SCC File No. 42152

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

BETWEEN:

ATTORNEY GENERAL OF QUEBEC

APPELLANT
(Respondent)

- 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,
VILLE DE SHERBROOKE

RESPONDENTS
(Appellants)

- and -

JEAN-FRANÇOIS BLANCHET, in his capacity as Chief Electoral Officer of Quebec and as chairman of the Commission de la représentation

RESPONDENT
(Mis-en-cause)

- and -

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

INTERVENERS
(Mis-en-cause)

- and -

ATTORNEY GENERAL OF ALBERTA,
ATTORNEY GENERAL OF SASKATCHEWAN,
ATTORNEY GENERAL OF ONTARIO,
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, FAIR VOTING BRITISH COLUMBIA AND SPRINGTIDE COLLECTIVE FOR DEMOCRACY SOCIETY

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PART I – OVERVIEW AND STATEMENT OF FACTS

1. The Attorney General of Alberta (**Alberta**) intervenes in this appeal in support of the ability of provincial legislatures to craft legislation that ensures the effective representation of their citizens, as affirmed by this Court in the 1991 *Reference re Provincial Electoral Boundaries (Saskatchewan)*, also known as the ***Carter*** decision.[1]

2. The *Carter* decision establishes effective representation, not relative voter parity, as the standard to be met by provincial electoral district boundaries under section 3 of the *Canadian Charter of Rights and Freedoms* (the ***Charter***).[2] Effective representation recognizes Canada's democratic tradition and the need to tailor the process used to establish electoral boundaries to the disparate geographies, community histories, community interests and minority communities of each individual province within Canada's constitutional architecture. Reaffirming effective representation as the applicable standard is consistent with the values of both certainty and correctness.

3. Following *Carter*, the application of section 1 of the *Charter* should focus on whether departures from the standard of effective representation are reasonable and justifiable, not on justifying departures from voter parity between electoral districts. Justification of departures from effective representation may be based on a broad range of pressing and substantial objectives that are consistent with a free and democratic society. This justification is to be assessed by reference to the content of the impugned legislation, not the process leading to its eventual adoption.

PART II – ISSUES

4. Alberta's submissions focus on the application of section 3 of the *Charter* to electoral district boundaries, the relationship between section 3 and section 1 of the *Charter*, and the considerations relevant to the justification of departures from effective representation under section 1. Alberta takes no position on the outcome of this case, nor on any factual dispute raised.

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[1] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158.

[2] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

PART III – ARGUMENT

A. Section 3 requires effective representation, not voter parity

a. *Effective representation is the authoritative standard*

5. Section 3 of the *Charter* provides that "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."[3]

6. In *Carter*, Justice McLachlin, as she then was, wrote for the majority. She affirmed that the right to vote recognized in section 3 of the *Charter* requires "effective representation," not voter parity between electoral districts.[4] She also held that deviations from relative voter parity were permissible within section 3 where these departures were based on factors such as "geography, community history, community interests and minority representation," which "may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic."[5]

7. As Justice McLachlin also noted in *Carter*, the establishment of electoral district boundaries under the effective representation standard involves "conflicting policy considerations."[6] As such, "the courts ought not to interfere with the legislature's electoral map under s. 3 of the *Charter* unless it appears that reasonable persons applying the appropriate principles ... could not have set the electoral boundaries as they exist."[7]

8. Applying this standard, this Court went on to uphold the validity of the 29 urban, 35 rural and 2 northern electoral districts that Saskatchewan's boundaries commission had been required to implement under Saskatchewan's *Electoral Boundaries Commission Act* (the ***SEBCA***).[8] It also

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[3] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 3.

[4] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 183.

[5] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 184.

[6] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 189.

[7] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 189, quoting *Dixon v BC (AG)*, 1986 CanLII 770, [1989] 4 WWR 393 at 419.

[8] *Electoral Boundaries Commission Act*, SS 1986-87-88, c E-6.1.

upheld the final electoral district boundaries established by Saskatchewan's *Representation Act, 1989* (the ***RA 1989***).[9] It reached these conclusions notwithstanding that the resulting distribution involved an important disproportion between the number of voters encompassed within rural and urban electoral districts.

9. Since deciding *Carter*, this Court has drawn upon and reaffirmed the effective representation standard in numerous subsequent decisions involving section 3 of the *Charter*. None of these decisions have ever suggested that voter parity should be substituted for effective representation as the appropriate standard to assess section 3 *Charter* claims, nor that a procedural reading of section 3 should be substituted for a substantive reading focused on effective representation.

