

Court File No.

**ONTARIO SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**FAIR VOTING BC and  
SPRINGTIDE COLLECTIVE FOR DEMOCRACY SOCIETY**

Applicants

- and -

**ATTORNEY GENERAL OF CANADA**

Respondent

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*  
and the *Canadian Charter of Rights and Freedoms*, Part I of the  
*Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*  
(*U.K.*), 1982, c. 11

**NOTICE OF APPLICATION**

**TO THE RESPONDENT**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicant. The claim made by the Applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, at Toronto, Ontario.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a Notice of Appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have

a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY**

**EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your Notice of Appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it with proof of service, in the Court office where the Application is to be heard as soon as possible, but not later than 2 days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: \_\_\_\_\_

Issued by: \_\_\_\_\_

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Ontario Superior  
Court of Justice  
393 University Ave  
  
Toronto, Ontario  
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## APPLICATION

### THE APPLICANT MAKES APPLICATION FOR:

1. A declaration that ss. 2(1) and 313 of the *Canada Elections Act*, S.C. 2000, c. 9 (Act) violate ss. 3 and 15(1) of the *Canadian Charter of Rights and Freedoms* (Charter);
2. A declaration that these violations cannot be justified as a reasonable limit pursuant to s. 1 of the Charter;
3. An Order suspending the operation of the above declarations for a period of 1 year to allow the Parliament of Canada to amend the Act to provide for a method of voting that does not violate ss. 3 and 15(1) of the Charter;
4. Standing as public interest litigants;
5. Costs of this application on a substantial indemnity basis;
6. Such further and other relief as counsel may advise and this Honourable Court may permit.

### THE GROUNDS FOR THIS APPLICATION ARE:

#### *The Canada Elections Act*

1. Sections 2(1), 24(1), and 313 of the Act together establish Canada's first-past-the-post (FPTP) system of elections, more precisely known as single member plurality (SMP). Under FPTP, the only successful candidate in an electoral riding is the individual who garners the highest number of votes (or a plurality) in the riding. The name "first-past-the-post" is a misnomer, as there is no "post" for the winner to pass.
2. Under Canada's FPTP system:

- The ballots of approximately half of all voters do not contribute to the election of a Member of Parliament (MP), and these voters find themselves with a significantly impaired representation or voice in the deliberations of Parliament, particularly with respect to Parliament’s legislative function;
  - Votes are converted into seats in Parliament in an arbitrary and unfair manner, resulting in an arbitrary and unfair distribution of legislative power and benefits to voters;
  - Supporters of smaller parties, who are dispersed across many ridings, may not elect any MPs (or may elect a trivial number of MPs), even though they may number hundreds of thousands across Canada;
  - Voters in ridings where the candidates they prefer have no chance of winning have little motivation to vote. Furthermore, such voters often face an incentive to not cast a vote for their honestly preferred candidate, but instead to cast a vote for a candidate that they may dislike in hopes of preventing an even less appealing candidate from winning; and
  - Candidates for election are discriminated against on the basis of sex, race, ethnicity, and political belief.
3. There are many electoral systems that do not violate the Charter and have proven to be reliable in various forms both in Canada and in other countries, including all major western English-speaking countries (United Kingdom, Australia, New Zealand, Ireland, USA).

*The Applicants*

4. The Applicants are Fair Voting BC and Springtide Collective for Democracy Society (collectively, the “Applicants”).

## 5. Fair Voting BC:

- (i) Fair Voting BC was founded in 1997 and is a non-partisan, registered, non-profit society, which works for fair voting systems for Canadian elections and for all provincial, municipal, council, and independent organization elections in BC;
- (ii) Fair Voting BC supports improvements in the operating practices of elected bodies aimed at making government more representative, inclusive, transparent and accountable. Supported areas of improvement include campaign financing and disclosure rules, committee structures, and legislative conventions;
- (iii) Fair Voting BC also advocates for increased opportunities for citizens and NGOs to be meaningfully engaged in policy development processes, and favours improvements to BC's initiative process;
- (iv) Fair Voting BC advocated for BC-STV in the 2005 electoral reform referendum, in which the Citizens' Assembly's recommendation received 58% support, but was not implemented by the provincial government;
- (v) In the 2009 referendum campaign, Fair Voting BC served as the official proponent of the BC's Citizens' Assembly on Electoral Reform's recommendation that the Single Transferable Vote (BC-STV) be adopted;
- (vi) Following the 2009 referendum, Fair Voting BC's focus has widened to include a range of democratic reform issues, including discussing and promoting models for participatory democracy, expressing caution about naive support for internet voting and supporting Vancouver's quest for increased local autonomy to choose new voting systems and to impose campaign finance rules. Fair Voting BC remains strongly committed to achieving voting reform federally as well as at all levels of government in BC;

