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FROM: SOPANA SELVACHANDRAN, Judicial Secretary for
THE HONOURABLE MADAM JUSTICE K. van RENSBURG

DATE: April 29, 2013

NO. OF PAGES, including cover sheet: **22**

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COMMENTS:

Re: Vezina v. Parrish, Court file No. DC-12-0046-00

Enclosed, please find a copy of Justice van Rensburg's Reasons for Decision in the above noted matter, released April 29, 2013.

Thank you.

CITATION: Vezina v. Parrish, 2013 ONSC 2368
COURT FILE NO.: DC-12-0046-00
DATE: 20130429

SUPERIOR COURT OF JUSTICE – ONTARIO

IN THE MATTER OF AN APPLICATION FOR A COMPLIANCE AUDIT OF CAROLYN PARRISH'S ELECTION CAMPAIGN FINANCES PURSUANT TO SECTION 81 OF THE MUNICIPAL ELECTIONS ACT, 1996, S.O. 1996, c.32

RE: GREG VEZINA - and - MISSISSAUGA ELECTION CAMPAIGN FINANCES COMMITTEE OF THE CITY OF MISSISSAUGA - and - CAROLYN PARRISH

BEFORE: K. van RENSBURG, J.

COUNSEL: T. Richardson and M. Atherton, for the Appellant Carolyn Parrish

G. Vezina, Respondent, in person

C. Loopstra, Q.C., for the Respondent, Mississauga Election Campaign Finances Committee, City of Mississauga

REASONS FOR DECISION

[1] In September 2011, Carolyn Parrish ran in a by-election as a candidate in Ward 5, for Mississauga city council. As required by s. 78(1) of the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, (the "MEA" or the "Act"), she submitted to the city clerk a financial statement and auditor's report in the prescribed form (the "Financial Statement"). Greg Vezina applied under s. 81(1) of the MEA to request a compliance audit of Ms Parrish's election campaign finances. The

Mississauga Election Campaign Finances Committee (the "Committee") refused the request, and Mr. Vezina appealed successfully to the Ontario Court of Justice (the "OCJ"). Ms Parrish appeals to this court from the decision of Duncan J., directing a compliance audit of her campaign finances.

[2] Section 81(1) of the MEA provides that "an elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of [the] Act relating to election campaign finances may apply for a compliance audit of the candidate's election campaign finances". The application is required to be made to the city clerk, and is forwarded to a committee established under s. 81.1 of the Act.

[3] Section 81.1 of the MEA requires that the compliance audit committee (referred to by the City of Mississauga as the "election campaign finances committee") not include members of council, city employees or officers, or candidates from the election in question. As such, the legislation represents a departure from the provisions in force prior to its amendment in 2009, which required the city council to decide an audit application, or to delegate its powers to do so to a committee. According to City of Mississauga terms of reference, the election campaign finances committee is required to have five voting members, with at least one member holding a recognized accounting

designation. The Committee in this case included one certified management accountant, and two certified general accountants.

[4] Section 81(5) of the MEA provides that, "within 30 days after receiving the application, the committee shall consider the application and decide whether it should be granted or rejected". Under s. 81(7), if the committee decides to grant the application, it shall appoint an auditor to conduct a compliance audit of the candidate's election campaign finances.

[5] Once appointed, the auditor is required to promptly conduct an audit of the candidate's election campaign finances to determine whether he or she has complied with the provisions of the MEA relating to election campaign finances, and is required to prepare a report outlining any apparent contravention by the candidate: MEA, s. 81(9). The auditor has the powers of a commission under the *Public Inquiries Act.* The auditor's report is received by the compliance audit committee, which then considers the report and may: (a) if the report concludes that the candidate appears to have contravened a provision of the Act relating to election campaign finances, commence a legal proceeding against the candidate for the apparent contravention; or (b) if the report concludes that the candidate does not appear to have contravened a provision of the Act relating to election campaign finances, make a finding as to whether there were reasonable grounds for the application: s. 81(14).

