

CANADA / JUDGMENT

Sinclair-Desgagné v. Canada (Chief Electoral Officer)

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SUPREME COURT OF CANADA

Citation: Sinclair-Desgagné v. Canada (Chief Electoral Officer), 2026 SCC 31

Appeal Heard and Judgment Rendered: February 13, 2026

Reasons for Judgment: September 18, 2026

Docket: 42076

Between:

Nathalie Sinclair-Desgagné

Appellant

and

Chief Electoral Officer of Canada ,

Returning Officer for the Electoral District of Terrebonne ,

Tatiana Auguste and

Adrienne Charles

Respondents

Coram : Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

Reasons for judgment:

(paras. 1 to 74)

Jamal J. (Wagner C.J. and Côté, Rowe, Kasirer and O'Bonsawin JJ. concurring)

Joint Dissenting Reasons:

(paras. 75 to 129)

Karakatsanis and Martin JJ. (Moreau J. concurring)

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Nathalie Sinclair-Desgagné Appellant

v.

Chief Electoral Officer of Canada,

Returning Officer for the Electoral District of Terrebonne,

Tatiana Auguste and Adrienne Charles Respondents

Indexed as: Sinclair-Desgagné v. Canada (Chief Electoral Officer)

2026 SCC 31

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Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

on appeal from the superior court of quebec

Elections — Federal election — Contested election application — Irregularities — Voter's special ballot not received by Elections Canada due to postal code error made by Elections Canada employee on pre-addressed return envelopes for several mail-in ballots — Candidate defeated by margin of one vote contesting election in electoral district on ground that it should be annulled because of irregularity — Whether Elections Canada's error constituted irregularity that affected result of election — If so, whether election in electoral district should be annulled — Canada Elections Act, S.C. 2000, c. 9, ss. 524(1)(b), 531(2).

In preparing for the federal general election to be held in the electoral district of Terrebonne, Quebec, on April 28, 2025, an Elections Canada employee mistakenly printed the wrong postal code for the polling station on the labels affixed to prepaid return envelopes for several electors' mail-in ballots. He discovered the error over three weeks before election day, but did not report it to his supervisors or try to contact the affected electors. The election was decided by a margin of just one vote. Shortly after election day, an elector's mail-in ballot was returned to her undelivered by Canada Post in a return envelope bearing the postal code error. Her vote — which the elector claimed was for the runner-up candidate — was never counted.

The runner-up candidate applied to the Quebec Superior Court to contest the election under s. 524(1)(b) of the Canada Elections Act , which provides that any elector or candidate may contest an election on the grounds that “there were irregularities, fraud or corrupt or illegal practices that affected the result of the election.” The court dismissed the application, ruling that the postal

code error and Elections Canada's failure to correct it involved a simple human error without dishonest or malicious intent, and therefore did not constitute an irregularity under s. 524(1)(b). It further stated that, even if it had found an irregularity that affected the result of the election, it would not have exercised discretion to annul the election. The runner-up candidate appeals to the Court as of right under s. 532(1) of the Canada Elections Act .

Held (Karakatsanis, Martin and Moreau JJ. dissenting): The appeal should be allowed.

Per Wagner C.J. and Côté, Rowe, Kasirer, Jamal and O'Bonsawin JJ.: An irregularity under s. 524(1)(b) of the Canada Elections Act includes a serious administrative error that is honest and unintentional, even if it does not breach any statutory provision. The key consideration is whether the administrative error was capable of undermining a voter's franchise. In the instant case, the postal code error, combined with Elections Canada's failure to correct it before the election, was an irregularity that affected the result of the election. The federal election held on April 28, 2025, in the electoral district of Terrebonne, should be annulled under s. 531(2) of the Canada Elections Act .

The Canada Elections Act does not define what constitutes an irregularity . Applying the modern approach to statutory interpretation, the Court in *Opitz v. Wrzesnewskyj* , 2012 SCC 55, [2012] 3 S.C.R. 76 , established a three-step test for when an election should be annulled based on "irregularities . . . that affected the result of the election" under s. 524(1)(b). First, it must be shown that there was an irregularity, which includes a serious administrative error. Second, it must be shown that the irregularity affected the result of the election by affecting the vote count. Finally, a court must decide whether to exercise discretion to annul the election. The applicant bears the burden of proof at each step on a balance of probabilities.

In the instant case, the court below made errors of law at each step of the *Opitz* framework, justifying the Court's intervention. At the first step, the court below erred in law by concluding that an administrative error must be intentional or made in bad faith to rise to the level of seriousness needed for an irregularity. Unintentional, honest, or good faith errors can also undermine the integrity of the electoral process if they prevent electors from exercising their right to vote. An administrative error, even a serious one, need not involve intentional wrongdoing. The *noscitur a sociis* or associated words rule of statutory interpretation suggests that an irregularity must be serious and capable of undermining electoral integrity; it need not involve dishonest intent or bad faith. The postal code error, combined with Elections Canada's failure to correct it for over three weeks before election day, was a serious administrative error capable of undermining the integrity of the electoral process by having a direct bearing on an individual's right to vote, and therefore an irregularity under s. 524(1)(b). Elections Canada did not receive or count an elector's vote because it took insufficient steps to correct the error, despite knowing that it had made a mistake, and despite its expectation that affected electors would have been contacted by one of its employees. Elections Canada caused the error and had the ability and responsibility to correct it.

At the second step, it was inappropriate for the court below to consider the affected elector's voting preference, which is precluded by the tradition of ballot secrecy in Canada. The focus at this step is the vote count, rather than the election outcome. The court also erred in law by interpreting ss. 239(2) and 240 of the Canada Elections Act — provisions aimed at exonerating Elections Canada from contingencies outside its control — as exonerating it from errors within its control. Interpreting these provisions as such would produce absurd results. The legislative history of ss. 239(2) and 240 shows that the specific purpose of these provisions is to facilitate voting, balanced with the need to promote voter diligence and timeliness; it is not to exonerate Elections Canada from the consequences of its own errors that are within its control to fix. The second step is met in the instant case because of the direct causal link between the irregularity and the lost vote. The affected ballot was not delivered or counted because of the postal code error and Elections Canada's failure to take remedial action. The irregularity affected the result of the election by improperly preventing an elector from voting.

At the third step, judicial discretion must be exercised to annul the election in the instant case because the number of affected votes (one) exactly equals the margin of victory (one), leaving doubt as to the winner of the election. This conclusion enhances public trust in the electoral process by affirming that a federal election should not be decided by known and correctable official errors.

The irregularity in the instant case — involving a serious administrative error caused by Elections Canada that it had the ability and responsibility to correct and that affected a voter's franchise — is narrowly circumscribed and will not open floodgates to electoral challenges for every human error during a federal election. The stringency of the Opitz test ensures that the annulment of an election will remain an extremely rare occurrence.

Per Karakatsanis, Martin and Moreau JJ. (dissenting): The appeal should be dismissed. The error in the instant case did not rise to the high threshold of an irregularity under s. 524(1)(b) of the Canada Elections Act. It was not a serious error, nor does it undermine the integrity of the electoral system.

Every vote matters, but the Canada Elections Act obliges all electors to cast their vote in a lawful manner for it to count. Voters who choose to avail themselves of special balloting options, like a mail-in ballot, are subject to a different and specific statutory regime and must follow separate rules in order for their vote to be counted. That regime recognizes that the mail-in ballot process carries known risks and foreseeable difficulties. These risks and difficulties flow from the complex and decentralized structure of the mail-in ballot process. The process tries to protect against errors by building in safeguards, but errors remain inevitable. One way that the legislation addresses these risks is by placing responsibility on the voter to ensure their vote is counted. The voter may opt to vote in this special regime, but they assume the responsibilities that come with this choice. The Canada Elections Act is clear, in ss. 239(2) and 240(b), that the elector "shall", and has the "sole responsibility" to, "ensure" their ballot is "received" at the right place and at the right time. However, the purpose of these provisions is not to limit voter responsibility only to risks arising from factors beyond Elections Canada's control. Nothing in the

text, history or purpose of the provisions supports that limited interpretation. The source of an error — whether it is Elections Canada, the elector, Canada Post, or some third party — is immaterial to the operation of these sections.

Sections 524(1)(b) and 531(2) of the Canada Elections Act require a three-step analysis to consider a challenge to the result of an election, as set out by the Court in *Opitz*. First, the applicant must prove that the election was subject to fraud, corruption, illegal practice, or an irregularity. When the applicant bases their claim on an irregularity, they must show that the election was subject to a breach of a statutory provision or a serious administrative error that is capable of undermining the integrity of the electoral system. Second, they must show that the fraud, corruption, illegal practice, or irregularity affected the result of the election. Third, even if both of these steps are met, the reviewing court must determine if it should exercise its discretion to annul the election.

The clerical mistake in the instant case was not serious enough to meet the high threshold of an irregularity under s. 524(1)(b) to justify setting aside an election. The mistake was limited in scope, inadvertent in origin, and confined in its operation. The Canada Elections Act expressly places responsibility on mail-in voters to ensure their vote is received by Elections Canada. It would be illogical for the statutory definition of “irregularity” to capture certain conduct when the same statute makes the voter responsible for countering the risks of that conduct. The error in this case was foreseeable and exemplifies why the Canada Elections Act places responsibility on the voter. Nor was this mistake serious or capable of undermining confidence in the electoral process; rather, it resulted from unintentional human error. If this mistake affecting one vote is enough to reopen an election result, it is hard to see what kind of error would not meet the threshold. Such a low threshold would put all election results at risk, undermining the stability, certainty and finality of election results. Annuling the election in this situation would not uphold the integrity of the electoral process; it would have the converse effect. The inquiry should end at the first stage of the analysis and it is not necessary to address the subsequent stages of the analysis.

Cases Cited

By Jamal J.

