COURT OF APPEAL FOR ONTARIO

CITATION: Fair Voting BC v. Canada (Attorney General), 2025 ONCA 581
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Huscroft, Trotter and Dawe JJ.A.

BETWEEN

Fair Voting BC and Springtide Collective for Democratic Society

Applicants (Appellants)

and

Attorney General of Canada

Respondent (Respondent)

and

Electoral Reform Society (UK), The Apathy is Boring Project, Fair Vote Canada* and Canadian Constitution Foundation*

Interveners (Interveners*)

Nicolas M. Rouleau, for the appellants

Sean Gaudet, Andrew Law and Renuka Koilpillai, for the respondent

Jeffrey J. Nieuwenburg, for the intervener Fair Vote Canada

Meaghan Daniel, for the intervener Aboriginal Council of Winnipeg

Tina Lie and Mariam Moktar, for the intervener Women's Legal Education and Action Fund

W. David Rankin and Ankita Gupta, for the intervener Canadian Lawyers for International Human Rights

Sujit Choudhry and Michael Pal, for the intervener South Asian Legal Clinic of Ontario

Asher Honickman and Kristopher Kinsinger, for the intervener Canadian Constitution Foundation

Heard: November 5, 2024

On appeal from the judgment of Justice Edward M. Morgan of the Superior Court of Justice, dated November 30, 2023, with reasons reported at 2023 ONSC 6516.

Huscroft J.A.:

OVERVIEW

[1] Canada has had the same federal electoral system since 1867. Candidates representing political parties seek election in over 300 ridings across the country. The candidate who gets the most votes wins the riding, and following constitutional convention the Governor General invites the political party whose candidates win the most ridings to form a government and seek the confidence of Parliament.

[2] The percentage of votes a party's candidates obtain nationally – aggregated across elections in all of the ridings – may not be commensurate with the percentage of ridings that party wins in the election. For example, a party with support concentrated in particular ridings may win a larger percentage of ridings than its national support suggests it should. Conversely, a party whose support is distributed more evenly across many ridings may win fewer seats than its national support suggests. This is by no means a failure of the system. The number of seats a party has in Parliament is based on individual elections at the riding level rather than the support a political party receives on a national basis, and the parties

campaign accordingly. The percentage of the vote that a party obtains nationally is simply irrelevant.

[3] Many countries have different electoral systems including ranked ballots, single transferable votes, party list, and mixed member proportional representation. Proportional representation electoral systems (PR) share the goal of establishing proportionality between the number of votes a party receives in an election and the number of seats that party receives in the legislature.

[4] PR renders single-party majority government exceptional, as political parties will rarely receive over 50% of the vote and hence win over 50% of the seats in the legislature. Multi-party coalition governments are thus a feature of many forms of PR. Negotiations between multiple parties are required following elections in order to form coalition governments that can command majority support in the legislature and so ensure the passage of legislation.

[5] Electoral reform is a longstanding matter of political debate and academic study in Canada. Some political parties have campaigned on promises of electoral reform and some provinces have held referendums on the adoption of proportional representation systems. But all attempts to change the electoral system – that is, the manner in which votes are translated into representation in Parliament – have failed.

[6] This is the context in which the appellants bring their application seeking a declaration that the federal electoral system is unconstitutional. They argue that it violates not only the right to vote protected by s. 3 of the *Canadian Charter of Rights and Freedoms,* but also the right to equality protected by s. 15(1). The electoral system, they say, is "'a relic of days more barbarous than ours', where representation was restricted to propertied men and stands against Canada's diverse pluralistic society with distinct minorities and voices."

[7] These are extraordinary claims. If they are correct, the federal electoral system is an affront to basic constitutional rights. The same would presumably be true of all the provincial and territorial electoral systems as well.

[8] But these claims are not correct. The electoral system is not in conflict with either the right to vote or the right to equality. It does not violate the *Charter*.

[9] The appellants' arguments that the electoral system violates the *Charter* are, in essence, a repackaging of failed political arguments as constitutional rights violations. The expert evidence put forward in support of them is replete with highly contestable policy arguments about which reasonable disagreement abounds, not only in the academic community but amongst the public at large. This evidence demonstrates the shortcomings of constitutional litigation in addressing public policy disagreements.

[10] The short answer to the argument that the electoral system violates the *Charter* is that Canadian citizens are free to vote for anyone they choose, for any reason they choose. Their choices do not constitute state action and cannot give rise to outcomes that violate either s. 3 or s. 15(1), regardless of how their votes translate into representation in Parliament. There is no constitutional requirement that their individual choices aggregate in a way that achieves some ideal of representational diversity. Neither the political party affiliation nor the personal characteristics of the candidates who win election are relevant to the constitutionality of the electoral system.

[11] Changing the electoral system may or may not be a good idea but it is not required by the *Charter*, nor is there any role for the court in evaluating proposals for electoral reform.

[12] I would dismiss the appeal.

BACKGROUND

The legislation

[13] The appellants challenge ss. 2(1), 24(1), and 313 of the *Canada Elections Act*, S.C. 2000, c.9 (“CEA”). Section 2(1) defines electoral districts, while s. 24(1) requires the appointment of returning officers for each electoral district. The key provision is s. 313(1), which establishes single-member plurality representation in a riding:

> The returning officer, without delay after the sixth day that follows the completion of the validation of results or, if there is a recount, without delay after receiving the certificate referred to in section 308, shall declare elected the candidate who obtained the largest number of votes by completing the return of the writ in the prescribed form on the back of the writ. [Emphasis added.]

[14] Additional provisions of the CEA and accompanying regulations govern the conduct of the parties and candidates in the electoral process. However, these matters are not relevant to the appeal and no more need be said about them.

The operation of the electoral system

[15] The application judge begins his reasons with a brief description of the operation of the electoral system, noting that the CEA is premised on the idea that the candidate who obtains the largest number of votes in a district becomes the Member of Parliament for that district. Given that candidates from several political parties run in each district, as well as independents, the candidate who receives the most votes and so wins the riding may receive only a plurality rather than an absolute majority of the votes cast – that is, less than 50% +1. The application judge terms this system Single Member Plurality (SMP), and states that it results in some people being represented by a Member of Parliament for whom they did not vote.

