

Court File No.:

**FEDERAL COURT**

B E T W E E N:

BRADLEY OSBORNE and LINDA OSBORNE

Applicants

and

CANADA (ATTORNEY GENERAL)

Respondent

**NOTICE OF APPLICATION**

**(APPLICATION UNDER SECTION 18.1 OF THE  
*FEDERAL COURTS ACT*, R.S.C. 1985, c. F-7)**

**TO THE RESPONDENT:**

**A PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the applicants. The relief claimed by the applicants appears below.

**THIS APPLICATION** will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of the hearing will be as requested by the applicant. The applicant requests that this application be heard at **Toronto**.

**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 another acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of the Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

Date:

Issued by: \_\_\_\_\_  
(Registry Officer)

Address of local office:

180 Queen Street West, Suite 200  
Toronto, Ontario  
M5V 3L6

**TO:** The Attorney General of Canada  
c/o Office of the Deputy Attorney General of Canada

and

Ontario Regional Office  
Department of Justice Canada

## APPLICATION

### OVERVIEW

1. This is an application for judicial review in respect of an order made by the Chief Statistician of Canada (the “CSC”), requiring the applicants, Bradley Osborne and Linda Osborne (the “Applicants”), to answer the questions contained in the 2026 Census of Population (the “2026 Census”) long-form questionnaire (the “Long-Form Census Questionnaire”), including Questions D3, D4, D17(a)-(f), D18, D34, D35, D36, D56(a)-(c) and D57(a)-(b) (the “Impugned Questions”), and to submit their answers to Statistics Canada by no later than May 12, 2026 (the “Order”).

### STATEMENT OF RELIEF SOUGHT

2. The Applicants make application for an order:
- (a) granting this application for judicial review;
  - (b) declaring that the questions presented in the Long-Form Census Questionnaire were prescribed by the Governor in Council *ultra vires* its authority under s. 21(1) of the *Statistics Act*, RSC 1985 c S-19 (the “Act”), and that accordingly, the Order was also made by the CSC *ultra vires* his authority under the Act;
  - (c) quashing the Long-Form Census Questionnaire in its entirety, or, alternatively, such portions thereof as the Court considers appropriate;
  - (d) alternatively, declaring that the Order and Impugned Questions (as described below) infringe sections 7 and 8 of the *Canadian Charter of Rights and Freedoms*, being Part 1 of the *Constitution Act, 1982*, being

Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 (the “*Charter*”), and that such infringements cannot be saved by section 1;

- (e) declaring, pursuant to section 24(1) of the *Charter*, that the Order, to the extent that it requires a response to the Impugned Questions, is of no force or effect;
- (f) quashing the Impugned Questions from the Long-Form Census Questionnaire; and
- (g) providing such further and other relief as counsel may advise and this Court considers appropriate.

3. The Applicants do not seek costs, and ask that no costs be awarded against them, given the public interest nature of this matter, regardless of the outcome of this application.

### **GROUND FOR THE APPLICATION**

#### **The Applicants**

4. The Applicants are individuals who reside in Foothills, Alberta. The Applicants are Canadian citizens who are obligated to participate in the 2026 Census, as described below.

#### **Legal and Constitutional Framework**

5. Section 8 of the *Constitution Act, 1867*, 30 & 31 Vict, c. 3 (the “*Constitution Act, 1867*”), provides for the taking of a decennial census in Canada, as follows:

**8** In the general Census of the Population of Canada which is hereby required to be taken in the Year One thousand eight hundred and seventy-one, and in every Tenth Year thereafter, the respective Populations of the Four Provinces shall be distinguished.

6. Statistics Canada is the national statistics bureau, established and continued by section 3 of the Act. Its duties, pursuant to section 3, include taking the census of population of Canada as required by section 8 of the *Constitution Act, 1867* and as provided by the Act.

7. The CSC, currently André Loranger, is the deputy head of Statistics Canada, appointed by the Governor in Council pursuant to section 4(1) of the Act.