[6] Pursuant to s. 81(3), the cost of the audit is paid by the city, however if the report indicates that there was no apparent contravention and the committee finds that there were no reasonable grounds for the application, the council is entitled to recover the auditor's costs from the applicant: s. 81(15).

[7] Mr. Vezina's application for a compliance audit raised three issues respecting Ms Parrish's campaign finances. First, he questioned the candidate's recorded expense of $750 for her campaign office space, in respect of which she had noted an in-kind donation by EMBEE Properties Ltd. ("EMBEE"). Mr. Vezina asserted that the value of the rent was substantially higher than $750, that Ms Parrish had contravened the MEA's requirement, as interpreted by Mr. Vezina, to value the rent "at market value", and that EMBEE had provided a donation in excess of the per-candidate contribution limit of $750 under s. 71(1) of the MEA.

[8] Mr. Vezina also took issue with the accounting for signs and stakes used in Ms Parrish's campaign, asserting that more signs and stakes had been used than were disclosed in the Financial Statement. Finally, Mr. Vezina complained that Ms Parrish had not properly completed the required statutory declaration on the Financial Statement. Although she signed the declaration, the place for her name was left blank.

[9] The Committee, at a meeting on March 6, 2012, received evidence from Mr. Vezina and Ms Parrish, and asked questions of both parties, as well as a real estate broker who gave evidence in support of the application.

[10] The Committee deliberated and then provided its decision as follows:

> No compelling and credible information which raises reasonable probability of breach of statute (MEA). Application for compliance audit is denied for the above reason.

[11] Mr. Vezina appealed the Committee's decision to the OCJ under s. 81(6) of the MEA. That section does not speak to the standard of review, but simply states that "the court may make any decision the committee could have made."

[12] The appeal was heard on May 22, 2012. The evidence before the OCJ was the record of proceedings, consisting of minutes of the meeting before the Committee, documents received by the Committee and marked as exhibits, as well as the affidavits of Greg Vezina and Carolyn Parrish. The affidavits, which set out what occurred before the Committee and repeated the evidence the parties had supplied to the Committee, were accepted by the court in the absence of a verbatim transcript of the proceedings.[1]

[13] In his reasons for judgment dated June 19, 2012, Duncan J. addressed only Mr. Vezina's complaint about Ms Parrish's rent expenses. As a compliance audit was warranted as a result of his determination of that issue, it was

unnecessary to deal with the second and third points raised in the application and considered by the Committee.

[14] The relevant evidence on the rent issue both before the Committee and the OCJ was as follows. Ms Parrish had declared a rent expense for her campaign headquarters of $750 in total for the two month campaign period. Mr. Vezina submitted that this amount on its face was extremely low for commercial space in that area. In his evidence he compared Ms Parrish's stated office expenses, including rent, to those of other candidates from the 2011 by-election and the 2010 election. He also compared what candidates in a similar area had indicated for "rent, heat and light" on their declarations in respect of federal election campaigns. A licensed realtor testified about the market value for long term leases of commercial real estate in the area, and that the maximum discount for short term rental of similar space would normally be 50%. Mr. Vezina noted that Ms Parrish spent $44,409.75 out of her $44,879.45 election campaign expense limit under s. 76(4) of the MEA as set by the Mississauga city clerk. Mr. Vezina argued that, if Ms Parrish had valued the campaign office space at market value, she would have violated the expense limit as well as the prohibition against corporate campaign donations exceeding $750.

[15] Ms Parrish provided the following explanation respecting her campaign office space. At the time she began looking for space there were only two

vacancies in the south section of Ward 5. She contacted Michael Baker of EMBEE to inquire about temporary occupancy of 720 Bristol Rd., Unit 8, and was advised that the space was vacant pending occupation by a submarine sandwich franchise with which EMBEE had committed to a long-term lease. As the franchisee was not taking possession until after the election, EMBEE had no interim use for the premises. Mr. Baker agreed that Ms Parrish could use the premises "as is" for her campaign office until the by-election under the conditions that garbage from the previous tenant be removed from the premises, that a $5 million policy of liability insurance be taken out at Ms Parrish's expense, and that a payment be made to Enbridge to cover the cost of utilities used.

