

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**AMELIA PENNEY-CROCKER, PARKER BOOT-QUACKENBUSH, KHADIJAT FOLASAYO DAIRO, CATHERINE HE, THARAN D'SILVA, KATIE YU, DIEGO CHRISTIANSEN-BARKER, LACHLAN BROWN, ZOEY ANN PURVES, JACOB COLATOSTI, MILAN ROZOTTO-LAGOS, OSWALDO PAZ FLORES AND JUSTICE FOR CHILDREN AND YOUTH**

Applicants

and

**ATTORNEY GENERAL OF CANADA**

Respondent

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**FACTUM OF THE APPLICANTS**

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March 6, 2026

**JUSTICE FOR CHILDREN AND YOUTH**

55 University Avenue, Suite 1500

Toronto, ON M5J 2H7

Tel: 416-920-1633

Fax: 416-920-5855

**Mary Birdsell (LSO# 38108V)**

Email: [mary.birdsell@jfcy.clcj.ca](mailto:mary.birdsell@jfcy.clcj.ca)

**Emily Chan (LSO# 45352P)**

Email: [emily.chan@jfcy.clcj.ca](mailto:emily.chan@jfcy.clcj.ca)

**DAVID ASPER CENTRE FOR  
CONSTITUTIONAL RIGHTS**

78 Queens Park Cres  
Toronto, ON M5C 2C5  
**Cheryl Milne (LSO #27022C)**  
Email: [cheryl.milne@utoronto.ca](mailto:cheryl.milne@utoronto.ca)

**Counsel for the Applicants, Penney-Crocker et al.**

**TO: THIS HONOURABLE COURT**

**AND TO: DEPARTMENT OF JUSTICE CANADA**  
400-120 Adelaide St W  
Toronto, Ontario M5H 1T1

**Michael H. Morris (LSO #34397W)**

Email: [Michael.Morris@justice.gc.ca](mailto:Michael.Morris@justice.gc.ca)

**Sanam Goudarzi (LSO #61519H)**

Email: [Sanam.Goudarzi@justice.gc.ca](mailto:Sanam.Goudarzi@justice.gc.ca)

**Ryan Deshpande (LSO #84186S)**

Email: [Ryan.Deshpande@justice.gc.ca](mailto:Ryan.Deshpande@justice.gc.ca)

**Adrian Zita-Bennett (LSO #84848K)**

Email: [Adrian.Zita-Bennett@justice.gc.ca](mailto:Adrian.Zita-Bennett@justice.gc.ca)

**Counsel for the Respondent, Attorney General of Canada**

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## PART I. OVERVIEW

1. The Supreme Court of Canada has long affirmed that voting is a fundamental political right essential to Canadian democracy and that any restriction on the franchise must withstand the most rigorous scrutiny.<sup>1</sup> The minimum voting age of 18 set out in s. 3 of the *Canada Elections Act* (“CEA”)<sup>2</sup> fails this standard. It denies the Applicants—and all similarly situated Canadian citizens—their constitutionally protected right under s. 3 of the *Charter of Rights and Freedoms*<sup>3</sup> to participate in the political process, even though they bear legal responsibilities and will live with the long-term consequences of today’s political decisions. Their exclusion demands a constitutionally adequate justification, which Parliament has not provided.

2. Canadian history demonstrates that Parliament has both used the franchise to exclude groups and retained restrictions untethered to democratic principles. The current voting age is emblematic of this pattern. The major political parties in Canada permit individuals as young as 14 to become party members, vote in leadership contests, and shape party policy, yet those same people are excluded from the right to vote in general elections until age 18. This inconsistency underscores the absence of a principled rationale for the legislated age limit.

3. The age of 18 as the threshold for voting is not grounded in evidence but is instead the product of historical happenstance. The Constitution demands more than tradition or symbolism to justify restricting a fundamental right.

4. Since the advent of the *Charter*, courts have repeatedly struck down restrictions on the right to vote that rely on stereotypes, moral judgments, or proxies for competence. *Section 3* of the *Charter* protects the right to vote for all Canadian citizens; the Supreme Court has

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<sup>1</sup> *Frank v Canada*, 2019 SCC 1 at [para 1](#).

<sup>2</sup> *Canada Elections Act*, [SC 2000, c 9](#).

<sup>3</sup> *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 a. [the “*Charter*”].

emphasized that citizenship—not age-based assumptions about maturity—is the sole constitutionally legitimate criterion for participation. The *CEA*'s 18-year-old minimum voting age is therefore inconsistent with s. 3 of the *Charter*.

5. *Section 3* of the *CEA* also violates the Applicants' rights under ss. 2(b) and 15(1) of the *Charter*. With respect to s. 2(b), voting is the most fundamental form of political expression. Every Canadian citizen—except young people—has the right to express their views and interests through their vote, and, to have their voice represented in Parliament. With respect to s. 15(1), the exclusion of young people from the franchise is an extension of their broader marginalization, historic and ongoing exclusion from decisions that affect them, and from social and political life. By denying them representation, Parliament has little incentive to attend to their interests, perpetuating structural disadvantage and democratic invisibility.

6. These constitutional violations are further illuminated by Canada's obligations under the United Nations *Convention on the Rights of the Child* (“*UNCRC*”), which affirms that young people are entitled to meaningful participation in decisions affecting them, commensurate with their maturity, and in their best interests. The evidence demonstrates that many individuals under 18 possess the civic knowledge, interest, and capacity necessary to vote responsibly.

7. The violation of the Applicants' rights under ss. 3, 2(b) and 15(1) of the *Charter* is not justified under s. 1 of the *Charter*. The purported objective of ensuring an informed and engaged electorate is undermined by the blanket exclusion of all young people based on assumptions about a subset of them. The voting age bears no rational connection to the stated objective, nor is it minimally impairing. It disenfranchises a large cohort of capable citizens while permitting uninformed or disengaged adults to vote without restriction. The harms of disenfranchisement—

particularly the long-term political exclusion of an entire generation—substantially outweigh any unproven or speculative benefits of the limit.

8. Given the central role of the franchise in Canadian democracy and the seriousness of any infringement, the exclusion of young people from federal elections cannot be justified.

Preventing all citizens under 18 from voting in order to ensure that no uninformed or disengaged youth cast ballots is constitutionally impermissible. The *CEA*'s minimum voting age violates ss. 3, 2(b), and 15(1) of the *Charter* and must be struck down. A minimum age at which voting could be reasonably justified in a free and democratic society, grounded in evidence of capacity, would likely be an age between 12 and 16.

## **PART II. FACTS**

### **A. THE APPLICANTS: TWELVE HIGHLY ENGAGED YOUNG PEOPLE**

9. Each of the individual youth Applicants in this matter brings unique experiences and interests but all are united in their claim that the voting age of 18 is unjust, has prevented, and is preventing them from voting when they are interested, committed, and ready to do so. They are:

10. Amelia Penney-Crocker from Halifax, NS, is now 20 years old. Amelia's desire to vote stems from her experiences of gender inequality. She believes that young people should have the right to vote because today's political decisions affect the future she will inherit and because youth offer a distinct perspective on political issues that affect them.<sup>4</sup>

11. Parker Boot-Quackenbush from London, ON is now 20 years old. Parker wants to vote to ensure their interests are represented in Parliament. Parker is frustrated that youth voices are not considered on policy issues that directly affect them right now.<sup>5</sup>

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<sup>4</sup> Affidavit of Amelia Penney-Crocker, sworn Nov 27/21, Supp. Application Record ("SAR"), Tab 1, at paras 1-5.

<sup>5</sup> Affidavit of Parker EJ Boot-Quackenbush, sworn Nov 28/21, SAR, Tab 2, at paras 1, 3-5.

12. Khadijat Folasayo Dairo from Fort McMurray, AB, is now 19 years old. Khadijat is active on her student council, is a part of the Mayor's Youth Advisory Council, and participates in Plan Canada's Speakers Bureau. She wants to vote to hold politicians accountable to their young constituents on issues that they care about, like religious discrimination.<sup>6</sup>

13. Tharan D'Silva of Richmond Hill, ON is now 16. Tharan feels strongly that governments are making decisions today that disproportionately affect young Canadians without considering their views, such as the decrease in the quality of his education following funding cuts. He is inspired to vote because of his community involvement, and to promote his love of science.<sup>7</sup>

14. Katie Yu is now a 19-year-old living in Iqaluit, Nunavut. Katie is involved in her community and is the high school representative at the Iqaluit District Education Authority. She cares about the issues faced by the residents of Nunavut, such as food insecurity, infrastructure and the housing crisis, technological inequality, mental health and the suicide epidemic, Indigenous rights, and climate change. Nunavut has the youngest average population in the country; so, youth voices on these issues are lost.<sup>8</sup>

15. Diego Christiansen-Barker from Campbell River, BC, is now 21-years-old. Diego became involved in youth politics by joining the BC Youth Council and the Vote16 BC campaign. He is inspired to challenge the minimum voting age of 18 because young people can join the reserves, be sentenced as an adult in criminal court, emancipate, and drive, all before they can vote.<sup>9</sup>

16. Zoey Ann Purves from Ottawa, ON is now 21 years old. Zoey is concerned that a failure to address environmental protection today will saddle future generations with the costs of the

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<sup>6</sup> Affidavit of Khadijat Folasayo Dairo, sworn Nov 27/21, SAR, Tab 3, at paras 1-6.

<sup>7</sup> Affidavit of Tharan Chandra D'Silva, sworn Nov 28/21, SAR, Tab 5, at paras 1-5.

<sup>8</sup> Affidavit of Katie Yu, sworn Nov 28/21, SAR, Tab 6, at paras 1-7.

<sup>9</sup> Affidavit of Diego Chistiansen-Barker, sworn Nov 30/21, SAR, Tab 7, at paras 1-5.

climate crisis. Zoey knows that the state has no direct incentive to consider the harms its decisions may impose on young people, who have no means to hold them accountable.<sup>10</sup>

17. Jacob Colatosti from Hamilton, ON is now a 21-year-old. Jacob knows that the political, social, and economic knowledge of young people is seriously underestimated. Jacob is passionate about politics and is involved in his community. Many young Canadians work, pay taxes, and hold views on political issues, and Jacob feels strongly that young people should not be disenfranchised based on discriminatory tropes.<sup>11</sup>

18. Milan Rozotto-Lagos is a 17-year-old from Saskatoon, SK. Milan is concerned that children do not have a voice in federal politics since many laws and decisions being made by politicians affect children significantly. Milan wants a say in issues related to her education, environment, immigration, and injustice, which will affect her today and throughout her life.<sup>12</sup>

19. Oswaldo Andrés Paz Flores from Montreal, QC is 20. Oswaldo is passionate about environmental sustainability. He is active in several organizations that promote water access and hopes to use his vote to protect the environment. Oswaldo cares about issues that affect youth, like the intergenerational wealth gap and general equality.<sup>13</sup>

20. Catherine He is 20-years-old from St. Catherine's, ON. Catherine's pursues her passion for social and racial justice through community involvement. Catherine believes that young people are already engaged in politics, are prepared to vote, and should have a say in issues that affect them personally, like the rise of anti-Asian hate.<sup>14</sup>

21. Lachlan Brown turned 18 years old just over a month after the federal election that

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<sup>10</sup> Affidavit of Zoey Ann Purves, sworn Nov 26/21, SAR, Tab 9, at paras 1-6.