8. Pursuant to section 7 of the Act, the CSC is responsible for prescribing rules and instructions for the taking of the census of population of Canada:

**Rules, instructions and requests for information**

**7 (1)** The Chief Statistician may prescribe the rules, instructions and, subject to subsection 21(1), requests for information that he or she considers necessary for conducting the work and business of Statistics Canada, the collecting, compiling and publishing of statistics and other information and the taking of any census authorized by this Act.

9. Participation in a census of population is mandatory. Section 8(1) of the Act provides:

**Mandatory or voluntary requests for information**

**8 (1)** The Chief Statistician shall determine whether a request for information is mandatory or voluntary, with the exception of the census of population and census of agriculture, both of which are mandatory.

10. Section 19 of the Act also provides:

**Population census**

**19 (1)** A census of population of Canada shall be taken by Statistics Canada in the month of June in the year 1971, and every fifth year thereafter in a month to be fixed by the Governor in Council.

**Counts of electoral divisions**

**(2)** The census of population shall be taken in such a manner as to ensure that counts of the population are provided for each federal electoral district of Canada, as constituted at the time of each census of population.

**Decennial census**

**(3)** A reference in any Act of Parliament, in any order, rule or regulation or in any contract or other document made thereunder to a decennial census of population shall, unless the context otherwise requires, be construed to refer to the census of population taken by Statistics Canada in the year 1971 or in any tenth year thereafter.

11. The Governor in Council decides what mandatory questions are to be included in a census.

Section 21(1) of the Act provides:

**Census questions**

**21 (1)** The Governor in Council shall, by order, prescribe the questions to be asked in any census taken by Statistics Canada under section 19 or 20.

12. Completion of the census in its entirety is mandatory. Section 23(2) of the Act provides:

**Request for information by any method**

**23 (1)** The requests for information prescribed under section 7 may be made by any method authorized by the Chief Statistician.

**Duty to provide information**

**(2)** A person to whom a mandatory request for information is made shall provide the information to Statistics Canada, properly certified as accurate, not later than the time prescribed by the Chief Statistician and indicated to the person or not later than the extended time that may be allowed in the discretion of the Chief Statistician.

13. Section 31 of the Act also provides:

**False or unlawful information**

**31** Every person is guilty of an offence and liable on summary conviction to a fine of not more than \$500 who, without lawful excuse,

**(a)** refuses or neglects, following a request for information under this Act,

**(i)** to provide any requested information to the best of their knowledge and belief, or

**(ii)** to provide any requested information when and as required under this Act; or

**(b)** knowingly gives false or misleading information or practises any other deception under this Act.

14. From 1971 to 2006, and from 2016 to the present, the census questionnaire has taken two forms: a short form survey sent to approximately 75% of households, and a long form survey sent

to approximately 25% of households. The short form asks for basic demographic information, while the long form asks for more granular detail on a wider variety of subjects.

### **Factual Background**

15. On June 13, 2025, a federal Order-in-Council bearing P.C. No. 2025-0510 (“**OIC 2025-0510**”) was issued. It provided:

Her Excellency the Governor General in Council, on the recommendation of the Minister of Industry, under subsections 19(1) and 21(1) of the *Statistics Act*, fixes May 2026 as the month in which a census of population is to be taken by Statistics Canada and prescribes the questions to be asked in the 2026 Census of Population, as set out in the schedule.

16. The schedule to OIC 2025-0510 prescribed the questions to be asked on the Long-Form Census Questionnaire, including the following discrete questions, found under “Step D” of the schedule, which are required to be answered with respect to all persons who usually live at a given address (the “**Impugned Questions**”):

[...]

**3.** What is this person’s **gender**?

Gender refers to an individual’s personal and social identity as a man (or a boy), a woman (or a girl), or a person who is not exclusively a man (or a boy) or a woman (or a girl), for example, non-binary, agender, gender fluid, queer or Two-spirit.