[16] With the assistance of unpaid volunteers, truckloads of garbage were removed and damages to the premises were repaired, such that the space was made suitable for use as a campaign office on or about the last week of July 2011, and was occupied for six and a half weeks ending September 19, 2011. The insurance was obtained at a cost of $756, and $220.35 was paid to Enbridge. These payments, as well as a receipt for an "in kind" donation of $750 by EMBEE, were recorded in the Financial Statement. Ms Parrish provided copies of the expense records and a summary spreadsheet to the Committee.

[17] In his reasons for judgment Duncan J. noted that the Committee must have accepted Ms Parrish's explanation on the rent issue. The judge however

considered such explanation to be "no answer" to the requirements of s. 66(3)(a) of the MEA.

[18] The relevant provisions are sections 66(1), (2) and (3). Section 66(1) provides that "money, goods and services given to and accepted by ... a person for his or her election campaign are contributions." Section 66(2) provides rules for determining whether an amount is a contribution, including that, where goods and services used in a person's election campaign are purchased for less than their market value, the difference between the amount paid and market value is a contribution: s. 66(2)1.iii, and that the value of services provided by voluntary unpaid labour is not a contribution: s. 66(2)2.i.

[19] Section 66(3)(a) provides as follows:

> Value of goods and services
>
> 66. (3) The value of goods and services provided as a contribution is,
>
> (a) if the contributor is in the business of supplying these goods and services, the lowest amount the contributor charges the general public in the same market area for similar goods and services provided at or about the same time.

[20] The essence of Mr. Vezina's complaint was that Ms Parrish's campaign office space had not been valued at its "fair market value" in her Financial Statement. In his reasons for judgment on the appeal, Duncan J. noted that, "the MEA provides that the goods and services provided by way of contribution are to be evaluated at fair market value (though that phrase is not used)". He concluded

that the explanation offered by Ms Parrish did not address the requirement of s. 66(3) of the MEA "and its requirement for valuation at fair market value", and that her evidence provided "no answer to it". He noted that "the message of that section is that when it comes to election expenses, there are no freebies and there are no bargains". Finally, he stated:

> I stress that my conclusion is based on the evidence presented. I am making no finding that there has been a violation of the Act or any wrongdoing by the Respondent Parrish – only that there were sufficient reasonable grounds presented by the Applicant that were unanswered *on the evidence presented* by the Respondent.

[21] In the appeal to this court, Ms Parrish asserted that Duncan J. erred in his application of the standard of review, ultimately substituting his own view for that of the Committee, and in any event erring in his interpretation of s. 66(3) as requiring an assessment of "fair market value" of the rent. The Committee, which was a respondent to the appeal, but supported the position of Ms Parrish, agreed with this position. Mr. Vezina asserted that there was no error in the OCJ judgment. He also argued that the decision to direct a compliance audit is supportable because the proper standard of review by the OCJ is "correctness", and not "reasonableness" (so that Duncan J. was entitled to substitute his view for that of the Committee).

[22] In his reasons for judgment, Duncan J. identified "reasonableness" as the standard of review of the decision of the Committee. He noted that, "apart from

questions of law, the appeal is essentially an examination of the reasonableness of the decision made by the Committee – with due deference shown to its statutory authority and expertise".