[16] The application judge canvasses evidence from several scholars concerning the operation of proportional representation electoral systems around the world. The evidence is voluminous and I will not review it here. The application judge

does not make findings on every aspect of the evidence. Instead, at various points in his decision he simply recounts and summarizes the various opinions concerning how electoral systems work and their impact on the formation of governments and the operation of the political system.

[17] The application judge reviews statistical evidence concerning the election of women in SMP and PR systems, noting the experts' views that various cultural and sociological factors are at play in electoral outcomes. He states that although it is self-evident that electoral systems may be tangentially implicated in women's participation in politics, "the particular type of system – whether SMP or PR – is not the cause of women's comparative advantages or disadvantages across societies." That said, the application judge adds that the experts did not have the ability to analyze "the deep sociological and cultural questions underlying the status of women[‘s] position in different societies." He describes the evidence concerning the representation of diverse minorities as necessarily incomplete and states that the political success of "racialized communities … is at best only tangentially related to the form that elections take."

[18] The application judge states that if political effectiveness were the goal, SMP would have a stronger case than PR; but if citizens' "happiness" were the goal, PR would have the upper hand. Both are important from the political science and sociological point of view, and neither can be discounted in assessing the merits

of competing electoral systems. “That said”, he concludes, “neither effectiveness nor satisfaction factors directly into an analysis of constitutional rights.”

The nature and relevance of the expert evidence

[19] As noted above, this application involves a voluminous record with considerable expert evidence proffered by academics, chiefly by those who study politics. Great care is required in assessing such evidence. Social science evidence may have an empirical dimension, but unlike natural science evidence it is not inherently oriented to discovering the objective truth of some matter under investigation. Not all academic disciplines can be evaluated on the same metrics, and not all research has the same methodology or even the same purpose.

[20] Social science research is concerned with human behaviour and typically has a significant normative dimension: research is often a matter of assessing arguments for competing proposals, using contested criteria. Often, what appears to be disinterested conceptual or empirical analysis is better understood as the marshalling of facts and arguments to create a case for a policy change favoured by the author. Evidence that is the product of such research must be assessed with an awareness of the researcher’s objectives, and in the knowledge that there is considerable disagreement – *reasonable* disagreement – amongst social science experts on everything from causation to policy preferences. All of this is to say that the policy recommendations of those within the academic community must

be evaluated by the soundness of their observations and arguments, and not by the sheer fact of their academic credentials. Academic views are not entitled, *a priori*, to priority over anyone else's.

[21] Although the application judge acknowledges that the question for the court is *not* whether the SMP electoral system is optimal according to some set of criteria fashioned by the experts, or whether a PR system would be preferable on some or other basis, he discusses these questions in considerable detail and at several points in his decision comments favourably on PR. There are many variants of PR, however, and it is misleading to talk about PR in the abstract. For example, PR systems may involve the appointment of members to the legislature from lists of candidates compiled by political parties, with seats apportioned having regard to a party's share of the party vote, as opposed to the votes cast for individual candidates. PR systems may establish minimum vote percentage thresholds that must be reached by a party before any of its members are appointed. PR systems may involve the direct election of members to the legislature as well as the appointment of members from party lists. And so on. The many possible variations of PR preclude generalized judgments about its operation. With respect, the application judge's comment that the appellants "have shown that PR would be a fair system" is insufficiently attentive to these nuances and is inapt. It is also irrelevant to the questions before him.

[22] These sorts of comments stray beyond the realm of legal analysis into policy analysis. The court is legitimately concerned only with the question whether the federal electoral system we have violates the *Charter*. Opinion evidence from academic experts as to the operation and potential benefits of a PR electoral system we do not have is not relevant to answering that question.

THE RIGHT TO VOTE

The application judge's decision

[23] The application judge rejects the appellants' argument that the impugned provisions of the CEA violate the right to vote because they result in a disproportion between the number of votes a party receives and the number of seats it secures. The right to vote is to be interpreted with an eye to "effective representation", but voting rights focus on electoral process rather than electoral outcomes. Effective representation means the right to participate in an election and to have a representative of your riding in Parliament. It does not mean that Parliament must reflect any particular electoral outcome or form of government.

[24] The application judge states that s. 3 does not establish a right to play a role in government; rather, it is concerned with the right to play a meaningful role in selecting representatives to make decisions on their behalf. Although PR provides voters with a more direct link to a Member of Parliament for whom they voted, Members of Parliament are responsible to their entire constituency, including those

who did not vote for them or their party. This understanding, he notes, has been described by the Supreme Court in *Figueroa v. Canada (Attorney General)*, 2003 SCC 37, [2003] 1 S.C.R. 912 as a complete statement of the purpose of s. 3. On this view, no votes are wasted votes.

[25] The application judge finds that although the evidence demonstrated that SMP elections have their flaws and may produce anomalous results, those flaws do not result in the ineffective representation of citizens. The application judge endorses the view of the Court of Appeal of Quebec in *Daoust v. Québec (Directeur general des élections)*, 2011 QCCA 1634, [2011] R.J.Q. 1687, leave to appeal refused, [2011] S.C.C.A. No. 490 – a near identical challenge to the electoral system under the Canadian *Charter* and the Quebec *Charter* – that the right to vote is respected "[o]nce there is effective representation of citizens, which implies the possibility that each elector can exercise his right to vote periodically, freely, and secretly, be a candidate for office, vote for the party of his choice, and express himself in public": at para. 56.

The right to vote in the Supreme Court

[26] Unlike many *Charter* rights, the right to vote in s. 3 is not worded vaguely. On the contrary, it is expressed with rule-like clarity: "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly". Nevertheless, it is also clear that the right to vote leaves

much unsaid. The right to vote presumes a democratic procedural baseline and all that this entails – voter enumeration and registration, elections with secret ballots, secure places to vote, vote-counting and dispute resolution procedures, and so on, all of which are provided by ordinary legislation and executive decisions. See, generally, Grégoire Webber, et al., *Legislated Rights*: *Securing Human Rights through Legislation* (Cambridge: Cambridge University Press, 2018). But are other rights implied by the right to vote?