- Man (or boy)
- Woman (or girl)
- Or please specify this person’s gender:

**4.** What was this person’s sex at birth?

Sex at birth refers to the sex recorded on a person’s first birth certificate. It is typically observed based on a person’s reproductive system and other physical characteristics.

- Male

- Female

[...]

### Activities of daily living

The following question is about difficulties a person may have doing certain activities. Only **difficulties or long-term conditions** that have lasted or are **expected to last for six months or more** should be considered.

**17. a)** Does this person have any **difficulty seeing** (even when wearing glasses or contact lenses)?

- No
- Sometimes
- Often
- Always

**17. b)** Does this person have any **difficulty hearing** (even when using a hearing aid)?

- No
- Sometimes
- Often
- Always

**17. c)** Does this person have any **difficulty walking, using stairs, using their hands or fingers or doing other physical activities?**

- No
- Sometimes
- Often
- Always

**17. d)** Does this person have any **difficulty learning, remembering or concentrating?**

- No
- Sometimes
- Often

- Always

**17. e)** Does this person have any **emotional, psychological or mental health conditions** (e.g., anxiety, depression, bipolar disorder, substance use disorder, anorexia, etc.)?

- No
- Sometimes
- Often
- Always

**17. f)** Does this person have any **other health problem or long-term condition** that has lasted or is expected to last **for six months or more**?

**Exclude:** any health problems previously reported in questions 17. a) to 17. e) above.

- No
- Sometimes
- Often
- Always

### **General Health**

The following question is about the general health status of members of this household.

**18.** In general, how is this person's health?

Health means not only the **absence of disease or injury** but also, **physical, mental and social well-being**.

Mark "x" one circle only.

- Excellent
- Very good
- Good
- Fair
- Poor

[...]

### Homelessness

**34.** Considering **homelessness experiences**, over the past 12 months, has this person stayed in a shelter, on the street or in parks, in a makeshift shelter, in a vehicle, or in an abandoned building?

- Yes
- No

**35.** Considering other types of housing challenges, over the past 12 months, has this person lived **temporarily** with friends, family or others **because they had nowhere else to live**?

**Include temporary** living arrangements where the person did not have the resources to secure their own permanent housing (person facing financial difficulties, fleeing abuse, recently evicted, etc.).

**Exclude** stays for vacation, family visits, or other voluntary short-term stays.

- Yes

Is this person **currently** living in this household **temporarily** because they have nowhere else to live?

- o Yes
- o No
- No [*sic*]

[...]

**36.** What is this person's **sexual orientation**?

Sexual orientation refers to how a person describes their sexuality.

- Heterosexual (i.e., straight)
- Lesbian or gay
- Bisexual or pansexual
- Or please specify this person's sexual orientation:

[...]

**56. a) In a usual workweek**, what modes of commuting does this person use to get to work?

**Hybrid workers** respond for the days they commute to work.

Mark "Subway or elevated rail" for:

- Vancouver SkyTrain
- Toronto subway
- Montréal Metro.

Mark "Light rail, streetcar or commuter train" for:

- Vancouver West Coast Express
- Calgary CTrain
- Edmonton LRT
- Toronto streetcars
- Toronto GO Train
- Ottawa O-Train
- Montréal commuter trains
- Montréal REM
- Kitchener-Waterloo ION LRT.

**Mark "x" as many circles as applicable.**

- Car, truck or van — as a driver
- Car, truck or van — as a passenger
- Bus
- Subway or elevated rail
- Light rail, streetcar or commuter train
- Passenger ferry
- Walked to work
- Bicycle, electric bike or electric scooter
- Motorcycle, motorized scooter or moped

- Other method

**56. b) In a usual workweek, what main mode of commuting does this person use to get to work?**

Mark "x" one circle only.

