SCC clarifies when administrative errors are “irregularities” requiring annulment of election

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In *Sinclair-Desgagné v. Canada (Chief Electoral Officer)*, 2026 SCC 31, the Supreme Court of Canada, in a 6-3 decision, annulled the 2025 federal election in the electoral district of Terrebonne, Québec, after concluding that a mail-in ballot was not counted because of a serious administrative error by Elections Canada. The majority held that an “irregularity” under s. 524(1)(b) of the *Canada Elections Act* includes a serious administrative mistake, even where the mistake is honest and unintentional. Because the lost vote equalled the one-vote margin of victory, the election result was left in doubt and the election was annulled.

The decision is significant not only because it resulted in the rare annulment of a federal election, but because it clarifies how courts should balance electoral integrity and voter enfranchisement under the *Canada Elections Act*. The majority emphasized that serious administrative errors by election officials can undermine the right to vote even where there is no bad faith, fraud, or statutory breach. The majority's reasons also reinforce a voter-centred interpretation of s. 3 of the *Charter*, placing emphasis on protecting an individual’s right to vote, which could have implications for s. 3 jurisprudence more broadly.

Background

The dispute arose from the April 28, 2025 federal election in Terrebonne, Québec. Following a judicial recount, Liberal candidate Tatiana Auguste was declared elected by a margin of a single vote over Bloc Québécois candidate Nathalie Sinclair-Desgagné.

Before the election, an Elections Canada employee had mistakenly printed an incorrect postal code on return envelopes for mail-in voting kits, an error that affected at least 40 electors. The employee discovered the error more than three weeks before election day but did not report it to supervisors or contact the affected electors. Although some ballots bearing the incorrect postal code were successfully delivered, one elector’s ballot was returned undelivered by Canada Post after the election and was never counted.

Sinclair-Desgagné challenged the election under s. 524(1)(b) of the *Canada Elections Act*, which provides that an eligible elector or candidate may apply to contest the

election in their electoral district on the grounds that there were irregularities, fraud or corrupt or illegal practices that affected the result of the election, and where the grounds are established, the court may annul the election. Sinclair-Desgagné argued that the postal code error, coupled with Elections Canada's failure to take corrective action after discovering it, constituted an irregularity that affected the result of the election, justifying an annulment of the election.

The Quebec Superior Court dismissed the application, finding that the error was merely an inadvertent human mistake without dishonesty or malicious intent, which did not constitute the type of serious error capable of undermining the integrity or honesty of the electoral process. The Superior Court therefore concluded that neither the error nor the actions of the Elections Canada employee after discovering it qualified as an "irregularity." The Superior Court also stated that even if there had been an irregularity it would have been unreasonable to annul the election result in the circumstances. Sinclair-Desgagné appealed to the Supreme Court of Canada as of right under s. 532(1) of the *Canada Elections Act*.

The majority decision

Writing for the majority, Justice Jamal (on behalf of himself, Chief Justice Wagner, and Justices Côté, Rowe, Kasirer, and O'Bonsawin) applied and clarified the three-part framework established in *Opitz v. Wrzesnewskyj*, 2012 SCC 55. Under that framework, a court must determine:

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

Step one: What constitutes an "irregularity"?

The majority rejected the view that an irregularity requires fraud, dishonesty, bad faith, or intentional wrongdoing. In the majority's view, the text and purpose of s. 524(1)(b), interpreted in light of the constitutional right to vote under s. 3 of the *Charter*, supports a broader view. The majority emphasized that s. 3 protects each citizen's meaningful opportunity to participate in the electoral process and that the *Canada Elections Act* must be interpreted in a manner than advances that enfranchising purpose. As a result, the majority focused on whether Elections Canada's error and conduct interfered with an individual elector's ability to exercise their right to vote.

The majority held that irregularities include:

- breaches of statutory provisions designed to establish an individual's entitlement to vote; and
- serious administrative errors capable of undermining the integrity of the electoral process by directly affecting an individual's right to vote.

The majority held that the lower court erred by treating the absence of wrongful or reprehensible intent as effectively dispositive of whether an irregularity had occurred. In the majority's view, this improperly conflates irregularities with the separate ground of

fraud or corrupt practices. Having rejected the notion that intentional misconduct is required, the majority found that the error in this case constituted an irregularity. Although no statutory provision had been breached, Elections Canada discovered the error with sufficient time to take corrective action but failed to do so. The majority concluded that the error directly affected an elector's right to vote and therefore constituted an irregularity.