- (vii) Fair Voting BC made formal submissions to and appeared before the 2016 Canadian House of Commons Special Committee on Electoral Reform;
  - (viii) Fair Voting BC was a central partner in the Vote PR BC coalition that served as the official proponent arguing in favour of the adoption of a proportional representation (PR) voting system in the 2018 electoral reform referendum in BC.
6. Springtide Collective for Democracy Society (“Springtide”):
- (i) Springtide is a registered Canadian charitable organization based in Nova Scotia and dedicated to education and research for more responsive and resilient democratic institutions and public leadership;
  - (ii) Springtide is dedicated to non-partisan research, teaching and public engagement about democracy and politics in Canada. It has published two papers on electoral reform – modelling four alternative electoral systems for Canada and Nova Scotia – and has conducted public engagement and education workshops on electoral reform throughout Nova Scotia;
  - (iii) Springtide has presented submissions to the Law Amendments Committee of the Nova Scotia Legislature on issues related to electoral reform on multiple occasions;
  - (iv) Springtide made formal submissions to and appeared before the 2016 Canadian House of Commons Special Committee on Electoral Reform.

*Public Interest Standing*

7. The present application raises serious justiciable issues. The rights to vote and to legal and political equality are among the most fundamental rights accorded to Canadians. The constitutionality of Canada’s electoral system is an issue of profound and far-reaching consequence that goes to the very heart of our legal and political

order. Under FPTP, voters in an electoral district who do not vote for the elected MP are marginalized and systemically disenfranchised. They effectively have no voice in Parliament. Politicians elected through FPTP have a vested interest in maintaining this electoral system, as do voters who benefit from a disproportionately enhanced influence in government.

8. As noted above, the plaintiffs have a genuine interest in these issues and are thoroughly engaged with them.
9. This application is a reasonable and effective means of bringing these issues to court. The constitutionality of FPTP is a complex case of public interest, engaging all Canadians and the electoral system as a whole. The Applicants, through their longstanding work on the issue throughout the country, are in the best position to advance in a non-partisan fashion these broad issues in a court of law. There are no realistic alternative judicial means that would provide a more effective or efficient way of determining the issues raised by this application.

*FPTP violates the right to vote (s. 3 of the Charter)*

10. Section 3 of the Charter provides for the democratic rights of citizens: “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.”
11. The section 3 right to vote is meaningful only if the electoral process is fair. A fair electoral process requires citizens to have a fair and equal ability to participate in governance and influence political institutions and public policy.
12. Section 3 contains at least three overarching rights: (1) effective representation; (2) meaningful participation (including a free and informed vote); (3) fair and legitimate elections.
13. FPTP violates the s. 3 Charter right to **effective representation**. This right is broader than the concept of “one person, one vote”. It requires citizens to have a voice in the



deliberations of government and permits them to bring one's grievances and concerns to the attention of one's government representative.

14. FPTP substantially interferes with the right to effective representation of voters who do not vote for elected representatives. Voters find themselves with significantly less effective representation in the deliberations of Parliament if they vote for other candidates or parties, even where these candidates or parties have significant popular support.
15. FPTP substantially interferes with the right to effective representation of voters who belong to minority communities, particularly those that geographically dispersed, including indigenous peoples.
16. FPTP has no significant countervailing benefits or mechanisms to ensure effective representation of voters who did not vote for their elected representative.
17. Furthermore, there are other electoral systems that ensure that voters are effectively represented in Parliament. Countries and subnational jurisdictions with highly proportional systems achieve effective representation for voters. This includes jurisdictions using List Proportional Representation systems such as Denmark, Norway, and Sweden; jurisdictions using Mixed-Member Proportional Representation systems such as Germany, Scotland, and New Zealand; and jurisdictions using Single Transferable Vote systems such as Ireland, Northern Ireland, and the Australian Senate.
18. FPTP violates the s. 3 Charter right to **meaningful participation**. This right requires: (1) that each citizen have the right and be able to exercise their right to vote in a manner that accurately reflects his or her preferences; and (2) that Parliament not enhance the capacity of one citizen to participate in the electoral process in a manner that compromises another citizen's parallel right to meaningful participation in the electoral process. Legislation that contributes to a disparity in the capacity of

candidates and political parties to participate in elections can decrease the capacity of voters to meaningfully participate in the electoral process.