10. Indeed, this Court has repeatedly cited *Carter* in support of the conclusion that effective representation serves as the overall purpose of section 3 of the *Charter*. As this Court noted in *Figueroa*:

> This Court first considered the purpose of s. 3 in *Reference re Provincial Electoral Boundaries* […] In determining that s. 3 does not require absolute equality of voting power, McLachlin J. held that the purpose of s. 3 is "effective representation" […] This Court has subsequently confirmed, on numerous occasions, that the purpose of s. 3 is effective representation.[10]

11. In its 2021 decision in *Toronto (City)*,[11] this Court specifically reiterated the effective representation standard in the context of the assessment of electoral district boundaries. In that case, it had been asked to consider whether Ontario legislation consolidating several municipal electoral districts in the City of Toronto ahead of an upcoming municipal election infringed section 3 of the *Charter*. While the majority found that section 3 did not apply to municipal elections, it

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[9] *Representation Act, 1989*, SS 1989-90, c R-20.2.

[10] *Figueroa v Canada (Attorney General)*, 2003 SCC 37 at para 21 [***Figueroa***], citing *Haig v Canada*, [1993] 2 SCR 995; *Harvey v New Brunswick (Attorney General)*, [1996] 2 SCR 876; *Thomson Newspapers Co v Canada (Attorney General)*, [1998] 1 SCR 877. See also *Harper v Canada (Attorney General)*, 2004 SCC 33 at para 68.

[11] *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34 [***Toronto (City)***].

nonetheless affirmed the continued application of the effective representation standard established in *Carter*.[12]

12. The dissent in *Toronto (City)* similarly endorsed the relevance of the effective representation standard to the establishment of electoral boundaries. In response to Ontario's argument invoking voter parity, efficiency and cost-savings as justifications for a section 2(b) *Charter* limitation, the dissent cited *Carter* in support of the affirmation that "this Court has never found voter parity to be the electoral lodestar, asserting, on the contrary, that the values of a free and democratic society 'are better met by an electoral system that focuses on effective representation than by one that focuses on mathematical parity.'"[13]

13. More recently still, in *Working Families*, this Court has reaffirmed the continued relevance of *Carter*.[14] The majority quoted *Carter* for the proposition that the interpretation of section 3 should be "guided by the ideal of a 'free and democratic society' upon which the *Charter* is founded."[15] In joint dissenting reasons, Chief Justice Wagner and Justice Moreau also explicitly reaffirmed the principle of effective representation as the standard applicable to the establishment of provincial electoral district boundaries.[16]

14. In the case under appeal, both the Quebec Superior Court[17] and Quebec Court of Appeal[18] similarly recognized the authoritativeness of the majority opinion in *Carter*. However, the approach adopted at both levels of court was inconsistent with the effective representation standard.

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[12] *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34 at para 47.

[13] *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34 at para 160, quoting *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 188.

[14] *Ontario (Attorney General) v Working Families Coalition (Canada) Inc.*, 2025 SCC 5.

[15] *Ontario (Attorney General) v Working Families Coalition (Canada) Inc.*, 2025 SCC 5 at para 8.

[16] *Ontario (Attorney General) v Working Families Coalition (Canada) Inc.*, 2025 SCC 5 at para 112.

[17] *Lalande c Procureur général du Québec*, 2025 QCCS 2078 at para 8.

[18] *Lalande c Procureur général du Québec*, 2025 QCCA 1558 at para 15.

15. In its decision, the Superior Court concluded that the electoral boundaries maintained by *An Act to interrupt the electoral division delimitation process*, also known as the ***LVI***,[19] had limited section 3 of the *Charter* due to a combination of "deux facteurs – soit la présence de sept (7) circonscriptions en situation d'exception positive et l'interruption politique du processus de délimitation des circonscriptions par la commission."[20]

16. In other words, the Superior Court concluded that section 3 had been breached because the *LVI* maintained seven electoral districts with a population at variance from the provincial norm by more than twenty-five per cent (25%), and because this outcome was reached through direct legislative intervention.[21] Instead of applying the standard of effective representation mandated by section 3 of the *Charter*, the Superior Court effectively approached section 3 as guaranteeing relative voter parity.

