

Nfld. &amp; Labrador

## Supreme Court ruling on NL special ballots could change future election rules



Julie Mitchell would have won her riding in 2011 if special ballots hadn't been allowed

[Sarah Smellie](#) · CBC News · Posted: Sep 06, 2017 10:33 PM NT | Last Updated: October 20, 2017



A Supreme Court ruling released September 6, 2017 may change the future of elections in Newfoundland and Labrador and, technically, the results of the past. (CBC)

A ruling from the Newfoundland and Labrador Supreme Court on Wednesday could change the future and, technically, changes the past.

Justice Gillian Butler ruled the province's rules for special ballots violate the section of the Canadian Charter of Rights and Freedoms guaranteeing each citizen the democratic right to

vote, and are essentially void or "of no force and effect."

- [NDP wants special ballots axed](#)
- [Civil liberties group gets standing in election suit](#)

The decision effectively reverses the results of the 2011 provincial election in Burin-Placentia West. Progressive Conservative candidate Clyde Jackman was declared the victor, but without special ballots, Julie Mitchell, the NDP candidate, would have won. By nine votes.

“I'm not angry. Not at all.”

- Julie Mitchell

"I'm not angry," says Mitchell. "Not at all."

"It's a moot point. You can't go back and undo history. I'm just happy that it will be fixed for future candidates and, more primarily, for the future electorate."

## Won by 40 votes

Jackman originally won the election by just 40 votes. He received 179 special ballot votes. Mitchell received 130.

The NDP initially took the election results to the Supreme Court for a recount, but that request was denied.

So, led by Mitchell, they took it back to court. This time they challenged the province's Elections Act. Specifically, they challenged its provisions for special ballots.

“I'm just very pleased for the future of elections in this province.”

- Julie Mitchell

According to section 86 of the Elections Act, a person can vote in an election via special ballot up to four weeks before the election has even been called.

This means someone could have voted before all candidates had even announced their intention to run.

In that particular election," said Mitchell, "the Liberal candidate didn't declare until a week after the writ was dropped that they were going to be the Liberal candidate."

## Sets a precedent

The challenge to the special ballot process went before the court in the winter of 2011. The NDP's court filings claim the provisions "are a violation of democratic and constitutional norms of Canada and the Commonwealth."

The ruling was finally delivered, in the New Democrat's favour, on Sept. 6, 2017.

"I'm just very pleased for the future of elections in this province," Mitchell said. "And of course it sets a precedent for the whole country should another province try to do it."



Julie Mitchell, the NDP candidate in Burin-Placentia West in the October 2011 provincial election, would have won if special ballots hadn't been allowed.

She said the fact that she would have won if the special ballots hadn't been allowed wasn't the impetus to challenge the rules in court.

"I never did agree with the special ballot votes," she said. "I always thought there was something not right about them when you could go in and vote for a nonexistent candidate before the writ had even dropped."

Now that Mitchell, in a way, has won the election and the Supreme Court challenge, she's still not planning a victory party. At least not yet.

She wants to see if the government will appeal the decision first.

"I'm very pleased with the decision but really and truly we'll hold off on the celebrations until the time has expired for the appeal process," she said. "And we'll hope and pray that the justice minister will see fit to accept it and move on."

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