

Voting by mail extended in Québec: successful court challenge leads to amendment of the Election Act

MAY 13, 2026 6 MIN READ



Related Expertise

- [Disputes](#)

Authors: [Julien Morissette](#), [François Laurin-Pratte](#), [Quentin Montpetit](#), [Rachelle Saint-Laurent](#)

Key Takeaways

- The Superior Court of Québec declared section 282 of the *Election Act* unconstitutional, as it violated the right to vote under the *Canadian Charter of Rights and Freedoms*.
- An amendment to the Québec *Election Act* extends eligibility for electors temporarily outside Québec to vote by mail.
- The law change promotes greater electoral participation for those living abroad, including students, ahead of upcoming provincial elections.

An amendment to the Québec *Election Act* came into force on April 2, 2026, extending eligibility for electors temporarily residing outside Québec, including students, to vote by mail. The amendment follows a decision issued last year by the Superior Court of Québec on a challenge in which Osler represented the plaintiff pro bono.

In *Gélinas-Faucher c. Procureur général du Québec*,^[1] the Superior Court ruled section 282 of the *Election Act*^[2] (the EA) unconstitutional. Under that section, the time during which most Quebecers living abroad could vote by mail was limited to two years. The Court ruled that this time limit violated the right to vote guaranteed by the *Canadian Charter of Rights and Freedoms* (the Charter). The plaintiff was represented pro bono by an Osler team made up of partners Julien Morissette and François Laurin-Pratte and associates Quentin Montpetit and Rachelle Saint-Laurent.

The government amended the EA to add three years to the period during which Quebecers living abroad can vote by mail. It now also grants Quebecers studying abroad mail-in voting rights for the entire duration of their studies.

The plaintiff

Bruno Gélinas-Faucher is a Québec lawyer who completed his undergraduate law degree at the University of Ottawa and his master's degree at the University of Cambridge. He then undertook doctoral studies in international law at the University of Cambridge before

returning to Canada to pursue an academic career.

When a byelection was held in Québec City's Jean-Talon electoral division in 2019, Gélinas-Faucher was domiciled there but residing outside Québec to study at the University of Cambridge. Having been outside the province for over two years on polling day, he was denied the right to vote by mail under section 282 of the EA and was therefore unable to vote in his electoral division's byelection.

The Superior Court ruling

Violation of the right to vote

The Court concluded that section 282 of the EA violated the right to vote under section 3 of the Charter.

The Court observed that the right to vote is critical to democracy and must therefore be interpreted broadly and liberally. Section 3 of the Charter protects citizens' right to participate meaningfully in the election process, which means they must have a real opportunity to vote.

In the context of Québec elections, the EA states that a person must meet two conditions to exercise the right to vote:

1. Be a qualified elector on polling day.
2. Be on the list of electors at least 14 days before the polling.

Under section 282 of the EA, an eligible elector could exercise the right to vote by mail for two years after leaving Québec. When the two-year period elapsed, the elector could only vote in person.

The Court ruled that having to vote in person imposed a burden on electors outside Québec and effectively hindered them from participating in provincial elections. Many such electors were deprived of any real opportunity to exercise their right to vote, as it involved physical travel that would be highly inconvenient or even impossible for financial or personal reasons. Accordingly, section 282 of the EA violated section 3 of the Charter.

An unjustified violation

The Court determined that the violation of the right to vote was not justified in a free and democratic society within the meaning of section 1 of the Charter and the *Oakes*^[3] decision. Consequently, the two-year limit on mail-in voting provided for in section 282 of the EA was ruled unconstitutional.

The Court first noted that the objectives of the EA and of the time limit in section 282 were to preserve the integrity and fairness of Québec's electoral system, objectives it described as real and urgent. It then pointed out a rational link between the two-year limit and the objective of maintaining an attachment to the province, as such an attachment is essential to the integrity and fairness of the electoral process.

However, at the third stage of the *Oakes* test, the Court concluded that the two-year limit was not reasonably suited to the real and urgent objective. According to the Court, two years is an arbitrary limit; the Attorney General of Québec never explained why that specific period was chosen nor why electors would lose their attachment to Québec once it expired. The two-year limit does not correspond either to election cycles or to the typical duration of study-abroad programs. Regarding study programs, the Court noted that, unlike Québec, a

number of other Canadian provinces allow students to vote by mail for the entire duration of their studies abroad. Finally, the Court deemed the prejudicial effects of section 282 to be out of proportion to its objective.

The National Assembly's response: adoption of Bill 18

On March 26, 2026, in response to the Superior Court ruling, the Minister responsible for Democratic Institutions introduced Bill 18, *An Act to amend the voting criteria for electors outside Québec* (the bill).

The bill was agreed upon by all the political parties, adopted without debate and assented to on April 2. It came into force that same day.

Although it contains only four clauses, the bill brings significant changes to the province's mail-in voting system. Electors outside Québec can now vote by mail for five years after their departure, unless they are pursuing studies abroad.^[4] In that case, the five-year time limit does not apply, and those electors can vote by mail throughout their studies, as long as they can provide a certificate of school attendance.^[5]

According to the Minister, the new five-year period is designed to ensure that mail-in voters can vote at least once in an electoral cycle. There was consensus in the National Assembly that a five-year limit is both reasonable and necessary to ensure a connection between the province and an elector living abroad by attaching the elector to an electoral district. Voters studying outside Québec now benefit from an exception similar to the one that already applied to certain other categories of voters in Québec — including civil servants posted abroad — and to the one that applies to students in other Canadian provinces.^[6]

This legislative response addresses a number of concerns raised by the Court in its analysis of the time limit on mail-in voting. It is a major step forward for democracy and fosters greater participation in the electoral process by electors temporarily living abroad, including students. Moreover, this change comes at a timely moment, with provincial elections fast approaching.

[1] 2025 QCCS 2846.

[2] *Election Act*, CQLR, c. E-3.3.

[3] *R. v. Oakes*, [1986] 1 S.C.R. 103, 1986 CanLII 46.

[4] *An Act to amend the voting criteria for electors outside Québec*, 2nd sess., 43rd leg. (Québec), s. 1.

[5] *An Act to amend the voting criteria for electors outside Québec*, 2nd sess., 43rd leg. (Québec), s. 1 and 2.

[6] Québec National Assembly, *Journal des débats*, 2nd sess., 43rd leg., April 2, 2026.