<sup>11</sup> Affidavit of Jacob Colatosti, sworn Nov 27/21, SAR, Tab 10, at paras 1-5.

<sup>12</sup> Affidavit of Milan Rozotto-Lagos, sworn Nov 30/21, SAR, Tab 11, at paras 1-6.

<sup>13</sup> Affidavit of Oswaldo Andrés Paz Flores, sworn Nov 29/21, SAR, Tab 12, at paras 1-6.

<sup>14</sup> Affidavit of Catherine He, sworn Nov 27/21, SAR, Tab 4, at paras 1-7.

immediately preceded the filing of this Application. Prior to the election, he was involved in and later employed by the Students Commission of Canada. Lachlan is passionate about political causes but was constrained in how he could influence political decision-making. He volunteered as a canvasser, attended protests, spread awareness through posters and donated to campaigns.<sup>15</sup>

22. The individual Applicants are joined by public interest litigant Justice for Children and Youth (“JFCY”, together the “Applicants”). (JFCY) seeks to be included as a public interest advocate, knowing that many more young people seek the same findings and remedy from this Court as the individual Applicants. JFCY is a non-profit legal aid clinic dedicated to advancing the rights and interests of young people in Canada. JFCY is the only legal clinic in Canada exclusively practicing law on behalf of children and youth across a range of legal subjects, has been involved with young people who seek to be included in the franchise, and has extensive experience as a public interest litigant in cases involving children and young people.<sup>16</sup>

## **B. THE APPLICATION IS SUPPORTED BY EXPERT EVIDENCE & A LAY WITNESS WHO WORKS WITH STUDENTS ON VOTING**

23. The Applicants rely on the affidavit evidence of three leading experts on election law and voting rights and one lay witness who is an experienced teacher - all support the application.

24. Dr. Jan Eichhorn is a Senior Lecturer in Social Policy at the University of Edinburgh. Dr. Eichhorn’s research focuses on political participation and attitudes, in particular of young people. Dr. Eichhorn has led representative studies on lowering the voting age in Scotland, and co-edited a book collating evidence from countries where the voting age has been lowered below 18.<sup>17</sup>

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<sup>15</sup> Affidavit of Lachlan Brown, sworn Nov 26/21, SAR, Tab 8, at paras 1-9.

<sup>16</sup> Affidavit of The Public Interest Applicant Justice for Children and Youth, sworn Nov 30/21, SAR, Tab 14, at paras 7-15.

<sup>17</sup> Affidavit of Jan Eichhorn, affirmed May 5/22, Application Record (“AR”), Tab C, at paras 1-8 [Eichhorn Affidavit].

25. Dr. Richard Johnston is a Professor Emeritus of Political Science at the University of British Columbia. From 2011 to 2020, Professor Johnston was the Canada Research Chair in Public Opinion, Elections and Representation at the University of British Columbia. Dr. Johnston's research focuses on election turnout and related questions. Dr. Johnston's evidence also includes a detailed legislative history of the federal franchise.<sup>18</sup>

26. Joshua Douglas is the Ashland, Inc.-Spears Distinguished Research Professor of Law at the University of Kentucky, J. David Rosenberg College of Law. His scholarship focuses on voting rights and on the benefits to democracy from lowering the voting age from 18.<sup>19</sup>

27. Matthew Herrington is a Grade 7 teacher at Fisher Park Middle School/Summit Alternative School, at the Ottawa-Carleton District School Board. He has a specialist designation in Special Education - skills and expertise in meeting unique learning needs of students, including everything from giftedness, learning and cognitive disabilities, to brain injury. As part of his teaching role he coordinates "Student Vote" elections (a Canada wide program described below). For years he has experienced first-hand the extent to which students as young as 11-12 are deeply engaged and seek to be well informed in the democratic process.<sup>20</sup> Matthew Herrington has been responsible for his school's and students' participation in the Civix Mock Election program. It is a national program that engages millions of students across Canada in mock elections that are held alongside municipal, provincial, and federal elections.<sup>21</sup>

## **C. HISTORY OF THE FRANCHISE SUPPORTS A LOWER VOTING AGE**

### **I. Prior to the *Charter*, Politicians Regularly Used the Franchise as a Political Tool**

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<sup>18</sup> Affidavit of Richard Johnston, affirmed Oct 18/22, AR, Tab E, at paras 1-4 [Johnston Affidavit].

<sup>19</sup> Affidavit of Joshua Douglas, affirmed Oct 5/22, AR, Tab B, at paras 1-7 [Douglas Affidavit].

<sup>20</sup> Affidavit of Matthew Herrington, affirmed Mar 6/23, AR, Tab D, at paras 26-31 [Herrington Affidavit].

<sup>21</sup> *Ibid* at para 8-14.

28. Prof. Johnston’s summary of the legislative history demonstrates that the path to a more inclusive franchise has not been linear. Understood as a centuries-long struggle for inclusion in democratic decision-making, Canada’s long history of disenfranchisement—including the disenfranchisement of women and other equity-seeking groups—is laid bare. Parliament and courts have used the franchise as a tool to implement policies of racial and gender-based discrimination.<sup>22</sup> Voting rights have been revoked and granted as marginalized groups fell in and out of favour with the electorate and in pursuit of the government’s policy objectives.

29. Progressive enfranchisement has a long history in Canada and began well before the *Charter*. An obvious example is women’s suffrage in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. In 1885, Parliament codified in the *Electoral Franchise Act*, unfair and discriminatory qualifications that limited the franchise to male British subjects 21 years or older who met specific property ownership or tenancy requirements. Otherwise qualified individuals could not vote if they were judges, revising officers, or electoral officers.<sup>23</sup> Members of specific racialized communities were barred from voting by federal legislation, including individuals of “Mongolian or Chinese race” and “Indians” living on reserve across Canada or in Manitoba, British Columbia, Keewatin, and the North-West Territories.<sup>24</sup>

30. In subsequent years, Parliament continued to add “merit” and “desert”-based voting qualifications. These qualifications controlled who deserved to participate in Canadian democracy, excluding disfavoured groups and political dissidents. Early restrictions to the franchise excluded prison inmates, residents of “lunatic asylums,” and residents of charitable

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<sup>22</sup> See, for e.g. *Reference re meaning of the word “Persons” in s.24 of British North America Act*, 1928 CanLII 55 (SCC) at [277](#) citing the fact that women could not vote at confederation as proof that women were not “qualified persons” under s. 24 of the *British North America Act*, rev’d [1929 CanLII 438](#) (UK JCPC).

<sup>23</sup> *Ibid* at [para 58](#).

<sup>24</sup> Johnston Affidavit, *supra* note 18 at para 58-59.

institutions that received assistance from the state.<sup>25</sup> The *Wartime Elections Act*, disenfranchised conscientious objectors, as well as individuals born in adversarial nations who had become naturalized British subjects after March 1902.<sup>26</sup>

## **II. Setting the Minimum Voting Age at 18 was an Historical Accident**

31. As Prof. Douglas explains, the decision to select 18 as the voting age is arbitrary and was largely the result of an “historical accident”.<sup>27</sup> The starting point for reform in Canada, age 21, was no less arbitrary. For instance, Prof. Douglas explains that the original 21-year-old voting age requirement was borrowed from British common law. That tradition came from medieval times, as 21 “was the age at which a medieval adolescent was thought capable of wearing a suit of heavy armour and was therefore eligible for knighthood”.<sup>28</sup> The voting-age requirement in Canada was set as a proxy for a man’s physical strength.

32. The 21-year-old voting age requirement was not reconsidered until 1970, when Parliament introduced legislation to lower the federal voting age from 21 to 18.<sup>29</sup> In Canada, there was little public pressure to reduce the voting age, though there was considerable support among Parliamentarians to do so between 1954 and 1970.<sup>30</sup> Global reform was driven by a thirty-year struggle that stemmed from young people being asked to serve in the Second World War. The mantra became “old enough to fight, old enough to vote.”<sup>31</sup>

33. Prof. Johnston’s analysis of Parliamentary debate records in Canada points to four primary rationales for the decision to lower the voting age to 18 from 21: 1) 18-to-20-year-olds had a stake in Canada’s governance; 2) 18-to-20-year-olds could be trusted to exercise the right

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<sup>25</sup> Johnston Affidavit, *supra* note 18 at para 59.

<sup>26</sup> *Ibid* at para 61.

<sup>27</sup> Douglas Affidavit, *supra* note 19 at para 17.

<sup>28</sup> *Ibid* at para 20; See also Eichhorn Affidavit, *supra* note 17 at para 21.

<sup>29</sup> Johnston Affidavit, *supra* note 18 at paras 66-68.

<sup>30</sup> *Ibid* at para 68.

<sup>31</sup> Douglas Affidavit, *supra* note 19 at para 23.

to vote in a mature, informed manner; 3) 18-to-20-year-olds were already participating in other activities connected to citizenship and public service, particularly military service; and 4) several provinces had already enfranchised 18-to-20 year olds.<sup>32</sup> These justifications could apply with equal strength and veracity to justify a voting age below 18.<sup>33</sup>

## **D. THE 18-YEAR-OLD VOTING AGE REQUIREMENT IS NOT BASED IN EVIDENCE**

### **I. Section 3 of the CEA is Arbitrary and Grounded in Stereotypes about Young People**

34. In his Affidavit, Dr. Eichhorn identifies the most common reasons employed by opponents of voting age reform, which include that people who are under 18: (1) lack political knowledge; (2) lack sufficient maturity; (3) lack sufficient political interest; (4) are likely to replicate their parents' voting choices rather than form their own; (5) are easy to manipulate or are uncritical; and (6) are also deprived of other citizenship rights that they acquire at age 18.<sup>34</sup> Dr. Eichhorn's evidence, drawing on research and analysis from many jurisdictions that have lowered their minimum voting age below age 18, challenges each of these stereotypes in turn.