[27] The Supreme Court has decided several cases concerning the right to vote and two lines of decisions emerge. The first applies the right to vote in rule-like fashion and gives rise to little difficulty for purposes of this appeal. This line of cases implicates the most basic aspect of the right to vote: the right to participate in an election by casting a ballot. For example, in *Sauvé v. Canada (Attorney General)*, [1993] 2 S.C.R. 438 and *Sauvé v. Canada (Chief Electoral Officer)*, 2002 SCC 68, [2002] 3 S.C.R. 519, the Court invalidated legislation that denied inmates the right to vote, while in *Frank v. Canada (Attorney General)*, 2019 SCC 1, [2019] 1 S.C.R. 3, the Court invalidated legislation that denied citizens living abroad the right to vote. *Haig v. Canada*, [1993] 2 S.C.R. 995 also concerned the right to cast a ballot, but it arose in the context of a referendum rather than an election and the Court found no infringement of s. 3.

[28] The second line of cases involves a purposive interpretation of the right to vote and results in the establishment of two additional rights: the right to “effective

representation” and the right to “meaningful participation”. These rights introduce considerable uncertainty as to the outer boundaries of the right to vote and are key to the outcome of this appeal.

Effective representation

[29] The concept of effective representation was outlined by McLachlin J. in *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158. She described it as entitling citizens to be represented in government – to have a voice in government deliberations and to have the ability to raise their concerns and grievances with their elected representatives. Justice McLachlin described effective representation as a freestanding right, rather than simply the *purpose of* the right to vote: at pp. 188-89.

[30] In doing so she merged conceptually distinct concepts: rights, which are constitutionally protected, and the purpose of particular constitutionally protected rights, which is not. The purpose ascribed to a particular right will often be broader than the right itself, and as a result the characterization of purposes as rights may broaden the scope of *Charter* rights considerably. However, recognition of the right to effective representation did not have the effect of broadening the right to vote in the *Electoral Boundaries Reference*; on the contrary, it led to a narrower result than what would have been required had the Court concluded that the right to vote required each vote to count equally. The Court held that disparity in the size of

electoral ridings that had the effect of enhancing or diminishing the relative value of individual votes did not infringe the right to vote. This was the context in which the court concluded that the right to vote protected "effective representation". Although the court stated that parity of voting power was an important consideration, it was not the only thing that mattered: geography, community history, community interests, and minority representation were also important considerations in determining the size of electoral ridings.

[31] Despite the outcome in the *Electoral Boundaries Reference*, "effective representation" is a vague term that has the potential to broaden the scope of the right to vote considerably. It all depends on what the concept of representation includes and what "effective" representation is understood as requiring. The question on this appeal is whether effective representation extends to the manner in which votes are translated into representation in Parliament.

Meaningful participation

[32] The right to effective representation was supplemented by the right to play a meaningful role in the electoral process – the right to "meaningful participation" – in *Figueroa*. Iacobucci J. described this right as participatory in nature, concerned with enhancing participation in the electoral process and promoting political debate so that society can benefit from the full range of opinions that people hold. He emphasized that participation in the electoral process has an intrinsic value

regardless of its outcome: citizens must be afforded a genuine opportunity to take part in governance by participating in selecting their elected representatives.

[33] Although the right to meaningful participation is not subject to internal qualifications, Iacobucci J. noted that the content of the right is stated in qualified terms. Voters have the right to be *reasonably informed* and candidates' have the right to have a *reasonable opportunity* to present their positions: *Figueroa*, at para. 131. This, he said, means that s. 3 does not protect the right of citizens to play an unlimited role in the electoral process.

[34] Although the Supreme Court reiterated its commitment to both effective representation and meaningful participation in its recent decision in *Ontario (Attorney General) v. Working Families Coalition (Canada) Inc.*, 2025 SCC 5, 500 D.L.R. (4th) 193, the court split three ways in applying these rights. A majority of the court held that limitations on third party spending in the pre-election period violated the right to meaningful participation because they permitted political parties to have a disproportionate voice in the political discourse, and so deprived voters of a broad range of views and perspectives on social and political issues. Thus, the right to vote is concerned with political discourse and related issues, including spending limits, and may be exercised by third parties as well as political parties and their candidates.

The positions of the parties

[35] The appellants argue that the federal electoral system violates the right to effective representation in three ways. First, it results in large numbers of voters who, unable to elect a representative they support, end up represented by an MP they do not support, and may oppose. Second, it diminishes the value of votes cast for small parties compared to those cast for larger or regional parties. Third, it violates the principle of majority rule: that the majority of elected representatives should represent the majority of the citizens entitled to vote.

[36] The appellants argue that SMP violates the right to meaningful participation because it favours large parties over small and so reduces the participation and engagement of voters and candidates for small parties, as well as those who live in “safe” ridings held by another party, which their preferred candidate has little chance of winning. Finally, the appellants argue that the application judge improperly balanced the right to vote against competing interests, conflating the distinct analyses required under ss. 3 and 1 of the *Charter*.

[37] Following release of the Supreme Court’s decision in *Working Families*, the parties were invited to make additional submissions. The appellants argue that the principles underlying the “egalitarian model of elections”, a term coined in the election spending cases *Libman v. Quebec (Attorney General)*, [1997] 3 S.C.R. 569 and *Harper v. Canada*, 2004 SCC 33, [2004] 1 S.C.R. 827, should apply to

the right to effective representation as well as the right to meaningful participation. The electoral system, they say, results in disproportionalities that enable large political parties and small groups of voters to exercise undue influence – not just on electoral discourse, but also the composition of Parliament, legislation passed, and ultimately, the political course of the nation.

[38] The respondent argues that the application judge found that different electoral systems have different advantages and disadvantages, but also that no system has a monopoly on effective representation. Effective representation turns not on ideological consistency between citizens and their representatives but on the integrity of the democratic process itself. There is no justification for the court to depart from the long-settled understanding that effective representation exists independent of electoral results. The Supreme Court's decision in *Working Families* reiterates this approach: s. 3 is concerned with process – disparities within the electoral process, regardless of any impact on voting results.

[39] The respondent argues that meaningful participation contemplates the opportunity afforded citizens to take part in the governance of the country through the selection of elected representatives. The challenged provisions affirm rather than deny meaningful participation because they give effect to the basic democratic precept that the candidate who receives the most votes is elected, as well as the personal autonomy to vote directly for individual candidates rather than a list drawn up by political party intermediaries. The application judge did not

impermissibly balance s. 3 against group interests. He merely considered contextual factors in determining the content of the right to vote.

