

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

CANADIAN CONSTITUTION FOUNDATION

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION under Rules 14.05(3)(d), 14.05(3)(g), and 14.05(3)(h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, sections 1 and 2(b) of the *Charter of Rights and Freedoms*, and section 52(1) of the *Constitution Act, 1982*

NOTICE OF CONSTITUTIONAL QUESTION

THE APPLICANT INTENDS to question the constitutional validity of s. 91 of the *Canada Elections Act*, S.C. 2000, c. 9 (the “*CEA*”).

The question is to be argued on a date to be fixed by the Court.

The material facts giving rise to the constitutional question are as set out in the Applicant’s Notice of Application, issued September 13, 2019.

The following is the legal basis for the constitutional question:

1. Section 91 of the *CEA* provides that:

Publishing false statement to affect election results

91 (1) No person or entity shall, with the intention of affecting the results of an election, make or publish, during the election period,

(a) a false statement that a candidate, a prospective candidate, the leader of a political party or a public figure associated with a political party has committed an offence under an Act of Parliament or a regulation made under such an Act — or under an Act of the legislature of a province or a

regulation made under such an Act — or has been charged with or is under investigation for such an offence; or

(b) a false statement about the citizenship, place of birth, education, professional qualifications or membership in a group or association of a candidate, a prospective candidate, the leader of a political party or a public figure associated with a political party.

Clarification

(2) Subsection (1) applies regardless of the place where the election is held or the place where the false statement is made or published.

2. Under ss. 486(4) and 500(5) of the *CEA*, any person who contravenes s. 91(1) of the *CEA* is guilty of an offence, and may be sentenced: (i) on summary conviction, to pay a fine of up to \$20,000, to be imprisoned for up to one year, or to both; or (ii) on conviction on indictment, to pay a fine of up to \$50,000, to be imprisoned for up to five years, or to both. Section 514(3) of the *CEA* provides that “[p]roceedings in respect of an offence under a provision set out in ... [s. 500(5)] may be commenced at any time”.

3. Section 91 of the *CEA* limits the freedoms guaranteed in s. 2(b) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), particularly the freedoms of belief, opinion, and expression. This limit is not a “reasonable limit[] prescribed by law [that] can be demonstrably justified in a free and democratic society” under s. 1 of the *Charter*.

4. Accordingly, s. 91 of the *CEA* is of no force and effect under s. 52(1) of the *Constitution Act, 1982*.

September 16, 2019

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(This notice must be served as soon as the circumstances requiring it become known and, in any event, at least 15 days before the question is to be argued, unless the court orders otherwise.)

Canadian Constitution Foundation **Attorney General of Canada**
Applicant - and - Respondent

Court File No.: CV-1900627380-0000

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Proceeding commenced at **TORONTO**

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