Step two: Did the irregularity affect the result?

The majority held that the second step focuses on whether the irregularity affected the vote count, rather than the election outcome.

In an important clarification, the Court stated that principles of ballot secrecy prevent courts from relying on evidence of an elector's actual voting preference when assessing whether an irregularity affected the result. The question is whether a vote was improperly lost or counted, not which candidate would have received the vote.

The majority further rejected arguments based on ss. 239(2) and 240 of the *Canada Elections Act*, which place responsibility on mail-in voters to ensure their ballots are received on time. The majority held that those provisions are designed to address contingencies outside Elections Canada's control, such as postal delays or voter inaction. They do not exonerate Elections Canada from the consequences of its own correctable errors.

The majority held that the second step is met because of the direct causal link between the irregularity and the lost vote that was not counted.

Step three: Should the election be annulled?

In considering whether to exercise its discretion to annul the election, the majority relied on the two factors identified in *Opitz*: whether the number of affected votes casts doubt on the true winner of the election, and whether the irregularity calls into question the integrity of the electoral process.

The majority assessed the first factor by applying the "magic number" test recognized in *Opitz*. Under that approach, an election should be annulled where the number of affected votes equals or exceeds the winner's margin of victory. Here, one vote was affected, and the margin of victory was one vote. Accordingly, even without attributing the lost vote to any one candidate, there was doubt as to the true winner of the election.

The majority held that, in these circumstances, it would be unreasonable not to annul the election. Despite reiterating that step 3 is a matter within the court's discretion, the majority appeared to do away with that discretion where the "magic number" test is met, saying it is "determinative" and where met it "requires that the election be annulled".

The dissent

Justices Karakatsanis and Martin, with Justice Moreau concurring, would have dismissed the appeal.

The dissent agreed that the *Opitz* framework governed the analysis but disagreed on the interpretation and application of the first step of the test. The dissent emphasized that where the alleged irregularity is an administrative error, the reviewing court must look to both the seriousness of the conduct and its impact on the integrity of the electoral process. To be sufficiently serious, it must belong to the same category as fraud, corruption, and illegality. To impact the integrity of the electoral process, it must undermine public confidence in the legitimacy and finality of elections.

In the dissent's view, the postal code mistake was an unintentional minor error affecting only one voter and was neither sufficiently serious nor capable of undermining public confidence in the electoral process.

The dissent placed significant weight on the statutory special-ballot regime. It emphasized that ss. 239(2) and 240 expressly assign mail-in voters the responsibility to ensure their ballots are received. In the dissent's view, the risk that a mailed ballot may not arrive is a foreseeable consequence of the special-ballot system, regardless of whether the source of the problem is Elections Canada, Canada Post, or the voter.

Electors who choose to vote by mail accept the risks inherent in that process and bear the responsibility of taking available steps, such as tracking their ballot. The dissent therefore considered it illogical to characterize conduct as an "irregularity" when the statute simultaneously makes the voter responsible for countering the risks of that conduct.

In interpreting what constitutes an "irregularity, the dissent also looked to s. 3 of the *Charter*, but emphasized that s. 3 is not limited to protecting an individual elector's ability to vote, but also safeguards the collective democratic interests of all voters through legitimate, and final election results. Annulling an election affects every elector in the riding because a by-election does not recreate the original election. Political circumstances change, turnout may differ, and voters may make different choices. Accordingly, the threshold for establishing an irregularity must be high and account for the integrity of the electoral process as a whole, and not only the impact on the individual voter.

The dissent cautioned that characterizing this type of error as an "irregularity" would set a low threshold and risk undermining the stability, certainty, and finality of election results.

Key takeaways

- A serious administrative error can constitute an "irregularity" under the *Canada Elections Act*, even if it is inadvertent and does not involve fraud, bad faith, or a breach of a statutory provision.
- Although the test under s. 524(1)(b) is a discretionary one, where the "magic number" test is satisfied—that is, where the number of votes affected by an irregularity are equal to or greater than the margin of victory—it requires that the election results be annulled.
- The majority emphasized that the decision does not lower the threshold for electoral challenges. The Opitz framework remains stringent, and election annulments will continue to be extremely rare.

- The decision provides important guidance for future electoral challenges and confirms that courts will scrutinize serious administrative errors that prevent electors from voting.
- The decision may have implications beyond election challenges by reinforcing a broad, voter-centred interpretation of s. 3 of the Charter and affirming that electoral legislation should be interpreted consistently with its enfranchising purpose.

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