DISCUSSION

[40] How is it possible that a system in which citizens are free to cast ballots for the candidates and political parties of their choice could infringe the right to vote? The answer, according to the appellants, is that the electoral system does not work as well as it should. Small political parties do not fare as well as they deserve to, and as a result those who vote for them are disadvantaged in the political process.

[41] I do not doubt that small political parties fare poorly in Canada. They receive relatively few votes and invariably win few or no seats. But why does this sound as a *Charter* infringement rather than a political complaint? How can the failure of a political party establish a claim for constitutional redress?

[42] The answer is that it cannot. As I will explain, although the right to vote presumes the operation of a democratic order, it stands apart from the electoral system in which that right is exercised. In short, the right to vote is a right to vote pursuant to the electoral system in operation – whatever that system is, and regardless of the electoral outcomes that may obtain.

[43] I will review briefly the concept of purposive *Charter* interpretation before addressing the rights to effective representation and meaningful participation inferred from s. 3.

The scope and limits of purposive interpretation

[44] Purposive interpretation of *Charter* rights begins with *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295. As Dickson C.J. explained in that case, *Charter* rights and freedoms are to be understood in light of the interests they were meant to protect. Purpose must be determined by reference to, amongst other things, "the language chosen to articulate the specific right or freedom", "the historical origins of the concepts enshrined", and "the meaning and purpose of the other specific rights and freedoms with which it is associated within the text of the *Charter*" Dickson C.J. warned that "it is important not to overshoot the actual purpose of the right or freedom in question, but to recall that the *Charter* was not enacted in a vacuum, and must therefore … be placed in its proper linguistic, philosophic and historical contexts": at p. 344.

[45] The Supreme Court has, since *Big M Drug Mart,* repeatedly emphasized the importance of constitutional text, making plain that purposive interpretation is necessarily informed and constrained by the text of the *Charter*. In *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32, [2020] 3 S.C.R. 426, the Court referred to the "primordial significance" of constitutional text, which it explained as follows:

> This Court has consistently emphasized that, within the purposive approach, the analysis *must begin* by considering the text of the provision….

> This is so because constitutional interpretation, being the interpretation *of the text of the Constitution*, must first and foremost have reference to, and be constrained by, that text. Indeed, while constitutional norms are deliberately expressed in general terms, the words used remain "the most primal constraint on judicial review" and form "the outer bounds of a purposive inquiry": B.J. Oliphant, "Taking purposes seriously: The purposive scope and textual bounds of interpretation under the Canadian Charter of Rights and Freedoms" (2015), 65 *U.T.L.J.* 239, at p. 243. The Constitution is not "an empty vessel to be filled with whatever meaning we might wish from time to time"….
>
> Moreover, while *Charter* rights are to be given a purposive interpretation, such interpretation must not overshoot (or, for that matter, undershoot) the actual purpose of the right … Giving primacy to the text — that is, respecting its established significance as the first factor to consider within the purposive approach — prevents such overshooting. [at paras. 8-10, internal citations omitted.]

[46] The importance of constitutional text cannot be overstated. Canadians did not adopt a generic charter of rights. We adopted a very specific charter of rights: the *Canadian Charter of Rights and Freedoms*, which establishes as supreme law the specific rights and freedoms it enumerates and so enshrines. The text of the *Charter* and the constitutional settlement it effects necessarily structure and delimit the scope of purposive interpretation.

The electoral system does not limit the right to vote

[47] How does this play out in the context of the right to vote? Plainly, the two rights inferred from the right to vote – effective representation and meaningful

participation – expand the scope of that right beyond its literal confines. But that expansion is not unlimited: purposive interpretation cannot legitimately change the essential nature of *Charter* rights. It does not permit the judicial incursion into the design of the electoral system the appellants advocate, let alone require it.

[48] A careful reading of the Supreme Court's decisions demonstrates that the right to vote is not to be understood so broadly as the appellants argue. For example, although McLachlin J. said in the *Electoral Boundaries Reference* that the right to vote was to be interpreted "in a broad and purposive way, having regard to historical and social context", she stated clearly that "[t]he circumstances leading to the adoption of the *Charter* negate any intention to reject existing democratic institutions": at pp. 179, 185. This point was reiterated in *Figueroa*, where Iacobucci J. went further by describing s. 3 as protecting rights that are *"*participatory in nature". He stated specifically: *"*Section 3 does not advert to the composition of Parliament subsequent to an election, but only to the right of each citizen to a certain level of participation in the electoral process": at para. 26.

[49] Apart from the cases in which the Supreme Court has found violations of the right to vote arising out of prohibitions on the casting of ballots, the Court has been concerned with legislation regulating pre-election and campaign periods. Most recently, in *Working Families*, the Court found that election spending limits on third parties violated the right to vote, and in *Figueroa* the Court found that the regulation of political party status violated the right to vote. There is no doubt that these

decisions expand the scope of the right to vote. At the same time, however, there is no doubt that the Court has limited the scope of that expansion. Specifically, para. 37 of *Figueroa* makes clear that the right to vote has nothing to say about the nature or design of the electoral system:

> [T]he fact that our current electoral system reflects certain political values does not mean that those values are embedded in the *Charter*, or that it is appropriate to balance those values against the right of each citizen to play a meaningful role in the electoral process. After all, the *Charter* is entirely neutral as to the type of electoral system in which the right to vote or to run for office is to be exercised. This suggests that the purpose of s. 3 is not to protect the values or objectives that might be embedded in our current electoral system, but, rather, to protect the right of each citizen to play a meaningful role in the electoral process, whatever that process might be. [Emphasis added.]

[50] Although *Working Families* extends the rights to "effective representation" and "meaningful participation" to include expressive components that overlap the protection afforded by the freedom of expression, this extension occurs in the context of the pre-election period, to which the right already applied. It is designed to ensure that citizens are able to receive information from third parties in order that they can make well-informed voting decisions, without regard to the electoral system in which their votes are cast.