17. Indeed, the Superior Court relegated concerns about the effective representation of rural populations to its analysis of section 1 of the *Charter*.[22] It treated the representation of rural regions experiencing demographic decline as a pressing and substantial objective under the first part of the section 1 *Oakes* framework.[23] The Superior Court then considered this objective against the adverse impact that preserving existing electoral boundaries would have on voter parity between these districts.[24]

18. The Court of Appeal, for its part, did not consider any factors beyond relative voter parity, whether under section 3 or section 1 of the *Charter*. In the Court of Appeal's view, the *LVI*'s limitation of section 3 of the *Charter* resulting from a lack of voter parity between electoral districts could not be justified under the *Oakes* framework because alternative solutions that lessened the relative lack of voter parity were available.[25]

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[19] *An Act to interrupt the electoral division delimitation process*, SQ 2024, c 14.
[20] *Lalande c Procureur général du Québec*, 2025 QCCS 2078 at para 66.
[21] *Lalande c Procureur général du Québec*, 2025 QCCS 2078 at para 66.
[22] *R v Oakes,* [1986] 1 SCR 103.
[23] *Lalande c Procureur général du Québec*, 2025 QCCS 2078 at para 120.
[24] *Lalande c Procureur général du Québec*, 2025 QCCS 2078 at para 163-164.
[25] *Lalande c Procureur général du Québec*, 2025 QCCA 1558 at paras 80, 84.

19. Both the Superior Court and Court of Appeal's reasons are thus at odds with the effective representation standard authoritatively established by this Court in *Carter* and repeatedly reaffirmed in its subsequent decisions. Instead of understanding section 3 of the *Charter* to guarantee effective representation, these courts took section 3 to establish a guarantee of relative voter parity, with concerns such as urban-rural representation being relegated to the status of potential justifications for a departure from voter parity under section 1 of the *Charter*.

b. *Concern for process is inconsistent with effective representation*

20. As already noted, the majority in *Carter* affirmed that section 3 of the *Charter* requires effective representation. This standard excludes a reading of section 3 that guarantees only voter parity between electoral districts. It also excludes a procedural understanding of section 3, which would only permit deviations from voter parity where these have been found to be justified using a particular process.

21. A process-oriented reading of section 3 of the *Charter* is inconsistent with the factors this Court listed as relevant to the determination of effective representation in *Carter*. As the majority in *Carter* noted, factors relevant to assessing effective representation include "geography, community history, community interests and minority representation."[26]

22. While the majority recognized that its list of factors was not exhaustive,[27] none of the factors it listed are procedural or process oriented. Nor were these factors presented as relevant only as exceptions to a general rule of voter parity. Rather, these factors were listed as directly relevant to the ultimate objective of assessing effective representation and ensuring that "our legislative assemblies effectively represent the diversity of our social mosaic."[28]

23. A process-oriented reading of section 3 of the *Charter* is also inconsistent with the specific conclusions this Court drew on the facts of *Carter*. In that case, the challenge concerned both legislation that imposed constraints on the decisions that could be made by Saskatchewan's

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[26] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 184.
[27] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 184.
[28] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 184.

Electoral Boundaries Commission (through the *SEBCA*) and the specific boundaries that had been adopted following the Commission's final report through the *RA 1989*.[29]

24. With respect to the *SEBCA*, the majority expressly dismissed the suggestion that the rural-urban representation constraints imposed on Saskatchewan's Electoral Boundaries Commission amounted to a *per se* infringement of section 3 of the *Charter*. In the majority's view, these requirements did not render the process arbitrary, because they did not preclude the Commission from applying all relevant factors when deciding on the establishment of electoral boundaries:

> I am satisfied that the proposition that the Commission was unduly constrained by the governing legislation and consequently failed to take into consideration the appropriate factors must fail. The process, viewed as a whole, was fair. The original division between urban and rural ridings was the work of an unimpeded commission; the subsequent adjustment largely reflected population changes, and gave due weight to the principle of voter parity. The fact that the legislature was involved in the readjustment does not in itself render the process arbitrary or unfair, in my view.[30]

25. Justice Sopinka adopted substantially the same position on this issue in his concurring opinion. As he explained:

> It was not necessary for the Saskatchewan legislature to create an independent commission, and, had it simply legislated the impugned boundaries, the process itself would not have been subject to judicial scrutiny. Having chosen to delegate the task to the commission, there is no reason why the legislature should be prohibited from laying down tight guidelines delineating the powers to be conferred on the commission.[31]

26. According to both the majority and the concurring opinion in *Carter*, the process chosen by the legislature will be consistent with section 3 so long as this process does not preclude consideration of all factors relevant to effective representation. In *Carter* itself, the *SEBCA* was found to have complied with section 3 obligations, because its mandatory allocation of a precise number of rural, urban and northern electoral districts had not prevented Saskatchewan's Electoral

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[29] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 178.

[30] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 194.

[31] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 198.