35. First, evidence about the political knowledge of young people should be carefully scrutinized. It is methodologically flawed to draw inferences about the political knowledge of disenfranchised young people to make conclusions about whether they would be informed voters if they were enfranchised.<sup>35</sup> In other jurisdictions where the voting age has been lowered to 16, greater engagement with political issues is often observed, which results in increases in political knowledge.<sup>36</sup> Dr. Eichhorn explains that enfranchised 16 and 17-year-olds in the Scottish Independence Referendum had similar levels of political interest as Scottish adults.<sup>37</sup>

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<sup>32</sup> Johnston Affidavit, *supra* note 18 at para 69.

<sup>33</sup> British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 41st Parl, 4th Sess (21 November 2019) at [10648](#) (Hon D. Eby).

<sup>34</sup> Eichhorn Affidavit, *supra* note 17 at para 35.

<sup>35</sup> *Ibid* at para 37.

<sup>36</sup> *Ibid*.

<sup>37</sup> Exhibit 11 to the Eichhorn Affidavit at *supra* note 17 at paras 25-28.

36. The evidence indicates that less restrictive measures can be taken to improve political knowledge. For instance, as Eichhorn explains, if young people have civic education provided by their schools to prepare them to vote for the first time, greater engagement with political issues can be observed.<sup>38</sup> Johnston similarly argues that a lower voting age would dovetail with practical possibilities for deeper engagement in classrooms.<sup>39</sup> In Austria, for example, where concentrated efforts are made to engage young people in schools, 16 and 17-year-old voters have equal levels of political understanding compared to their older counterparts.<sup>40</sup>

37. Second, in jurisdictions where the voting age has been lowered to 16, there is no evidence that 16 and 17-year-olds treat their vote in a less mature way than adults,<sup>41</sup> and the most recent evidence from Germany shows that young people tend to vote similarly to adults.<sup>42</sup> Where maturity is used as a proxy to characterize the cognitive abilities of young people to make reasoned choices, the evidence indicates that teenage citizens possess the same cognitive sophistication as young adults.<sup>43</sup> In any event, the Respondent is not arguing that age is a proxy for competence and competence is not a legislated requirement for those over 18.<sup>44</sup>

38. Third, in these same jurisdictions, 16 to 17-year-olds had the same average level of political interest as the adult population overall.<sup>45</sup> In fact, in Austria, one study showed interest in politics among 16 and 17-year-olds was the second highest of the four age groups under 30.<sup>46</sup> In another study on American youth, 16-year-olds scored about the same as adults on measures of

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<sup>38</sup> Eichhorn Affidavit, *supra* note 17 at para 37; See also Exhibit 11 to the Eichhorn Affidavit, *supra* note 17 at paras 32-33.

<sup>39</sup> Johnston Affidavit, *supra* note 18 at para 37.

<sup>40</sup> Exhibit 17 to the Eichhorn Affidavit, *supra* note 17 at para 24.

<sup>41</sup> Eichhorn Affidavit, *supra* note 17 at para 38.

<sup>42</sup> Reply Affidavit of Jan Eihorn, SAR, Tab 15, Exhibit 4: "Anna Lang, Voting at 16? 16–17-Year-Old Germans Vote as Correctly as Adults" *Political Psychology*, Vol. 44, No. 4, 2023".

<sup>43</sup> Exhibit 23 to the Eichhorn Affidavit, *supra* note 17 at 373; and Douglas Affidavit, *supra* at para 39.

<sup>44</sup> CEA, *supra* note 2.

<sup>45</sup> *Ibid.*

<sup>46</sup> Eichhorn Affidavit, *supra* note 17 at para 39.

political tolerance, skill efficacy and interest. Prof. Johnston similarly argues that the narrative of “uninterested young citizens,” is not supported by the evidence.<sup>47</sup>

39. Fourth, intergenerational vote transmission has been declining for decades and a large proportion of young people vote differently from their parents.<sup>48</sup> For example, 40% of 16 to 17-year-olds held a different view than their parents on the Scottish independence referendum question.<sup>49</sup> Fifth, and similarly, there is little evidence to show that young people are easily manipulated in their voting choices.<sup>50</sup> Dr. Eichhorn’s findings from a study on the voting habits of 16-17-year-olds in the Scottish Independence Referendum indicate that young people do not uncritically take on what they are told by their parents or peers.<sup>51</sup>

40. The observations of Mr. Herrington, at his school, where the students are aged 11-14, support the independence of thought and engagement of young people in political discourse. Mr. Herrington has, in every year since 2014 seen the consistently high levels of engagement, interest, pursuit of information and knowledge that his students demonstrate while participating in the Student Vote. In particular, during mock election Town Hall meetings with candidates and the students, he reports enthusiastic participation, and thoughtful engagement by the students and political candidates alike. The Civix data shows that students in mock elections have diverse voting choices, often tracking the actual vote outcomes, but also reflecting some diversity.<sup>52</sup>

41. Finally, Dr. Eichhorn points out that there is no uniform age across jurisdictions at which other rights associated with citizenship are granted.<sup>53</sup> Some are reserved for 18, while other rights, like the ability to drive, work, pay taxes, and more, are afforded at younger ages. While

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<sup>47</sup> Johnston Affidavit, *supra* note 18 at para 22.

<sup>48</sup> Eichhorn Affidavit, *supra* note 17 at para 40.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid* at para 42.

<sup>51</sup> *Ibid* at para 43.

<sup>52</sup> Herrington Affidavit, *supra* note 20, Exhibit 2.

<sup>53</sup> *Ibid* at para 44.

the variation is important, it does not justify voting rights being withheld until 18.<sup>54</sup> Jurisdictions that have studied these phenomena, such as an Expert Panel set up by the National Assembly for Wales to consider election reform, have rejected these arguments as providing justifications against a reduction in the voting age below 18.<sup>55</sup>

## II. Youth Vote in Political Party Elections and Other Jurisdictions Without Consequence

42. Parliament's justifications for an 18-year-old voting age are contradicted by the membership practices of major federal political parties. All major federal political parties but one allow 14-year-olds to join as members.<sup>56</sup> As members, these young people enjoy full participatory rights, including the right to vote for prospective candidates in each riding and in the leadership elections,<sup>57</sup> and yet citizens under age 18 are not able to vote in federal elections.

43. A number of jurisdictions have lowered their voting age from 18 without negative consequence. For example, the voting age is 16 in Argentina, Austria, Brazil, Cuba, Ecuador, Guernsey, Isle of Man, Jersey, Malta, Nicaragua, Scotland, and Wales,<sup>58</sup> and is 17 in Greece and Indonesia.<sup>59</sup> Additional jurisdictions have set the voting age at 16 in local elections, including Belgium (European elections), Estonia, Germany, and a number of municipalities in the United

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<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*; See also Exhibit 17 to the Eichhorn Affidavit at c 15 para 12.

<sup>56</sup> Johnston Affidavit, *supra* note 18 at para 112; Note: Bloc Quebecois permits membership and voting at age 16.

<sup>57</sup> Johnston Affidavit, *supra* note 18 para 112; see also, Liberal Party of Canada, "Rules Governing Registration as Registered Liberals" (May 2020), online: [liberal.ca](#) at [Schedule A](#); Liberal Party of Canada "The Constitution of the Liberty Party of Canada (n.d.), online: [liberal.ca](#) at [B.10](#); Conservative Party of Canada, "Conservative Party of Canada Membership By-law" (December 2015), online: [conservative.ca](#) at [1.1.1](#) and [6](#); New Democratic Party of Canada, "Constitution of the New Democratic Party of Canada," (February 2018), online: at [2-3](#); Ontario NDP, "Ontario New Democrats Party Constitution and By-Laws; (2022), online at [3](#); Green Party, "Constitution of the Green Party of Canada" (February 2025), online: [greenparty.ca](#) at [1.1.1](#).

<sup>58</sup> ACE Electoral Knowledge Network, "Youth and Elections" (2018), [online](#); Scottish Elections (Reduction of Voting Age) Act 2015 (Scot), [ASP 7](#); UK, Scottish Parliament, Official Report, 4 (28 May 2015) at [col 49-50](#); Wales, National Assembly, Senedd and Elections (Wales) Bill, Explanatory Memorandum (February 2019), [online](#); Denis Derbyshire & Ian Derbyshire, "United Kingdom's Dependencies" in Encyclopedia of World Political Systems (Abingdon, Oxon: Routledge, 2016) 850 at 850-51; [online](#).

<sup>59</sup> ACE Electoral Knowledge Network, "Youth and Elections" (2018), [online](#); Stelios Bouras, "[Greece Passes Electoral Reform Law](#)", Wall Street Journal (21 July 2016).

States.<sup>60</sup> As Dr. Eichhorn provides, the evidence indicates that where countries have a voting age lower than 18 no harmful effects have been observed to their respective democracies.<sup>61</sup> On the contrary, lowering the voting age has led to higher levels of political engagement.<sup>62</sup>

### **III. A Lower Voting Age Would Contribute to a Healthier Canadian Democracy**

44. The disenfranchisement of young people undermines the legitimacy of democracy. Prof. Douglas explains that democracy is stronger and more legitimate when voting rights are inclusive.<sup>63</sup> A government's responsiveness to the people is reflected, in part, by the people's power to vote out a politician or party who does not respond to their concerns. The authorization of laws collectively by the people who are subject to them is inseparable from voting.<sup>64</sup>

45. Young people's lives are extensively controlled by laws over which they have no direct influence or say. If people under age 18 work or earn money they must pay taxes, drive and obey traffic laws, are subject to legal sanctions including under the criminal law, and must complete compulsory education.<sup>65</sup> Similarly, political decisions made today, Prof. Douglas explains, will continue to affect disenfranchised young people for decades.<sup>66</sup>

46. Evidence from other jurisdictions indicates that a lower voting age contributes to high levels of political engagement. As Dr. Eichhorn explains, in countries where 16 to 17-year-olds can vote, we have seen a "treatment effect."<sup>67</sup> Enfranchised young people tend to become more politically engaged creating a number of pro-civil pay-offs: greater voting participation throughout their lives, greater participation in other forms of political engagement, and

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<sup>60</sup> ACE Electoral Knowledge Network, "Youth and Elections" (2018), [online](#); "Voting Age Lowered to 16 in Local Elections", ERR News (6 May 2015), [online](#); Douglas Affidavit, *supra* note 19 at para 26.

<sup>61</sup> Eichhorn Affidavit, *supra* note 17 at para 46.

<sup>62</sup> *Ibid.*

<sup>63</sup> Douglas Affidavit, *supra* note 19 at paras 8-11.

<sup>64</sup> *Ibid* at para 12.

<sup>65</sup> *Ibid* at para 42.

<sup>66</sup> *Ibid* at para 44-45.

<sup>67</sup> Eichhorn Affidavit, *supra* note 17 at para 46.

engagement with more types of information sources.

