

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUEBEC)

B E T W E E N:

ATTORNEY GENERAL OF QUEBEC

APPELLANT
(intimé)

- and -

**XAVIER-ANTOINE LALANDE,
CONSEIL DES PRÉFETS ET DES ÉLUS DE LA RÉGION DES LAURENTIDES,
DAVID ARMSTRONG, RÉMI BARBEAU-CARDOZA, MUNICIPALITÉ RÉGIONALE
DE COMTÉ DE BROME-MISSISQUOI, TABLE DES MRC DU CENTRE-DU-QUÉBEC
ET VILLE DE SHERBROOKE**

RESPONDENTS
(appelants)

- and -

**JEAN-FRANCOIS BLANCHET, in his capacity as Chief Electoral Officer of Québec
and chair of the Commission de la représentation électorale**

RESPONDENT
(mis en cause)

- and -

**LA TABLE DES PRÉFETS DE MRC DE LA GASPÉSIE ET
DES ÎLES-DE-LA-MADELEINE, DANIEL CÔTÉ,
CANADIAN CIVIL LIBERTIES ASSOCIATION**

INTERVENERS
(mis en cause)

- and -

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SPRINGTIDE COLLECTIVE FOR DEMOCRACY SOCIETY**

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(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

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PART I — OVERVIEW

1. Section 3 of the *Charter* enshrines the fundamental right of any constitutional democracy: the right to vote. Almost 35 years ago, in the foundational case of *Reference re Prov. Electoral Boundaries (Sask.)*, [\[1991\] 2 S.C.R. 158](#) (“*Saskatchewan Reference*”), this Court held that s. 3 does not require equality of voting power *per se*, but rather guarantees “effective representation.”

2. This appeal raises important issues concerning the concept of effective representation. Specifically, this appeal concerns whether the infringement of s. 3 via Quebec’s *Act to interrupt the electoral division delimitation process* (“*Act to interrupt*”) is justified under s. 1. As such, this appeal directly implicates the constitutional analysis of the right to vote under s. 3 and its interaction with s. 1 of the *Charter*.

3. The parties before this Court have conceded that the *Act to interrupt* breaches s. 3 of the *Charter*. Nevertheless, this appeal presents this Court with the opportunity to clarify the importance of voter parity as the primary principle under s. 3. In fact, this appeal is the first time this Court has considered how s. 3 bears upon electoral districting since the 1991 *Saskatchewan Reference*.

4. The British Columbia Civil Liberties Association (“BCCLA”) submits that any departure from voter parity necessarily results in a breach of the right to vote under s. 3. Any “countervailing” factors that may justify deviation from parity should be considered under s. 1. At the s. 1 stage, in order to justify any infringement of this fundamental democratic right, only objective and cogent evidence can ground a conclusion that treating voters unequally is necessary.

PART II — QUESTION IN ISSUE

5. BCCLA intervenes in this appeal to advance its view on the proper interpretation of the right to vote under s. 3 of the *Charter*, including the importance of the presumption of voter equality. The Court’s conclusions regarding the presumption of parity may influence electoral districting throughout Canada, as well as whether and how a law that departs from voter parity can

be saved under s. 1. This appeal may directly impact civil liberties, the right to vote, and the concept of vote dilution for future elections.

PART III — STATEMENT OF ARGUMENT

A. The Right to Vote under Section 3 Requires a Strong Presumption of Parity

6. Section 3 of the *Charter* creates a presumption that all citizens must be provided with a ballot carrying the same electoral weight within each province. If a particular law treats voters unequally and undermines this presumption of parity, the right to vote under s. 3 has necessarily been breached, and the analysis must proceed to s. 1.

7. The primary consideration in any democracy must be the political equality of its citizens. As recently confirmed by this Court in *Working Families Coalition*, “[a] legislative measure that undermines or interferes with citizens’ ability to meaningfully participate in the electoral process will infringe the right to vote.”¹ The BCCLA submits that a legislative measure that dilutes citizens’ votes treats voters unequally, undermines the ability of voters to meaningfully participate in the electoral process, and therefore infringes the right to vote.

i. The Jurisprudential Context: Voter Parity at the Forefront of Section 3

8. The importance of voter equality when discussing the right to vote has been confirmed by the earliest cases discussing s. 3. In *Dixon v. British Columbia (Attorney General)*, Chief Justice McLachlin wrote that “equality of voting power” is fundamental to democracy in Canada, adding that the claim to “rep by pop” both preceded and was confirmed by Confederation.² As such, “the notion of equality is inherent in the Canadian concept of voting rights.”³

9. Chief Justice McLachlin’s conclusion is unassailable. It is true that the Chief Justice found

¹ *Ontario (Attorney General) v. Working Families Coalition (Canada) Inc.*, [2025 SCC 5](#), at [para. 9](#).