Applied: *Opitz v. Wrzesnewskyj*, 2012 SCC 55, [2012] 3 S.C.R. 76; referred to: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Piekut v. Canada (National Revenue)*, 2025 SCC 13; *R. v. Nguyen*, 2026 SCC 10; *Frank v. Canada (Attorney General)*, 2019 SCC 1, [2019] 1 S.C.R. 3; *Sauvé v. Canada (Chief Electoral Officer)*, 2002 SCC 68, [2002] 3 S.C.R. 519; *Figueroa v. Canada (Attorney General)*, 2003 SCC 37, [2003] 1 S.C.R. 912; *Ontario (Attorney General) v. Working Families Coalition (Canada) Inc.*, 2025 SCC 5; 2747-3174 *Québec Inc. v. Quebec (Régie des permis d'alcool)*, [1996] 3 S.C.R. 919; *B.J.T. v. J.D.*, 2022 SCC 24, [2022] 1 S.C.R. 668; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Canada (Transportation Safety Board) v. Carroll-Byrne*, 2022 SCC 48, [2022] 3 S.C.R. 515; *R. v. J.W.*, 2025 SCC 16; *Larocque v. Wilson-Raybould*, 2017 QCCS 5229; *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20, [2006] 1 S.C.R. 715; *R. v. Carignan*, 2025 SCC 43; *R. v. Kuldip*, [1990] 3 S.C.R. 618; *Wuttunee v. Whitford*, 2023 FCA 18; *McEwing v.*

Canada (Attorney General) , 2013 FC 525, [2013] 4 F.C.R. 63; Lorentz v. Suhr , 2022 FC 1138; McNabb v. Cyr , 2017 SKCA 27.

By Karakatsanis and Martin JJ. (dissenting)

Opitz v. Wrzesnewskyj , 2012 SCC 55, [2012] 3 S.C.R. 76; Dixon v. British Columbia (Attorney-General) (1989), 59 D.L.R. (4th) 247; Figueroa v. Canada (Attorney General) , 2003 SCC 37, [2003] 1 S.C.R. 912; Reference re Prov. Electoral Boundaries (Sask.) , [1991] 2 S.C.R. 158; Haig v. Canada , [1993] 2 S.C.R. 995; Reference re Secession of Quebec , [1998] 2 S.C.R. 217.

Statutes and Regulations Cited

Act to amend the Canada Elections Act , S.C. 1993, c. 19, s. 24.

Canada Elections Act , S.C. 2000, c. 9, ss. 177 to 280, 286, 301(2), 524, 531(2), 532.

Canadian Charter of Rights and Freedoms , ss. 3, 33.

Authors Cited

Beaulac, Stéphane. Handbook on Statutory Interpretation : General Methodology, Canadian Charter and International Law . Markham, Ont.: LexisNexis, 2008.

Canada. Elections Canada. Special Ballot Voting (online: <https://www.elections.ca/content.aspx?section=vot&dir=bkg&document=ec90540&lang=e>; archived version: https://www.scc-csc.ca/cso-dce/2026SCC-CSC31_1_eng.pdf).

Canada. Royal Commission on Electoral Reform and Party Financing. Reforming Electoral Democracy : Final Report , vol. 2. Ottawa, 1991.

Côté, Pierre-André, and Mathieu Devinat. Interprétation des lois , 5th ed. Montréal: Thémis, 2021.

Neufeld, Harry. Compliance Review: Final Report and Recommendations — A Review of Compliance with Election Day Registration and Voting Process Rules . Ottawa: Elections Canada, 2013.

Prince, Michael J. “Enabling the Voter Participation of Canadians with Disabilities: Reforming Canada’s Electoral Systems” (2014), 3:2 C.J.D.S. 95.

Sullivan, Ruth. The Construction of Statutes , 7th ed. Toronto: LexisNexis, 2022.

APPEAL from a judgment of the Quebec Superior Court (Dufour J.), 2025 QCCS 3859 , [2025] AZ-52164992, [2025] J.Q. n o 8842 (Lexis), 2025 CarswellQue 14497 (WL), dismissing the application to contest the election. Appeal allowed, Karakatsanis, Martin and Moreau JJ. dissenting.

Julius H. Grey , Ariane Gagnon and Sasha Fortin-Ballay , for the appellant.

Daniel Baum and Jean-Philippe Dionne , for the respondents Chief Electoral Officer of Canada and Returning Officer for the Electoral District of Terrebonne.

Marc-Étienne Vien , Frédéric Arcand , Perri Ravon and Juliette Vani , for the respondent Tatiana Auguste.

Chris Semerjian , Thomas Barlow , K.C. , and Marie-Eve Labonté , for the respondent Adrienne Charles.

The reasons for judgment of Wagner C.J. and Côté, Rowe, Kasirer, Jamal and O'Bonsawin JJ. were delivered by

Jamal J. —

I. Introduction

[1] This case is a powerful reminder that, in a constitutional democracy, every vote counts. The case involves a contested election application brought under s. 524(1)(b) of the Canada Elections Act , S.C. 2000, c. 9, after the federal general election held in the electoral district of Terrebonne, Quebec, on April 28, 2025, was decided by a margin of just one vote.

[2] Elections Canada mistakenly placed the wrong postal code for the Terrebonne polling station on the prepaid return envelopes for several electors' mail-in ballots. Elections Canada discovered the error over three weeks before election day, but did not contact any of the affected electors. After a judicial recount, the election in Terrebonne was decided by one vote. Then, shortly after election day, an elector's mail-in ballot was returned to her undelivered by Canada Post in a return envelope bearing the postal code error: her vote was never counted.

[3] The question on this appeal is whether the postal code error, combined with Elections Canada's failure to correct it before the election, was an "irregularit[y] . . . that affected the result of the election" under s. 524(1)(b) of the Canada Elections Act , and if so, whether the election should be annulled under s. 531(2). Answering that question involves applying the three-step test established by the majority of this Court in *Opitz v. Wrzesnewszky* , 2012 SCC 55, [2012] 3 S.C.R. 76 (per Rothstein and Moldaver JJ.). First, it must be shown that there was an irregularity, which includes a serious administrative error. Second, it must be shown that the irregularity affected the result of the election by affecting the vote count. Finally, a court must decide whether to exercise discretion to annul the election.

[4] The Quebec Superior Court dismissed the contested election application brought by the runner-up candidate. The court ruled that the postal code error and Elections Canada's failure to correct it involved a simple human error without dishonest or malicious intent, and therefore did not constitute an irregularity under the Canada Elections Act . Even had the court found an irregularity that affected the result of the election, it would not have exercised discretion to annul the election.

[5] The runner-up candidate appealed to this Court as of right under s. 532(1) of the Canada Elections Act . At the conclusion of the oral argument, a majority of the Court allowed the appeal. The election held in Terrebonne on April 28, 2025, was accordingly annulled, with reasons to follow. These are those reasons.

[6] A question of law raised by this appeal is whether an irregularity under s. 524(1)(b) includes a serious administrative error that is honest and unintentional but does not breach any statutory provision. In my view, it does. The key consideration is whether the administrative error was capable of undermining a voter's franchise.

[7] In this case, each step of the Opitz test is met. First, the postal code error, combined with Elections Canada's failure to correct it for over three weeks before election day, was a serious administrative error and therefore an irregularity under s. 524(1)(b). Elections Canada did not receive or count an elector's vote because it took insufficient steps to correct the error, despite knowing that it had made a mistake, and despite its expectation that affected electors would have been contacted. Elections Canada caused the error and had the ability and responsibility to correct it. Second, the irregularity affected the result of the election by improperly preventing an elector from voting. Third, judicial discretion must be exercised to annul the election because the number of affected votes (one) exactly equals the margin of victory (one), leaving doubt as to the winner of the election. This conclusion enhances public trust in the electoral process by affirming that a federal election should not be decided by known and correctable official errors.

[8] The irregularity in this case — involving a serious administrative error caused by Elections Canada that it had the ability and responsibility to correct and that affected a voter's franchise — is narrowly circumscribed and will not open floodgates to electoral challenges for every human error during a federal election. The stringency of the Opitz test ensures that the annulment of an election will remain an extremely rare occurrence.

II. Facts

[9] After the federal general election held in the electoral district of Terrebonne on April 28, 2025, and a subsequent judicial recount, the respondent Ms. Tatiana Auguste, of the Liberal Party of Canada, was declared elected as the Member of Parliament for Terrebonne. Ms. Auguste's margin of victory over the next candidate, the appellant Ms. Nathalie Sinclair-Desgagné, of the Bloc Québécois, was a single vote.

[10] An elector, Ms. Emmanuelle Bossé, later told the media that her mail-in ballot was returned to her by Canada Post after polling day, despite having been mailed within the prescribed time in Elections Canada's prepaid, pre-addressed return envelope. Elections Canada's website instructs electors to "return [their] ballot using the pre-addressed return envelope provided" (Special Ballot Voting (online)). Canada Post had placed a sticker on the envelope containing Ms. Bossé's mail-in ballot that read: "MOVED / UNKNOWN. . . . RETURN TO SENDER" (A.R., vol. II, at p. 76). Ms. Bossé claimed that she had voted for Ms. Sinclair-Desgagné. Her ballot, filed in evidence, confirms her claim.

[11] It turned out that an Elections Canada employee had mistakenly printed the wrong postal code for the polling station on several return envelopes sent to electors with special ballot kits for mail-in voting. By the employee's estimate, this error affected at least 40 electors. The employee discovered the mistake on April 6, 2025 — over three weeks before polling day — but did not report the error to his supervisors or try to contact the affected electors. He reasoned that his mistake did not seem to be causing any problem because the Terrebonne polling station was receiving completed special ballots in the ordinary course, including in envelopes bearing the postal code error. He destroyed some of the defective special ballot kits that had not been mailed yet, but others had already been sent to electors, including Ms. Bossé. The Terrebonne Returning Officer only learned of the error after the election, when the media began asking questions.