[23] The weight of authority suggests that the standard of review of the decision of a compliance audit committee under s. 81(5) of the MEA is reasonableness. This was recognized by Quinn J. in *Lancaster v. St. Catharines (City) Compliance Audit Committee,* 2012 ONSC 5629, the only reported decision of the Superior Court in an appeal of an OCJ decision respecting the decision of a compliance audit committee. In *Lyras v. Heaps*, [2008] O.J. No. 4243 (C.J.) at paras. 17 to 19, Lane J. considered earlier decisions pre-dating amendments to the MEA and applying a "correctness" standard of review when the decisions were made by city council or a delegated committee. She concluded that the composition of the committee, its narrow function to screen applications for audits, and the procedure followed in that case, which included a public meeting with evidence and submissions by the parties and questions by the committee, required deference by any court reviewing the decision. As Duncan J. noted, in agreeing with this analysis: "The change [in the legislation] has imbued the decisions made both with independence from potential political influence and with expertise."

[24] Mr. Vezina relied on two OCJ decisions made after the legislation had been amended and which continued to apply a "correctness" standard of review: *Dickerson v. Compliance Audit Committee of the City of Pickering* (OCJ), (December 21, 2011, unreported) and *Fuhr v. Perth South (Township)*, [2011] O.J. No. 4251 (O.C.J.). In each case, the court noted that there was no information as to the specific expertise of the committee, and, in *Fuhr,* there was only a minimal record of the proceedings before the committee. In *Dickerson*, Bellefontaine J. stated that he preferred the reasoning of the earlier decisions in any event.

[25] In my view, Duncan J. correctly identified the standard of review of the decision of the Committee in this case. In circumstances where a compliance audit committee has relevant expertise, and is independent of the political process, and where the procedure before the committee involves the opportunity for each side to present evidence and to make submissions, the decisions it is authorized to make under the MEA are entitled to deference, and should be reviewed for reasonableness. As Quinn J. noted in *Lancaster,* at para. 58, the appeal is in the nature of a judicial review.

[26] In *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9, the reasonableness standard of review was described at para. 47 as follows:

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[27] The question on appeal to the OCJ, accordingly, was whether the Committee's decision fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law".

[28] I have concluded that the OCJ judge erred in his application of the "reasonableness" standard in this case, based on his interpretation of the requirements of s. 66(3), as not including a consideration of the particular circumstances in which the campaign office was made available, and as such in rejecting Ms Parrish's explanation as providing "no answer".

[29] Duncan J. may have been correct in describing the rent arrangement as "bargain basement", however in my new he overstated the requirements of the MEA provisions when he concluded that the message of s. 66(3) is that there are "no freebies". The MEA anticipates that municipal election candidates will receive goods and services from third parties, and does not prohibit bargains or the provision of goods or services without charge. It requires that all goods and

services received be valued, and where supplied by a person in the business, the valuation must be "the lowest amount the contributor charges the general public in the same market area for similar goods and services provided at or about the same time".

[30] Section 66(3) of the MEA, by its reference to what the contributor would charge the general public for similar goods or services at or about the same time, requires a consideration of the particular circumstances in which the goods or services in question are supplied. The information provided by the candidate with respect to the agreement with EMBEE, the fact that the space was in transition and awaiting occupancy by a new tenant, and therefore surplus space to the landlord, and the conditions under which Ms Parrish was in fact offered and used the space "as is" and requiring clean-up by volunteer labour, were all relevant to what the Committee had to decide, although those circumstances may not have been determinative.

[31] Ms Parrish's evidence did provide an answer, and it was for the Committee to evaluate all of the evidence before it, including the information provided by the candidate, and the evidence offered by Mr. Vezina in support of his application for an audit, to decide whether there was a probable breach of the MEA, and whether an audit was warranted.

[32] There was no evidence that the candidate or anyone on her behalf had paid rent that was not reported on the Financial Statement, or that the transaction was other than arms-length. Ultimately, the question was whether the $750 in-kind donation receipt represented an appropriate value for the use of the space supplied without charge to the candidate by EMBEE. The evidence provided by Mr. Vezina focussed on market value for commercial space for long-term leases, as well as office expenses for other candidates. While this was pertinent evidence because it provided a context in which Ms Parrish's rent arrangement could be scrutinized, the commercial lease evidence was not determinative of the decision that had to be made under s. 66(3).