² *Dixon v. British Columbia (Attorney General)*, [35 BCLR \(2d\) 273](#) (S.C.), at p. 16.

³ *Dixon v. British Columbia (Attorney General)*, [35 BCLR \(2d\) 273](#) (S.C.), at p. 18.

that absolute or strict equality was not required. However, the emphasis of a presumption of parity and equality is evident: “We must start ... from the proposition that equality of voting power is the single most important factor to be considered in determining electoral boundaries.”⁴

10. The presumption of parity finds meaning in the *Saskatchewan Reference*, also penned by Justice McLachlin (as she then was). Here, Justice McLachlin determined that the right to vote requires a right to “effective representation,” which entails two conditions: (1) relative parity of voters; and (2) addressing certain “countervailing factors.” Justice McLachlin noted that voter equality is of “prime importance” under s. 3.⁵

11. Decisions of this Court following the *Saskatchewan Reference* confirm that equality remains at the forefront of the analysis. As this Court observed in the *Libman* decision, “[t]he principle of electoral fairness flows directly from a principle entrenched in the Constitution: that of the political equality of citizens.”⁶ BCCLA does not suggest that fairness and effective representation require absolute voter parity. This was confirmed by this Court in *Figueroa*.⁷ However, to respect the notion that equality of voting power is the “single most important factor” in determining electoral boundaries, and to satisfy the “prime importance” of voter equality, there must be a strong presumption of voter parity at the outset of the analysis.

12. This submission has jurisprudential support. As early as *Dixon*, Chief Justice McLachlin wrote that the “dominant consideration” in determining electoral districts should be population, and that “deviations from the ideal of equal representation” should only be permitted when “some other valid factor” exists.⁸ Later, in the *Saskatchewan Reference*, Justice McLachlin explained that

⁴ *Dixon v. British Columbia (Attorney General)*, [35 BCLR \(2d\) 273](#) (S.C.), at p. 29 (emphasis added).

⁵ *Reference re Prov. Electoral Boundaries (Sask.)*, [\[1991\] 2 S.C.R. 158](#), at p. 184.

⁶ *Libman v. Quebec (Attorney General)*, [\[1997\] 3 S.C.R. 569](#), at [para. 47](#).

⁷ *Figueroa v. Canada (Attorney General)*, [2003 SCC 37](#), at [para. 51](#).

⁸ *Dixon v. British Columbia (Attorney General)*, [35 BCLR \(2d\) 273](#) (S.C.), at p. 31.

“the value of a citizen’s vote should not be unduly diluted”:

deviations from absolute voter parity may be justified on the grounds of practical impossibility or the provision of more effective representation. Beyond this, dilution of one citizen's vote as compared with another's should not be countenanced.⁹

13. Justice McLachlin continued: “Respect for individual dignity and social equality mandate that citizen’s votes not be unduly debased or diluted. But the need to recognize cultural and group identity and to enhance the participation of individuals in the electoral process and society requires that other concerns also be accommodated.”¹⁰

14. Regardless of what these “other concerns” are, according to *Dixon* and the *Saskatchewan Reference*, those factors should only be “admitted” where they contribute to “better government of the populace as a whole.”¹¹ At first glance, this would seem to be a problematic measure, in that it mandates value judgments on potentially competing matters of public policy. However, this Court in *Figueroa* concluded that s. 3 “imposes on Parliament an obligation not to enhance the capacity of one citizen to participate in the electoral process in a manner that compromises another citizen’s parallel right to meaningful participation in the electoral process.”¹² The thrust of this reasoning is that diminishing the status of one citizen to boost that of another requires careful scrutiny.

15. This careful scrutiny should not occur in the s. 3 analysis. Rather, it necessarily implies a balancing of interests which best belongs in the s. 1 analysis. If legislation impacts voter equality, it necessarily breaches s. 3 of the *Charter*.

⁹ *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158, at p. 185 (emphasis added).