47. Prof. Johnston argues that the phenomenon of low voter turnout amongst voters in their early twenties can be partly explained by an electorate's age when they are eligible to vote for the first time.<sup>68</sup> When the voting age was 21, electoral cycles often resulted in citizens encountering their first election at age 22 or 23. Johnston argues that by this time, youth will have passed through “their most turbulent years.”<sup>69</sup> When the voting age was set at 18, in contrast, voters may experience their first election at a singularly bad point in the life cycle to embark on electoral involvement and turnout decreased.<sup>70</sup> By lowering the age requirement below 18, the turbulent years can be by-passed and lifelong voting habits can be improved.

#### **E. RESPONDENTS’ EXPERTS**

48. The Attorney General has not provided an evidentiary justification for the age of 18 in the *CEA*. Professor Peter Loewen gave his opinion that a change in the age from 18 requires broader support from the electorate or there is a risk to the public’s confidence in the electoral system but provided no concrete evidence of this from history. He also expressed concern about the low voter turnout for young people who are eligible to vote. This concern is countered by the evidence of Dr. Eichhorn about increased engagement of voters in countries where the voting age is lower than 18<sup>71</sup> and by Prof. Johnston’s analysis of the persistence of early experience of voters – that the first opportunity to vote affects the likelihood of subsequent turnout.<sup>72</sup> The evidence of Louis Massicotte was unhelpful. While initially suggesting in his affidavit that only those countries with a weak democratic system had lowered the voting age below 18 and thereby

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<sup>68</sup> Johnston Affidavit, *supra* note 18 at para 50-52.

<sup>69</sup> *Ibid* at para 10.

<sup>70</sup> Johnston Affidavit, *supra* note 18 at para 10.

<sup>71</sup> Eichhorn Affidavit, *supra* note 17 at para 46.

<sup>72</sup> Johnston Affidavit, *supra* note 18 at paras 15-16.

implying that this could happen if such a step were taken here, he acknowledged in cross-examination that his conclusions were unsupportable.<sup>73</sup>

49. The Respondent's witnesses also include Miriam Lapp, Senior Director of Research, Consultations, and Civic Education in the Office of the Chief Electoral Officer who provided evidence on voter turnout in Canada as well as survey results on public opinion on the lowering of the voting age. It is acknowledged that the majority of the Canadian public surveyed do not support lowering the voting age, but in cross-examination it was made clear that very little context was provided as part of the surveys as to the interest and capabilities of people under 18 to be engaged in the issues.<sup>74</sup> Of note in her evidence was the results of youth electoral engagement survey that shows that voters between the age of 18 and 24 who reported a higher interest in politics, greater political knowledge, and watching or participating in campaign events were more likely to vote. However, even participation in informal political events (i.e. protesting) positively impacted the likelihood of voting.<sup>75</sup>

### **PART III. STATEMENT OF LAW, ISSUES, AND AUTHORITIES**

#### **A. THE MINIMUM VOTING AGE VIOLATES THE APPLICANTS' RIGHT TO VOTE**

##### **I. The *Charter* Guarantees All Canadian Citizens the Right to Vote in Elections**

50. Section 3 of the *Charter* guarantees that “[e]very citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.”<sup>76</sup> This provision is drafted in broad and unqualified terms, a clear intention to entrench a robust and universally available franchise. The centrality of this

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<sup>73</sup> Cross-examination and Transcript of the Cross-Examination of Louis Massicotte, on October 31, 2025 at p 13.

<sup>74</sup> Cross-examination and Transcript of the Cross-Examination of Peter Loewen, on October 20, 2025 at pp 29-31.

<sup>75</sup> Affidavit of Miriam Lapp, affirmed 11 March 2024, Exhibit “M”, *Youth Electoral Engagement in Canada*.

<sup>76</sup> *Charter*, *supra* note 3.

guarantee is reinforced by exempting s. 3 from the notwithstanding clause—an exclusion that underscores the imperative of shielding the franchise from legislative interference by those with both the capacity and incentive to limit electoral participation for political advantage.<sup>77</sup> The deliberate removal of the phrase “without unreasonable distinction or limitation” during the drafting process confirms that s. 3 was designed as a wide-ranging and unrestricted democratic right, with s. 1 operating as the sole permissible source of qualification.<sup>78</sup>

51. Under the *Charter* courts have consistently interpreted s. 3 purposively to expand, rather than restrict, the franchise. Early decisions such as *Muldoon v Canada* and *Canadian Disability Rights Council v Canada* struck down statutory provisions that excluded judges<sup>79</sup> and certain persons with mental disabilities from voting, finding these exclusions arbitrary and unsupported by evidence.<sup>80</sup> Germane to this case, the Court in *Canadian Disability Rights Council* rejected the assumption that all individuals subject to the impugned prohibition lacked capacity to vote, noting evidence that psychiatric patients’ voting patterns mirrored those of the general public.<sup>81</sup>

52. The SCC has reaffirmed and deepened this expansive approach.<sup>82</sup> In *Sauvé v Canada (Chief Electoral Officer)*, the Court rejected deference to Parliamentary choices grounded in political philosophy and struck down restrictions on voting rights for penitentiary inmates, underscoring that limits on such a fundamental right demand careful scrutiny and must be justified by evidence of concrete harm.<sup>83</sup> More recently, in *Frank v Canada (Attorney General)*, the Court invalidated restrictions on the voting rights of citizens living abroad for more than five

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<sup>77</sup> *Sauvé v Canada (Chief Electoral Officer)*, 2002 SCC 68 at [para 11](#) [*Sauvé* #2].

<sup>78</sup> Peter Hogg & Wade Wright, *Constitutional Law of Canada, 5th Edition* (Toronto: Thomson Reuters Canada, 2022).

<sup>79</sup> *Muldoon v Canada*, 1988 CanLII 9407 (FC) at [636](#).

<sup>80</sup> *Canadian Disability Rights Council v Canada*, 1988 CanLII 9443 (FC) at [627](#), [*CDRC*].

<sup>81</sup> *Ibid* at [624-626](#).

<sup>82</sup> *Ontario (Attorney General) v Working Families Coalition (Canada) Inc*, 2025 SCC 5 at [paras 1-2, 8-9](#).

<sup>83</sup> *Sauvé* #2, *supra* note 77 at [paras 12, 9, 13](#).

years, finding the arbitrary threshold neither minimally impairing nor rationally connected to the government's claimed objective of electoral fairness.<sup>84</sup> These decisions collectively confirm that courts will not uphold restrictions on the franchise that rest on conjecture, political sentiment or administrative convenience.

53. The jurisprudence reflects a consistent and principled legacy of progressive enfranchisement that is consistent with the SCC's recent discussion of the purposive approach to *Charter* interpretation reiterating that it was drafted with an eye to the future.<sup>85</sup> Courts have repeatedly emphasized that voting rights lie "at the heart of Canadian democracy," an unwritten constitutional principle with both institutional and individual dimensions.<sup>86</sup> Representatives must be chosen by the people, and individual citizens must have the right to participate in that selection.<sup>87</sup> Additionally, the Court has made clear that s. 3 must be interpreted in a broad and purposive manner to enhance<sup>88</sup> "the quality of and strengthen our democracy."<sup>89</sup> Interpreting s. 3 narrowly by restricting the franchise to select groups would weaken the legitimacy of our country's democratic system and "undermine its own claim to power".<sup>90</sup> These statements of law are consistent with Johnston's characterization of the legislative history of the franchise and Douglas' characterization of the underpinning of Canadian democracy.

54. The Applicants' claim strikes at the core of the purposes of s. 3 - effective representation

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<sup>84</sup> *Frank*, *supra* note 1 at [paras 35, 67](#).

<sup>85</sup> *Taylor v Newfoundland and Labrador*, 2026 SCC 5 at [para 70](#), (citing *Hunter v Southam Inc.*, 1984 CanLII 33 (SCC) at [p 155](#)); L. E. Weinrib, "The Canadian *Charter's* Transformative Aspirations" (2003), 19 S.C.L.R. (2d) 17). Like a "living tree", it must be "capable of growth and expansion within its natural limits" (*Hunter*, at pp [155-56](#), quoting *Edwards v Canada (Attorney General)*, *supra* note 22 at [p 136](#)).

<sup>86</sup> *Sauvé #2*, *supra* note 77 at [para 1](#); *Thomson Newspapers Co. v Canada (Attorney General)*, 1998 CanLII 829 (SCC) at [para 79](#); *Optiz v Wrzesnewskij*, 2012 SCC 55 at [para 10](#) [*Optiz*].

<sup>87</sup> *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC) at [paras 61-62](#), [para 65](#) [1998] 2 SCR 217. See also Yasmin Dawood, "[Democracy and the Right to Vote: Rethinking Democratic Rights under the Charter](#)" (2013) 51 Osgoode Hall LJ 251.

<sup>88</sup> *Frank*, *supra* note 1 at [para 26](#); *Figueroa v Canada (Attorney General)*, 2003 SCC 37 at [para 30](#) [*Figueroa*].

<sup>89</sup> *Frank*, *supra* note 1 at [para 27](#); *Figueroa*, *supra* note 88 at [para 27](#); *Sauvé #2*, *supra* note 77 at [para 34](#).

<sup>90</sup> *Ibid.*

and meaningful participation in democracy. The SCC held that the purpose of the right to vote enshrined in s. 3 of the *Charter* is the right to “effective representation, stating that each citizen is entitled to be represented in government.”<sup>91</sup> In *Haig v Canada*, the SCC added a related purpose of s. 3, “to grant every citizen of this country the right to play a meaningful role in the selection of elected representatives, who in turn will be responsible for making decisions embodied in legislation for which they will be accountable to their electorate.”<sup>92</sup> The Applicants are each subject to the law, but each of them has been denied the opportunity to participate in the electoral process and to be represented in government, a clear violation of their s. 3 rights.

## **II. The Impugned Provision Breaches the Applicants’ *Charter* Right to Vote**

55. The *CEA* violates the Applicants’ right to vote in elections of members of the House of Commons. The violation is clear: citizens who are less than 18 years old on polling day are excluded from voting without exception. All of the Applicants in this case could not vote because of s. 3 of the *CEA*.

56. The Alberta Court of Appeal in *Fitzgerald v Alberta* found that prohibiting citizens under 18 from voting in provincial elections violated s. 3 of the *Charter* and demanded scrutiny under s. 1.<sup>93</sup> The trial judge found that the violation was justified under s. 1 based on the purpose of the age restriction being that “individuals eligible to vote will have sufficient maturity to make rational and informed voting decisions.”<sup>94</sup> However, that case can be distinguished on the basis that this justification is understood to be incorrect and is not being advanced by the Respondent in this case.

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<sup>91</sup> *Reference re Prov. Electoral Boundaries (Sask.)*, 1991 CanLII 61 (SCC) at [183](#).