Boundaries Commission from applying all factors relevant to achieving effective representation when making its decision.[32]

27. As to the second part of the challenge in *Carter*, concerning the boundaries ultimately established by the *RA 1989*, the majority's conclusions were also consistent with a focus on outcomes, rather than process. None of these conclusions turned on (or could have turned on) the adequacy of the process used to assess the various factors relevant to effective representation. To quote the majority:

> In summary, the evidence supplied by the province is sufficient to justify the existing electoral boundaries. In general, the discrepancies between urban and rural ridings is small, no more than one might expect given the greater difficulties associated with representing rural ridings. And discrepancies between particular ridings appear to be justified on the basis of factors such as geography, community interests and population growth patterns. It was not seriously suggested that the northern boundaries are inappropriate, given the sparse population and the difficulty of communication in the area. I conclude that a violation of s. 3 of the *Charter* has not been established.[33]

28. Reading the majority and concurring reasons together, the authoritative position articulated by this Court in *Carter* is thus that the effective representation guaranteed by section 3 of the *Charter* is an outcome-based standard, and that deviations from voter parity between electoral districts do not need to be justified by recourse to any special process. Both the text and purpose of section 3 are respected so long as the process chosen permits consideration of the factors relevant to achieving an effectively representational outcome.

29. This reading of section 3 of the *Charter* is also consistent with the Nova Scotia Court of Appeal's more recent decision in the *Reference re the Final Report of the Electoral Boundaries Commission*, also known as the ***Nova Scotia Reference***.[34] That case dealt with the adoption by the Nova Scotia Legislature of a final report of the Nova Scotia Boundaries Commission recommending the abolition of three formerly protected electoral districts deviating from the average population ratio by more than 25%.

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[32] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 194.
[33] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 197.
[34] *Reference re the Final Report of the Electoral Boundaries Commission*, 2017 NSCA 10.

30. In the *Nova Scotia Reference*,[35] the Nova Scotia Court of Appeal found that the Nova Scotia Attorney General's intervention in the Boundary Commission's process had imposed an unjustified limit on section 3 *Charter* rights. However, it only drew this conclusion because this intervention had prevented the Boundary Commission from considering all factors relevant to the assessment of effective representation. In the Court of Appeal's words, "[t]he 2012 Commission's Final Report did not say that the abolition of the protected Acadian ridings would achieve effective representation. Rather, it said the Attorney General's directive removed the Commission's discretion to consider the matter."[36]

31. As the Court of Appeal went on to explain:

> The *Charter* does not require that there be an "independent commission". But, under *Carter*, whatever body fashions electoral boundaries is tasked by s. 3 of the *Charter* to balance voter parity against the countervailing criteria. In Nova Scotia, the Legislature has decided that body is "the Independent Electoral Boundaries Commission", whose functions are prescribed by s. 5 of the House of Assembly Act. [37]

32. This approach stands in direct contrast with the procedural reading of section 3 that was adopted by the Superior Court below. In tandem with its understanding of section 3 as guaranteeing relative voter parity, the Superior Court took the view that recourse to an independent boundaries commission was required because the electoral district boundaries maintained by the *LVI* significantly deviated from voter parity. In the Superior Court's words, this deviation was sufficient to constitute an infringement of section 3 of the *Charter* in the absence of "un processus qui soit indépendent et découlant de critères neutres qui peut expliquer le résultat."[38]

33. Put differently, and in contrast with the majority and concurring reasons in *Carter*, the approach adopted by the Superior Court in this case assumed that section 3 of the *Charter* mandates an American-style "one person-one vote" model of electoral representation,[39] with departures from

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[35] *Reference re the Final Report of the Electoral Boundaries Commission*, 2017 NSCA 10 (CanLII).

[36] *Reference re the Final Report of the Electoral Boundaries Commission*, 2017 NSCA 10 at para 86.

[37] *Reference re the Final Report of the Electoral Boundaries Commission*, 2017 NSCA 10 at para 90.

[38] *Lalande c Procureur général du Québec*, 2025 QCCS 2078 at para 94.

[39] See *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 185.

this model being permissible only where they are justified by an independent electoral boundaries commission. This approach treats the establishment of electoral district boundaries based on criteria other than voter parity as constitutionally impermissible unless a particular process has been followed.

34. The approach adopted by the Superior Court in this case should be categorically rejected. Not only is such an approach inconsistent with section 3, but its imposition through legislation would itself likely amount to an infringement of the effective representation standard mandated in *Carter*. Legislation requiring adherence to strict voter parity, subject only to deviations where they are justified using a particular process, would likely itself constitute an unreasonable and arbitrary limitation on the establishment of effectively representational electoral boundaries. This limitation would be arbitrary and unreasonable because it would prevent the applicable decision-maker from considering all factors relevant to the provision of effective representation, contrary to the conclusions drawn by this Court in *Carter*[40] and by the Nova Scotia Court of Appeal in the *Nova Scotia Reference*.[41]

c. *Reaffirming effective representation is consistent with certainty and correctness*

35. Given the approach taken by the Superior Court and the Court of Appeal below, this Court is now being asked to directly reconsider the effective representation standard it first affirmed in *Carter*. In its place, this Court is being asked to substitute a conception of section 3 of the *Charter* that guarantees only relative voter parity between provincial electoral districts, while other considerations, such as the preservation of rural representation, are to be considered as exceptional deviations from voter parity and relevant only where they have been justified through the use of a pre-approved process.

