Federal Court  Cour fédérale

Date: 20240214

Docket: T-1516-23

Citation: 2024 FC 219

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 14, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

ALEXIS DESCHÊNES
and DROITS COLLECTIFS QUÉBEC

applicants

and

ATTORNEY GENERAL OF CANADA
and ELECTIONS CANADA

respondents

ORDER AND REASONS

I. Overview

[1] By their motion, the applicants are asking this Court to issue an injunction to obtain a stay of application, for the electoral districts of the Province of Quebec, of the *Proclamation Declaring the Representation Orders to be in Force Effective on the First Dissolution of*

Parliament that Occurs after April 22, 2024, SI/2023-57, registered on September 27, 2023 (the "Proclamation"), until final judgment is rendered in the present proceeding.

[2] The motion is part of an application for judicial review (the "Application for Judicial Review") brought against the Attorney General of Canada and Elections Canada (the "respondents") pursuant to which the applicants seek the issuance of a writ of *certiorari* against the recommendation of the Federal Electoral Boundaries Commission for Quebec (the "Commission"), contained in its final report tabled in the House of Commons on June 21, 2023, to abolish the existing federal electoral district of Avignon–La Mitis–Matane–Matapédia and to redistribute its territory between the existing electoral districts of Gaspésie–Les Îles-de-la-Madeleine and Rimouski–Neigette–Témiscouata–Les Basques (the "Commission's recommendation"). Pursuant to section 15 of the *Electoral Boundaries Readjustment Act*, RSC 1985, c E-3 (the "Readjustment Act"), the Proclamation gives force of law to the reduction in the number of electoral districts, from four to three, for the region extending from Montmagny to Les Îles-de-la-Madeleine by removing the electoral district of Avignon–La Mitis–Matane–Matapédia.

[3] In their Application for Judicial Review, the applicants are seeking, among other things, the issuance of the following orders:

> (a) an order declaring the Commission's recommendation null and void;
>
> (b) an order maintaining the current boundaries of the electoral districts of Avignon–La Mitis–Matane–Matapédia, Gaspésie–Les Îles-de-la-Madeleine and Rimouski–Neigette–Témiscouata–Les Basques;

> (c) an order declaring null and void the removal of one member in Gaspésie;
>
> (d) an order maintaining the current number of members in Gaspésie; and
>
> (e) an order to amend *An Act to amend the Constitution Act, 1867 (electoral representation)*, SC 2022, c 6, to establish the number of members in Quebec at 79 out of a total of 344 for all of Canada.

[4] On September 27, 2023, pursuant to subsection 25(1) of the Readjustment Act, the Governor in Council gave force of law to the representation order adopting the Commission's recommendation.

[5] In their motion, the applicants ask this Court to order a stay of the Proclamation until final judgment on the Application for Judicial Review.

II. Decision

[6] The applicants' motion is dismissed for the following reasons.

III. Preliminary question: Is Elections Canada an appropriate respondent?

[7] The respondent, Elections Canada, has not filed a motion to dismiss, although arguments to that effect appear in its memorandum. In the absence of such a motion, I will not rule on this issue.

IV. Legal test: injunction

[8] *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311 (*RJR-MacDonald*) defines the conjunctive test for an injunction: for an interlocutory injunction to obtain a stay pending final judgment, the applicants must demonstrate 1) that there is a serious issue to be tried, 2) that irreparable harm will result if the relief is not granted, and 3) that the balance of convenience weighs in their favour. The applicants have the burden of demonstrating that their motion meets these well-established cumulative criteria.

[9] To demonstrate that they will suffer irreparable harm, the applicants must establish "that [they] will suffer real, definite, unavoidable harm – not hypothetical and speculative harm" (*Janssen Inc. v Abbvie Corporation*, 2014 FCA 112 at paragraph 24 (*Janssen*)).

[10] This Court's jurisprudence is clear that irreparable harm cannot be based on mere assumption. It must be established by clear and convincing evidence (*Newbould v Canada (Attorney General)*, 2017 FCA 106 at paragraphs 28–29.)

[11] This demonstration requires the production of sufficiently convincing evidence from which there is a real probability that unavoidable irreparable harm will result unless a stay is granted. This has not been demonstrated in this case (*Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at paragraph 31).

[12] It is indisputable that free and fair elections are the cornerstone of Canadian democracy and that any unwarranted interference in such elections will be unduly detrimental to the electorate. However, in the present case, nothing in the applicants' documents demonstrates that, without the injunction, the applicants would suffer irreparable harm, such as the undue dilution of their vote in a future federal election. There is no explanation as to why their ability to vote in a differently constituted electoral district would be affected. In fact, the applicants filed documents, specifically page 24 of the "Report of the Federal Electoral Boundaries Commission for the Province of Quebec", that state that the Commission based its recommendation on statistical data supported by the census, for the sole purpose of preventing an election that would not be based on adequate representation.

[13] Rather than concrete evidence of potential prejudice regarding the effect of the reduction of electoral districts from four to three in eastern Quebec, the applicants present an argument in principle that the Commission's recommendation soon to come into effect is in itself prejudicial. This does not amount to irreparable harm.

[14] The applicants also argue that in the absence of an injunction, in the face of uncertainty surrounding the redistribution of the territory's electoral districts, the electorate in the boundaries modified by the Commission's recommendation would suffer harm because of confusion as to their voting rights and representation, particularly if and when the Application for Judicial Review is allowed, which would likely result in a return to the old boundaries. Again, in the absence of evidence on how the new limits will have a real, definite and unavoidable negative

impact on the democratic rights of the electorate, this argument is hypothetical (*Janssen* at paragraph 24).

[15] The applicant also argues that in the event of an election, Elections Canada may not have sufficient time to prepare for the election. There is no evidence before me that would lead me to conclude that Elections Canada would be unlikely to be able to comply with the statutory regime in place. In fact, contrary to the applicant's argument, his presentation of Marc Maynard's testimony before a parliamentary commission attests to Elections Canada's ability to meet the statutory deadlines. The respondent offers no evidence that Elections Canada is unable to meet its obligations. I conclude that the applicant's speculation does not constitute evidence of irreparable harm.

[16] As noted, the tripartite test in *RJR-MacDonald* is conjunctive, meaning that all three prongs of the test must be satisfied for the injunction to be granted. In this case, the applicants have failed to demonstrate that they would suffer irreparable harm and, consequently, the test cannot be met.

[17] The motion is therefore dismissed, with costs**.**

ORDER in T-1516-23

THIS COURT ORDERS that the motion is dismissed, with costs.

"Negar Azmudeh"
Judge

Certified true translation
Janna Balkwill

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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