<sup>92</sup> *Haig v Canada (Chief Electoral Officer)*, 1993 CanLII 58 (SCC) at [1031](#) [*Haig*]; *Figueroa*, *supra* note 88 at [para 25](#).

<sup>93</sup> *Fitzgerald v Alberta*, 2004 ABCA 184 at [para 2](#) and [9](#).

<sup>94</sup> *Fitzgerald v Alberta*, 2002 ABQB 1086 at [para 60](#).

### III. Voting Age Prohibitions are Indistinguishable from Other Limits on Voting Rights

57. The voting age requirement is analogous to other categorical restrictions on voting rights and cannot escape *Charter* scrutiny on the basis that voting age restrictions are a “modality.”

58. The argument that age limitations are somehow different from other “moral” assessments of worthiness to vote is inconsistent with the established approach to s. 3, which requires that restrictions on voting be closely interrogated. The legislative history makes clear that Parliament has *in fact* used age restrictions as a proxy for limiting who *should* be permitted to participate in democracy.<sup>95</sup> Parliament should not be permitted to avoid *Charter* scrutiny by doing indirectly (by using age as a proxy for competency) what it cannot do directly without clear justification (imposing a competency requirement on voting generally).

59. In *obiter dicta*, the SCC in *Sauvé*, differentiated the impugned provisions that disenfranchised inmates from voting age qualifications because they were too different.<sup>96</sup> In the case of incarcerated Canadians, the state determined the class was unworthy to vote. In the case of youth, the Court suggested that an age must be established and therefore the age chosen simply regulates a “modality” of the franchise.<sup>97</sup>

60. The Applicants make two submissions in response. First, the court’s remarks in *Sauvé* about youth voting restrictions were made in *obiter dicta*, were not the subject of argument, and do not bind this Court.<sup>98</sup> Section 3 of the *CEA* was not at issue in *Sauvé*. The Court’s decision did not turn on the constitutional validity of age restrictions on youth voting. Moreover, the Court did not decide that “modalities” cannot be the object of s. 3 scrutiny. Rather, the SCC’s

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<sup>95</sup> Johnston Affidavit, *supra* note 18 at para 69.

<sup>96</sup> *Sauvé* #2, *supra* note 77 at [para 37](#).

<sup>97</sup> *Ibid*.

<sup>98</sup> *R v Henry*, 2005 SCC 76 at [para 57](#).

reasons indicate “modalities” are subject to *Charter* scrutiny.<sup>99</sup>

61. Second, the development of the jurisprudence since *Sauvé* demonstrates that the interpretation of s.3 cannot incorporate age limits. In *Frank v Canada*, the SCC reaffirmed s. 3 of the *Charter* confers broad voting rights to citizens. Chief Justice Wagner, for the majority, held that the broad language of s. 3 of the *Charter* tethers voting rights to citizenship and citizenship alone.<sup>100</sup> Exactly like the residency requirements in *Frank*, age requirements have a long legislative history and have been subject to change over time. Thus, like the residency requirements in *Frank*, the fact that the framers of the *Charter* chose to omit age as an element of this core democratic right is significant in defining the right.<sup>101</sup> Limitations beyond citizenship - including a limitation based on age, must not be incorporated into the scope of the right itself. Rather it constitutes a breach of s. 3 that must be justified under s. 1, like all other limits.

62. The Cambridge Dictionary defines the word modality as “a particular way of doing or experiencing something”<sup>102</sup> - more akin to procedural aspects of a voting system. The exclusion of a group of citizens from the right to vote is a substantive infringement of the right, not a method of organizing voting such as electoral districts or methods of casting a ballot and arguably not a modality at all.

63. In dissent in *Frank v Canada*, Côté and Brown JJ. highlighted the incongruence between the *Frank* majority’s approach to s. 3 and the court’s *obiter* in *Sauvé*.<sup>103</sup> Côté and Brown JJ. argued that the logic of the modality distinction in *Sauvé* would inappropriately support *any* line-drawing exercise. For example, Parliament could set the voting age at 75 without attracting s. 3

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<sup>99</sup> *Sauvé* #2, *supra* note 77 at [para 62](#).

<sup>100</sup> *Frank*, *supra* note 1 at [para 29](#).

<sup>101</sup> *Ibid*.

<sup>102</sup> *Cambridge Dictionary* (online: <https://dictionary.cambridge.org/>), “modality”.

<sup>103</sup> *Frank*, *supra* note 1 at [paras 144-145](#).

scrutiny.<sup>104</sup> On the facts of *Frank*, any distinction between modalities and limits breaks down: age cannot be distinguished from other characteristics like residency. The Applicants agree with Côté and Brown JJ. insofar as they reason that “the only coherent account for the *CEA*’s restriction on the right to vote for Canadian citizens under the age of 18 [would be that] such a limit on the s. 3 right is justified.”<sup>105</sup> The modality-limit distinction cannot hold under *Frank*.

64. Age requirements cannot be distinguished from other limits on the right to vote because they regulate a “modality of the universal franchise.” This distinction is not consistent with the SCC’s statement of the principles of s. 3 in *Frank*. Voting rights are tethered to citizenship alone.

#### **IV. Even if the Minimum Voting Age is a “Modality,” s. 3 of the *Charter* is Infringed**

65. Finally, even if age qualifications can be differentiated from other limits on the basis that they regulate a “modality” of the franchise, it does not follow that “modalities” escape *Charter* scrutiny.<sup>106</sup> In *Henry v Canada*, for example, the claimants challenged amendments to mandatory voter identification requirements in the *CEA* under s. 3 of the *Charter*. The BCCA held that “any interference with the right to put a ballot in the box must be justified under s. 1 of the *Charter*.”<sup>107</sup> The process by which voting is regulated and implemented is captured within the ambit of voting rights under s. 3 of the *Charter*.

#### **B. THE MINIMUM VOTING AGE VIOLATES SECTION 2(B) OF THE *CHARTER***

66. Section 3 of the *CEA* violates the Applicants’ freedom of expression under s. 2(b) of the *Charter* by prohibiting the Applicants from being able to engage in the most essential form of political expression - voting. The prohibition on the Applicant’s political expression through

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<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.* Note the Justices make the unsupported assumption in their dissenting reasons that the age restriction is generally considered uncontested.

<sup>106</sup> *Sauvé #2*, *supra* note 77 at [para 62](#).

<sup>107</sup> *Henry v Canada (Attorney General)*, 2014 BCCA 30 at [para 56](#), leave to appeal to SCC refused, [35806](#) (17 July 2014).

voting strikes at the core of the guarantee of free expression under s. 2(b) of the *Charter*. The prohibition on voting for citizens under age 18 represents a purposeful and substantial interference with their political expression without a reasonable justification.

## **I. The Fundamental Freedom of Expression Protects Political Expression at its Core**

67. Section 2(b) of the *Charter* provides an expansive right of free expression to everyone. The text provides that everyone has the fundamental “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.” The SCC has repeatedly affirmed the importance of free expression as a foundation of a democratic society and has specifically recognized voting as a core tenet of our democracy,<sup>108</sup> stating that at its core, freedom of expression promotes values including self-fulfillment, participation in social and political decision-making, and the idea that seeking the truth through the communal exchange of ideas is an inherently good activity.<sup>109</sup>

68. Freedom of expression is grounded in democratic values.<sup>110</sup> The SCC has described the connection between freedom of expression and the political process as “perhaps the linchpin” of s. 2(b) protection.<sup>111</sup> Free expression protects human dignity and the right to think and reflect freely on one’s circumstances. It ensures a person may advocate for change in the wider social and political environment.<sup>112</sup>

## **II. The Applicants’ Claim Meets the Test for s. 2(b) *Charter* Protection**

69. Section 2(b) of the *Charter* protects all activity that conveys or attempts to convey meaning. Under *Irwin Toy*, the analysis asks (1) whether the activity has expressive content and,

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<sup>108</sup> *Frank*, *supra* note 1 at [para 1](#).

<sup>109</sup> See *RWDSU v Pepsi-Cola Canada Beverages (West) Ltd.*, 2002 SCC 8 at [para 32](#) [*RWDSU*].

<sup>110</sup> See *Irwin Toy Ltd. v Quebec (Attorney General)*, 1989 CanLII 87 (SCC) at [para 44](#) [*Irwin Toy*].

<sup>111</sup> *R v Keegstra*, [1990] 3 SCR 697 at [para 89](#).

<sup>112</sup> *RWDSU*, *supra* note 111 at [para 32](#); *Canada (Attorney General) v JTI-Macdonald Corp.*, 2007 SCC 30 at [para 60](#).

if so, (2) whether state action restricts that expression in purpose or effect.<sup>113</sup> Decisions including *Haig*, *Dunmore*, *Baier*, and *City of Toronto*<sup>114</sup> distinguish between negative rights claims (freedom from state suppression of expression) and positive rights claims (underinclusive state provision of a platform). Pursuant to *Baier*<sup>115</sup> an infringement is established in the negative-rights context where government imposes a “gag” on expressive activity. The exclusion of all citizens under 18 from voting is precisely this kind of suppression: a legislative bar preventing them from engaging in a fundamentally expressive act.

70. Either standard - a distinction is without a difference. The SCC has stated that the democratic rights, including voting, are positive rights that require state action,<sup>116</sup> and would thus satisfy the more stringent *Baier* test. Under *Baier*, the claimant must show that 1) the claim is grounded in a fundamental *Charter* freedom; 2) the exclusion substantially interferes with expression or is intended to do so; and 3) the state is responsible for that inability to exercise the freedom.<sup>117</sup> Here, all three criteria are met: 1) the claim rests on the fundamental right to vote protected by s. 3; 2) the exclusion imposes the most severe interference possible—an absolute prohibition—plainly satisfying any requirement of substantial interference, and a purpose to restrict the expressive activity of those under 18; 3) the state is entirely responsible for the inability to vote: the *CEA* creates and maintains the statutory bar.

71. Voting in federal elections is not a statutory platform or other discretionary forum in which the state may decide whom to include. It is a constitutional right whose purpose is to allow every citizen to participate. The Applicants do not seek government assistance, resources, or

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<sup>113</sup> *Irwin Toy*, *supra* note 112 at [paras 40-47](#).

<sup>114</sup> *Haig*, *supra* note 92; *Dunmore v Ontario (Attorney General)*, [2001 SCC 94](#); *Baier v Alberta*, [2007 SCC 31](#); *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34 (CanLII) at [para 18](#).

<sup>115</sup> *Baier v Alberta*, *supra* note 115 at [para 21](#).

<sup>116</sup> *Haig*, *supra* note 92 at [pp 1035-1036](#).