**Hybrid workers** respond for the days they commute to work.

If this person uses more than one mode of commuting to get to work, **mark the one used for most of the travel distance.**

- Car, truck or van — as a driver
  - o **Go to question 56. c)**
- Car, truck or van — as a passenger
  - o **Go to question 56. c)**
- Bus
  - o **Go to question 57. a)**
- Subway or elevated rail
  - o **Go to question 57. a)**
- Light rail, streetcar or commuter train
  - o **Go to question 57. a)**
- Passenger ferry
  - o **Go to question 57. a)**
- Walked to work
  - o **Go to question 57. a)**
- Bicycle, electric bike or electric scooter
  - o **Go to question 57. a)**
- Motorcycle, motorized scooter or moped
  - o **Go to question 57. a)**
- Other method
  - o **Go to question 57. a)**

**56. c) How many workers, including this person, usually ride in this car, truck or van to work?**

- 1 worker
- 2 workers
- 3 or more workers

**57. a)** What time does this person's trip to work **usually** begin?

**Hybrid workers** respond for the days they commute to work.

- Usual time
  - o Specify the usual time this person leaves for work
    - § hour
    - § min
    - § a.m.
    - § p.m.
- No usual time (e.g., shift worker)

**57. b)** How many minutes does this person's trip to work **usually** last?

**Hybrid workers** respond for the days they commute to work.

- Number of minutes

**OR**

- No usual duration

[...]

### **The Order**

17. In May 2026, the CSC or Statistics Canada sent letters (i.e. orders) by mail to private Canadian households, including that of the Applicants, requiring them to participate in the 2026 Census.

18. In mid-May, Mr. Osborne retrieved such a letter (i.e. the Order) from the Osbornes' mailbox. This was the first time that Mr. Osborne was made aware of the 2026 Census, and his first notification that their participation was required.

19. The Applicants' letter contained instructions on how to complete their questionnaire. It included a unique 16-digit secure access code that allows respondents to access and complete their questionnaire online. It also provided that the Applicants were required to complete their questionnaire by May 12, 2026.

20. Using the access code included in their letter, the Applicants discovered that they had been selected to complete the Long-Form Census Questionnaire. They were accordingly required by law to answer all of the questions on the Long-Form Census Questionnaire, including the Impugned Questions.

21. The Applicants object to providing answers to the Impugned Questions, for the following reasons.

**OIC 2025-0510 and the Order are both *ultra vires***

22. Section 22 of the Act does not relate to the collection of information relating to a census, but rather the collection of other statistical information. It provides that the CSC shall collect, compile, analyse, abstract and publish statistics in relation to a lengthy list of enumerated matters:

**22** Without limiting the duties of Statistics Canada under section 3 or affecting any of its powers or duties in respect of any specific statistics that may otherwise be authorized or required under this Act, the Chief Statistician shall collect, compile, analyse, abstract and publish statistics in relation to all or any of the following matters in Canada:

- (a) population;
- (b) agriculture;
- (c) health and welfare;
- (d) law enforcement, the administration of justice and corrections;
- (e) government and business finance;
- (f) immigration and emigration;
- (g) education;

- (h) labour and employment;
- (i) commerce with other countries;
- (j) prices and the cost of living;
- (k) forestry, fishing and trapping;
- (l) mines, quarries and wells;
- (m) manufacturing;
- (n) construction;
- (o) transportation, storage and communication;
- (p) electric power, gas and water utilities;
- (q) wholesale and retail trade;
- (r) finance, insurance and real estate;
- (s) public administration;
- (t) community, business and personal services; and
- (u) any other matters prescribed by the Minister or by the Governor in Council.

23. Section 8 of the Act provides that the CSC shall determine whether such requests for information will be “mandatory” or “voluntary”, with the exception of censuses of population and censuses of agriculture, which are both mandatory:

**Mandatory or voluntary requests for information**

**8 (1)** The Chief Statistician shall determine whether a request for information is mandatory or voluntary, with the exception of the census of population and census of agriculture, both of which are mandatory.