[12] On May 23, 2025, Ms. Sinclair-Desgagné applied to the Quebec Superior Court to contest the election under s. 524(1)(b) of the Canada Elections Act . She claimed that the postal code error, combined with Elections Canada's failure to contact the affected electors before the election, was an "irregularit[y] . . . that affected the result of the election", and that because only one vote separated her from Ms. Augustine, the election in Terrebonne should be annulled. Her application was supported by the respondent Ms. Adrienne Charles, the Conservative Party of Canada candidate. The respondents the Chief Electoral Officer of Canada and the Returning Officer for the district of Terrebonne also participated in the proceedings to address factual and legal issues but took no position on the merits.

III. Decision Under Appeal — Quebec Superior Court, 2025 QCCS 3859 (Dufour J.)

[13] The Quebec Superior Court ruled that neither the postal code error nor the conduct of the Elections Canada employee after discovering it, separately or in combination, was an irregularity under s. 524(1)(b). Drawing on this Court's decision in *Opitz* , the court held that the term "irregularity", read in the context of the terms "irregularities, fraud, or corrupt or illegal practices", involves serious errors that are capable of undermining the integrity or honesty of the electoral process, but does not include inadvertent human errors without dishonest or malicious intent. The postal code error fell far short of that standard. The civic address of the polling station on the return envelope was correct; only the last three characters of the postal code were wrong. The error was inadvertent, involved no fraud, dishonesty, or reprehensible conduct, and was light years away from conduct associated with fraud or corrupt or illegal practices that would undermine the integrity of the electoral system.

[14] The court maintained this conclusion after considering the conduct of the Elections Canada employee when he discovered the error on April 6, 2025. The court acknowledged that Elections Canada's special voting rules administrator would have expected the employee to have alerted his supervisors immediately upon discovering the mistake, and that this would ideally have led Elections Canada to contact every elector who had been sent a mail-in voting kit containing the postal code error. Even so, the court declined to characterize the employee's inaction as a form of gross negligence that would undermine the integrity of the electoral system. The employee had a reasonable basis for believing that the error was not causing any issues: Elections Canada's

computer tracking system showed that completed special ballot envelopes were being returned at rates consistent with past elections, and the evidence later showed that, of all the envelopes sent to electors before April 6, 2025, only Ms. Bossé's ballot was not returned to the polling station on time. The employee's conduct, while deeply regrettable and unfortunate, fell within the range of vicissitudes that ordinarily arise in a general election. The administration of an election does not require perfection. The court also rejected the view that the gravity of an error's consequences could transform it into an irregularity that undermined the integrity of the electoral system. The error here remained banal.

[15] The court added that even had the postal code error and the employee's subsequent conduct been an irregularity that affected the result of the election, it would have been unreasonable to annul the election, for three reasons.

[16] First, Ms. Auguste had objected during the judicial recount to the validity of three ballots found in garbage bins on the election premises. Although she withdrew those objections once her victory was conceded, and although the court lacked jurisdiction under s. 286 of the Canada Elections Act to rule on the validity of these ballots, her earlier challenge remained relevant to the court's discretion as to whether to annul the election.

[17] Second, Ms. Bossé could have taken steps to ensure that Elections Canada received her vote. She could have tracked her mail-in ballot using a tracking number provided by Elections Canada and, on noticing that it had not been received, she could have contacted the special voting rules administrator in Terrebonne to obtain permission to vote in person on polling day.

[18] Third, Ms. Bossé was not definitively deprived of exercising her right to vote. She could have voted in person at an advance poll or on polling day.

[19] Based on these considerations, the court declined to annul the election. It highlighted that annulling an election has serious consequences. A by-election is, in a sense, [translation] "a theoretical construct because a redo, strictly speaking, is impossible" (para. 94). Political circumstances change quickly and it is impossible to know how Terrebonne electors would vote over six months after the April 28 election. A by-election is therefore an inexact substitute for the actual election and not a panacea. The court accordingly dismissed the application without costs.

IV. Relevant Legislative Provisions

[20] The following legislative provisions are relevant to this appeal:

Canadian Charter of Rights and Freedoms

3 Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Canada Elections Act

[239] (2) In order to have their special ballot counted, an elector whose application for registration and special ballot was accepted by the returning officer in the elector's electoral district shall ensure that the ballot is received at the office of that returning officer before the close of the polling stations on polling day.

...

240 For the purpose of this Division, an elector has the sole responsibility to ensure that

- (a) his or her application for registration and special ballot is made within the period specified; and
- (b) his or her special ballot is received within the period specified to be counted as a vote.

...

286 (1) One of the election officers referred to in subsection 283(1) shall make a record, in the prescribed form, of every objection to a ballot made by a candidate or candidate's representative, give a number to the objection, write that number on the ballot and initial it.

- (2) Every question that is raised by the objection shall be decided by the election officer who counts the votes, and the decision is subject to reversal only on a recount or on application under subsection 524(1).

...

[301] (2) The judge shall fix a date for a recount if it appears, on the affidavit of a credible witness, that

- (a) an election officer has incorrectly counted or rejected any ballots, or has written an incorrect number on the statement of the vote for the votes cast for a candidate; or
- (b) the returning officer has incorrectly added up the results set out in the statements of the vote.

...

524 (1) Any elector who was eligible to vote in an electoral district, and any candidate in an electoral district, may, by application to a competent court, contest the election in that electoral district on the grounds that

- (a) under section 65 the elected candidate was not eligible to be a candidate; or
 - (b) there were irregularities, fraud or corrupt or illegal practices that affected the result of the election.
- (2) An application may not be made on the grounds for which a recount may be requested under subsection 301(2).

...

[531] (2) After hearing the application, the court may dismiss it if the grounds referred to in paragraph 524(1)(a) or (b), as the case may be, are not established and, where they are established, shall declare the election null and void or may annul the election, respectively.

...

532 (1) An appeal from a decision made under subsection 531(2) lies to the Supreme Court of Canada on any question of law or fact, and must be filed within eight days after the decision was given.

V. Legal Framework

[21] Section 524(1)(b) of the Canada Elections Act provides that any elector or candidate may contest an election on the grounds that “there were irregularities, fraud or corrupt or illegal practices that affected the result of the election.” Where such grounds are shown, s. 531(2) provides that the court “may annul the election”. The Act does not define what constitutes an irregularity. The interpretation of that term, and the framework for its application, were established by this Court in *Opitz* .

[22] Although *Opitz* concerned the validity of votes cast by persons alleged to have been ineligible to vote, the majority recognized that s. 524(1)(b) also applies where “a person entitled to vote was improperly prevented from doing so, due to an irregularity on the part of an election official” (para. 25). That situation arises here.

[23] The meaning and scope of s. 524(1)(b) are determined by applying the modern approach to statutory interpretation. The words of an Act must be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme and object of the Act and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. (Re)* , [1998] 1 S.C.R. 27 , at para. 21; *Piekut v. Canada (National Revenue)* , 2025 SCC 13 , at para. 42; *R. v. Nguyen* , 2026 SCC 10 , at para. 79). The majority in *Opitz* applied the modern approach by drawing on three interpretive tools: the constitutional right to vote and the objectives of the Canada Elections Act ; the text and context of s. 524(1)(b); and the reconciliation of the competing democratic values engaged (para. 26).

A. The Right to Vote and the Purpose of the Canada Elections Act

[24] Turning first to the constitutional right to vote, s. 3 of the Charter guarantees every Canadian citizen the right to vote in elections of members of the House of Commons. Section 3 is cast in broad language and is not subject to legislative override in s. 33 of the Charter (*Opitz* , at para. 29; *Frank v. Canada (Attorney General)* , 2019 SCC 1, [2019] 1 S.C.R. 3, at para. 25; *Sauvé v. Canada (Chief Electoral Officer)* , 2002 SCC 68, [2002] 3 S.C.R. 519 , at para. 11). As this Court has recognized, “[t]he right of every citizen to vote, guaranteed by s. 3 of the Charter , lies at the heart of Canadian democracy” (*Opitz* , at para. 10). The right to vote “is fundamental to our democracy and the rule of law and cannot be lightly set aside” (*Sauvé* , at para. 9).

[25] This Court has consistently interpreted s. 3 of the Charter in a broad and purposive manner. The main purpose of s. 3 is to ensure that each citizen has a meaningful opportunity to participate in the electoral process and the political life of the country by participating in the selection of elected representatives (*Figueroa v. Canada (Attorney General)* , 2003 SCC 37, [2003] 1 S.C.R. 912 , at paras. 25-26 and 30; *Frank* , at para. 26; *Ontario (Attorney General) v. Working Families Coalition (Canada) Inc.* , 2025 SCC 5 , at para. 30). The right to vote is participatory and reflects the fundamental importance of individual engagement in a free and democratic society. A broad and purposive interpretation of the right to vote “best reflects the capacity of individual participation in the electoral process to enhance the quality of democracy in this country” (*Figueroa* , at para. 27).

[26] These constitutional principles bear directly on the proper interpretation of s. 524(1)(b). As the majority in *Opitz* recognized, the Canada Elections Act gives effect to the right to vote (para. 12; see also *Frank* , at para. 11). The Act must be interpreted consistent with its purpose “to enfranchise all persons entitled to vote and to allow them to express their democratic preferences” (*Opitz* , at para. 35). As a result, “[t]he constitutional right to vote and the enfranchising purpose of the Act are of central importance in construing the words ‘irregularities . . . that affected the result’” (para. 36). At the same time, the majority in *Opitz* emphasized that “enfranchisement . . . is not free-standing ” , and procedural measures designed to ensure that only entitled persons vote are equally important to the integrity of the democratic process and public confidence in its fairness (para. 38). Interpreting s. 524(1)(b) therefore requires reconciling the imperatives of enfranchisement and the integrity of the democratic process (para. 38).