¹⁰ *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158, at p. 186 (emphasis added).

¹¹ *Dixon v. British Columbia (Attorney General)*, 35 BCLR (2d) 273 (S.C.), at p. 31; *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158, at p. 185.

¹² *Figueroa v. Canada (Attorney General)*, 2003 SCC 37, at para. 50.

ii. Canada as an International Outlier for Voter Parity

16. Representation by population is of prime importance to a constitutional democracy. Most Canadians would assume that every person's vote would have equal value. Yet that is not the case.

17. Over recent decades, a consensus has developed in which Canadian electoral boundaries statutes have encoded an accepted deviation of up to 25% from the provincial electoral quotient. However, commissions can go beyond this threshold in so-called extraordinary circumstances.

18. Canada's longstanding toleration of electoral districts that deviate from representation by population is an international outlier.¹³ In 2010, when compared to the peer federal countries of Australia, the United States, Switzerland, and Germany, Canada stood out as "the worst violator of the rep-by-pop principle."¹⁴ With "every move to re-draw the country's electoral boundaries," the violations of the principle of representation by population get "progressively worse."¹⁵

19. Since the *Saskatchewan Reference*, academics have criticized Canada's acceptance of a 25% deviation threshold. In a 1994 article, David Johnson categorized the 25% threshold as inherently unprincipled: "If a 25% deviation is considered acceptable, why not 26% or 27% or 33%? What qualitative difference in principle arises in the interstices between these quantitative figures?"¹⁶ In 2014, Michael Pal and Sujit Choudhry argued that the 25% threshold, coupled with the concept of effective representation, allows for the overrepresentation of disadvantaged rural voters over disadvantaged urban minority voters: "Reducing the variance permitted in riding populations and the discretion granted to commissions ... would lead to greater voter equality and

¹³ See Michael Pal & Sujit Choudhry, "[Still Not Equal? Visible Minority Vote Dilution in Canada](#)" (2014) *Canadian Political Science Review* 8(1) 85, at p. 86.

¹⁴ Matthew Mendelsohn, "[Some Are More Equal Than Others: Canadian Political Representation in Comparative Context](#)" (Mowat Centre for Policy Innovation, March 2010), at p. 3.

¹⁵ Andrew Sancton, "[The Principle of Representation by Population in Canadian Federal Politics](#)" (Mowat Centre for Policy Innovation, March 2010), at p. 1.

¹⁶ David Johnson, "[Canadian Electoral Boundaries and the Courts: Practices, Principles and Problems](#)" (1994) 39 *McGill L.J.* 224, at p. 245.

indirectly, therefore, reduce visible minority vote dilution.”¹⁷ Using the United Kingdom as an example, Professors Pal and Choudhry argued that the acceptable variance should be reduced from 25% (or more in “extraordinary” circumstances) to 5% or 10%.¹⁸

20. As intervener in this appeal, BCCLA is not submitting that this Court should revise the 25% electoral quotient threshold. However, the fact that this 25% quotient has been criticized, and that Canada is an international outlier, suggests that voter parity must be firmly entrenched in the s. 3 framework, lest the violations of voter parity continue to worsen. After all, representation by population “is widely seen as a cornerstone of most modern democracies.”¹⁹ BCCLA submits that the greater the departure from the 25% threshold, the easier it is to identify a breach of s. 3. However, this common sense inference does not mean that lesser violations of voter equality do not amount to breaches of s. 3. Any departure from voter parity necessarily results in a breach of the right to vote under s. 3.

B. Assessing “Countervailing Factors” under Section 1: A Strict Evidentiary Standard

21. To the extent that “countervailing factors” such as geography and minority representation are used to justify deviations from equality, BCCLA submits that the right of a voter to meaningful participation in the election can only be balanced against these factors under s. 1, not s. 3.²⁰

22. It is entirely appropriate to consider these “countervailing factors” in the s. 1 analysis, as the courts have reminded time and time again that the democratic rights of Canadian citizens are of paramount importance when it comes to safeguarding our free and democratic society. If

¹⁷ Michael Pal & Sujit Choudhry, “[Still Not Equal? Visible Minority Vote Dilution in Canada](#)” (2014) Canadian Political Science Review 8(1) 85, at p. 97.

¹⁸ Michael Pal & Sujit Choudhry, “[Still Not Equal? Visible Minority Vote Dilution in Canada](#)” (2014) Canadian Political Science Review 8(1) 85, at p. 97.