<sup>117</sup> *Baier v Alberta*, *supra* note 115 at [para 27](#).

amplification of their views; they seek only the removal of the statutory prohibition that suppresses their ability to express themselves through voting. Treating this claim as one that requires the more stringent test in *Baier* would improperly extend it in precisely the manner cautioned against in *Greater Vancouver Transportation Authority*,<sup>118</sup> where the Court warned against using the positive-rights framework in situations where the state has curtailed expression through overbroad exclusions.

72. In any event, the Applicants meet both legal standards. Their vote is expressive activity; the *CEA* prohibits it; and the prohibition is both purposeful and effective in suppressing their political expression. As the Court reaffirmed in *Frank*<sup>119</sup> and *Figueroa*,<sup>120</sup> voting is not merely instrumental but intrinsically valuable because it is the primary means through which citizens participate in public debate and influence social policy. Denying citizens under 18 the right to vote denies them expressive participation. A complete interference by a total ban on voting. Accordingly, the denial of the Applicants' right to vote constitutes a s. 2(b) *Charter* breach.

### **C. THE MINIMUM VOTING AGE VIOLATES SECTION 15(1) OF THE *CHARTER***

73. Section 15(1) of the *Charter* guarantees the right to equal protection and benefit of the law without discrimination, including discrimination based on age.<sup>121</sup> To establish a s. 15(1) violation, the Applicants must show that s. 3 of the *CEA*: (A) creates, on its face or in effect, a distinction based on an enumerated or analogous ground; and (B) imposes a burden or denies a benefit in a manner that perpetuates, reinforces, or exacerbates disadvantage.<sup>122</sup>

74. Section 3 of the *CEA* excludes all citizens under 18 from voting solely because of age.

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<sup>118</sup> *Greater Vancouver Transport Authority v Canadian Federation of Students*, 2009 SCC 31 at [para 34](#).

<sup>119</sup> *Frank*, *supra* note 1.

<sup>120</sup> *Figueroa*, *supra* note 88 at [paras 25-26](#)

<sup>121</sup> *Charter*, *supra* note 3 at [s 15\(1\)](#).

<sup>122</sup> *Fraser v Canada*, 2020 SCC 58 at [para 27](#) [*Fraser*]; *R v Sharma*, 2022 SCC 39 at [para 28](#) [*Sharma*].

This denial perpetuates young people’s historical and ongoing political marginalization and rests on harmful stereotypes that they are less capable, engaged, knowledgeable, and worthy of democratic participation.

### **I. Section 3 of the CEA Creates a Distinction Based on the Enumerated Ground of Age**

75. The first stage of the s. 15(1) analysis is not an onerous hurdle and filters out only claims not based on enumerated or analogous grounds.<sup>123</sup> Section 3 of the *CEA* explicitly distinguishes between Canadian citizens based solely on age, this is a clear facial distinction on an enumerated ground.

### **II. The Voting Age at 18 Discriminates Against Young People Contrary to Section 15(1)**

76. The SCC has repeatedly affirmed that substantive equality is the “animating norm” of s. 15(1).<sup>124</sup> Substantive equality requires examining the real-world effects of the impugned law on the claimant group, including historical and current systemic disadvantage.<sup>125</sup> Both steps of the s. 15(1) inquiry must focus on the material impact of the distinction and the broader patterns of marginalization.<sup>126</sup> Harms may include social or political exclusion, or other adverse impacts, and must be evaluated in light of systemic disadvantage.<sup>127</sup>

77. Denying citizens under 18 the right to vote perpetuates their political exclusion and powerlessness.<sup>128</sup> Historically, Parliament has disenfranchised groups on grounds that now appear as enumerated grounds in s. 15(1). Age remains the sole enumerated ground on which

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<sup>123</sup> *Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17 at [para 26](#) [*Alliance*].

<sup>124</sup> *Sharma*, *supra* note 123 at [paras 37-38](#); *Fraser*, *supra* note 123 at [para 42](#); *Withler v Canada*, 2011 SCC 12 at [para 2](#) [*Withler*].

<sup>125</sup> *Ontario (Attorney General) v G*, 2020 SCC 38 at [para 47](#) [*Ontario v G*].

<sup>126</sup> *Ibid* at [para 43](#).

<sup>127</sup> *Fraser*, *supra* note 123 at [para 76](#), citing Colleen Sheppard, *Inclusive equality: the relational dimensions of systemic discrimination in Canada* (Montreal: McGill-Queen’s University Press, 2010) at 62-63.

<sup>128</sup> *Frank*, *supra* note 1 at [para 2](#).

citizens are denied the franchise, perpetuating prejudicial assumptions about their worthiness.<sup>129</sup>

### **1. Perpetuates Young People’s Disadvantage**

78. Young people are one of the most vulnerable groups in Canadian society, and their exclusion from the franchise reinforces political powerlessness. Voting is the “primary means” for citizens to shape public policy and protect their interests.<sup>130</sup> Citizens under 18 cannot vote, and thus lack access to the mechanism needed to advocate for their own rights.<sup>131</sup> Those who are elected have limited incentive to consider youth who cannot affect electoral outcomes.<sup>132</sup>

79. The SCC has recognized that denying the right to vote “*in and of itself*, inflicts” constitutional harm.<sup>133</sup> Section 3 of the *CEA* inflicts this harm based solely on age, reflecting broader historical subordination patterns. Evidence shows young people’s interests and values do not always align with others’, emphasizing the need for independent political expression.<sup>134</sup>

80. Voting carries intrinsic value: it is expression, a means of influencing public institutions, an opportunity to express opinions and a source of political legitimacy.<sup>135</sup> Excluding young people, while binding them to obey the law, denies them reciprocal democratic participation.<sup>136</sup>

### **2. The Voting Age of 18 Perpetuates Stereotypes and Prejudice**

81. Excluding citizens under 18 conveys that they are less worthy, rational, or capable of participation and recognition.<sup>137</sup> While prejudice and stereotyping are not discrete elements

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<sup>129</sup> See Johnston Affidavit, *supra* note 18 at para 69; Exhibit 23 to the Eichhorn Affidavit, *supra* note 17 at 373; Exhibit 15 to the Eichhorn Affidavit, *supra* note 17 at 23; See also Douglas Affidavit, *supra* note 19 at para 39.

<sup>130</sup> *Figueroa*, *supra* note 88 at [para 29](#).

<sup>131</sup> See Douglas Affidavit, *supra* note 19 at para 12; See also Exhibit 3 to the Douglas Affidavit, *supra* note 19 at 1058.

<sup>132</sup> *Ibid.*

<sup>133</sup> See *Frank*, *supra* note 1 at [para 82](#); See also *Sauvé #2*, *supra* note 77 at [para 59](#).

<sup>134</sup> See Affidavit of Parker EJ Boot-Quackenbush, *supra* note 5 at paras 1, 3-5; See also Eichhorn Affidavit, *supra* note 17 at para 40.

<sup>135</sup> *Figueroa*, *supra* note 88 at [para 29](#).

<sup>136</sup> *Sauvé #2*, *supra* note 77 at [para 31](#).

<sup>137</sup> See *Law v Canada (Minister of Employment & Immigration)*, [1999] 1 SCR 497 at [para 51](#).

under s. 15, they indicates discriminatory impact.<sup>138</sup>

82. Courts have held that denying voting rights signals diminished social worth. In *Sauvé*, the SCC held that disenfranchisement undermines the principle that “everybody counts.”<sup>139</sup> In *Fitzgerald*, Lefsrud J found Alberta’s minimum voting age violated s. 15(1) of the *Charter*, because it relied on the stereotype that young people cannot make rational political decisions, sending the message that citizens under 18 are less worthy.<sup>140</sup> Most recently in *Frank*, the Court confirmed that denying voting rights undermines dignity and self-worth.<sup>141</sup>

83. Voting is the cornerstone of Canadian democracy. Citizens under 18 are equally worthy of meaningful political participation and expression. The minimum voting age denies them the equal benefit of their s. 3 *Charter* rights and violates s. 15(1).

#### **D. CANADA’S OBLIGATIONS UNDER INTERNATIONAL LAW**

84. A Finding that the *CEA*’s exclusion of adolescents under 18 violates their *Charter* rights accords with Canada’s obligations under the United Nations *Convention on the Rights of the Child* (“*UNCRC*”).<sup>142</sup> International law is recognized as a persuasive interpretive tool, and legislation is presumed to conform to Canada’s international obligations.<sup>143</sup> The *Charter* is presumed to provide at least the level of protection in ratified human rights instruments, including the *UNCRC*.<sup>144</sup>

85. The SCC has repeatedly relied on the *UNCRC* in domestic and *Charter* matters where children’s interests are concerned. Its content is a meaningful indicator of the scope of *Charter*

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<sup>138</sup> *Quebec v A*, 2013 SCC 5 at [para 325](#); *Fraser*, *supra* note 124 at [para 78](#).

<sup>139</sup> *Sauvé #2*, *supra* note 77 at [para 58](#).

<sup>140</sup> *Fitzgerald (Next Friend of) v Alberta*, 2002 ABQB 1086 at [para 44](#) [*Fitzgerald* ABQB], *aff’d* [2004 ABCA 184](#).

<sup>141</sup> *Frank*, *supra* note 1 at [para 82](#).

<sup>142</sup> United Nations *Convention on the Rights of the Child*, [Can. T.S. 1992 No.3](#), [“*UNCRC*”].

<sup>143</sup> *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at [para 105](#); *Baker v Canada*, 1999 SCC 699 at [paras 70-71](#) [*Baker*]; see also *R v DB*, 2008 SCC 25 at [para 60](#).

<sup>144</sup> *Divito v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47 at [paras 22-23](#) [“*Divito*”]; see also, *Quebec (Attorney General) v 9147-0732 Québec inc.*, 2020 SCC 32 at [paras 22-23](#).

protections,<sup>145</sup> and it is part of the contextual framework through which the Court should assess the scope of ss. 3, 2(b), and 15.

86. Article 12 of the *UNCRC* guarantees children the right to express their views freely in all matters affecting them, with due weight given to age and maturity.<sup>146</sup>

87. General Comment No 12 confirms that States must dismantle legal political, economic, social, and cultural barriers that impede children’s participation and ensure conditions for free expression.<sup>147</sup> These principles inform *Charter* interpretation: excluding adolescents from voting substantially interferes with political expression under s. 2(b); undermines participation rights central to s. 3; and, perpetuates a recognized form of discrimination under s. 15(1).

88. The *UNCRC* and the human rights of children articulated thereunder reinforces that blanket age restrictions require careful justification. The UN Committee on the Rights of the Child emphasizes that fostering “a culture of respect for children and their views,” is essential to implementing Article 12,<sup>148</sup> that structural barriers to participation must be removed, and that “assumptions about children’s capacities” must be challenged.<sup>149</sup> These principles align with the *Charter*’s demand that age-based restrictions be justified on evidence, not stereotype.