B. Text and Context of Section 524(1)(b)

[27] Turning to the text and context of s. 524(1)(b), the majority in *Opitz* observed that the word “irregularities” appears alongside the words “fraud or corrupt or illegal practices”, which all “speak to serious misconduct” (para. 42). The majority applied the “ *noscitur a sociis* ” or “associated words” rule of statutory interpretation, which provides that a term or expression should be interpreted by considering the surrounding terms (paras. 40-43, quoting 2747-3174 *Québec Inc. v. Quebec (Régie des permis d’alcool)* , [1996] 3 S.C.R. 919 , at para. 195; see also *B.J.T. v. J.D.* , 2022 SCC 24, [2022] 1 S.C.R. 668 , at para. 94). The common thread among these associated words is “the seriousness of the conduct and its impact on the integrity of the electoral process” (*Opitz* , at para. 43). As the majority stated, “Parliament must have contemplated mistakes and administrative errors that are serious and capable of undermining the integrity of the electoral process” (para. 43; see also para. 42). As a result, not every mistake or administrative error qualifies as an irregularity . Non-compliance with the legislation or any deviation from the statutory procedure is also insufficient on its own to annul an election (para. 39).

C. Balancing Competing Democratic Values

[28] Lastly, the majority in Opitz stated that the meaning of “irregularities” must be informed by balancing the interrelated and sometimes competing democratic values engaged by the federal electoral system. In addition to “the central value [of] the Charter -protected right to vote”, these values include “certainty, accuracy, fairness, accessibility, voter anonymity, promptness, finality, legitimacy, efficiency and cost” (para. 44). Tens of thousands of election workers administer elections under difficult circumstances, and therefore some degree of administrative imperfection is inevitable (paras. 2 and 46). The electoral system is “not designed to achieve perfection, but to come as close to the ideal of enfranchising all entitled voters as possible” (para. 50). The provision for contesting elections serves to restore the accuracy and reliability of results that have been compromised, balanced against the need for prompt and final resolution of election outcomes and the efficiency and stability of the electoral system (para. 47). Annuling an election is a remedy with serious consequences and must be reserved for cases where the evidence establishes that the irregularity affected the result of the election and thereby undermined the integrity of the electoral process (paras. 2 and 51).

D. The Substantive Approach to an Irregularity That Affected the Result and the Three-Step Test

[29] With these considerations in mind, the majority in Opitz adopted a “substantive approach” to the interpretation of an “irregularit[y] . . . that affected the result” under s. 524(1)(b), in preference to the stricter “procedural approach” that had prevailed in some lower courts (paras. 54 and 56-57). Under the procedural approach, any vote cast under an irregular procedure was invalid. The majority rejected that approach as placing form over substance. The substantive approach gives primacy to the underlying right to vote and holds that failing to follow a procedural safeguard is not determinative (paras. 55-57). It recognizes that procedural safeguards “should not be treated as ends in themselves. Rather, they should be treated as a means of ensuring that only those who have the right to vote may do so” (para. 34).

[30] Under the substantive approach, the majority in Opitz established a three-step test for when an election should be annulled based on “irregularities . . . that affected the result of the election” under s. 524(1)(b). The applicant bears the burden of proof at each step on a balance of probabilities (paras. 53 and 62).

[31] First, the applicant must establish an irregularity . Irregularities are “serious administrative errors that are capable of undermining the electoral process — the type of mistakes that are tied to and have a direct bearing on a person’s right to vote” (Opitz , at para. 24).

[32] Second, the court must determine whether the irregularity affected the result of the election . This requires showing that “someone not entitled to vote, voted” or that “a person entitled to vote was improperly prevented from doing so, due to an irregularity on the part of an election official” (Opitz , at para. 25).

[33] Third, if the applicant establishes that an irregularity affected the result of the election, the court “may” annul the election (s. 531(2)). The use of the permissive “may” indicates that a court has discretion whether to do so. Important considerations are whether the number of impugned votes “is sufficient to cast doubt on the true winner of the election or whether the irregularities are such as to call into question the integrity of the electoral process” (Opitz , at para. 23). At the same time, because “voting is conducted by secret ballot in Canada, this assessment cannot involve an investigation into voters’ actual choices” (para. 23). Instead, “[i]f a court is satisfied that, because of the rejection of certain votes, the winner is in doubt, it would be unreasonable for the court not to annul the election” (para. 23).

VI. Analysis

A. Standard of Review

[34] This is a statutory appeal under s. 532 of the Canada Elections Act from a judgment on a contested election application, not an application for judicial review. As a result, the appellate standards of review apply. Questions of law are reviewable for correctness, while findings of fact or mixed fact and law may be set aside only where the judge made a palpable and overriding error, unless the judge made an extricable error of law, in which case the error is also reviewed for correctness (Housen v. Nikolaisen , 2002 SCC 33, [2002] 2 S.C.R. 235 , at paras. 8, 10, 28 and 33-34). An exercise of judicial discretion is generally entitled to deference unless tainted by a legal error (considered an error in principle), a palpable and overriding factual error (viewed as a material misapprehension of the evidence), or a failure to exercise discretion judicially (such as acting arbitrarily or conduct that is so clearly wrong as to be an injustice) (Canada (Transportation Safety Board) v. Carroll-Byrne , 2022 SCC 48, [2022] 3 S.C.R. 515 , at para. 41; R. v. J.W. , 2025 SCC 16, at para. 50).

[35] In my respectful view, the court below made errors of law at each step of the Opitz framework, justifying this Court’s intervention.

B. Step One: Was There an Irregularity?

[36] The first question is whether the postal code error, together with the response of Elections Canada after it discovered the error, was an irregularity under s. 524(1)(b).

[37] To begin with, I agree with the implicit conclusion of the court below that an irregularity under s. 524(1)(b) need not involve breach of legislation, such as the Canada Elections Act or its regulations (para. 49). Although the majority’s reasons in Opitz have some language suggesting that an irregularity requires “breach of a statutory provision designed to establish a person’s entitlement to vote” (Opitz , at para. 58), those statements were made in the context of a challenge to the statutory entitlement of certain individuals to vote. The majority explained that while not every deviation from statutory procedure rises to the level of an irregularity, a breach of a statutory provision designed to establish an individual’s entitlement to vote does. In addition, mere non-compliance with any provision of the Act, standing alone, is insufficient to establish an irregularity (para. 39). Elsewhere, however, the majority accepted that an irregularity is broader

than a breach of a statutory provision. It wrote that irregularities include: “serious administrative errors that are capable of undermining the electoral process — the type of mistakes that are tied to and have a direct bearing on a person’s right to vote” (para. 24 (emphasis added)); “administrative errors that are serious and capable of undermining the integrity of the electoral process” (para. 43 (emphasis added)); and breach of a “procedural safeguard designed to establish an elector’s entitlement to vote” (para. 74 (emphasis added)).

[38] As a result, irregularities under s. 524(1)(b) include: (1) breaches of statutory provisions designed to establish an individual’s entitlement to vote; but also (2) serious administrative errors that are capable of undermining the integrity of the electoral process by directly affecting an individual’s right to vote.

[39] In my respectful view, however, the court below then erred in law by concluding that an administrative error must be intentional or made in bad faith to rise to the level of seriousness needed for an irregularity. The court stated that an irregularity does not include a simple error that would not lead well-informed citizens to realistically conclude that the integrity or honesty of the electoral process had been undermined (para. 13). It highlighted that the error here was not [translation] “intentional”, did not involve “reprehensible or dishonest acts”, was not “a scheme concocted by malicious persons”, and was thus light years from an error that could undermine the integrity of the electoral system (para. 51). The court saw no reason [translation] “to doubt the good faith” of the Elections Canada employee (para. 53). And it stated that an electoral system that values timeliness and efficiency must inevitably tolerate [translation] “human errors, which are unfortunate, to say the least, but which are made in good faith with no suspicion of dishonesty and which do nothing to diminish the integrity of the electoral process” (para. 57).

[40] But the majority in *Opitz* did not suggest that a “serious administrative error” must be intentional, dishonest, or in bad faith to constitute an irregularity. Unintentional, honest, or good faith errors can also undermine the integrity of the electoral process if they prevent electors from exercising their right to vote. As noted in *Larocque v. Wilson-Raybould*, 2017 QCCS 5229, at para. 76, the word “irregularities” [translation] “refers to serious acts preventing certain electors from voting . . . or to facts and actions preventing the counting of valid votes”.

[41] An administrative error, even a serious one, need not involve intentional wrongdoing. The *noscitur a sociis* or associated words rule of statutory interpretation, on which the majority in *Opitz* relied in reading “irregularities” alongside the other listed grounds, suggests that an irregularity must be serious and capable of undermining electoral integrity; it need not involve dishonest intent or bad faith (paras. 42-43).

[42] This understanding is confirmed by how the majority in *Opitz* applied the test for an irregularity. It found an irregularity with respect to 10 votes because an election official — rather than the relevant voters — had signed voter registration certificates in the place where voters had been required to sign. It described the situation as “consistent with a clerical mistake” and “outside the voters’ control” and saw no evidence of fraud or corruption (paras. 114-15). Despite

finding an irregularity, the majority went on to restore these 10 votes by applying the substantive approach. It was not satisfied that the irregularity had affected the result through persons who had not been entitled to vote casting ballots, finding it “highly improbable that the election official would put his signature on completely filled out registration forms without being satisfied of the voters’ entitlement to vote, on 10 separate occasions” (para. 115).

[43] In this case, the court below erred by treating the absence of wrongful or reprehensible intent as effectively dispositive of the first step of the Opitz test. It characterized the conduct as being light years away from the seriousness associated with fraud or corrupt practices, and thereby conflated the distinct grounds listed in s. 524(1)(b). Such a reading of the text flouts the presumption against redundancy, which provides that “courts should avoid adopting interpretations that render any portion of a statute meaningless or redundant” (*Placer Dome Canada Ltd. v. Ontario (Minister of Finance)* , 2006 SCC 20, [2006] 1 S.C.R. 715, at para. 45; see also R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at § 8.03; P.-A. Côté and M. Devinat, *Interprétation des lois* (5th ed. 2021), at paras. 1012 and 1015; S. Beaulac, *Handbook on Statutory Interpretation: General Methodology, Canadian Charter and International Law* (2008), at pp. 112-13).