**Publication**

**(2)** The Chief Statistician shall publish any mandatory request for information before the request is made.

**Notification of Minister**

**(3)** The Chief Statistician shall notify the Minister of any new mandatory request for information at least 30 days before the day on which it is published.

24. In stark contrast, census questions are treated differently. Section 21(1) of the Act provides that the Governor in Council shall prescribe only what are known as “census questions”, which are mandatory and must be answered during a census:

**Census questions**

21 (1) The Governor in Council shall, by order, prescribe the questions to be asked in any census taken by Statistics Canada under section 19 or 20.

25. In this case, OIC2025-0510 prescribed all of the questions listed in its schedule as “census questions” pursuant to s. 21(1) of the Act, and therefore as mandatory questions. OIC2025-0510 did not provide that any or the questions were voluntary, pursuant to s. 22 of the Act, nor did the CSC. Further, the CSC did not publish anything indicating that mandatory statistical questions would be included along with census questions as was required by s. 8(2) of the Act.

26. Only those questions necessary to fulfill the constitutional census requirement in s. 8 of the *Constitution Act, 1867* may be prescribed as mandatory “census questions” by the Governor in Council pursuant to section 21(1) of the Act. By prescribing far more questions than are necessary to fulfill that purpose, the Governor in Council acted *ultra vires* its authority under the Act.

27. As a result, the Order from the CSC, requiring the Applicants to answer the entirety of the Long-Form Census Questionnaire, was also made *ultra vires* his authority under the Act.

**The Order is Incorrect and/or Unreasonable**

28. Further, or in the alternative, the Order is incorrect and/or unreasonable on the following *Charter*-related grounds.

**The Availability of *Charter* Review in this Proceeding**

29. Statistics Canada and the CSC are “government” and therefore subject to the *Charter*, pursuant to section 32(1) of the *Charter*.

30. The Order and the Impugned Questions are subject to review under the *Charter*.

31. Further, the Order and Impugned Questions unreasonably, disproportionately and unjustifiably violate the Applicants' rights and freedoms as guaranteed by sections 7 and 8 of the *Charter*, for the following reasons.

The Order and Impugned Questions violate section 7 of the *Charter*

32. Section 7 of the *Charter* provides that everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

33. The Supreme Court of Canada has recognized the protection of individual privacy primarily within the section 7 liberty interest. Such privacy interests are most notably engaged where aspects of one's individual identity are at stake.

34. The Supreme Court of Canada has stated that "*respect for individual privacy is an essential component of what it means to be free*", and that "*the infringement of this right undeniably impinges upon an individual's 'liberty' in our free and democratic society*".

35. The Supreme Court of Canada has also stated, with respect to the disclosure of private information and its impact on a person's liberty under section 7 of the *Charter*:

When a private document or record is revealed and the reasonable expectation of privacy therein is thereby displaced, the invasion is not with respect to the particular document or record in question. Rather, it is an invasion of the dignity and self-worth of the individual, who enjoys the right to privacy as an essential aspect of his or her liberty in a free and democratic society.

36. In Canada, it is a principle of fundamental justice that where an individual has a reasonable expectation of privacy in personal and confidential information, that information may not be disclosed without his or her consent.

37. In this case, the Order and Impugned Questions require the Applicants to divulge deeply private information about their individual identities and circumstances. This constitutes an invasion by the state of the Applicants' dignity and self-worth. The Applicants thus have a reasonable expectation of privacy to the information responsive to the Order and Impugned Questions. Moreover, the Applicants have not consented to the disclosure of such information to the government.

38. Yet, the Applicants are nonetheless forced to disclose, in the Long-Form Census Questionnaire, the information responsive to the Order and Impugned Questions, without their consent.

39. The Order and Impugned Questions therefore violate section 7 of the *Charter*.

40. Moreover, the respondent has not demonstrated that requiring the Applicants to comply with the Order and respond to the Impugned Questions is a reasonable limit of their section 7 rights that is demonstrably justified in a free and democratic society, nor can it do so.

