

Court rejects bid to overturn Terrebonne election result (*Sinclair-Desgagné v. Attorney General (Canada)*)

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3 November 2025

The April 2025 Canadian federal election was a close contest, with a handful of electoral districts not determining a winner until the votes in the last ballot box were counted. In extremely close contests, election laws across Canada generally permit for an automatic judicial recount of votes.

Razor-thin margins of victory can also prompt a second-place or losing candidate to bring a contested election application to overturn an election result and to seek a new election.

However, as seen in *Sinclair-Desgagné v. Attorney General (Canada)*, overturning an election result under a contested election application is virtually impossible.

On 28 April 2025, Tatiana Auguste, a candidate for the Liberal Party of Canada, was elected as the Member of Parliament for the electoral district of Terrebonne, located in Quebec. Her election-night victory, by a margin of one vote, was confirmed by an automatic judicial recount.

Subsequently, the second-place candidate, Nathalie Sinclair-Desgagné, the Bloc Québécois candidate, learned that a voter, who had delivered her ballot to the local election office by mail before election night, had received her ballot back because the postal code on the envelope containing the ballot was incorrect.

The voter claimed that her ballot was cast for Ms. Sinclair-Desgagné and that the election result should have been a tie.

The evidence showed that the envelope in which the voter's special ballot was contained was incorrectly labelled by an election official. The election official had used the last three elements of his own residential postal code when making the label for the return envelope which the voter was instructed to use when returning her ballot.

Although the election official knew that he had mislabelled the return envelope, he never corrected his error and told no one about the mistake he had made. The election official estimated that at least forty of the special kits he had prepared for special ballot mail-in voting contained the mislabelled postal code.

Accordingly, Ms. Sinclair-Desgagné contended that the return of the voter's special ballot constituted an irregularity that affected the result of the election under [section 524\(1\)\(b\)](#) of the *Canada Elections Act* and that a new election was required.

The court rejected the bid to overturn the election result because in the judge's view the error which resulted in the voter's special ballot never being counted in the result did not impact the integrity of the electoral system.

Based on the landmark decision of the Supreme Court of Canada in *Opitz v. Wrzesnewskyj*, a simple error that does not undermine the integrity of the electoral system will not justify annulling an election under a contested election application.

The error in question was, in the view of the court, a simple administrative error.

The court noted that Canada's system of electoral administration was not designed to achieve perfection. Rather it was designed to provide a method that permitted all persons entitled to vote to cast a ballot. The ability to vote by special ballot was a method that permitted the voter to cast her ballot but was not the only method by which she could have done so.

The evidence showed that the voter could have tracked her envelope using an individualized reference number to ensure that it had been received. The reference number allowed the voter to follow the process from the time that her ballot was received from the election office to the return of her envelope.

In addition, notwithstanding the silence of the election official who had made the error, the evidence showed that mislabelled envelopes were being received by the election office throughout the election and that the rate of return for special ballots was close to the percentage that had been received in previous elections.

Accordingly, it was reasonable for the election official to not have worried about the possible negative consequences of his error.

In the result, the court concluded that the election official's error was careless, not intentional.

For the purposes of the Act, the error was not the result of any fraud, corrupt practice or illegal act.

As described in *Opitz*, imperfections in the conduct of an election are inevitable. Therefore, although an election can be overturned for an "irregularity" under section 524(1)(b), the irregularity had to be "serious".

The term "irregularity" as used in the section was juxtaposed with the terms "fraud", "fraudulent" or "unlawful act" which the court accepted limited the range of administrative errors that could lead to the annulment of an election.

The court also refused to exercise any discretion to annul the election based on the losing candidate's contention that the failure to count the voter's ballot had a real impact on the election process.

Although the court recognized that under section 3 of the Canadian Charter of Rights and Freedoms every Canadian citizen was guaranteed the right to vote in a federal election, that electoral law was required to be read generously to give full scope to this right, and that this right was a predominant value in Canada's electoral system, the court reasoned that it would be unreasonable to set aside the one vote victory in the circumstances.

The court stated that under sections 239(2) and 240 of the Canada Elections Act, it was the responsibility of the elector to ensure that the envelope containing her special ballot arrived at the polling station in time. The tracking system associated to her ballot allowed the voter to discover that her envelope had not been received. In the circumstances, the court found that the voter could have proceeded to vote in person.

Even the voter acknowledged that by using a mail-in ballot she was taking a chance that her vote might not be received. On cross-examination, the voter said:

Well, I was thinking, you know, I'm still aware that voting by mail is a bit of, I don't know, throwing a bottle of water into the sea with a little message. We don't, you know, know if it is going to make it. And I think my doubts were a little...I was right to have doubts about the way to do things. Then that's it. I was wondering if I'm supposed to receive an acknowledgement of receipt or a confirmation that the envelope has been returned and well, I don't know yet if this something that Elections Canada is doing because I have not been able to [vote live]...My vote was just never returned. But that's it, yes, I had my doubts. I was wondering if it's going to turn out, given that there's no follow-up after it's posted.

The voter admitted to taking no follow up steps because she simply trusted that her envelope would arrive at its destination despite warnings provided by Elections Canada on its internet site.

The warnings recommended that electors check the status of their special ballots and that if an elector was concerned about a ballot arriving on time, that an expedited courier delivery service could be used to deliver a special ballot.

In this regard, the court found that the elector had not actually been permanently denied her right to vote in the election.

Lastly, the court explained that granting the application and cancelling the election would have serious consequences. The election could not simply be a rerun of the election that had taken place on election night because of, among other things, changed political circumstances.

The court concluded that the annulment of an election should only be pronounced in the most serious case, and that this was not the most serious case.



As one of the lawyers involved in the *Opitz* case, in my view, the fact that the elector's ballot was never received, or in other words deposited into the ballot box, was critical to the outcome of the case. Unlike in *Opitz*, the second place candidate was not trying to take ballots out the ballot box; she was trying to have a ballot added to the box after the election. In my view, this weakened the strength of the application because it allowed the court to take into account the rights of the over 60,000 electors who had exercised their right to vote. Granting the application to accommodate the elector's special ballot, which was never received, would have disenfranchised the other electors, whose ballots were received and counted.

The lesson of this case is that overturning an election is a Herculean task. Under federal election law, unless a candidate can prove fraud or serious misconduct, the results of election will never be overturned. Administrative errors by election officials are simply not enough. A PDF version is available to download [here](#).

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