[44] Applying the correct legal principles, I nevertheless agree with the court below that there was no violation of any specific provision of the Canada Elections Act or the applicable regulations. This is confirmed by the historical context and current practice of mail-in voting.

[45] Mail-in ballots are one type of “special ballot”, a voting system first established during the First World War to allow Canadian soldiers to vote while overseas (Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy: Final Report* (1991), vol. 2 (“Lortie Report”), at pp. 50-51). Mail-in voting became an especially important way for Canadians to exercise their franchise during the COVID-19 pandemic and is now commonplace. Yet it is neither expressly provided for under the Canada Elections Act nor governed by legislative provisions. The legislation provides for “special ballots” (ss. 177 to 280), but the specific procedures that an elector must follow when voting by mail are established by the Chief Electoral Officer by administrative practice, rather than under a statutory provision.

[46] The absence of breach of a statutory provision, however, does not prevent the postal code error from constituting an irregularity. In this case, there was a serious administrative error capable of undermining the integrity of the electoral process by having a direct bearing on an individual’s right to vote (*Opitz* , at para. 24). The Elections Canada employee discovered the postal code error over three weeks before polling day, when corrective action would have been possible. Only about 40 of the mail-in voting kits issued by Elections Canada in Terrebonne involved the postal code error. Elections Canada could have contacted these electors, who had been asked to provide their contact information when applying to vote by special ballot. Elections Canada’s own special voting rules administrator testified that she would have expected the employee to report the error to his supervisors. Had he done so, the affected electors could have been notified and alternative voting arrangements could have been put in place. None of this happened.

[47] The irregularity in this case therefore involved the combination of a typographical mistake — a known administrative error — and Elections Canada’s failure to take any corrective action during the three-week period before the election, when such action was both possible and would have been expected by Elections Canada itself. These circumstances prevented at least one elector’s vote from being counted.

C. Step Two: Did the Irregularity Affect the Result of the Election?

[48] The second step of the Opitz test asks whether the irregularity affected the result of the election . The focus at this step is the vote count, rather than the election outcome: did the administrative error “ affec[t] the result of the election in the sense that it change [d] the vote count” (para. 59)?

[49] The second step is met in this case because of the direct causal link between the irregularity and the lost vote. Ms. Bossé’s ballot was not delivered or counted because of the postal code error and Elections Canada’s failure to take remedial action.

[50] The court below stated that, had it found an irregularity, it would have concluded that the second step of the Opitz test was met. Yet the court’s reasons on this point reveal an error of law. The court said that because Ms. Bossé voted for Ms. Sinclair-Desgagné, counting her vote would have produced a tie. As the court explained, [translation] “the fact that Bossé’s vote was not taken into account had a real impact on the outcome of the election. Bossé cast her vote for Sinclair-Desgagné, and, if it had been counted, it would have tied the number of votes received by Auguste” (para. 59). It was, however, inappropriate for the court to consider Ms. Bossé’s voting preference. As the majority noted in Opitz , the tradition of ballot secrecy in Canada precludes an “investigation into voters’ actual choices” (para. 23). Although the majority made this statement in rejecting the role of voting preferences at the third step of the Opitz test, it applies equally at all steps of the analysis.

[51] The respondent Ms. Auguste contends that a court should also consider the effect of ss. 239(2) and 240 of the Canada Elections Act . The respondents Chief Electoral Officer of Canada and Returning Officer for the district of Terrebonne similarly brought these provisions to this Court’s attention. These provisions stipulate, respectively, 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 underscore that it is an elector’s “sole responsibility” to ensure that their special ballot “is received within the period specified to be counted as a vote”. Ms. Auguste claims that these provisions transfer responsibility for the uncounted ballot to Ms. Bossé herself, who could have used her tracking number to determine that her vote had not been received and then could have voted in person. It was, she claims, Ms. Bossé’s sole responsibility to ensure that Elections Canada received her ballot in time.

[52] I respectfully disagree with this submission. This interpretation of ss. 239(2) and 240 broadens the application of these provisions far beyond their statutory purpose and produces absurd results.

[53] First, it is a well-established principle of statutory interpretation that legislation should not be interpreted to overshoot its purpose. As this Court has recognized, “a provision that uses broad and general language can be read more narrowly so that its interpretation does not overreach its purpose” (R. v. Carignan , 2025 SCC 43 , at para. 124, citing R. v. Kuldip , [1990] 3 S.C.R. 618 , at p. 639).

[54] The legislative history of ss. 239(2) and 240 of the Canada Elections Act shows that the specific purpose of these provisions is to facilitate voting, balanced with the need to promote voter diligence and timeliness. An earlier version of these provisions was introduced in 1993 as part of a major reform of the electoral system in response to the Lortie Report (An Act to amend the Canada Elections Act , S.C. 1993, c. 19). This history provides valuable context for interpreting ss. 239(2) and 240 (see Sullivan, at § 23.03). The Lortie Report had recommended several measures to increase access to the polls, including making voting by special ballot accessible to every voter, which would allow Canadians to vote away from their home constituency or at a different time and place than their polling station on election day (pp. 50-52). At the same time, it recognized that electors must be diligent to ensure that their ballots are received by the close of polls on election day. The Lortie Report’s recommendations tried to balance accessibility with voter diligence. As the report explained: “Once voters have received and marked a special ballot they would be responsible for transmitting it to an election office” (p. 50). A voter waiting until the last minute to return their ballot would do so at their peril: “The voter may have to make a special effort to return the ballot on time, such as sending it by courier rather than by mail. Given that voters would have at least 40 days to vote, if they left it too close to the deadline, they would do so at their own risk” (p. 61).

[55] As the court below acknowledged, ss. 239(2) and 240 are intended to [translation] “absolve Elections Canada from postal mishaps or other possible contingencies that are outside its control” (para. 88 (emphasis added)) — including delays by Canada Post, a voter’s failure to mail their ballot on time, or similar external hazards. The legislation places the responsibility for those issues on the elector because an elector can manage them by voting early. Elections Canada’s assignment of a tracking number for each mail-in ballot further illustrates this responsibility: when an elector has been tardy in returning their ballot by mail, they are given the means to follow up by taking reasonable steps to ensure that their ballot has been received within the prescribed period.

[56] The specific purpose of these provisions is not to exonerate Elections Canada from the consequences of its own errors that are within its control to fix. Yet, with respect, the court below did just that. As the court stated, because of these provisions, [translation] “[i]t therefore fell to Bossé to ensure that her special ballot was properly received” (para. 88). Although the court accepted that [translation] “she was entitled to expect the postage-paid envelope she received from the electoral authorities to not contain an error”, it found that “this legitimate expectation did not diminish the intensity of the obligation imposed on her by the Elections Act to ensure that her ballot reached the polling station in time” (para. 88). As a result, the court below erred in law by interpreting provisions aimed at exonerating Elections Canada from contingencies outside its

control as exonerating it from errors within its control.

[57] Second, to interpret these provisions as the court below did and as Ms. Auguste urges would produce absurd results. As is well known, “[c]ourts should interpret legislation under the presumption that a legislature does not intend to produce absurd consequences” (Piekut , at para. 98). Absurd consequences include, for example, consequences that frustrate the purpose of the legislation, are extremely unreasonable or unfair, or would lead to ridiculous or futile consequences (para. 98).

[58] Interpreting ss. 239(2) and 240 of the Canada Elections Act as proposed by Ms. Auguste would frustrate the enfranchising purpose of the legislation. The Canada Elections Act should not be interpreted to allow administrative mistakes caused by election officials to disenfranchise voters (Opitz , at paras. 35-36). It would also be extremely unreasonable and unfair, and would lead to ridiculous and futile consequences, to hold that Elections Canada has no legal responsibility under s. 524(1)(b) for any errors or failures in the administration of the special ballot system, even when it is aware of those errors and has a responsibility to correct them, provided that the elector theoretically had access to an alternative voting method.

[59] The court below also referred to Ms. Bossé’s expressed doubts about the reliability of mail-in voting and her failure to follow up by using her tracking number. With respect, these are not relevant considerations in determining whether the irregularity affected the result. The question at this second step of the Opitz test is whether a voter’s ballot was prevented from being counted because of the irregularity. In my view, it was. Ms. Bossé’s subjective doubts about the reliability of mail-in voting and her conduct in not tracking her return envelope did not attenuate the causal connection between Elections Canada’s error and the loss of her vote.

[60] Ms. Bossé followed the procedures under the Canada Elections Act . She applied for a special ballot, received a voter kit, and marked her ballot. She then mailed it diligently 22 days before polling day using the prepaid and pre-addressed envelope that Elections Canada had given to her and had told her to use. Her duty under ss. 239(2) and 240 of the Canada Elections Act did not require her to second-guess the accuracy of official materials supplied to her by government authorities. Nor did it require her to take active steps to correct an error that was entirely of Elections Canada’s making and within its power and responsibility to correct.

D. Step Three: Should the Election Be Annulled?

[61] Having found an irregularity that affected the result of the election, the final question is whether the election should be annulled under s. 531(2) of the Canada Elections Act . This is a matter within the court’s discretion. The majority in Opitz identified two considerations that should guide the exercise of that discretion. First, the court should consider “whether the number of impugned votes is sufficient to cast doubt on the true winner of the election ” (para. 23). In such a case, “it would be unreasonable for the court not to annul the election” (para. 23). Second, the court should consider “whether the irregularities are such as to call into question the integrity of the electoral process” (para. 23; see also Wuttunee v. Whitford , 2023 FCA 18, at para. 61).