41. Therefore, the Order and Impugned Questions violate section 7 of the *Charter*, and are not justified by section 1.

The Impugned Questions violate section 8 of the *Charter*

42. Section 8 of the *Charter* provides that everyone has the right to be secure against unreasonable search or seizure.

43. Section 8 protects a biographical core of personal information, which individuals in a free and democratic society would wish to maintain and control from dissemination to the state, including information that tends to reveal intimate details of the lifestyle and personal choices of the individual.

44. A “search” is any state activity that interferes with a reasonable expectation of privacy. The privacy interest can be personal, territorial, or informational.

45. A “seizure” is the taking of a thing from a person by a public authority without that person’s consent.

46. Whether or not state action has interfered with a reasonable expectation of privacy (so as to constitute a search or seizure) is assessed on the totality of the circumstances.

47. In this case, the Order and Impugned Questions require the Applicants to divulge information that will tend to reveal intimate details of their lifestyles and personal choices. The Applicants have a reasonable expectation of privacy with respect to such information. Thus, section 8 is engaged. Moreover, in the circumstances, the requirement to comply with the Order and answer the Impugned Questions interferes with the Applicants’ reasonable expectation of privacy and therefore constitutes both a search and seizure for the purposes of section 8.

48. Moreover, in this case, the search and seizure of the Applicants’ personal information through requiring them to comply with the Order and answer the Impugned Questions is unreasonable. To the extent that the Act authorizes the search and seizure of such information, it does not do so in a reasonable manner.

49. Thus, the requirement for the Applicants to comply with the Order and answer the Impugned Questions constitutes an unreasonable search based on an unreasonable authorizing law.

50. Moreover, the respondent has not demonstrated that requiring people to comply with the Order and respond to the Impugned Questions is a reasonable limit of their section 8 rights that is demonstrably justified in a free and democratic society, nor can it do so.

51. Therefore, the Order and Impugned Questions violate section 8 of the *Charter*, and are not justified by section 1.

The CSC failed to consider whether the Order and Impugned Questions would unreasonably limit the Applicants' *Charter* rights

52. Further, or in the alternative, where an individual's *Charter* rights are engaged by an administrative decision, the decision-maker must consider those rights, and attempt to balance any limitations on those rights against the decision-maker's statutory objective. Failure to do so is a fatal constitutional error.

53. As pleaded above, the Order and Impugned Questions engage the Applicants' rights under sections 7 and 8 of the *Charter*. There is no evidence that the respondents considered the Applicants' *Charter* rights and freedoms before requiring the Applicants to comply with the Order and answer the Impugned Questions. The Order and Impugned Questions must be quashed on this basis.

**THE APPLICANT RELIES ON THE FOLLOWING STATUTORY PROVISIONS:**

- (a) the *Constitution Act, 1867*, 30 & 31 Vict, c. 3;
- (b) the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982 (UK)*, 1982, c. 11, including the *Canadian Charter of Rights and Freedoms*;
- (c) *Statistics Act*, R.S.C. 1985, c. S-19;
- (d) *Federal Courts Act*, R.S.C. 1985, c. F-7, ss. 18.1;
- (e) *Federal Courts Rules*, SOR/8-106.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

- (a) the Affidavit(s) of TBD, sworn TBD; and
- (b) such further and other evidence as the lawyers may advise and this Court may permit.

~~CHARTER ADVOCATES CANADA~~

**Hatim Kheir, LSO#79576J**

**Counsel for the Applicants**

**BRADLEY OSBORNE et al.**  
Applicants

-and-

**CANADA (ATTORNEY GENERAL)**  
Respondent

Court File No.

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**FEDERAL COURT**

PROCEEDING COMMENCED AT  
TORONTO

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**CHARTER ADVOCATES CANADA**

**Hatim Kheir (LSO #79576J)**

**Counsel for the Applicants**