[51] *Working Families* is another example of the Supreme Court protecting the right to participate in the political process. Nothing in the decision speaks to the nature or design of the electoral system itself. The majority of the Court refers to

"the right of a citizen to vote 'in a manner that accurately reflects his or her preferences'": at para. 32, citing *Figueroa*, at para. 54. But even the majority in *Working Families* does not go so far as to say that s. 3 protects the right to have those preferences translated into legislative power. For their part, Justices Côté and Rowe (dissenting) anticipate the *Charter* challenge in this case and reiterate Justice Iacobucci's remarks from *Figueroa.* The *Charter* is neutral as to the type of electoral system that is used, they say, and the purpose of s. 3 "does not enable courts to direct Parliament or the legislatures as to the overall design of the electoral system". The court's role is to "ensure that the right of each citizen to play a meaningful role in the electoral process — *whatever that electoral process might be* — is upheld": at para. 210 (emphasis added).

[52] It is easy to lose sight of the scope of s. 3 given the ostensible breadth of the language of "effective" representation and "meaningful" participation. But the purposes a court ascribes to a right cannot licence continued expansion of that right without undermining the constitutional settlement the *Charter* effects.

[53] The constitutional settlement effected by the inclusion of s. 3 in the Charter is a limited one: every Canadian citizen has the right to vote in federal and provincial elections. The right to vote is, at its heart, a right to participate in choosing a community's representative in Parliament or a provincial legislature by casting a ballot – a right to participate in a democratic electoral process. It does not entail a right to be represented by a candidate or party of one's choice, or a

right to have that candidate or party share in the political decision-making authority that flows from forming government. This occasions no hardship to those whose preferred candidates or parties do not succeed in elections. As the application judge notes, it is foundational to the democratic constitutional order that Members of Parliament are responsible for representing their entire constituencies – those who voted against them as well as those who supported them.

[54] The political difficulties facing small political parties may well discourage some people from voting for them, or even from voting at all, but that decision is theirs to make. The right to vote is an individual right: each person may exercise it as he or she sees fit. Whether a person chooses to vote for a large party, a small party, to vote strategically – even to spoil their ballot, or not to vote at all – is of no moment as far as s. 3 is concerned. Democratic political outcomes following elections do not violate the right to vote.

[55] I conclude that the Canadian electoral system does not conflict with the right to vote. It remains to consider the claim that it conflicts with the right to equality.

THE RIGHT TO EQUALITY

The application judge's decision

[56] The application judge rejects the appellants' argument that the CEA creates adverse impact discrimination by causing the underrepresentation of small national parties, women, and racial minorities in Parliament. He applies the

approach to s. 15(1) set out by the Supreme Court in its recent decision in *R. v. Sharma,* 2022 SCC 39, 486 D.L.R. (4th) 579. This requires the appellants to demonstrate that SMP:

a) creates a distinction based on enumerated or analogous grounds, on its face or in its impact; and

b) imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.

The application judge emphasizes the need for an equality rights claimant to establish "a sufficient causal connection between the state-caused [effect] and the prejudice suffered by the [claimant]", citing *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307, at para. 60. The link must be real, rather than speculative: *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101, at para. 76.

[57] The application judge notes that no evidence was proffered that any person had suffered discrimination on an enumerated ground under s. 15(1). He finds it was "far from proven" that the electoral system causes underrepresentation of women in Parliament. He makes the same finding concerning the claim of underrepresentation of "racialized Canadians". The electoral system may reflect racial disparities, he says, but it does not cause them. "And since the evidence does not establish that implementing PR in Canadian elections would do any better than SMP, the section 15 claim is not made out."

[58] The application judge rejects the attempt to establish an analogous ground of discrimination based on political affiliation as unsupported in the case law. Although voters may be ideologically committed to the political party they support, political affiliation is not a personal characteristic that is immutable or changeable only at unacceptable cost to personal identity. On the contrary, the application judge notes that voters can and do change their minds regularly.

The positions of the parties

[59] The appellants argue that the application judge erred in imposing a heightened causation threshold under s. 15(1). The primary cause of underrepresentation of women and minorities was irrelevant. According to the appellants, to establish that s. 15(1) was infringed, they need prove only that the impact of the CEA *contributes to* the underrepresentation of women and minorities in Parliament. It does so, they say, by incentivizing political parties to predominately run white men as candidates in the most winnable ridings.

[60] The appellants argue that the application judge made three palpable and overriding factual errors. First, he mischaracterized the evidence in denying any nexus between the electoral system and the representation of women in Parliament. Second, he erred in finding that the electoral system reflects but does not cause racial disparities in representation. And third, he erred in rejecting evidence of New Zealand’s experience with PR. The appellants argue that once

these errors are corrected, SMP must be found to establish a distinction based on enumerated grounds by reducing political parties' incentives to run balanced slates of candidates, which in turn contributes to the underrepresentation of women and minorities. The analysis then turns to the second stage, and the evidence establishes that the underrepresentation of women and minorities in Parliament has the effect of reinforcing, perpetuating, or exacerbating disadvantages. Underrepresentation reinforces harmful stereotypes and jeopardizes the legitimacy of the electoral system, while proportionally representing women and minorities would positively impact deliberation and policy making processes.

[61] In addition, the appellants argue that the application judge erred in finding that SMP does not discriminate against those who vote for small national parties. Political affiliation is part of the core personal identity of those who vote for small parties and central to their worth, freedom, and dignity. Moreover, small parties like the Communist Party, Marijuana Party, and Green Party have historically been discriminated against. Political affiliation or party support should be recognized as an analogous ground of discrimination under s. 15(1).

[62] The appellants argue that the infringements of ss. 3 and 15(1) they identify cannot be justified under s. 1, asserting that SMP would fail at the minimal impairment stage. The electoral system, they submit, is not carefully tailored to minimally impair fundamental rights of representation and equality.

[63] The respondent argues that the application judge properly found that the appellants had not met their burden of establishing a sufficient causal connection between the state-caused effect and the prejudice they asserted.

[64] The respondent argues that the application judge made no palpable and overriding error in concluding that cultural and sociological factors external to the electoral system play the key role in representation of women and minorities, and that those factors would persist even if a PR electoral system were adopted. Further, the application judge was entitled to reject evidence of New Zealand's experience with minority representation under PR given the many differences between Canada and New Zealand.