[62] The majority in *Opitz* noted that the first consideration can be addressed using the “magic number” test, which requires that the election be annulled if the votes affected by an irregularity “are equal to or outnumber the winner’s plurality” or margin of victory (para. 71). Meeting the magic number test is determinative because it leaves doubt as to the winner of the election. The magic number test inherently favours the challenger because it assumes that the affected votes would have yielded a different result (para. 72). Although that assumption may be highly improbable, to date no alternative test has been devised. The majority did not exclude the possibility of devising a more realistic test in a future case (para. 73).

[63] Even when the magic number test is not met, an election may still be annulled if the irregularities are such as to call into question the integrity of the electoral process. The second consideration relevant to the exercise of judicial discretion is the degree to which public trust would be undermined by allowing an election to stand when it was tainted by irregularities or fraudulent or wrongful practices. Allegations of electoral maladministration or fraud are “very serious matters that strike at the integrity of our democratic process. If they are not addressed and responded to, they risk undermining an essential ingredient of a healthy democracy, namely the trust that electors have in the electoral process” (*McEwing v. Canada (Attorney General)* , 2013 FC 525, [2013] 4 F.C.R. 63 , at para. 1 (emphasis deleted), quoting the remarks of Mr. Marc Mayrand, Chief Electoral Officer of Canada, to the Standing Committee on Procedure and House Affairs of the House of Commons, Evidence , No. 30, 1st Sess., 41st Parl., March 29, 2012, at p. 1).

[64] Applying the above legal principles to this case, judicial discretion must be exercised to annul the election. The magic number test is met. One ballot is in issue, which exactly equals Ms. Auguste’s plurality or margin of victory. Because, as a matter of arithmetic, the irregularity leaves doubt as to the identity of the winner, it would be unreasonable not to annul the election (*Opitz* , at para. 75; see also *Lorentz v. Suhr* , 2022 FC 1138, at para. 109; *McNabb v. Cyr* , 2017 SKCA 27, at paras. 47-48). This enhances public trust in the electoral process by affirming that known and remediable electoral irregularities caused by election officials should not decide the outcome of an election.

[65] The court below would not have exercised its discretion to annul the election for three reasons: the status of three ballots contested during the judicial recount was unresolved; Ms. Bossé had ways of ensuring that Elections Canada received her vote; and Ms. Bossé was not definitively deprived of the right to vote. With respect, each reason involved an error of law.

[66] With respect to the three ballots, the court below acknowledged that it lacked jurisdiction under s. 286 of the Canada Elections Act to adjudicate their validity but still treated them as a relevant factor in the exercise of its discretion under s. 531(2). In my respectful view, the court erred in doing so. Ms. Auguste withdrew her objections to those ballots during the judicial recount once her victory was conceded. The result was then certified accordingly. Section 524(2) of the Canada Elections Act expressly excludes from the grounds for a contested election application “grounds for which a recount may be requested under subsection 301(2)”, which include the ground that “an election officer has incorrectly counted or rejected any ballots” (s. 301(2)(a)). The certified recount result was therefore conclusive as to the validity of these ballots.

Allowing that conclusion to be revisited indirectly through the exercise of judicial discretion would circumvent s. 524(2) and undermine the finality of the recount process.

[67] With respect to the other measures that Ms. Bossé had to ensure that Elections Canada received her vote, the reasoning of the court below repeated the same error it made at step two of the Opitz test. It was not Ms. Bossé's responsibility to catch Elections Canada's error. It was her responsibility to ensure that she mailed her ballot in sufficient time for Elections Canada to receive it within the prescribed period. She did so.

[68] The court below also referred to the availability of alternative ways of voting, such as obtaining permission to vote in person. But that cannot absolve Elections Canada of responsibility for Ms. Bossé's lost vote. It would mean that none of Elections Canada's errors in the special ballot system could ever ground an annulment, even if it knew of and had a responsibility to correct the error, because in-person voting would always remain available. Exercising judicial discretion on this basis would flout the purpose of the Canada Elections Act to enfranchise voters by effectively making the contested election regime inapplicable to an entire class of Elections Canada's errors, resulting in a blanket disenfranchisement.

[69] With respect to the claim that Ms. Bossé was not definitively deprived of the right to vote because she could have voted in person at an advance poll or on polling day, that is true, but beside the point. Ms. Bossé was entitled to vote as she did. That she could have voted in other ways, when she had no reason to pursue those options, is not an appropriate basis for exercising discretion not to annul the election.

[70] I appreciate that this Court has recognized that annulling an election is a serious remedy that should not be granted lightly (Opitz , at paras. 48, 70 and 87). Annulling an election "disenfranchise[s] not only those persons whose votes were disqualified, but every elector who voted in the riding"; a by-election is "not a perfect answer" (para. 48). At the same time, public confidence in the electoral process requires an assurance that election outcomes not be decided by Elections Canada's serious administrative errors. In this case, there was no discretion not to annul the election because the magic number test was met. This recalls the crucial point discussed above: every vote counts.

[71] As a result, the election held in the electoral district of Terrebonne on April 28, 2025, must be annulled.

E. This Decision Does Not Open Floodgates

[72] The court below and Ms. Auguste were both concerned that finding an irregularity and annulling the election in this case would invite a proliferation of future electoral challenges. In my respectful view, this concern, while understandable, is not well-founded. The irregularity identified is narrowly circumscribed. It consists of a serious administrative error caused by Elections Canada relating to the exercise of an elector's franchise, which Elections Canada discovered in time to correct, acknowledged it should have corrected, yet failed to do so. The approach adopted here will not encompass every minor error or imperfection, or situations

where errors are corrected promptly, because such errors would have no bearing on an individual's right to vote. Moreover, the Opitz framework has other requirements: the applicant must prove on a balance of probabilities that the irregularity affected the election result, and even then, the court retains a residual discretion not to annul the election. In many cases, the margin of victory will be large enough to prevent the magic number test from being met. By contrast, this case involves the extremely rare situation of a single confirmed lost ballot in an election decided by just one vote.

F. Costs

[73] The court below made no order as to costs. It noted that Ms. Sinclair-Desgagné's application to contest the election raised issues of public importance for the citizens of the electoral district of Terrebonne, the Province of Quebec, and Canada as a whole, and ruled that it would be unfair to order her to pay costs. I would adopt the same approach before this Court, especially because none of the candidates was responsible for the error that gave rise to these proceedings. I would therefore not award costs in this Court or the court below.

VII. Disposition

[74] I would allow the appeal without costs. The federal election held on April 28, 2025, in the electoral district of Terrebonne, should be annulled.

The reasons of Karakatsanis, Martin and Moreau JJ. were delivered by

Karakatsanis and Martin JJ. —

I. Overview

[75] Every vote matters, but the Canada Elections Act , S.C. 2000, c. 9 (CEA), obliges all electors to cast their vote in a lawful manner for it to count. Even people who vote in person must meet required legal standards for their ballot to be tabulated. Voters who choose to avail themselves of special balloting options, like a mail-in ballot, are subject to a different and specific statutory regime and must follow separate rules in order for their vote to be counted (see, e.g., ss. 232 to 240).

[76] That regime recognizes that the mail-in ballot process carries known risks and foreseeable difficulties. These risks and difficulties flow from the complex and decentralized structure of the mail-in ballot process. The process involves: registration for the special ballot, delivery of the mail-in ballot to the elector, filling out the ballot correctly, and having the ballot returned in time to the correct polling station. Errors may self-evidently arise at every stage of this process.

[77] And yet, Parliament permits this special process to provide an accessible, flexible, and convenient method of casting a ballot that can accommodate a range of voter needs. The special balloting process tries to protect against errors by building in safeguards, but errors remain inevitable.

[78] One way that the legislation addresses these risks is by placing responsibility on the voter to ensure their vote is counted. The voter may opt to vote in this special regime, but they assume the responsibilities that come with this choice. The CEA is clear that the elector “shall”, and has the “sole responsibility” to, “ensure” their ballot is “received” at the right place and at the right time (ss. 239(2) and 240(b)).

[79] In this appeal, an Elections Canada worker made a mistake in the last three characters of the postal code on an otherwise correctly labelled return envelope for a mail-in ballot. Canada Post failed to deliver the ballot to the office of the returning officer, even though it successfully delivered other ballots bearing the same mistake. The mistake affected one voter. This voter was provided with a tracking number, but took no steps to check whether her ballot was received or to vote in person.

[80] The issue in this case is whether this mistake was serious enough to annul the election under ss. 524(1)(b) and 531(2) of the CEA , putting in jeopardy the votes of all those whose votes were counted.

[81] Sections 524(1)(b) and 531(2) require a three-step analysis to consider a challenge to the result of an election. First, the applicant must prove that the election was subject to fraud, corruption, illegal practice, or an irregularity. When the applicant bases their claim on an irregularity, as is the case here, they must show that the election was subject to a breach of a statutory provision or a serious administrative error that is capable of undermining the integrity of the electoral system. Second, they must show that the fraud, corruption, illegal practice, or irregularity affected the result of the election. Third, even if both of these steps are met, the reviewing court must determine if it should exercise its discretion to annul the election.

[82] In our view, the mistake falls well short of being an irregularity. The mistake was limited in scope, inadvertent in origin, and confined in its operation. The inquiry should end at the first stage of the analysis.

[83] The CEA expressly places responsibility on mail-in voters to ensure their vote is received by Elections Canada. It would be illogical for the statutory definition of “irregularity” to capture certain conduct when the same statute makes the voter responsible for countering the risks of that conduct. The error in this case was foreseeable and exemplifies why the CEA places responsibility on the voter.

[84] Nor was this mistake serious or capable of undermining confidence in the electoral process; rather, it resulted from unintentional human error. If this mistake is enough to reopen an election result, it is hard to see what kind of error would not meet the threshold. Such a low threshold would put all election results at risk, undermining the stability, certainty and finality of election results.