89. The Department of Justice’s adopts the same interpretation of Article 12, emphasizing that there should be “as few restrictions on children’s participation as possible”<sup>150</sup> that capacity should be presumed, and that age-based limits on participation should be discouraged.<sup>151</sup>

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<sup>145</sup> *Divito supra* note 145 at paras [31-36](#); *Baker, supra* note 144 [paras 69-70](#); *R v Sharpe*, 2001 CanLII 2 (SCC) at [paras 177-178, 196](#); *Winnipeg Child and Family Services v K/VW*, 2000 CanLII 48 (SCC) at [paras 7-8](#).

<sup>146</sup> *UNCRC, supra* note 141 at Article 12.

<sup>147</sup> United Nations Committee on the Rights of the Child, *General Comment No. 12: The Right of the Child to be Heard*, UN Doc CRC/C/GC/12 (2009) at [para 22](#).

<sup>148</sup> *Ibid* at [paras 135-136](#).

<sup>149</sup> *Ibid*; see also UN Committee on the Rights of the Child, *General Comment No. 20: The Rights of the Child During Adolescence*, UN Doc CRC/C/GC/20 (2016) at [paras 3 and 15](#) [“GC No 20”].

<sup>150</sup> Department of Justice, *Article 12 of the Convention on the Rights of the Child and Children’s Participatory Rights in Canada*, Government of Canada (2019), [online](#) (Accessed November 2022) [DOJ].

<sup>151</sup> *Ibid*.

90. The UN Committee’s General Comments clarify the *UNCRC*’s normative content and reflect contemporary understandings of adolescent development and effective State practice. GC No. 20 calls on states to establish mechanisms for their meaningful participation at all levels, and recognizes political participation as a principal means by which adolescents advocate for their rights and hold governments accountable.<sup>152</sup>

### **E. S. 3 OF THE *CEA* CANNOT BE JUSTIFIED UNDER S.1 OF THE *CHARTER***

91. Having established a violation of Ss 3, 2 (b), and/or 15 of the *Charter*, s. 3 of the *CEA* is subject to scrutiny under S. 1 of the *Charter*. Section 1 requires that any violation of *Charter* rights be prescribed by law and demonstrably justified in a free democratic society. The test for demonstrable justification established by the SCC in *R v Oakes*, requires that the violation be in service of a pressing and substantial objective, and that the means used are proportional to the objective. The proportionality analysis looks at a rational connection between the impugned measure and its intended goal, whether the measure is minimally impairing, and then a final balancing of the salutary and dilatory effects of the provision must be weighed.

#### **I. Section 3 of the *CEA* has no Pressing and Substantial Objective**

92. There are three requirements to establish a pressing and substantial objection: 1) the objective must be consistent with the values of a free and democratic society; 2) it must relate to concerns that are more than trivial; 3) the objective must relate to collective goals of fundamental importance.<sup>153</sup> Care must be taken not to characterize the objective of the infringing measure in overbroad terms.<sup>154</sup>

93. Johnston’s evidence is that 18 as the voting age was an “historical accident.” The

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<sup>152</sup> GC No 20, *supra* note 150 at [paras 5, 19, and 20](#).

<sup>153</sup> *R v Oakes*, [1986] 986 CanLII 46 (SCC) at [136-139](#).

<sup>154</sup> *RJR-MacDonald v Canada*, 1995 CanLII 64 (SCC) at para [144-146](#) [*RJR-MacDonald*].

evidence presented by the Attorney General suggests no particular purpose in selecting the age other than the original purpose to enfranchise those who could serve in the military and suggests that to change it without public support would undermine confidence in the electoral system.<sup>155</sup>

94. The Respondent is not arguing that age signifies competence to vote as the facts do not support such a purpose. All major political parties allow 14-year-old party members to vote in leadership elections, and on policy positions without any evidence of harm to our democracy.<sup>156</sup> Adults of all levels of capacity and political engagement are allowed to vote without restriction.

## **II. Section 3 of the CEA is Not Proportional**

95. The right to vote, the cornerstone of democracy, is exempt from the incursion of s. 33 of the *Charter* and thus poses an extremely high bar for the government to meet at this stage.<sup>157</sup>

96. While some age may be justified as an age for voting qualification, age 18 is not. A limit that disenfranchises all children is not within a range of reasonable alternatives given the importance of the right, and the evidence provided by the Applicants respecting the engagement of people under 18 and the standard assessed to be reasonable by the major political parties.

### **1. No Rational Connection Between Age 18 and a Pressing and Substantial Objective**

97. There is no rational connection between the age of 18 and the proposed pressing and substantial goal of ensuring that all voters are engaged, mature, informed, or competent. In *Frank*, the SCC held that the rational connection step requires the measure not to be “arbitrary,

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<sup>155</sup> Cross-Examination of Peter Loewen, *supra* note 74 at pp. 32-33.

<sup>156</sup> Johnston Affidavit, *supra* note 18 at para 112; see also, Liberal Party of Canada, “Rules Governing Registration as Registered Liberals” (May 2020), online: *liberal.ca* at [Schedule A](#); Liberal Party of Canada “The Constitution of the Liberty Party of Canada (n.d.), online: *liberal.ca* at [B.10](#); Conservative Party of Canada, “Conservative Party of Canada Membership By-law” (December 2015), online: *conservative.ca* at [1.1.1](#) and [6](#); New Democratic Party of Canada, “Constitution of the New Democratic Party of Canada,” (February 2018), online: at [2-3](#); Ontario NDP, “Ontario New Democrats Party Constitution and By-Laws; (2022), online at [3](#); Green Party, “Constitution of the Green Party of Canada” (February 2025), online: *greenparty.ca* at [1.1.1](#)

<sup>157</sup> *Sauvé #2*, *supra* note 77 at [para 11](#) and [14](#); See also *Taylor v Newfoundland and Labrador*, 2026 SCC 5 at [para 107](#).

unfair, or based on irrational considerations.” The government must show a causal connection between the limit and a pressing purpose.<sup>158</sup> Like the impugned provisions in *Frank*, there is no evidence of any alleged harms the 18-year-old requirement was meant to address.<sup>159</sup> While the rational connection may be established on the basis of reason and logic, the evidence fails to establish any logical and rational connection.<sup>160</sup>

98. Studies have shown that enfranchised 16 and 17-year-olds have the same average level of political interest as the overall adult population, as seen in Austria and Scotland.<sup>161</sup> Likewise, there is no evidence to show young people are easily manipulated in their voting, rather, young people show a greater degree of critical engagement than many expect.<sup>162</sup>

## **2. Section 3 of the CEA is Not Minimally Impairing**

99. As the SCC held in *Frank*, the second component of the proportionality test requires the government to show that the measure at issue impairs the right as little as reasonably possible.<sup>163</sup> The measure must be “carefully tailored” to ensure rights are impaired no more than is reasonably necessary while giving the legislature some latitude among reasonable alternatives.<sup>164</sup>

100. Setting the voting age at 18 is not minimally impairing to the fundamental democratic right of all citizens. It is serious to deny all young people under 18 the right to vote over concerns of the immaturity of some, especially when the evidence does not support the conclusion.

101. If the concern is ensuring political knowledge or engagement (which is not a requirement for voting) the evidence establishes that there are other means of targeting voters who lack those

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<sup>158</sup> *Frank*, *supra* note 1 at [para 59](#).

<sup>159</sup> *Ibid* at [para 64](#).

<sup>160</sup> *RJR-MacDonald*, *supra* note 156 at [para 154](#).

<sup>161</sup> Eichhorn Affidavit, *supra* note 17 at para 38.

<sup>162</sup> Eichhorn Affidavit, *supra* note 17 at para 42; evidence also shows that: adolescents do not necessarily follow the voting patterns of their parents; are less likely to simply follow party loyalty; and do not uncritically take on the views of parents or peers, Eichhorn Affidavit, *supra* note 17 at paras 41-43.

<sup>163</sup> *Frank*, *supra* note 1 at [para 66](#).

<sup>164</sup> *Ibid*.

qualities in a way that does not categorically disenfranchise an entire subset of the population. Specifically civic education in the classroom.<sup>165</sup> In Austria, where concentrated efforts are made to engage young people in schools, 16 and 17-year-old voters have equal levels of political understanding compared to their older counterparts.<sup>166</sup>

### **3. The Deleterious Effects of Restricting Voting Rights Outweigh the Salutary Effects**

102. At the final stage of *Oakes*, the court asks whether there is proportionality between the overall effects of the *Charter*-infringing measure and the legislative objective.<sup>167</sup> Like in *Frank*, disenfranchisement of millions of young Canadians is a serious deleterious effect of the *CEA*.<sup>168</sup>

103. There is no evidence to suggest that setting the voting age below 18 would be unhealthy for democracy. There is evidence that introducing first-time voters into the system before 18 may improve engagement, and establish habits required to become lifelong voters.<sup>169</sup> Limiting the right to vote is one of the most serious limitations of a citizen's rights. The voting age of 18 restricts young people's ability to meaningfully participate in our democracy, and exercise their voice on pressing issues that have a significant impact on them.<sup>170</sup>

104. The deleterious effects of denying the vote cannot be understated. As the court notes in *Sauvé*, “denying citizens the right to vote not only strikes at the heart of their fundamental rights,

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<sup>165</sup> For instance, as Eichhorn explains, if young people have civic education provided by their schools to prepare them to vote for the first time, greater engagement with political issues can be observed. Eichhorn Affidavit, *supra* at para 37; See also Exhibit 11 to the Eichhorn Affidavit, *supra* at paras 32-33; Johnston similarly argues that a lower voting age would dovetail with practical possibilities for deeper engagement in classrooms, Johnston Affidavit, *supra* note 18 at para 37.

<sup>166</sup> Eichhorn Affidavit, *supra* note 17 at para 42; evidence also shows that: adolescents do not necessarily follow the voting patterns of their parents; are less likely to simply follow party loyalty; and do not uncritically take on the views of parents or peers, Eichhorn Affidavit, *supra* note 17 at paras 41-43; recent studies confirming that young people frequently engage critically with the views of those around them.

<sup>167</sup> *Frank*, *supra* note 1 at [para 76](#).

<sup>168</sup> *Ibid* at [para 77](#).

<sup>169</sup> Douglas affidavit, *supra* note 19 at para 16; and Johnston Affidavit, *supra* note 18 at para 10; Douglas' research establishes that the longer one waits to start voting, the less likely they are to become a lifelong voter.