19. FPTP violates s. 3's right to meaningful participation by interfering with the capacity of voters who support popular parties trailing in the polls to play a meaningful role in the electoral process. It does so by lessening their incentives to vote for their preferred candidates for Parliament, motivating them to vote "strategically" for other candidates (rather than expressing their honest preference) or discouraging them from voting at all.
20. The distortions in voter preferences produced by FPTP have increased over time, for example due to increasing diversity in our society and the emergence of more political parties attracting significant numbers of adherents.
21. FPTP violates the right to meaningful participation of voters by advantaging political parties or candidates leading in the polls at the expense of others and exacerbating the pre-existing disparity in the ability of small and emerging parties to compete for votes with larger, more established parties.
22. FPTP violates the right to meaningful participation of voters by creating disparities between ridings in the incentive voters face to vote and their ability to impact the formation of a government (low in so-called "safe" ridings, higher in so-called "swing" ridings).
23. There are electoral systems that minimally distort the incentives of citizens to vote for their preferred candidate and treat all voters relatively equally; such systems have previously been and/or are being used successfully both in Canada and many other countries.
24. FPTP violates the s. 3 Charter right to **fair and legitimate elections**. This right requires the state's electoral framework to provide legislative power, benefits, and the ability to influence policy equally to all voters, no matter for whom they vote. The

right to fair and legitimate elections flows directly from the principle of the political equality of citizens.

25. FPTP converts votes into seats in an arbitrary and unfair manner, resulting in an arbitrary and unfair distribution of legislative power and benefits to voters. For example, FPTP arbitrarily and unfairly benefits those who vote for candidates from established or regionally strong political parties, while harming those who vote for candidates from any party that is not the local plurality, including smaller geographically dispersed parties and emerging parties.
26. The continued use of FPTP in Canada is a product of elected politicians' vested interest in retaining the status quo and insulating themselves from competition. This presents a significant structural impediment to moving toward a Charter-compliant voting system.
27. There are electoral systems in wide usage that allocate seats, power, and benefits in a fair, balanced, and rational manner.

*FPTP violates the right to equality (s. 15)*

28. Section 15(1) of the Charter guarantees every individual the right to be equal before and under the law and the right to the equal protection and equal benefit of the law without discrimination. Protected grounds include race, sex, ethnic origin, and mental or physical disability and other analogous groups.
29. Legislation can be discriminatory either because it treats people differently based on a protected characteristic, or because it treats people uniformly but has a differential and more negative impact on a protected group as a result of their membership in that group or their possession of the protected characteristic or quality.
30. FPTP violates the s. 15 right to equality by discriminating on the basis of political affiliation/belief. This is an analogous ground under the Charter.

31. FPTP disadvantages voters of small parties with particular ideologies or lenses, particularly where they are geographically dispersed. These voters, who have particular political affiliations/beliefs, are less able to successfully elect an MP who will represent their views in Parliament and effectively find themselves without a voice in Parliament.
32. FPTP also disadvantages candidates with these political affiliations/beliefs in their attempts to get elected.
33. These disadvantages are discriminatory.
34. In contrast, there are many electoral systems that do not disadvantage these voters, candidates, or parties.
35. FPTP also violates the s. 15 right to equality by discriminating on the basis of sex, race, and ethnicity. These are protected characteristics under the Charter.
36. Specifically, FPTP disadvantages women and racial and ethnic minorities in their attempts to become elected MPs.
37. These differential impacts are discriminatory. One result of their reduced representation in Parliament is that these groups are less able than others to generate visibility for and achieve progress on issues that matter to them and other members of their groups, further perpetuating the disadvantages faced by these groups.
38. In contrast, there are many electoral systems that do not disadvantage women and racial and ethnic minorities.
39. The violations of ss. 3 and 15 cannot be saved by s. 1 of the Charter.
40. Rule 14.05(2) of the Rules of Civil Procedure.
41. Sections 3, 15(1), 24(1), and 52 of the Charter.

42. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the application:**

1. Affidavit of Antony Hodgson, to be filed.
2. Affidavit of Mark Coffin, to be filed.
3. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Date: October 9<sup>th</sup>, 2019

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Court File No. \_\_\_\_\_

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**ATTORNEY GENERAL OF**  
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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceedings commenced at  
TORONTO

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**NOTICE OF APPLICATION**

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