[65] Finally, the respondent argues that the application judge applied the relevant case law and properly concluded that the appellants failed to establish that political party affiliation should be recognized as an analogous ground of discrimination under s. 15(1). The evidence did not establish that political opinion was immutable or changeable only at unacceptable cost to personal identity.

DISCUSSION

[66] Section 15(1) of the *Charter* provides as follows:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[67] It would be an understatement to say that s. 15(1) has given rise to interpretive difficulty. Equality is an essentially contested concept: an aspirational goal shared by all, despite widespread disagreement about the nature of the concept – what it requires and what it precludes. Good faith disagreement about interpretation is inevitable.

[68] The history of s. 15(1) and its interpretation are outlined clearly by Miller J.A. in *R. v. Sharma*, 2020 ONCA 478, 152 O.R. (3d) 209, at paras. 195-225, and need not be repeated here. It is enough to emphasize the peculiar difficulties associated with claims of indirect, or adverse impact, discrimination.

[69] Adverse impact discrimination arises incidentally as a side effect of legislation designed to promote the public good. Legislation designed to secure benefits inevitably produces side-effects – unintended consequences that may not be foreseen by legislators. Laws of general application are, in this sense, invariably imperfect. The question is, when do unintended side-effects rise to the level of constitutionally prohibited discrimination?

Causation is required

[70] In *Sharma*, the Supreme Court's most recent decision on adverse impact discrimination, the Court held that s. 15(1) includes a causation requirement. The majority's decision is in some ways difficult to reconcile with the prior decision of the Court in *Fraser v. Canada (Attorney General)*, 2020 SCC 28, [2020] 3 S.C.R.

113. However, that decision is itself at odds with the Court's prior decisions interpreting s. 15(1): see Hoi L. Kong, "Section 15(1): Precedent and Principles" (2023) 112 S.C.L.R. (2d) 149, at p. 161.

[71] In my view, the first stage in the analysis under s. 15(1) – whether the legislation creates a distinction based on enumerated or analogous grounds, on its face or in its impact – depends on causation. If it were otherwise – if mere statistical disparity in the application of a law were sufficient at the first stage of the analysis – the scope of adverse impact discrimination would be so broad as to trivialize the concept. Given that all laws of general application apply imperfectly, findings of adverse impact discrimination would become routine. Discrimination would be all but impossible for legislators to avoid.

[72] To say that causation is required is to say little, however, for everything depends on how causation is understood, and in particular what is required in order to establish it. The majority in *Sharma* described the claimant's burden as establishing that the impact of the impugned law "creates or contributes to a disproportionate impact" on the basis of a protected ground: at para. 42. "Creation" suggests that adverse impact discrimination occurs where the law is the sole or, at the very least, the predominant reason for the disproportionate treatment – essentially, a sort of but-for test. In contrast, "contribution" is a lower threshold that invites consideration of degree. This is a difficult concept, for the contribution of a law to a disproportionate impact on a protected group may be small or large, one

of few contributions or many. The requirement that the impact be *disproportionate* adds an additional layer of complexity to the analysis. *Sharma* provided little guidance in this regard; the majority noted simply that “the impugned law need not be the only or even the dominant cause of the disproportional impact”: at para. 45.

[73] Identifying causation in the electoral system is especially difficult because electoral outcomes are multi-factorial: they flow not simply from the way in which ballots are translated into representation, but from myriad decisions made by political actors and parties, not only locally but also at the regional and national levels – decisions made long before millions of citizens decide how to cast their ballots. All of these decisions are made in the context of the SMP electoral system and the political incentives and disincentives it establishes. Correlation is obvious, but correlation is not causation.

The limits of deference

[74] The appellants’ s. 15(1) argument can be dismissed on the basis that the application judge’s decision is entitled to deference. His conclusion that causation was not established can be characterized as a finding of fact based on his review of the expert social science evidence. The appellants have not established that the application judge made any palpable and overriding errors that would allow this court to intervene.

[75] The decision to uphold the application judge's decision on this basis follows the Supreme Court's instruction in *Bedford* as to how social science findings are to be treated on appeal. But we should be clear about what this means: that the constitutionality of the federal electoral system rests on a requirement to defer to the findings of a single judge concerning highly contestable social science evidence.

[76] Consider a counterfactual. Suppose that, instead of finding that causation was not established, the application judge made the findings that the appellants submit he should have: that PR systems moderate the effect of sexist attitudes and make it easier for women to get elected; that SMP disadvantages geographically dispersed minority and women voters and candidates; and that New Zealand's experience with PR is a useful model for Canada – all findings that, according to the appellants, were supported by the expert social science evidence.

[77] These too would be findings to which this court would be expected to defer, but they would support the opposite result: a finding that the SMP electoral system causes a disproportionate impact on women and racial minorities. Given this finding, it would not be difficult to establish that this disproportionate impact has the effect of reinforcing, perpetuating, or exacerbating the disadvantage of women and racial minorities in politics. The result would be a conclusion that the electoral system infringes s. 15(1) of the *Charter*.

[78] It is difficult to accept that a conclusion that the federal electoral system is discriminatory should depend on the social science findings of a single judge. And yet, that is the result of the Supreme Court's instruction in *Bedford*, at paras. 48-56, that appellate courts are to defer to social science findings made at trial.

[79] The problem is not simply that findings of fact based on highly contestable social science evidence are entitled to deference; it is that those findings may essentially determine the alleged *Charter* infringement. And even to the extent that findings can be characterized as a mixed question of fact and law, *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 instructs that the standard of review remains palpable and overriding error – although as I discuss below, there is now some uncertainty in this regard.

[80] The nature of the problem is put in sharp relief by the application judge when he says: "[S]ince the evidence does not establish that implementing PR in Canadian elections would do any better than SMP, the section 15 claim is not made out." I do not see why the constitutionality of the federal electoral system should depend on this sort of judgment, still less why this sort of judgment should be entitled to deference in this court. How could evidence establish that a foreign electoral system would deliver "better" results than the SMP electoral system? At the end of the day it is academic conjecture about how a different electoral system would operate in Canada. It is usefully discussed in academic and policy development settings, but it is hardly the stuff of constitutional law.