¹⁹ Andrew Sancton, “[The Principle of Representation by Population in Canadian Federal Politics](#)” (Mowat Centre for Policy Innovation, March 2010), at p. 1.

²⁰ See e.g. Brian Studniberg, “[Politics Masquerading as Principles: Representation by Population in Canada](#)” (2009) 34 Queen’s L.J. 611, at pp. 650-655.

equality is truly at the forefront of democracy, if equality of voting power is the “single most important factor” for determining electoral boundaries, and if voter parity is of “prime importance,” it is logical to relegate the “countervailing factors” to the s. 1 analysis when they are being used to support departures from the presumption of voter equality.

23. As stated in *Dixon*, s. 3 is a “preferred right”: “without the right to vote in free and fair elections all other rights would be in jeopardy.”²¹ This was later stressed in *Sauvé #2*:

The framers of the *Charter* signaled the special importance of this right not only by its broad, untrammelled language, but by exempting it from legislative override under s. 33’s notwithstanding clause. I conclude that s. 3 must be construed as it reads, and its ambit should not be limited by countervailing collective concerns, as the government appears to argue. These concerns are for the government to raise under s. 1 in justifying the limits it has imposed on the right.²²

24. Given the special nature of s. 3 as a “preferred right” exempt from legislative override, any departure from voter parity should result in a finding that the right to vote has been breached. Then, it is up to the government to justify its limits imposed on the right in the s. 1 analysis by explicating the “countervailing factors” identified in the *Saskatchewan Reference*. As Chief Justice McLachlin clearly stated in *Dixon*, “I view the task of defining a standard of reference of what a vote should be worth as properly falling under s.3. Practical problems of implementing that standard, on the other hand, are appropriately considered under s.1 of the Charter.”²³

25. When assessing these “countervailing factors” under s. 1, a strict evidentiary standard should apply to support any position that treating voters unequally is necessary to provide for the more effective representation of the diversity of Canada’s social mosaic.

26. The starting point in determining the proper evidentiary standard to be applied under s. 1 is

²¹ *Dixon v. British Columbia (Attorney General)*, [35 BCLR \(2d\) 273](#) (S.C.), at p. 13.

²² *Sauvé v. Canada (Chief Electoral Officer)*, [2002 SCC 68](#), at [para. 11](#) (emphasis added).

²³ *Dixon v. British Columbia (Attorney General)*, [35 BCLR \(2d\) 273](#) (S.C.), at p. 37 (emphasis added).

Oakes. To meet the burden of justification under s. 1, this Court held that “cogent and persuasive” evidence is generally necessary.²⁴ This evidentiary standard can only be relaxed where the elements of the s. 1 analysis are “obvious or self-evident.”²⁵

27. To justify a breach of the right to vote, the test is even stricter. In *Sauvé #2*, Chief Justice McLachlin explained that a stringent evidentiary standard was necessary to safeguard a right that is at the cornerstone of our democracy:

Charter rights are not a matter of privilege or merit, but a function of membership in the Canadian polity that cannot lightly be cast aside. This is manifestly true of the right to vote, the cornerstone of democracy, exempt from the incursion permitted on other rights through s. 33 override. Thus, courts considering denials of voting rights have applied a stringent justification standard.²⁶

28. The substance of Chief Justice McLachlin’s conclusions in *Sauvé #2* has been confirmed by this Court in later decisions. In *Figueroa*, this Court noted that “great care must be exercised in determining whether or not the government has justified a violation of s. 3.”²⁷ Later, in *Frank*, this Court reminded us that the “jurisprudence ... requires that a stringent standard of justification be applied when the government seeks to justify a limit on the s. 3 right to vote.”²⁸

29. The Court of Appeal of Quebec in the present decision under appeal also confirmed that any breach of s. 3 requires a strict evidentiary standard when applying the s. 1 analysis.²⁹ This need for a strict evidentiary standard arises out of the unique stature of s. 3: “L’article 3 de la *Charte* exige un processus évaluant de manière objective les critères utiles à la détermination de la « représentation effective ».”³⁰ In other words, s. 3 requires an objective assessment of whether

²⁴ *R. v. Oakes*, [1986] 1 S.C.R. 103, at p. 138.

²⁵ *R. v. Oakes*, [1986] 1 S.C.R. 103, at p. 138.