[33] Quinn J. in *Lancaster* concluded that, while the compliance audit committee had erred in concluding that there was no breach of the MEA, its decision not to appoint an auditor was nevertheless reasonable. The uncontradicted information received by the committee was that the omissions in the candidate's financial statement were unintentional and had been rectified. To have directed an audit would have amounted to a "speculative expedition and ended up revealing what was already known": para. 94. In *Jackson v. Vaughan (City)*, [2009] O.J. No. 1057 (S.C.J.), in the context of a review of a bylaw authorizing the prosecution of a candidate for breaches of the MEA campaign finance provisions following the report of an auditor, Lauwers J. observed in

obiter, that there was minimal discretion in the council's decision on whether to appoint an auditor, and that an auditor must be appointed if the application shows reasonable grounds to believe that the MEA has been violated: para. 51. That case predated the amendments to the MEA, and dealt with the decision of a city council, and not a specialized committee in considering an application for an audit.

[34] In the present case, it is unnecessary to determine whether it would have been reasonable for the Committee to have refused an audit if a breach of the MEA was made out. The Committee's conclusion was that there was no reasonable probability of a breach of the MEA, a decision which in my view was reasonable.

[35] Accordingly, I have concluded that, in respect of the campaign office space issue, it was within the range of reasonable outcomes for the Committee to have accepted Ms Parrish's explanation, to conclude that there had not been an apparent violation of the MEA, and to refuse to appoint an auditor.

[36] With respect to the second concern raised in Mr. Vezina's application, he asserted that Ms Parrish had not presented any proof or accounting of her actual sign usage, and that she admitted that her garage was full of signs and stakes and that accounting accurately for them all was a challenge.

[37] In response, Ms Parrish emphasized that she was a veteran of some nine elections. Following the 2010 election she had 347 large signs and 915 small signs left over, as declared in her 2010 financial statement. Some undamaged signs had been stored in her garage, of which volunteers were able to modify 150 small signs and 50 large signs for use in the 2011 campaign while they were waiting for their first 2011 sign order to arrive. To be used in 2011, the 2010 signs required the "re" in "re-elect" to be covered and the October 25 date to be cut off. The value attributed to the signs from 2010 that were used in 2011 was $1,858, the amount that was included in the Financial Statement, along with $9,498.17 for new signs and $71.14 for hardware used to affix the signs to fences. Ms Parrish noted that her Financial Statement reported the value of the signs actually used.

[38] With respect to stakes, Ms Parrish stated that no new stakes were purchased for the 2011 election. This was her ninth election and she had stakes left over not only from the 2010 election, but from previous municipal and federal elections. Seven hundred stakes were used and reported as required in her Financial Statement. Ms Parrish explained that there is little relationship between the number of signs used and the number of stakes required. Small signs come with wire stands, which do not require stakes, and some signs are attached to

fences. Ms Parrish stated that the value of signs and stakes used in the 2011 by-election was accurately reported as $11,356.17.

[39] There is no indication that the Committee disregarded any evidence relevant to the second complaint raised in Mr. Vezina's application. Considering the information Ms Parrish provided, it was reasonable for the Committee not to appoint an auditor.

[40] The final concern was acknowledged by Mr. Vezina to be technical, and would not warrant in itself the appointment of an auditor. Ms Parrish noted that the failure to print her name on the declaration was an oversight by her accountant, and that she had sworn the declaration in front of the city clerk, as required. She signed the statutory declaration, although her name was not printed in the space above her signature.

[41] Finally, in response to the appeal, Mr. Vezina raised an additional point, that can be addressed briefly. He asserted that the Committee, in deciding whether there were reasonable grounds for an audit, ought to have considered only the information contained in his application, without regard to the candidate's explanation. In this regard, he relied again on the *Dickerson* case, where Bellefontaine J. concluded that the committee's function was limited to determining whether credibly based reasonable grounds existed for the elector's

application at the time it was made, and as such it was wrong to consider materials provided by the candidate in response to the application.

