

put back into the ballot box and the box resealed, and the station should then re-open and remain open until 8:00 p.m. The Deputy Returning Officer followed those instructions and, as a result one person, of the six who first had tried to vote after 7:00 p.m., came back and voted, but the other five could not be reached. The Returning Officer did not get a telegram from Canadian National Telegraphs from any Division in the District until 8:30 p.m., but this was not to be taken as showing that none of the messages had been filed before 8:00 p.m. He said quite positively that no count was taken by telephone before 8:00 p.m. Many of the reports were sent in by telegram but the bulk were received by telephone.

This matter, in our view, hinges on the interpretation of Section 83 of the Canada Election Act, and it is only the first sentence of that section which is relevant:

83. No election shall be declared invalid by reason of non-compliance with the provisions of this act as to limitations of time unless it appears to the tribunal having cognizance of the question that such non-compliance may have affected the result of the election,

Counsel agreed, and we think it is so, that the rest of the section is not relevant to this matter because it does not deal with limitations of time. We were told that, as a matter of fact, in some of the older statutes of England, from which it would appear that the Canada Elections Act evolved, the first part of section 83, which we have quoted above, was a section unto itself and the last part of the present section 83 was a separate section. Counsel also agreed, and again we think it is so, that the early opening and closing of the polls concerned in this matter is a non-compliance with a provision of the Act—Section 31 (5)—as to limitation of time and therefore comes within the first part of section 83. In addition, section 70 (2) provides that it shall be deemed to be a non-compliance with the Act to do or omit to do any act that results in the reception of a vote which should not have been cast or in the non-reception of a vote which should have been cast. And counsel further agreed that the early closing of polls is not, without more, a sufficient ground for declaring an election invalid; it must appear that the early closing may have affected the result of the election before the election is to be declared invalid. The only questions, therefore, are as to the meaning of “result of the election”, and whether or not the non-compliance here “may have affected the result of the election.”

No one suggested that the Deputy Returning Officers in the Divisions concerned deliberately opened and closed the polls at the wrong time. On the contrary, it was accepted on all sides that the early opening and closing of those polls was an honest mistake and due solely to a non-appreciation of the distinction between standard time and daylight saving time on the day of the election. In doing what they did the Deputy Returning Officers concerned were acting in good faith and without any intention on the part of any one of them to affect the result of the election by trying deliberately to prevent anyone from voting who was qualified to vote.

Perhaps this is a good place to deal with the phrase “result of the election” in the relevant part of section 83. We do not feel it is necessary to discuss the cases cited on this point, beyond saying that we prefer the view of Mr. Justice O’Brien in the Clare case to that of Mr. Justice Grove in the Mackney case. As we see it, viewing it from a common sense point of view, the “result” of an election can mean only the election of one candidate over another. It cannot refer to the majority received by a candidate, because, obviously, cutting down