36. As this Court has previously noted, "overturning a precedent of this Court is a step not to be lightly undertaken."[42] When making such a decision, this Court "engages in a balancing exercise between the two important values of correctness and certainty. The Court must ask

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[40] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 194.

[41] *Reference re the Final Report of the Electoral Boundaries Commission*, 2017 NSCA 10 (CanLII) at para 86.

[42] *Ontario (Attorney General) v Fraser*, 2011 SCC 20 at para 56.

whether it is preferable to adhere to an incorrect precedent to maintain certainty, or to correct the error."[43]

37. Both the values of certainty and correctness are served by reaffirming this Court's decision in *Carter*. With respect to the value of certainty, the effective representation standard established in *Carter* has now stood for 35 years and has been reaffirmed by this Court on numerous occasions.[44] This standard has even been cited in support of statements concerning the overall purpose of section 3 of the *Charter*.[45] Overturning the effective representation standard established in *Carter* therefore risks destabilizing not only the law applicable to the determination of provincial electoral boundaries, but also the underlying purpose of section 3.

38. With respect to the value of correctness, the *Carter* decision is carefully grounded in the text and purpose of section 3 of the *Charter*. Nothing has changed in the legal landscape to cause this Court to overturn its precedent in *Carter*. There is no new legal issue or shift in the factual context suggesting that the "parameters of the debate" have fundamentally shifted or that the rationale of the decision has been eroded by significant social or legal change.[46]

39. Indeed, as the majority recognized in *Carter*, Canada's democratic tradition based on effective representation is "rooted in a different history than in the United States."[47] This tradition of effective representation has been affirmed in other Commonwealth countries as well.[48] As the majority added, the adoption of section 3 was never intended to derogate from Canada's tradition of effective representation by mandating a more American "one-person-one-vote" approach:

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[43] *Canada v Craig*, 2012 SCC 43 at para 27.

[44] *Figueroa v Canada (Attorney General)*, 2003 SCC 37 at para 21; *Harper v Canada (Attorney General)*, 2004 SCC 33 at para 68; *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34 at paras 47, 160; *Ontario (Attorney General) v Working Families Coalition (Canada) Inc.*, 2025 SCC 5 at paras 8, 112.

[45] See *Figueroa v Canada (Attorney General)*, 2003 SCC 37 at para 21; *Harper v Canada (Attorney General)*, 2004 SCC 33 at para 68.

[46] *R v Kirkpatrick,* 2022 SCC 33 at para 202; *Canada (Attorney General) v Bedford*, 2013 SCC 72 at para 44.

[47] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 186.

[48] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 186.

> The circumstances leading to the adoption of the *Charter* negate any intention to reject existing democratic institutions […] Nor was the issue raised by any of the plethora of interest groups making submissions in respect of voting rights during the prolonged Joint Senate and House of Commons Committee Hearings on the proposed *Charter*. The framers of the *Charter* had two distinct electoral models before them -- the "one person - one vote" model espoused by the United States Supreme Court […] and the less radical, more pragmatic approach which had developed in England and in this country through the centuries and which was actually in place. In the absence of any supportive evidence to the contrary (as may be found in the United States in the speeches of the founding fathers), it would be wrong to infer that in enshrining the right to vote in our written constitution the intention was to adopt the American model. On the contrary, we should assume that the goal was to recognize the right affirmed in this country since the time of our first Prime Minister, Sir John A. Macdonald, to effective representation in a system which gives due weight to voter parity but admits other considerations where necessary.[49]

40. As the majority in *Carter* also recognized, Canada's traditional standard of effective representation is based on sound practical considerations. As it explained:

> [E]ffective representation and good government in this country compel those charged with setting electoral boundaries sometimes to take into account factors other than voter parity, such as geography and community interests. The problems of representing vast, sparsely populated territories, for example, may dictate somewhat lower voter populations in these districts; to insist on voter parity might deprive citizens with distinct interests of an effective voice in the legislative process as well as of effective assistance from their representatives in their "ombudsman" role. This is only one of a number of factors which may necessitate deviation from the "one person - one vote" rule in the interests of effective representation.[50]

41. This last consideration is bolstered by the unwritten principle of federalism that undergirds Canada's constitutional architecture.[51] This principle recognizes that Canada's provinces differ significantly from each other, including in terms of their geographies, community histories, community interests and minority communities. As this Court put it in the *Reference re Secession of Quebec*, "[f]ederalism was a legal response to the underlying political and cultural realities that

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[49] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 185.