²⁶ *Sauvé v. Canada (Chief Electoral Officer)*, 2002 SCC 68, at para. 14 (emphasis added).

²⁷ *Figueroa v. Canada (Attorney General)*, 2003 SCC 37, at para. 60.

²⁸ *Frank v. Canada (Attorney General)*, 2019 SCC 1, at para. 43.

²⁹ *Lalande c. Procureur général du Québec*, 2025 QCCA 1558, at para. 44.

³⁰ *Lalande c. Procureur général du Québec*, 2025 QCCA 1558, at para. 74.

the impugned measure contributes to effective representation. This objective assessment can only be completed through cogent and persuasive evidence.

C. Minimal Impairment and Final Balancing Require Cogent and Objective Evidence

30. Without taking a position on the facts or the disposition of this appeal, BCCLA notes that the application judge in the present matter relied on speculative evidence for the purposes of the minimal impairment and final balancing analysis. This Court should take this opportunity to clarify that such speculative forms of evidence cannot be used to justify a breach of s. 3.

31. First, under minimal impairment, the application judge focused heavily on the *Act to interrupt* being the result of a unanimous vote from the National Assembly.³¹ Yet this is merely evidence that a particular legislative amendment has strong *support* by the elected officials of the day; it is not objective evidence that the amendment itself impairs the rights of voters no more than is reasonably necessary.

32. In any event, it cannot be said that unanimous legislative support is representative of the views of the entire electorate. As in any democracy, there are numerous political parties that are not represented in the legislature. Such parties continue to receive support from the electorate. The s. 3 rights of the electors who may not be represented in the National Assembly are also relevant.

33. If anything, legislative unanimity is in itself symbolic. As indicated in *Sauvé #2*, “the ... symbolic nature of the government’s objectives” do not command deference in the s. 1 analysis.³² If this Court were to except unanimity as an appropriate justification for minimal impairment, it would allow for deference to the legislature when faced with a violation of s. 3.

34. Second, under the final balancing of *Oakes*, the application judge noted that the temporary nature of the *Act to interrupt* softens the deleterious effects of the legislation and tips the balancing

³¹ See *Lalande c. Procureur général du Québec*, [2025 QCCS 2078](#), at [paras. 137-157](#).

³² *Sauvé v. Canada (Chief Electoral Officer)*, [2002 SCC 68](#), at [para. 16](#).

in favour of the law’s salutary effects.³³ Yet a law that is of temporary effect is not cogent, persuasive, or objective evidence that actually “softens the blow” of the deleterious effects of departing from voter equality and voter parity. While a law that departs from voter equality may be temporary in terms of duration, it is not temporary in terms of its ramifications. It is trite to say that elections have consequences. The ramifications of such a “temporary” law could last for decades, given that it could influence who gets elected, thereby influencing future policy and legislation.

35. Relying on the temporary nature of a law that departs from voter equality under final balancing is an example of supporting a “middle-of-the-road” compromise.³⁴ This Court should confirm that such a “compromise” does not satisfy the evidentiary burden required to justify a breach of s. 3.

36. This appeal gives this Court the opportunity to affirm that Canada’s electoral system must operate in a manner consistent with our basic commitment to the inherent equal dignity of individuals. Section 3 can better serve this principle by starting with a presumption of voter equality, and only then looking to deviations from parity under s. 1 where evidence demonstrates that such deviation contributes to the representation of the “diversity of our social mosaic.”³⁵

PARTS IV AND V — SUBMISSIONS ON COSTS AND ORDER SOUGHT

37. BCCLA seeks no costs and asks that no costs be awarded against it. BCCLA takes no position on the disposition of this appeal.

³³ See *Lalande c. Procureur général du Québec*, 2025 QCCS 2078, at [para. 164](#).

³⁴ See *Frank v. Canada (Attorney General)*, 2019 SCC 1, at [para. 67](#); *Lalande c. Procureur général du Québec*, 2025 QCCA 1558, at [para. 87](#).

³⁵ *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158, at p. 184.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of April, 2026.



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PART VI — TABLE OF AUTHORITIES

<u>CASES</u>	
Reference	Paragraph(s)
<i>Dixon v. British Columbia (Attorney General)</i> , 35 BCLR (2d) 273 (S.C.)	8, 9, 12, 14, 23, 24
<i>Figueroa v. Canada (Attorney General)</i> , 2003 SCC 37	11, 14, 28
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