

Unintentional administrative errors can be serious enough to annul an election (Sinclair-Desgange v. Canada (Chief Electoral Officer))

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Annulling an election result is difficult. However, on February 13, 2026, the Supreme Court of Canada annulled the result in the 2025 federal election in the electoral district of Terrebonne, with reasons to follow. A Quebec court had earlier determined that the election result, which was won by the federal Liberal candidate by a one-vote margin, should be upheld.

On September 18, 2026, the Supreme Court of Canada in *Sinclair-Desgagné v. Canada (Chief Electoral Officer)*, 2026 SCC 31, released its reasons for throwing out the election result and requiring a by-election, which eventually was won again by the Liberal candidate.

The reasons of the Supreme Court show that there remains a debate among judges whether a substantive approach that essentially protects an elector's right to vote always trumps a procedural approach that promotes strict adherence to the procedural voting processes set out in election laws.

For the majority of the Court, the substantive approach prevailed, while the minority was inclined to find that the procedures for special mail-in ballots established under the *Canada Elections Act* (the "CEA") placed the burden on the elector to ensure that their ballot was received in a timely fashion by election officials.

On April 28, 2025, election night in the 2025 federal election, the federal Liberal candidate, Tatiana Auguste, defeated the incumbent Member of Parliament and Bloc Québécois candidate, Nathalie Sinclair-Desgagné, by one vote.

After the election, an elector came forward asserting that her special mail-in ballot had not been counted in the vote because Canada Post returned it as undeliverable due to an error in the last three-digits of the postal code marked on the envelope containing the ballot.

The postal code error had been made unintentionally by a local election official when preparing the return envelopes for the special mail-in ballots.

Accordingly, although the elector had mailed her ballot to the local election office 22 days before polling day, using the prepaid and pre-addressed envelope provided to her by Elections Canada, the envelope and ballot never arrived at the election office.

Ms. Sinclair-Desgagné contested the election result.

In a [previous blog](#), dated November 3, 2025, I reviewed the decision of the Quebec Superior Court which rejected the application to void the election. The Quebec Superior Court found that the postal code error and the failure to correct the error were simply human errors and were not irregularities.

In a 6-3 decision, the Supreme Court of Canada reversed this decision.

The issue to be determined by the Supreme Court was whether the postal code error, combined with the failure to correct the error by election officials upon their discovery of the mistake a few weeks before the election, was an “irregularit[y]...that affected the result of the election” under section 524(1)(b) of the [CEA].”

Based on the Supreme Court's decision in *Opitz v. Wrzesnewskyj*, 2012 SCC 55, Ms. Sinclair-Desgagné was required to satisfy the following three-part test:

1. That there was a serious irregularity;
2. That the irregularity affected the result of the election by affecting the vote count; and
3. That the court should exercise its discretion to annul the election.

The majority of the Court found that, notwithstanding that the postal code error and the failure to correct it were unintentional, they remained serious administrative errors so as to constitute irregularities under the CEA. The term “irregularity” is undefined in the legislation.

The majority explained that section 524(1)(b) of the CEA applied to circumstances where a person entitled to vote was improperly prevented from casting a ballot due to an irregularity caused by an election official. Furthermore, the majority noted that section 3 of the Canadian *Charter of Rights and Freedoms* guaranteed the right of every citizen to vote. This guarantee lay at the heart of Canadian democracy and could not be lightly set aside.

Applying the substantive approach established by *Opitz*, which gave primacy to the underlying right to vote, the majority concluded that the unintentional conduct of local election officials was a serious administrative error that, in the circumstances, undermined the electoral process because it had breached “procedural safeguard[s] designed to establish an elector's entitlement to vote”.

In the majority's view, the Quebec Superior Court made an error of law because it concluded that the error had to be intentional or made in bad faith to rise to the level of a serious administrative error under the CEA. The majority cited *Larocque v. Wilson-Raybould*, 2017 QCCS 5229, which held that the word “irregularity” simply referred “to serious acts preventing certain electors from voting...or to facts and actions preventing the counting of valid votes.” As well, the majority noted that the court in *Opitz* had not suggested that a “serious administrative error” needed to be intentional, dishonest or in bad faith to constitute an irregularity.

The second element of the test was met because there was a direct causal link between the irregularity and the lost vote.

In contrast to the opinion of the dissenting minority of the Court, the majority rejected the argument that ss.239(2) and 240 of the CEA applied to absolve election officials of their administrative error. While it was argued that these provisions provided that an elector “shall ensure that the ballot is received at the office of [the relevant] returning officer before the close of the polling stations on polling day”, and that it was the elector's “sole responsibility” that their special ballot was “received within the period specified to be counted as a vote”, the majority found that the respondents were stretching these provisions beyond their statutory purpose and that accepting their interpretation would produce absurd results.

Lastly, the majority concluded that the election had to be annulled based on the “magic number” test.

Under this test, an election was to be annulled if the votes affected by the irregularity were equal to or outnumbered the winner's margin of victory.

The majority explained that the annulment of the election in the circumstances enhanced public trust in the electoral process. An irregularity “caused by election officials should not decide the outcome of an election”.

For the dissenting minority, the error of the election officials fell short of an irregularity because it was limited in scope, inadvertent and confined. Importantly, the minority stated that it was illogical for the word “irregularity” to include conduct which the CEA said was the ultimate responsibility of the voter. In this regard, the minority relied on the election procedures set out in the CEA over the substantive right of an elector's enfranchisement based on the view that the integrity of the electoral system was not impacted by the election officials' error.

Among other things, the minority found that the voter had failed to track her vote to ensure that it had been received and that the error was not capable of undermining the electoral system. At paragraph 125, the minority summed up their position as follows:

“...[I]f we want to have confidence in the finality and legitimacy of our elections, then we must accept some small degree of human error.”

In this regard, the minority recognized that a standard of perfection should not be the test and that election officials will make mistakes during the course of an election.



The key takeaway from this decision is that in contested election cases the court, in general, will protect the substantive rights of electors to have their votes count regardless of the statutory procedures that may place the burden on an elector to ensure that their ballot has been properly delivered to election officials or cast. Inadvertent errors caused by election officials which disenfranchise a voter will be viewed as serious and will potentially result in the annulment of an election, particularly in close contests. As shown by this case and *Opitz*, every vote counts and courts will be reluctant to reject ballots that either find their way into a ballot box or never make it into the ballot box because of an administrative error.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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