[50] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 188.

[51] *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 50.

existed at Confederation and continue to exist today. At Confederation, political leaders told their respective communities that the Canadian union would be able to reconcile diversity with unity."[52]

42. These differences mean that the factors that are globally relevant to the assessment of effective representation under Canada's broader democratic tradition may present a different normative salience in each Canadian province. The imposition of voter parity as the universal standard required by section 3, subject to a one-size-fits-all process to consider deviations from that standard, would stand in direct tension with ensuring effective representation in individual Canadian provinces.

43. Indeed, the flexibility provided by the effective representation standard has been relied upon in support of different approaches to the establishment of electoral district boundaries in different provinces. Similarly to the *SEBCA* considered by this Court in *Carter*, Alberta's *Electoral Boundaries Commission Act* provides for the establishment of electoral boundaries by the Legislative Assembly, by means of a bill introduced by the Government of Alberta following the issuance of the final report of Alberta's Electoral Boundaries Commission.[53] In Quebec, the *Election Act* instead provides that Quebec's boundaries commission, the Commission de la représentation, "shall establish the boundaries of the electoral divisions and assign names to them," without the need for separate legislation.[54]

44. In light of the foregoing, reaffirming the effective representation standard first affirmed by this Court in *Carter* is not only consistent with certainty, but also with correctness. Canada's democratic culture has always emphasized effective representation, and its constitutional architecture has always emphasized the need to respect regional differences. The enactment of section 3 of the *Charter* does not require that Canada's distinctive democratic culture be abandoned in favour of the strict voter parity characteristic of the United States, nor its recognition of provincial diversity to be diluted in favour of a unitary one-size-fits-all model.

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[52] *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 43.
[53] *Electoral Boundaries Commission Act*, RSA 2000, c E-3, s 11.
[54] *Election Act*, CQLR c E-3.3, s 29.

45. Conversely, emphasizing strict voter parity, to the exclusion of a broader consideration of effective representation, deviates from Canada's democratic tradition and attention to federalism. To adopt such an approach, subject only to possible exceptions under procedural constraints, is therefore inconsistent with this Court's decision in *Carter*, Canada's deeper democratic tradition, and its constitutional architecture. As against this approach, the reasons undergirding this Court's decision in *Carter* ought to be reaffirmed.

B. Section 1 permits reasonable limits on effective representation

a. *Justification is only required for departures from effective representation*

46. In *Carter*, the majority concluded that there had been no limitation of section 3 *Charter* rights, despite the existence of numerical disparities between the electoral districts established by the *RA 1989*. As the majority explained, both the constraints imposed on Saskatchewan's Electoral Boundaries Commission by the *SEBCA* and the boundaries ultimately established by the *RA 1989* were consistent with the standard of effective representation required by section 3.[55] There was therefore no need to consider the application of section 1 of the *Charter*.

47. Given the standard it establishes for a breach of section 3 of the *Charter*, the *Carter* decision stands for the further proposition that section 1 justification is only required where electoral boundaries established through legislation are inconsistent with the standard of effective representation. It is not enough for electoral district boundaries to depart from voter parity, as such a departure does not amount to a breach of section 3 of the *Charter* in and of itself. Lack of voter parity is at best an indicium of a lack of effective representation, alongside a failure to adequately consider other factors such as "geography, community history, community interests and minority representation."[56]

48. Relying on section 1 of the *Charter* to justify departures from voter parity, as the Superior Court and Court of Appeal did below,[57] is inconsistent with both this Court's precedent in *Carter* and its broader recognition that effective representation serves as the underlying purpose of section

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[55] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 194, 197.
[56] *Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158 at 184.
[57] *Lalande c Procureur général du Québec*, 2025 QCCS 2078 at paras 118, 157; *Lalande c Procureur général du Québec*, 2025 QCCA 1558 at paras 80, 84, 87.

