



Case in Brief: **Frank v. Canada (Attorney General)**

Judgment of January 11, 2019 | On appeal from the Court of Appeal for Ontario
Neutral citation: 2019 SCC 1

A rule preventing citizens from voting in federal elections if they've been living outside Canada for more than five years is unconstitutional, the Supreme Court has ruled.

The *Canada Elections Act* sets out the rules for federal elections in Canada. It says who can vote and how elections are held, while making sure the election process is fair. The Act says that any citizen age 18 or older can vote if they normally live in Canada.

One of the rules found in the Act was challenged in this case. It said that citizens who had been living abroad for less than five years, and who intended to return to Canada, could also vote in federal elections. Citizens who had been living abroad longer than five years generally couldn't vote. (There were some exceptions, including for members of the military and government employees posted in other countries.)

Over a million Canadian citizens living abroad hadn't been allowed to vote because of the rule. Many had strong employment, family, and social ties to Canada. Some received pensions from or paid taxes to Canada. Many couldn't vote anywhere else in the world.

Two Canadian citizens, Dr. Frank and Mr. Duong, were not allowed to vote in the Canadian federal election in 2011. This was because they had been living outside of Canada for more than five years. Both had strong ties to Canada and hoped to return if they could find suitable jobs.

Both Mr. Duong and Dr. Frank challenged the rule that prevented them from voting. They said it breached section 3 of the *Canadian Charter of Rights and Freedoms* because it denied them their right to vote, and so was unconstitutional. Section 3 says (in part) that every citizen of Canada has the right to vote in a federal election.

The Attorney General, on behalf of the federal government, agreed that the rule breached section 3. However, breaches of *Charter* rights can be allowed in some situations. Section 1 of the *Charter* says that certain rights can be limited, but only if the limit is reasonable and can be justified in a free and democratic society. The Attorney General argued that the rule was reasonable and justified under section 1.

The judge who first heard the case said that the rule limiting the right to vote wasn't justified. The Court of Appeal disagreed and said the rule was constitutional.

The majority at the Supreme Court said the rule breached section 3 and wasn't justified by section 1, so it struck the rule down. It said Canadian citizens should be allowed to vote in federal elections, even if they have been living abroad for longer than five years. The majority noted that section 3 doesn't say anything about residence. In our system, residence helps determine *where* you vote, but not *if* you can vote.

When deciding whether a law that breaches the *Charter* is justified under section 1, courts first look at whether the law has a "pressing and substantial objective" (an important purpose). If it does, they then look at whether it is "proportionate" (that is, whether it balances the law's purpose with how it is achieved). In this case, the majority said that fairness to voters living in Canada and fairness in elections were important goals. But it said the rule wasn't proportionate. For a rule to be proportionate, it has to meet three criteria. It must be rationally (or logically) connected to Parliament's purpose. Second, it has to limit the *Charter* right as little as possible. Third, it has to properly balance good and bad effects. In this case, there was no evidence anyone ever complained about non-resident voting, so the rule didn't seem to be rationally connected to the goal of fair elections. But the majority didn't need to decide this specifically, because the rule didn't meet the other two criteria. It harmed citizens' rights more than necessary because it was so broad it denied people with strong ties to Canada (despite long absences) their right to vote. This didn't support the purpose of electoral fairness. Finally, the majority said the rule's bad effects outweighed the good ones.

This decision confirms that the right to vote is a basic and important democratic right, not a mere privilege. That means Parliament can't limit it easily. The parts of the *Canada Elections Act* that limit the voting rights of non-resident citizens are no longer in force.

Breakdown of the Decision: *Majority:* Chief Justice Richard [Wagner](#) allowed the appeal (Justices [Moldaver](#), [Karakatsanis](#), and [Gascon](#) agreed) | *Concurring:* Justice Malcolm [Rowe](#) said that residence requirements could be constitutional in other circumstances, but also would have allowed the appeal | *Dissenting:* Justices Suzanne [Côté](#) and Russell [Brown](#) said the rule was justified under section 1 of the *Charter*, and would have dismissed the appeal

More information (case # 36645): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: [Charter application](#) (Ontario Superior Court of Justice) | [appeal](#) (Court of Appeal for Ontario)