[81] The application judge seems to recognize as much, stating that there was nothing in the record to suggest, let alone prove, that Canada would follow New Zealand's lead and so achieve similar outcomes if PR were adopted. And yet he strained to reject the relevance of New Zealand's experience with PR, pointing to relatively minor differences between Canada and New Zealand, including New Zealand's distinctive approach to tort reform, its smaller population and land mass, and its climate and geography. He could just as easily have noted more salient similarities between the two countries, including the fact that both are Westminster parliamentary democracies with common law legal orders complete with a bill of rights. And had he chosen to do so, he could just as easily have concluded that the representation of women and racial minorities would improve if PR were adopted in Canada, and that the appellants had established discrimination under s. 15(1).

Uncertainty in deference doctrine

[82] This appeal was argued on the basis that the application judge's legal conclusions on ss. 3 and 15(1) were reviewable for correctness, but that his underlying factual findings were entitled to deference. The parties made no submissions concerning the relevance, if any, of the Supreme Court's decision in *Société des casinos du Québec inc. v. Association des cadres de la Société des casinos du Québec*, 2024 SCC 13, 491 D.L.R. (4th) 385. In that case, the majority of the court endorsed Côté J.'s concurring reasons, which held that findings of

mixed fact and law made in connection with a constitutional question are subject to review for correctness. Only findings of "pure" fact that can be isolated from the constitutional analysis are entitled to deference: see paras. 45, 92-97.

[83] The constitutional question in *Société des casinos* arose on an appeal from a judicial review and was decided in accordance with the framework established in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653. Neither *Housen* nor *Bedford* was mentioned by the court, nor did the court acknowledge that it was altering the approach established by those cases and others. Nevertheless, two decisions in this court have assumed from *Société des casinos* that the correctness standard also applies to findings of mixed fact and law arising from civil constitutional appeals: see *R. v. Pike*, 2024 ONCA 608, 171 O.R. (3d) 241, at para. 31, and *Jacob v. Canada (Attorney General)*, 2024 ONCA 648, 172 O.R. (3d) 721, at para. 53, leave to appeal refused, [2024] S.C.C.A. No. 488.

[84] Two other decisions from this court, however, applied the palpable and overriding error standard to findings of fact relevant to the legal question at issue: *Ontario English Catholic Teachers Association v. Ontario (Attorney General)*, 2024 ONCA 101 at para. 51 and *Amalgamated Transit Union, Local 113 v. Ontario*, 2024 ONCA 407, 172 O.R. (3d) 571, at paras. 31-33. Dissenting in the *Amalgamated Transit Union* case, Nordheimer J.A. would have applied the approach in *Société des casinos* and reviewed the mixed findings below for correctness: at paras. 190-

94. There also appears to be disagreement on the Supreme Court as to whether the decision in *Société des casinos* extends to civil constitutional appeals. In their dissenting opinion, Chief Justice Wagner and Justice Moreau cited *Housen* in asserting that findings of mixed fact and law are reviewable only for palpable and overriding error: at paras. 108-9.

[85] This lack of clarity in the law has attracted academic commentary. See Anthony Sangiuliano & Mark Friedman, “What is the Standard of Review for (Mixed) Constitutional Questions?” (U.B.C. L. Rev., forthcoming). It is not necessary to weigh in on the debate for purposes of this appeal; neither party on appeal has characterized the application judge’s findings as findings of mixed fact and law. It is enough to note that the law requires clarification, not least because the distinction between findings of pure fact and findings of mixed fact and law – where both are made in connection with a constitutional question – may be subtle at best. That is certainly the case here.

The electoral system does not infringe s. 15(1)

[86] Putting the appellants’ case at its highest, there is evidence that some scholars think that PR systems will yield better outcomes – better, in the sense of having more women and racial minorities in Parliament. But their opinions provide no support for the conclusion that the SMP electoral system creates or contributes

to a disproportionate impact on women or racial minorities in a manner that constitutes discrimination.

[87] Thus, I agree with the application judge that the appellants' s. 15(1) argument must fail. That being said, I part company with him where his analysis strays into the political and policy realm. For example, the application judge notes the experts' view that attitudes towards women in the political arena are "sociologically and culturally determined" and finds there is no evidence that any political parties are or would be "better for women" than any other. This suggests a normative judgment of some sort, but it is not for the judge to make it. Better for women on what criteria? And how is the question whether any political party would be better for women relevant to the constitutionality of the electoral system in any event?

[88] The application judge asserts that the percentage of women in Parliament is "still too low" and adds that "Canadian political leaders and Canadian society overall should be encouraged to strive for gender parity in public institutions, including Parliament and the provincial legislatures." With respect, these sorts of remarks are out of place in a judicial decision concerned with determining a constitutional challenge. So too is the application judge's apparent endorsement of expert evidence that Canadian society is systemically sexist and racist.

[89] The concepts of over and underrepresentation are discussed as though they are neutral observations, devoid of normative content. But normative judgments are implicit in both observations: overrepresentation means that too many men in Parliament is a bad thing; underrepresentation means that too few women and racial minorities is a bad thing. Both judgments suggest that the composition of Parliament may be more or less legitimate depending on its demographic diversity. They also appear to suggest that a more diverse Parliament would be a better lawmaker.

[90] These are highly contestable political judgments, not matters of constitutional rights governed by the *Charter*. No matter what electoral system is employed, over or underrepresentation of particular demographic groups may occur to a greater or lesser extent from time to time. Arguments based on over and underrepresentation lose sight of the fundamental fact of the matter: the people are entitled to vote for whomsoever they want, for any reason they want. This is the very essence of the freedom that lies at the heart of the right to vote.

[91] The people are free to join political parties and nominate candidates of their choice; to campaign for or against parties or candidates; and ultimately to cast or withhold their vote for any reason, wise or foolish. The people may, if they choose, vote on the basis of a candidate's sex, race, or any other attribute they consider important. The people are not bound by the *Charter* and the votes they cast cannot give rise to an outcome that infringes constitutional rights, whether under s. 15(1)

or any other provision of the *Charter*. This is so whether the electoral system is based on SMP or some form or proportional representation. The right to equal protection and benefit of the law without discrimination does not mandate that the electoral system optimize representation in Parliament by sex, race, or any other prohibited ground of discrimination.

Political affiliation is not an analogous ground for purposes of s. 15(1)

[92] The appellants' final argument, that political affiliation should be recognized as an analogous ground of discrimination under s. 15(1), can be dealt with briefly.