3. Instead of being treated as pressing and substantial objectives under section 1, concerns relating to effective representation should be considered as part of section 3. Meanwhile, the pressing and substantial objectives admitted under section 1 should encompass a wider range of considerations that might justify a departure from the effective representation standard mandated by section 3, as applied through the *Oakes* framework.

b. *Oakes admits a wide range of pressing and substantial objectives*

49. If legislation is found to depart from the effective representation standard required by section 3 of the *Charter*, section 1 permits that departure to be justified by "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."[58]

50. Justification for a breach of *Charter* rights by legislation is to be assessed through the *Oakes* framework. This framework first requires the respondent in a *Charter* challenge to show that the legislation pursues an objective that relates "to concerns which are pressing and substantial in a free and democratic society".[59] If this threshold requirement is met, the respondent must then show that the means chosen are proportionate to the objective.[60] This determination requires that the legislation be rationally connected to its objective, minimally impair the affected right, and have negative effects that are proportional to the benefits of the objective being pursued.[61]

51. The "pressing and substantial" concerns that are acceptable under the first part of the *Oakes* framework are broad. For example, in *Figueroa*,[62] a case dealing with a section 3 *Charter* challenge to federal legislation restricting registered party status to parties nominating candidates in at least 50 electoral districts, this Court accepted a wide range of possible objectives as sufficiently pressing and substantial to potentially meet the requirements of the *Oakes* framework.

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[58] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 1.
[59] *R v Oakes*, 1986 CanLII 46 (SCC), [1986] 1 SCR 103 at para 69.
[60] *R v Oakes*, 1986 CanLII 46 (SCC), [1986] 1 SCR 103 at para 70.
[61] *R v Oakes*, 1986 CanLII 46 (SCC), [1986] 1 SCR 103 at para 70.
[62] *Figueroa v Canada (Attorney General)*, 2003 SCC 37.

52. Specifically, this Court in *Figueroa* found that "the improvement of the electoral process through the public financing of political parties,"[63] "the cost-efficiency of the tax credit scheme" for donations to political parties,[64] and "the preservation of the integrity of the electoral financing regime"[65] were all potentially pressing and substantial objectives. The Court also suggested that the objective of ensuring "the collective benefits associated with the formation of a majority government" might qualify as a pressing and substantive objective for the purposes of section 1 but declined to conclusively decide the issue.[66]

53. In *Harper*,[67] this Court similarly recognized three distinct purposes undergirding electoral financing restrictions as pressing and substantial. These were:

> … first, to favour equality, by preventing those with greater means from dominating electoral debate; second, to foster informed citizenship, by ensuring that some positions are not drowned out by others (this is related to the right to participate in the political process by casting an informed vote); third, to enhance public confidence by ensuring equality, a better informed citizenship and fostering the appearance and reality of fairness in the democratic process.[68]

54. In the case under appeal, the limited range of pressing and substantial objectives considered by the Superior Court and Court of Appeal under section 1 of the *Charter* is inconsistent with both this Court's precedent in *Carter* and its broader jurisprudence concerning the application of section 1 to section 3 claims. Not only should concerns about effective representation have featured as part of the section 3 analysis in this case, but the section 1 analysis undertaken by both courts should have admitted a wider range of potentially pressing and substantial objectives, beyond ensuring effective representation.

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[63] *Figueroa v Canada (Attorney General)*, 2003 SCC 37 at para 62.
[64] *Figueroa v Canada (Attorney General)*, 2003 SCC 37 at para 66.
[65] *Figueroa v Canada (Attorney General)*, 2003 SCC 37 at paras 71-72.
[66] *Figueroa v Canada (Attorney General)*, 2003 SCC 37 at paras 82-83.
[67] *Harper v Canada (Attorney General)*, 2004 SCC 33.
[68] *Harper v Canada (Attorney General)*, 2004 SCC 33 at para 23.

c. *Oakes focuses on impugned legislation, not the process leading to its adoption*

55. At the second, proportionality stage of the *Oakes* framework, the respondent in a *Charter* challenge must then show that the means chosen are proportionate to the objective. This Court has never required Parliament or a provincial legislature to have considered alternatives during its deliberations, or the government to have conducted public consultations, at this stage in the analysis.

56. To the contrary, as this Court explained in *Oakes*, the second portion of this framework involves "consideration of the means chosen by Parliament to achieve its objective. The means must be reasonable and demonstrably justified in a free and democratic society."[69] To the same effect is this Court's recent decision in *Kanyinda*: "Proportionality will be shown if the law is rationally connected to the objective, impairs the right as little as possible, and there is a balance between the benefits of the law and its negative effects."[70]

57. As these and other cases confirm, the focus of the second part of the *Oakes* framework is not on the process that Parliament or a provincial legislature followed when choosing the means to achieve its objective, but on whether the means it in fact chose to implement through legislation were justified. It is the impugned legislation, not the process leading to its eventual adoption, that must conform to the requirements of a rational connection, minimal impairment and balance of benefits and burdens.