[42] Again, the weight of authority is to the contrary. In the *Lancaster* case, Quinn J. concluded that the role of a compliance audit committee is more than simply to determine whether the elector believes on reasonable grounds that the candidate has contravened the Act. The committee must consider all of the evidence, and "the basis for the belief of the elector, as amplified at the hearing before the Committee, determines whether reasonable grounds exist" (at para. 70).

[43] In the present case, Duncan J. referred to the decision in the *Lancaster* case, and stated at para. 13:

> ...the legislative scheme requires that the applicant have reasonable grounds for his belief that the Act has been contravened. The Committee must consider the application. However the Act is silent as to the precise issue to be considered; does it consider only the validity of the applicant's belief based on the grounds he has presented? If that were so, its function would be very shallow indeed. In my view, the question for the Committee is not whether the applicant, on the basis of the evidence he presents, has or had reasonable grounds for his belief that the Act had been infringed; the question is whether the Committee, on the basis of the applicant's evidence *together with any additional evidence* believes on reasonable grounds that there had been a violation...

[44] I agree with Duncan J. on this issue. The function of a compliance audit committee is to consider an application for the appointment of an auditor in the context of the information that is provided by the applicant, as well as information that is provided by the candidate in response to the application. The Committee

held a meeting and gave the parties the opportunity to put forward their respective positions, so that it could make an informed decision whether to appoint an auditor.

[45] While I agree with Duncan J.'s statements of the applicable test and standard of review, I have concluded for the reasons set out above that he ought not to have interfered with the decision under appeal, which fell within a range of reasonable decisions available on the evidence that was before the Committee.

[46] Accordingly, the decision of the Committee is restored and the application for a compliance audit of the election finances of Carolyn Parrish in the September 2011 Mississauga city by-election is dismissed.

[47] If the parties are unable to agree on costs, I will receive brief written submissions as follows: from any party seeking costs within 30 days, responding submissions within 20 days of receipt of the submissions seeking costs, and reply submissions, if any, within 10 days of receipt of the responding submissions.

K. van Rensburg, J.

DATE: April 29, 2013

[1] The Committee, in responding to the appeal to this court, argued that Duncan J. ought not to have accepted affidavit evidence because that would transform the appeal into a hearing *de novo*. I do not intend to deal with the question of the proper scope of the record before the OCJ in an appeal from a compliance audit committee decision, except to note that the judge hearing the appeal must have discretion on this issue. The affidavits in this case did not include new evidence, but simply repeated the evidence that was before the Committee. In such circumstances, the judge did not embark on a hearing *de novo*, when he decided to receive such evidence.

CITATION: Vezina v. Parrish, 2013 ONSC 2368
COURT FILE NO.: DC-12-0046-00
DATE: 20130429

SUPERIOR COURT OF JUSTICE – ONTARIO

IN THE MATTER OF AN APPLICATION FOR A COMPLIANCE AUDIT OF CAROLYN PARRISH'S ELECTION CAMPAIGN FINANCES PURSUANT TO SECTION 81 OF THE MUNICIPAL ELECTIONS ACT, 1996, S.O. 1996, c.32

RE: GREG VEZINA - and - MISSISSAUGA ELECTION CAMPAIGN FINANCES COMMITTEE OF THE CITY OF MISSISSAUGA - and - CAROLYN PARRISH

BEFORE: K. van Rensburg, J.

COUNSEL: T. Richardson and M. Atherton, for the Appellant, Carolyn Parrish

G. Vezina, Respondent, in person

C. Loopstra, Q.C., for the Respondent, Mississauga Election Campaign Finances Committee, City of Mississauga

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REASONS FOR DECISION

K. van Rensburg, J.

DATE: April 29, 2013