[93] The nature of analogy – what counts as analogous and how it is determined – is controversial. See Frederick Schauer & Barbara A. Spellman, "Analogy, Expertise, and Experience" (2017) 84 U. Chicago L. Rev. 249. The argument that political affiliation is analogous to the other prohibited grounds of discrimination is not developed in the appellants' submissions. Instead, they simply assert that political affiliation is part of a person's core personal identity, central to their worth, freedom, and dignity – something the government has no interest in expecting a person to change in order to be proportionally represented.

[94] This assertion finds no support in the case law, and I see no error in the application judge's decision rejecting it. The application judge reviews the relevant authority, including *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, and the nature of analogous grounds, which the court

described in *Corbiere* as “a personal characteristic that is immutable or changeable only at unacceptable cost to personal identity”: at para. 13. Although many people identify with the political parties they support, that does not make political affiliation a matter of personhood. The application judge properly distinguishes *Quebec (Attorney General) v. A*., 2013 SCC 5, [2013] 1 S.C.R. 61, on the basis that marital status is not akin to support for a political party, albeit that both involve matters of choice. It is noteworthy that membership in a political party was rejected as an analogous ground in *Canada (Attorney General) v. Reform Party of Canada*, 1995 ABCA 107, 123 D.L.R. (4th) 366, at para. 77. As the application judge notes, if membership in a political party is not an analogous ground, then casting a vote for a member of a political party, an even weaker affiliation, cannot qualify.

[95] The appellants disagree with the application judge’s analysis but offer no basis for this court to interfere with his conclusion on appeal. This argument must be rejected.

CONCLUSION

[96] In summary, Canada’s electoral system does not establish limits on either the right to vote under s. 3 or the right to equality under s. 15(1). No burden of justification under s. 1 arises. In light of these conclusions, it is not necessary to address the argument that SMP is, in effect, constitutionalized by parts of the

Constitution Act, 1867, such that it cannot be altered without constitutional amendment, and I make no comment on it.

DISPOSITION

[97] I would dismiss the appeal. The Attorney General has not sought costs and none are awarded.

Dawe J.A. (Concurring):

[98] I have had the advantage of reading my colleague Huscroft J.A.'s reasons. I agree with his conclusion that the existing federal electoral system does not violate either s. 3 or s. 15 of the *Charter*. Like my colleague, I would accordingly dismiss the appeal.

[99] However, I write separately to note my disagreement with some of Huscroft J.A.'s comments about the role of the courts in assessing the constitutionality of federal, provincial and territorial electoral systems.

[100] Huscroft J.A. characterizes the s. 3 *Charter* right as "a right to vote pursuant to the electoral system in operation – whatever that system is, and regardless of the electoral outcomes that may obtain." Elsewhere in his reasons he suggests that there is no "role for the court in evaluating proposals for electoral reform."

[101] In my view, such a narrow conception of the scope of s. 3, and of the role of the courts in enforcing its guarantees, is at odds with the Supreme Court of Canada's interpretation of s. 3 in the *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158 ("*Saskatchewan Boundaries Reference*"). Writing for the majority in that case, McLachlin J., as she then was, concluded that s. 3 guarantees citizens not just the right to cast a ballot, but a right to "effective representation". She explained that this does not guarantee absolute voter parity, but added, at p. 185, that:

> [D]eviations 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. [Emphasis added.]

[102] Once it is recognized that s. 3 guarantees citizens a right to effective representation, it follows that s. 3 must constrain both the extent to which an electoral system can permissibly deviate from absolute voter parity, and the justifications that can permissibly be relied on by the legislature to support any such deviations. While in *Figueroa v. Canada (Attorney General)*, 2003 SCC 37, [2003] 1 S.C.R. 912, at para. 37, the majority stated that "the *Charter* is entirely neutral as to the type of electoral system in which the right to vote or to run for office is to be exercised", it did so in the course rejecting an argument that s. 3 constitutionally enshrined "the values or objectives that might be embedded in our current electoral system". I do not read the majority's reasons as suggesting that every imaginable electoral system would be constitutionally compliant, no matter how much it departs from "the ideal of a 'free and democratic society' upon which the *Charter* is founded": *Saskatchewan Boundaries Reference*, at p. 181; *Figueroa*, at para. 27. In my view, it falls to the courts to decide whether a particular set of legislative choices about how elections are conducted conforms with the demands of the *Charter*.

[103] That said, I agree with Huscroft J.A. that the existing federal Single Member Plurality electoral scheme does not violate s. 3 of the *Charter*. In particular, I do not accept the appellants' contention that the s. 3 right to effective representation requires that all voters have their votes "contribute to the election of a representative that they support". Under any system of representative democracy with a limited number of seats, some voters will inevitably cast their ballots for unsuccessful candidates or for political parties who are awarded no seats. The logic of the appellants' argument implies that every imaginable electoral system – including the proportional representation systems they favour – would violate the s. 3 *Charter* rights of at least some voters, and would thus require justification under s. 1. I am not persuaded that this would be a sensible interpretation of the s. 3 right. To the contrary, I am satisfied that legislatures have considerable leeway to choose between a wide range of different electoral models that all provide effective representation and "meaningful participation"[1] in the electoral process to a sufficient extent to meet the demands of s. 3.

[104] Turning to s. 15 of the *Charter*, this appeal was argued on the basis that the appellants had to establish that the application judge made palpable and overriding errors when he found that their adverse impact claim failed because they had not

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[1] See *Figueroa*, at paras. 27-30.

established the essential element of causation: see *R. v. Sharma*, 2022 SCC 39, 165 O.R. (3d) 398, at paras. 39-50. I agree with Huscroft J.A. that the appellants have not met their burden on this issue. While my colleague raises some thought-provoking questions about whether this is the proper standard of review to apply in constitutional cases involving findings of fact based on social science evidence, I agree with his ultimate conclusion that this appeal must be decided on the basis that it was argued by the parties. I also agree with his conclusion that political affiliation is not an analogous ground for the purposes of s. 15(1) of the *Charter*, and with his reasoning on this issue.

[105] I accordingly concur in my colleague's proposed disposition of the appeal and, like him, would dismiss the appeal.

Released: August 11, 2025

J.A.