58. This understanding of the framework to be applied under section 1 of the *Charter* is also consistent with the primacy that is accorded to parliamentary privilege under the Canadian Constitution. As this Court affirmed in *New Brunswick Broadcasting*, "[t]he members of the Houses of Parliament and the legislative assemblies hold parliamentary privileges as against the

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[69] *R v Oakes*, 1986 CanLII 46 (SCC), [1986] 1 SCR 103 at para 77.

[70] *Quebec (Attorney General) v Kanyinda*, 2026 SCC 7 at para 96.

Crown and the Judiciary",[71] adding that "[i]n the last century, privilege has most often been exercised in the form of immunity against judicial review."[72]

59. Under parliamentary privilege, "[w]hat is said or done within the walls of Parliament cannot be inquired into in a court of law… The jurisdiction of the Houses over their own members, their right to impose discipline within their walls, is absolute and exclusive."[73] Parliament and the provincial legislatures therefore possess control over their own processes, including against potential interferences in those processes by the judiciary. Indeed, as this Court confirmed in *Power*, "[c]ourts cannot review conduct within an area of parliamentary privilege, even for compliance with the *Charter.*"[74]

60. In the case under appeal, the Court of Appeal reviewed conduct within an area of parliamentary privilege as part of its consideration of the minimal impairment portion of the *Oakes* framework. In the Court's view, "l'intimé ne satisfait pas à son fardeau de démontrer que le législateur a soigneusement choisi une mesure parmi une gamme de choix" because "la preuve qu'il y a eu un débat public afin d'examiner une mesure autre que la *LVI* est absente."[75]

61. Similar comments on the legislative process informed the Court of Appeal's conclusions on the balance of benefits and burdens as well. In particular, the Court appears to have been particularly concerned with the process used to adopt the *LVI* where it affirmed that "la justification dite temporaire semble plutôt une excuse ou un compromis à « mi-chemin » motivé par un manque de volonté de prendre une initiative autre que le maintien du *statu quo.*"[76]

62. By inquiring into the extent to which the Quebec National Assembly considered alternatives to the impugned legislation during its deliberations, the Court of Appeal subjected an

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[71] *New Brunswick Broadcasting Co. v Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 SCR 319 at 342.

[72] *New Brunswick Broadcasting Co. v Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 SCR 319 at 342.

[73] *Bradlaugh v Gossett* (1884), 12 QBD 271 at 275, per Lord Coleridge CJ, cited in *New Brunswick Broadcasting Co. v Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 SCR 319 at 342.

[74] *Canada (Attorney General) v Power*, 2024 SCC 26 at para 52.

[75] *Lalande c Procureur général du Québec*, 2025 QCCA 1558 at para 78.

[76] *Lalande c Procureur général du Québec*, 2025 QCCA 1558 at para 87.

area of activity that falls squarely within the privileges of Parliament or a provincial legislature to *Charter* scrutiny. This inquiry, putatively conducted under section 1 of the *Charter*, not only contradicted established precedent, but also contradicted the deeper foundations of Canada's Constitution as well.

C. Conclusion

63. Section 3 of the *Charter* recognizes one of the most fundamental rights held by all Canadians: the right to vote. As this Court recognized in *Carter*, the Canadian understanding of this right has always been premised on the idea of ensuring effective representation, not voter parity as is the case under the American "one person-one vote" model. Ensuring effective representation, in turn, requires due recognition of the principle of federalism, and of the wide scope of variation that exists between different Canadian provinces as to their geographies, community histories, community interests and minority communities.

64. Both these considerations and the value of certainty support the reaffirmation of this Court's decision in *Carter*, holding that electoral district boundaries will respect section 3 if they provide for effective representation. They favour the rejection of the approach adopted by the Superior Court and the Court of Appeal below, which would instead equate section 3 of the *Charter* with a guarantee of voter parity, subject only to deviation where such deviations have been justified through the adoption of a particular process.

65. Both these considerations and the value of certainty also favour the concomitant rejection of the role that these courts attributed to section 1 of the *Charter*. Section 1 permits for justification by reference to a broader range of pressing and substantial objectives beyond the effective representation guaranteed by section 3. Section 1 is also properly concerned with the consequences of legislation on the provision of effective representation, not the legislative process leading up to the adoption of that legislation.

PART IV – COSTS

66. Alberta does not seek costs and submits that the ordinary rule that costs are not awarded against an Intervener should apply.

PART V – ORDER REQUESTED

67. Alberta takes no position on the outcome of the appeal.

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

for:

Stéphane Sérafin
Counsel for the Intervener,
Attorney General of Alberta

PART VII – TABLE OF AUTHORITIES & LEGISLATION

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