[85] We agree with the application judge that the clerical mistake here was not serious enough to meet the high threshold of an irregularity under s. 524(1)(b) of the CEA to justify setting aside an election. We would not reopen this election. We would dismiss the appeal.

II. Background

[86] This appeal stems from an application to annul the result of the April 28, 2025, federal election in the riding of Terrebonne due to a clerical error.

[87] Towards the end of March, an Elections Canada worker was preparing the address labels for the return envelopes of several mail-in ballot kits. He used the correct street number and name, the correct city and province, and the correct first three characters of the postal code. However, he accidentally inputted the wrong last three characters of the postal code.

[88] The worker realized his mistake on April 6, 2025, and took steps to fix it. He corrected the address labels on the election kits he could still access in the office and destroyed any remaining labels with the incorrect postal code.

[89] However, he did not inform his supervisor. He noticed that return envelopes bearing the incorrect postal code were being returned to the office and the return rates of mail-in ballots in his riding were similar to the rest of Canada. This made good sense to him because Elections Canada and Canada Post had an agreement to streamline the delivery of special ballots, and letter carriers were expressly informed of the location of the Elections Canada's office.

[90] Ultimately, the postal code error only affected one voter. She told the media after the election that her special ballot was “return[ed] to sender”. She did not track her ballot, nor did she try to vote in person.

III. The Special Ballot and Mail-In Voting Process

[91] Voting by mail is a recent development in Canada. It was not generally available until 1993, when Parliament amended the CEA to expand access to special ballots from limited categories of voters to entitle citizens to the special ballot procedures upon request (An Act to amend the Canada Elections Act , S.C. 1993, c. 19, s. 24). Mail-in voting is one form of special ballot voting.

[92] The expansion of voting procedures to include mail-in ballots transformed voting in Canada. It allowed citizens to vote at their convenience by sending their vote by mail to the ballot box. Mail-in voting created an accessible, flexible, and convenient method of voting that could accommodate a range of elector needs. It is now particularly important for seniors and voters with disabilities who may face more barriers to voting (M. J. Prince, “Enabling the Voter Participation of Canadians with Disabilities: Reforming Canada’s Electoral Systems” (2014), 3:2 C.J.D.S. 95, at pp. 102-5).

[93] Parliament and Elections Canada understand that this more flexible and convenient way of voting comes with risks. Mistakes are more likely, and even bound to occur. Voting by mail requires a voter to cast their vote away from the polling station; without the assistance of election staffers; in a system that depends on the collaboration of several administrators; and in a manner that hinges on prompt and accurate service from the postal service. That is why the CEA , its regulations, and Elections Canada create a set of safeguards to address these inherent risks. These safeguards include, for example, the ability to track the ballot sent to Elections Canada and

the ability to vote in person if it is not received.

[94] If the voter wants to accept the ease of mail-in votes, they must also accept the risks inherent in using them. The assignment of responsibility to the elector is codified in ss. 239(2) and 240(b) of the CEA . These provisions state:

[239] (2) In order to have their special ballot counted, an elector whose application for registration and special ballot was accepted by the returning officer in the elector's electoral district shall ensure that the ballot is received at the office of that returning officer before the close of the polling stations on polling day.

...

240 For the purpose of this Division, an elector has the sole responsibility to ensure that

...

(b) his or her special ballot is received within the period specified to be counted as a vote.

[239] (2) Pour que son bulletin de vote spécial soit compté, l'électeur dont la demande de bulletin de vote spécial a été approuvée par le directeur du scrutin de sa circonscription est tenu de veiller à ce que son bulletin de vote spécial parvienne au bureau du directeur du scrutin, avant la fermeture des bureaux de scrutin, le jour du scrutin.

...

240 Pour l'application de la présente section, il appartient à l'électeur seul de veiller à ce que . . . son bulletin de vote spécial . . . parvienn[e] au fonctionnaire électoral compétent dans les délais fixés.

[95] Section 239(2) makes clear that it is the elector who “ shall ensure that the ballot is received” before the close of the polling station on polling day “[i]n order to have their special ballot counted”. This is also affirmed in the French text, whereby “ [p]our que son bulletin de vote spécial soit compté ”, the voter is “ tenu de veiller à ce que son bulletin de vote spécial parvienne au bureau du directeur du scrutin ”. The word “shall” imposes a mandatory obligation, and the word “ensure” confirms the elector's high level of responsibility because it means to make certain or guarantee that something will happen. This section clearly assigns responsibility to the voter to ensure that their special ballot is “received” — not just sent in the mail, but actually delivered to the polling station. Section 240(b) further confirms that “an elector has the sole responsibility” to ensure that the ballot is received within the period specified, and the English version of the provision explicitly adds, if it is “to be counted as a vote”.

[96] According to Jamal J., the purpose of these provisions is to balance the need for accessible voting with voter diligence. Since mail-in voting entails risk, the individual voter must exercise responsibility and diligence to benefit from this accessible form of voting. This risk, as Jamal J. explains, includes “delays by Canada Post, a voter's failure to mail their ballot on time, or similar external hazards” (para. 55).

[97] We disagree, however, that the purpose of ss. 239(2) and 240(b) only extends to factors beyond Elections Canada's control. Nothing in the text, history or purpose of the provisions supports that limited interpretation. The wording of both sections assigns the sole responsibility to the elector, without regard to the source of the error. Instead, these provisions reflect Parliament's recognition that mail-in voting is vulnerable to error, and that those errors can arise from any of the steps or actors involved in the mail-in voting process. The source of an error — whether it is Elections Canada, the elector, Canada Post, or some third party — is immaterial to the operation of these sections.

IV. Challenging an Election Result

[98] Sections 524(1)(b) and 531(2) of the CEA provide a mechanism to contest the result of an election affected by fraud, corruption, illegality, or irregularities. The Court interpreted these provisions in *Opitz v. Wrzesnewskyj*, 2012 SCC 55, [2012] 3 S.C.R. 76. We apply the principles developed in that case.

[99] We conclude that the mistake here does not meet the high bar to be deemed an irregularity under s. 524(1)(b) of the CEA . This conclusion follows from a review of the purpose of the statutory scheme, the scope of the right to vote under s. 3 of the Canadian Charter of Rights and Freedoms , and the text of s. 524(1)(b) of the CEA .

A. The Purpose of the Canada Elections Act and the Right to Vote

[100] The CEA serves a dual purpose. Its first objective is “to enfranchise all persons entitled to vote and to allow them to express their democratic preferences” (*Opitz* , at para. 35). The statute gives effect to this purpose by establishing elections, allowing citizens to come to the ballot box, and entitling them to meaningfully participate in our democracy. And, second, the CEA aims to “[p]rotec[t] the integrity of the democratic process” (para. 38). It meets that goal by creating safeguards that ensure only entitled voters may cast ballots, that elections are fair and legitimate, and that public confidence in the electoral system is maintained.

[101] More broadly, the objective of the CEA is to give effect to the right to vote under s. 3 of the Charter . The right to vote is broader than the right of the individual to “place a ballot in a box” (*Dixon v. British Columbia (Attorney-General)* (1989) , 59 D.L.R. (4th) 247 (B.C.S.C.), at p. 256, quoted in *Figueroa v. Canada (Attorney General)* , 2003 SCC 37, [2003] 1 S.C.R. 912 , at para. 106). Instead, it is a positive and collective right aimed at guaranteeing meaningful participation in the electoral process and ensuring effective representation for all citizens (*Figueroa* , at paras. 26 and 31; *Reference re Prov. Electoral Boundaries (Sask.)* , [1991] 2 S.C.R. 158, at pp. 179 and 183). As a positive right, s. 3 requires the state to set up the electoral machinery necessary for citizens to cast their ballots, to hold regular elections, and “act upon” their results (*Haig v. Canada* , [1993] 2 S.C.R. 995, at p. 1032; see also *Figueroa* , at para. 133). As a collective right, s. 3 protects values inherently aimed at the broad interests of society. The function and legitimacy of Canada's democratic processes depend on the meaningful participation of citizens in elections and their ability to communicate their interests through collective political activity (*Reference re*

Secession of Quebec , [1998] 2 S.C.R. 217 , at paras. 61 and 63-65; Figueroa , at paras. 29-31). All elements of s. 3 — whether they be individual, positive, or collective — rest on the principle of democracy, “a fundamental value in our constitutional law and political culture” (Reference re Secession of Quebec , at para. 61).

[102] The positive and collective aspects of s. 3 are particularly relevant to an interpretation of s. 524(1)(b) of the CEA . The CEA sets up an electoral system that aims to balance competing values, which include “certainty, accuracy, fairness, accessibility, voter anonymity, promptness, finality, legitimacy, efficiency and cost” (Opitz , at para. 44). It is aimed at ensuring not only the individual aspects of the right to vote under s. 3 of the Charter , but its collective ones as well. Indeed, it mandates and protects the process of voting to ensure that the collective will of the sovereign people is tabulated, confirmed, and implemented in the legislature.

[103] To respect s. 3 of the Charter , s. 524(1)(b) of the CEA cannot be interpreted in a way that “demand[s] perfect certainty” (Opitz , at para. 50). Ensuring that a particular person’s vote is counted may undermine the same right of all other electors. Thus, when interpreting the CEA , courts “must be concerned with the integrity of the electoral system”, as informed by both the individual and collective aspects of constitutional democratic rights (para. 50).

B. Sections 524(1)(b) and 531(2) of the Canada Elections Act: The Framework to Contest an Election

[104] One way that the CEA gives effect to its purposes and the right to vote is by establishing a mechanism to contest elections. Under s. 524(1)(b), a voter may challenge an election based on fraud, corruption, illegality, or irregularities:

524 (1) Any elector who was eligible to vote in an electoral district, and any candidate in an electoral district, may, by application to a competent court, contest the election in that electoral district on the grounds that

...

(b) there were irregularities, fraud or corrupt or illegal practices that affected the result of the election.