<sup>170</sup> *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at [para 1](#).

but also comes at the expense of their dignity and their sense of self-worth.”<sup>171</sup> There is no evidence to support any salutary effects of setting the voting age at 18. In fact, it demonstrates risks inherent in distinctions that are based on stereotypes as opposed to evidence. The evidence establishes that a lower voting age is both consistent with the legislative objective of a competent, mature, and informed electorate, would foster a more politically engaged electorate, and would better reflect democratic principles.<sup>172</sup>

105. The voting age of 18 is not demonstrably justified in a free democratic society. Any such limit is not proportional. The rational connection between preventing young people from voting and ensuring a competent electorate is not grounded in scientific facts or evidence. A categorical denial of the right to vote is not minimally impairing. And the negative impacts of restricting the right greatly outweigh the positive effects of protecting the competence of the vote. This Court should find that s. 3 of the CEA is not saved under s. 1 of the *Charter* and is unconstitutional.

#### **PART IV. REMEDY SOUGHT**

106. The Applicants seek to strike down the voting age restriction. There is scholarship that would support the elimination of any age restriction on voting, arguing that those who lack capacity will not vote, and further that States in which capacity or competency is not a requirement for the franchise, such as Canada, “the competence required of a citizen in general in casting a vote is sufficiently low, that no harm is done by including all young people, from the point at which they choose to participate.”<sup>173</sup> The benefit, or in the language of Oakes, the salutary effect of including all children is to resolve the issues of lack of representation and

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<sup>171</sup> *Sauvé #2*, *supra* note 77 at [para 35](#).

<sup>172</sup> Douglas Affidavit, *supra* note 19 at paras 8-11.

<sup>173</sup> Nick Munn, (2022) How Low Can You Go? The Capacity to Vote Among Young Citizens, at p 57; and Wall, J. (2022). The Case for Children’s Voting, In: Wall, J. (eds) *Exploring Children's Suffrage. Studies in Childhood and Youth*. Palgrave Macmillan, Cham.

inclusion for a particularly vulnerable and distinct group who are impacted by government action.

107. However, the Applicants acknowledge that if either competency to make adult-like decisions or consistency with participatory rights currently enjoyed by young people (i.e. membership in political parties) are to guide the point at which young people should be able to vote then, the age range that is more justifiable than excluding all children would be during adolescence, between 12 and 16.<sup>174</sup> Thus, this may be one of the exceptional circumstances where a suspended declaration is appropriate in accordance with the principles set out in *Ontario (Attorney General) v G*.<sup>175</sup> Parliament's legislative response may consider public opinion, but the rule of law and constitutionalism demand that any age limit must be constitutional and meet the test of justification required by s. 1 of the *Charter*.

#### **PART V. ORDERS REQUESTED**

108. The Applicants seek the following relief:
- a. A declaration, pursuant to s. 52(1) of the *Constitution Act, 1982* that age 18 as a minimum age requirement set out in s. 3 of the *Canada Elections Act*, S.C. 2000, c. 9 violates the rights of young Canadians under s. 3, s. 2(b) and s. 15 of the *Charter* and cannot be saved by s. 1, rendering it of no force and effect; and
  - b. Such further and other relief as counsel may advise and this Honourable Court may deem just.

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<sup>174</sup> The Applicants do not concede that setting out these alternative ages means that the government's choice of 18, which excludes all children from the franchise, should be given deference as part of a range of reasonable alternatives as contemplated in *RJR-MacDonald*, *supra* note 154 at [para 60](#).

<sup>175</sup> *Ontario v G*, *supra* note 126 at [paras 94-99](#).

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of March, 2026.



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**JUSTICE FOR CHILDREN AND YOUTH**

55 University Avenue, Suite 1500

Toronto, ON M5J 2H7

Tel: 416-920-1633

Fax: 416-920-5855

**Mary Birdsell (LSO# 38108V)**

Email: [mary.birdsell@jfcy.clcj.ca](mailto:mary.birdsell@jfcy.clcj.ca)

**Emily Chan (LSO# 45352P)**

Email: [emily.chan@jfcy.clcj.ca](mailto:emily.chan@jfcy.clcj.ca)

**DAVID ASPER CENTRE FOR  
CONSTITUTIONAL RIGHTS**

78 Queens Park Cres

Toronto, ON M5C 2C5

**Cheryl Milne (LSO #27022C)**

Email: [cheryl.milne@utoronto.ca](mailto:cheryl.milne@utoronto.ca)

**Counsel for the Applicants, Penney-Crocker et al.**

**CERTIFICATION OF AUTHORITIES**

I, Mary Birdsell, counsel for the Applicants, am satisfied as to the authenticity of every authority cited in this factum.



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Mary Birdsell

Date: March 6, 2026

*Mary Birdsell*

*Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2))*

## SCHEDULE “A” – AUTHORITIES REFERRED TO

### STATUTES AND REGULATIONS

1. *Canada Elections Act*, [SC 2000, c 9](#)
2. *Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act*, [1982, Sch B to the Canada Act 1982 \(UK\)](#), 1982, c 11

### JURISPRUDENCE

1. *Baier v Alberta*, [2007 SCC 673](#)
2. *Baker v Canada*, [\[1999\] 2 SCR 817](#)
3. *Canada (Attorney General) v JTI-Macdonald Corp.*, [2007 SCC 30](#)
4. *Canadian Disability Rights Council v Canada*, [1988 CanLII 9443 \(FC\)](#)
5. *Divito v Canada (Public Safety and Emergency Preparedness)*, [2013 SCC 47](#)
6. *Dunmore v Ontario (Attorney General)*, [2001 SCC 94](#)
7. *Edwards v Canada (Attorney General)*, [1929 CanLII 438 \(UK JCPC\)](#)
8. *Figueroa v Canada (Attorney General)*, [2003 SCC 37](#)
9. *Fitzgerald (Next Friend of) v Alberta*, [2002 ABQB 1086](#)
10. *Fitzgerald v Alberta*, [2004 ABCA 184](#)
11. *Fitzgerald v Alberta*, [2002 ABQB 1086](#)
12. *Frank v Canada*, [2019 SCC 1](#)
13. *Fraser v Canada*, [2020 SCC 58](#)
14. *Greater Vancouver Transport Authority v Canadian Federation of Students*, [2018 SCC 31](#)
15. *Haig v Canada (Chief Electoral Officer)*, [1993 CanLII 58 \(SCC\)](#)
16. *Henry v Canada (Attorney General)*, [2014 BCCA 30](#)
17. *Hunter v Southam Inc.*, [1984 CanLII 33 \(SCC\)](#)

18. *Irwin Toy Ltd. v Quebec (Attorney General)*, [\[1989\] 1 SCR 927](#)
19. *Law v Canada (Minister of Employment & Immigration)*, [\[1999\] 1 SCR 497](#)
20. *Mason v Canada (Citizenship and Immigration)*, [2023 SCC 21](#)
21. *Muldoon v Canada*, [1988 CanLII 9407 \(FC\)](#)
22. *Ontario (Attorney General) v G*, [2020 SCC 38](#)
23. *Ontario (Attorney General) v Working Families Coalition (Canada) Inc.*, [2025 SCC 5](#)
24. *Optiz v Wrzesnewskij*, [2012 SCC 55](#)
25. *Quebec (Attorney General) v Alliance du personnel professionnel et technique de la santé et des services sociaux*, [2018 SCC 17](#)
26. *Quebec (Attorney General) v 9147-0732 Québec inc.*, [2020 SCC 32](#)
27. *Quebec v A*, [2013 SCC 5](#)
28. *R v DB*, [2008 SCC 25](#)
29. *R v Henry*, [2005 SCC 76](#)
30. *R v Keegstra*, [1990 CanLII 24 \(SCC\)](#)
31. *R v Oakes*, [1986 CanLII 46 \(SCC\)](#)
32. *R v Sharma*, [2022 SCC 39](#)
33. *R v Sharpe*, [2001 SCC 2](#)
34. *Reference re meaning of the word “Persons” in s.24 of British North America Act*,  
[1928 CanLII 55 \(SCC\)](#)
35. *Reference re Prov. Electoral Boundaries (Sask.)*, [1991 CanLII 61 \(SCC\)](#)
36. *Reference re Secession of Quebec*, [1998 CanLII 793 \(SCC\)](#)
37. *References re Greenhouse Gas Pollution Pricing Act*, [2021 SCC 11](#)
38. *RJR-MacDonald v Canada*, [1995 CanLII 64 \(SCC\)](#)

39. *RWDSU v Pepsi-Cola Canada Beverages (West) Ltd.*, [2002 SCC 8](#)
40. *Sauvé v Canada (Chief Electoral Officer)*, [2002 SCC 68](#)
41. *Taylor v Newfoundland and Labrador*, [2026 SCC 5](#)
42. *Thomson Newspapers Co. v Canada (Attorney General)*, [1998 CanLII 829 \(SCC\)](#)
43. *Toronto (City) v Ontario (Attorney General)*, [2021 SCC 34](#)
44. *Greater Vancouver Transport Authority v Canadian Federation of Students*, [2009 SCC 31](#)
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**SCHEDULE “B” - RELEVANT PROVISIONS OF STATUTES, REGULATIONS, AND  
BY-LAWS**

[Canadian Charter of Rights and Freedoms, being Part I of the Constitution Act, 1982, Sch B  
to the Canada Act 1982 \(UK\), 1982, c 11](#)

**Sections [3](#) and [15\(1\)](#)**

...

**Democratic Rights**

**Democratic rights of citizens**

3 Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

...

**Equality Rights**

**Equality before and under law and equal protection and benefit of law**

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

**Affirmative action programs**

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.(85)

**AMELIA PENNEY-CROCKER, PARKER BOOT-  
QUACKENBUSH, KHADIJAT FOLASAYO DAIRO,  
CATHERINE HE, THARAN D'SILVA, KATIE YU, DIEGO  
CHRISTIANSEN-BARKER, LACHLAN BROWN, ZOEY  
ANN PURVES, JACOB COLATOSTI, MILAN ROZOTTO-  
LAGOS, OSWALDO PAZ FLORES AND JUSTICE FOR  
CHILDREN AND YOUTH**

Applicants

and

**ATTORNEY GENERAL OF  
CANADA**

Respondent

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

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**FACTUM OF THE APPLICANTS**

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**Mary Birdsell and Emily Chan  
Justice for Children and Youth**

55 University Ave., Suite 1500

Toronto, ON M5J 2H7

T: 416-920-1633

F: 416-920-5855

E: [mary.birdsell@jfcy.clcj.ca](mailto:mary.birdsell@jfcy.clcj.ca)

E: [emily.chan@jfcy.clcj.ca](mailto:emily.chan@jfcy.clcj.ca)

**Cheryl Milne**

**The David Asper Centre for  
Constitutional Challenge**

78 Queen's Park Cres E,

Toronto, ON M5S 2C3

T: 416-978-0092

E: [cheryl.milne@utoronto.ca](mailto:cheryl.milne@utoronto.ca)

Counsel for the Applicants