[105] In Opitz , this Court concluded that the provisions provide a three-step framework to analyze election contests. First, the applicant must prove that the election was subject to “irregularities, fraud or corrupt or illegal practices” within the meaning of s. 524(1)(b). Second, the applicant must then show that the irregularity, fraud, corruption, or illegality “affected the result of the election”. And third, if the first two steps are satisfied, a court may exercise its discretion to annul the election. The first two steps are mandatory threshold requirements for granting a remedy. The court cannot annul the election unless both steps are made out. Each step of the Opitz test is distinct and should not be conflated.

[106] The key issue here is whether the inputting of an incorrect postal code on some return envelopes accompanying special ballots is an irregularity within the meaning of s. 524(1)(b).

[107] Rothstein and Moldaver JJ., writing for the majority in *Opitz* , interpreted the scope of an irregularity under s. 524(1)(b) of the CEA by taking account of three main factors. First, they looked to the individual, positive, and collective dimensions of s. 3 of the Charter as an interpretive aid (paras. 27-38). These positive and collective aspects of s. 3 are critical, because a decision to “annu[l] an election would disenfranchise not only those persons whose votes were disqualified, but every elector who voted in the riding” (para. 48). Indeed, the annulment of an election and ordering of a by-election does not repeat the election as if the error never happened. Rather, circumstances develop, voters become inconvenienced, individuals become disillusioned, and information and political tides change. Accordingly, the threshold for establishing an irregularity must be high and account for the integrity of the electoral process as a whole, instead of the impact on the individual voter.

[108] Second, the majority looked to the legislative context, which highlights the seriousness of the conduct required to engage s. 524(1)(b) (*Opitz* , at paras. 39-43). The word “irregularities” appears alongside “fraud or corrupt or illegal practices”. These associated words are illustrative of the type of conduct that can be used to challenge an election. The concepts of fraud, corruption, and illegality denote very serious conduct, thus indicating a markedly high threshold to establish an irregularity.

[109] Third, the majority notes that election challenges engage competing democratic values, which require courts to exercise restraint and avoid lightly overturning elections (*Opitz* , at para. 43). These values include “certainty, accuracy, fairness, accessibility, voter anonymity, promptness, finality, legitimacy, efficiency and cost” (para. 44). Again, these values direct the interpretation of s. 524(1)(b) to the population, and towards upholding the integrity of the entire system.

[110] In *Opitz* , the majority described the term “irregularity” in several ways (paras. 24, 43, 51, 58 and 74). These descriptions can be distilled such that irregularities include: (1) breaches of statutory procedures; and (2) administrative errors that are both (a) serious and (b) capable of undermining the integrity of the electoral process.

[111] Importantly, the analysis should not unduly focus on whether the impugned conduct affected a person’s right to vote. Rather, it should look more broadly to the conduct’s effect on the integrity of the electoral process, which can be undermined by a serious impact on the right to vote. The second step of the analysis — whether the irregularity affected the result of the election — looks into an individual’s substantive right to vote (*Opitz* , at paras. 55-56 and 65). Focusing the first step on the right to vote would therefore conflate two distinct stages of the analysis.

[112] When the alleged irregularity is an administrative error, as in this appeal, the reviewing court must look to both (a) “the seriousness of the conduct”; and (b) “its impact on the integrity of the electoral process” (Opitz , at para. 43). These components are distinct. The first concerns the nature of the conduct, and the second concerns its impact .

[113] Conduct will be sufficiently serious to be considered an irregularity when its gravity, recklessness, or severity belongs to the same category as fraud, corruption, and illegality. This is a high burden. Simple clerical or human errors will not trigger this threshold. Simple administrative errors refer to honest, minor, isolated mistakes. The proper functioning of the electoral system does not, and cannot, demand perfection. Indeed, “it is inevitable that administrative mistakes will be made” (Opitz , at para. 2). If all administrative errors were irregularities, then every election could become the subject of judicial scrutiny and, perhaps, annulment.

[114] Conduct will impact the integrity of the electoral process when it undermines public confidence in the legitimacy and finality of elections. This inquiry is a separate analysis from the conduct’s impact on the result of the election, which is assessed at step two of the legal framework. Otherwise, the first step would be subsumed within the second, and even the most trivial errors could lead to the annulment of an election if someone can show that it affected the result.

[115] To be clear, the applicant must meet a high bar to prove that something is an irregularity. The execution of elections is a massive undertaking. Elections Canada must arrange thousands of polling stations for advance and election day polls. They must create, print, and prepare materials for millions of voters to vote in person and through special ballots. They must recruit, hire, and train thousands of volunteers and employees across the country. And they must record, tabulate, and confirm election results rapidly once polls close. A low bar to disrupt this process would disenfranchise millions, gut public confidence in the integrity of elections, and strain our democracy.

V. Application

[116] The error in this case, while regrettable, did not rise to the high threshold of an irregularity under s. 524(1)(b) of the CEA . It was not a serious error, nor does it undermine the integrity of the electoral system.

A. The Error Does Not Involve a Serious Mistake

[117] First, the error does not involve a serious administrative mistake that would qualify as an irregularity under s. 524(1)(b) of the CEA . Simple administrative mistakes, like this one, occur in every election. This is especially true with mail-in ballots, which permit electors to exercise their right to vote in a way that may be subject to delay and error, at some risk. When those risks manifest, the elector has the responsibility to ensure their ballot is received or cast by alternative means.

[118] When the worker inputted the return address, he labelled it for Elections Canada, added the correct street number and name, the correct city and province, and the correct first three characters of the postal code. It was only the last three characters of the postal code that were incorrect. The evidence indicates that this mistake arose because the worker inadvertently entered the final three characters of his own postal code. It was a minor error. So much so that the four or so other volunteers working on the labels also did not identify the error.

[119] The worker's actions were unintentional. While mal-intent or bad faith is not a requirement for finding an irregularity, it remains relevant to the analysis. To recall, an irregularity involves conduct so serious that it is grouped with fraud, corruption, or illegality. This reflects the associated words principle applied in *Opitz*, which requires that the impugned conduct be of a comparable nature and gravity. A misprinted postal code that resulted from an honest mistake cannot rise to the level of these serious forms of misconduct.

[120] In his reasons, Jamal J. explains that this error rises to the level of an irregularity under s. 524(1)(b) due to the combination of the “typographical mistake . . . and Elections Canada's failure to take any corrective action during the three-week period before the election ” (para. 47 (emphasis added)).

[121] Respectfully, we disagree that this added element of a failure to adequately correct the error transformed it into a serious act akin to fraud, corruption, or illegality that is capable of undermining confidence in the electoral process.

[122] An issue with the return of a mail-in ballot was a known and foreseeable consequence of the special ballot voting regime. The CEA takes steps to address the potential for errors by creating safeguards and assigning responsibility to the voter to ensure that their vote is received. While the worker could have done more to address his mistake, his failure to do so does not transform the error into an irregularity. Further corrective action, such as trying to contact all the special ballot electors, could have potentially meant the one affected voter would have voted in person. But the CEA and Elections Canada have already put in place safeguards designed to address such errors without requiring that additional step.

[123] Regardless of the incorrect final three characters of the postal code, the elector had the statutory responsibility of ensuring that her ballot was received using the tracking reference number and to vote in person if it had not been received in time. Indeed, per s. 240(b) of the CEA, she had “the sole responsibility to ensure that . . . her special ballot [was] received within the period specified”, and the English version of the provision adds, “to be counted as a vote”. When she opted to vote by mail, instead of at the polls, she accepted the risk that her ballot may not be received in time, that it may get lost in the mail, or that it may be subject to any number of inadvertent administrative and logistical errors associated with this method of voting outside of a polling station. This voter did not track her vote to ensure it was received. Had she done so, she would have learned that it was not received and she could have voted in person.

[124] It would be absurd if the CEA could contemplate the annulment of an election based on such an error when the CEA simultaneously assigns responsibility to the elector to track and ensure the ballot is received in the event of this type of error.

B. The Error Is Not Capable of Undermining the Integrity of the Electoral System

[125] Second, this error, which affected one vote, is not capable of undermining the integrity of the electoral system. Simple, honest administrative errors will occur in every election. A 2013 report from Elections Canada suggests that non-compliance with administrative rules and procedures occurs in 1.3 percent of all voting transactions (H. Neufeld, *Compliance Review: Final Report and Recommendations — A Review of Compliance with Election Day Registration and Voting Process Rules* (2013), at p. 6). Of course, Elections Canada must strive to minimize or eliminate those errors. But mistakes are inevitable. Humans are fallible. And if we want to have confidence in the finality and legitimacy of our elections, then we must accept some small degree of human error.

[126] This is especially true with mail-in ballots. To repeat, the special ballot voting system is designed to facilitate flexibility, convenience and accessibility in voting, and imports additional procedural steps and corresponding risks. To mitigate those risks, Elections Canada gives electors a tracking number so they can personally ensure their vote is received, and publishes notices to electors asking them to check the status of their ballots. And the CEA makes clear that ensuring receipt of the ballot by Elections Canada is the voter's responsibility (ss. 239(2) and 240(b)).

[127] Under these circumstances, we cannot conclude that the error in this case would undermine public confidence in the legitimacy and finality of elections. Because the postal code error does not qualify as an irregularity under s. 524(1)(b) of the CEA , the threshold to open up the election was not met.

VI. Conclusion

[128] We conclude that the administrative error in this case is not an irregularity within the meaning of s. 524(1)(b) of the CEA . It was an unintentional minor mistake that ultimately affected a single voter using the special ballot process. This process was created for the ease of voters but carries risks. The responsibility to mitigate these risks falls on the voter. Annuling the election in this situation would not uphold the integrity of the electoral process; it would have the converse effect.

[129] We need not address the subsequent stages of the analysis. We would dismiss the appeal.

Appeal allowed without costs, Karakatsanis, Martin and Moreau JJ. dissenting.

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