

Alberta Court of Queen's Bench
Babiuk v. Chrapko
Date: 1993-02-02

R. Secord and *R. Renz*, for plaintiff.

J. Hustwick, Q.C., for defendant Chrapko.

J. Grundberg, for defendant county and defendant Popowich.

(Doc. Edmonton 9203-23869)

February 2, 1993.

[1] MARSHALL J. (orally):— A municipal election was held in Division 4 of the County of Two Hills on October 19th, 1992. The Applicant Babiuk and the Respondent Chrapko were the two candidates for the position of councillor. Chrapko was declared elected with 165 votes. Babiuk received 159 votes. Babiuk applies under the *Local Authorities Election Act* for an order declaring the election of Chrapko invalid.

[2] The first aspect to the application is for an order of quo warranto under s. 120 of the Act for a finding that Chrapko has been guilty of bribery. The second aspect of the application alleges irregularities in voting by seven persons who are alleged to have been ineligible to vote at the time.

[3] I'll deal with the second aspect first. I quote from p. 13 of the Applicant's submission:

The Act sets out certain requirements which were to have been satisfied in order for a person to be eligible to vote in the election. Section 47(1) sets out these requirements as to eligibility to vote as follows.

(47)(1) A person is eligible to vote in an election held pursuant to this Act if he

(a) is at least 18 years old;

(b) is a Canadian citizen; and

(c) has resided in Alberta for the six consecutive months immediately preceding election day and is resident in the area on election day unless another enactment requires him to be a proprietary elector.

Section (1)(a)(i) of the Act defines "area" to mean the area within the boundaries of a local jurisdiction and Section (1)(n) further defines "local jurisdiction" to mean a municipality, a district as defined in the Hospitals Act, or a district or division as defined in the School Act, as the case may be.

Accordingly, in order to have been eligible to vote in the election in Division 4, a person must have been

(a) at least 18 years old;

(b) a Canadian citizen; and

(c) have resided in Alberta for the six consecutive months immediately preceding election day and have been resident in Division 4 on election day.

Rules for determining residence are set out in the Act and establish that a person's residence is the place where that person lives and sleeps and intends to return to when absent. Section 48(1) sets out these rules of residence and provides as follows.

48(1): For the purposes of this Act, a place of residence is governed by the following rules.

(a) A person may have only one place of residence for the purposes of this Act.

(a)(i) The residence of a person is the place where he lives and sleeps and to which when he is absent he intends to return.

(b) A person does not lose his residence by leaving his home for a temporary purpose.

(c) If a person leaves the area with the intention of making his residence elsewhere, he loses his residence within the area.

[4] It is conceded that Charles Holderness, a resident of District 4 for many years, voted when he is ineligible. He is not a Canadian citizen. He testified of this.

[5] The other six persons' right to vote is challenged on the basis of a lack of residence in District 4 on election day.

[6] Pundick, a cousin of Ron Babiuk, testified that Ron Babiuk has lived and worked in Red Deer for about six years.

[7] For the residence of the remaining five persons whose eligibility is contested, the Applicant relied on affidavit evidence, which is permitted by the Act.

[8] The Applicant's affidavit alleged that Larry and Sheila Kitz rented a residence in the Town of Two Hills on election day.

[9] Joe Kitz, the father of Larry, testified for the Respondent. He said they were - that is, Larry and Sheila - were residing on Joe Kitz's farm at the time of the election. In cross-examination, he said Sheila had a rented residence in town at the time of their marriage, August 1st, 1992. Larry has lived there since, but they spent approximately half the time at each place in October. Larry worked at harvesting. He stated that Sheila works in town five days each week and often goes to work from there. He stated the residence in town is their matrimonial home, and "though they come to the farm and visit and often stay with us, they eventually return to the house in town". On that evidence, I find the residence of both Kitzes was in the Town of Two Hills on election day and they were not eligible to vote as they did.

[10] The other affidavit of evidence regarding Metro Kupchenko and Mike Melnychuk simply states that they each reside at street addresses in Lloydminster and Edmonton respectively and attaches copies of the phone directories for each. While this evidence is

somewhat cursory, in the absence of proof to the contrary, I accept it as prima facie evidence of their non-residence.

[11] Counsel for the Respondent argued that there's no proof that Babiuk, Kupchenko, or Melnychuk voted, other than copies of the voting registers signed by the persons of such - by persons of such names.

[12] The Act requires the proceedings to be heard in a summary fashion. In the absence of proof to the contrary, I accept the voting register statement as evidence that the particular elector voted. I do not feel it works a hardship on the Respondent to admit such evidence.

[13] Shane Chrapko testified he voted in the election, although he has been living in Lacombe nearly one year at the time of the election. He is 24 and works in a bank. He lives in half a duplex he purchased in Lacombe. He states he resides in Brosseau within District 4 and goes home to his parents' place there each weekend. He has lived - he has livestock at the Brosseau area and helps on the farm on weekends. I did notice, however, that he travelled to Court on Monday morning from Lacombe. On this evidence, I find the place he lives and sleeps is at Lacombe. I expect he will continue to return there as long as his employment is there.

[14] In the result, I find that seven ineligible persons voted. I must conclude the result of the election could have been affected and adjudge the election invalid under s. 137 of the Act.

[15] I turn to the allegation of bribery. Section 116 of the Act states as follows:

116 A person commits the offence of bribery

(a) who directly or indirectly by himself or by any other person on his behalf

(i) gives, lends, or agrees to give or lend or offers or promises money or valuable consideration, or gives or procures or agrees to give or procure or offers or promises an office, place or employment to or for an elector or to or for a person on behalf of an elector or any person, in order to induce an elector or a person to vote or to refrain from voting at an election ...

Any offer or promise of valuable consideration, if made in order to induce an elector to vote, is sufficient to make out a charge of bribery.

[16] Mr. Van Eck testified he's an elector in District 4. Chrapko was his councillor last summer and fall.

[17] It appears to be a policy, whether informal or otherwise, of the County, to provide a free load of gravel to farmers or acreage dwellers, not more than one free load per year. Van Eck wished to have a load of gravel for his driveway. Without requesting

one, a load was delivered, but, unfortunately, he had changed the route of his driveway and built a section of new driveway. It was on this area that he wished to have the gravel, but it was not spread on that portion of his driveway.

[18] Van Eck phoned Chrapko to ask if he could have a second load. He offered to pay for it. That's conceded by Chrapko. Van Eck states that he was told by Chrapko on the telephone that it was a bad time to provide another load of gravel. It was harvest time. The truckers hauling had removed gravel boxes from their trucks and were hauling grain. It might be possible after harvest.

[19] Van Eck had made clear that the timing was fairly critical here. He wanted to get gravel on the driveway before any significant rain fell. Van Eck stated that Chrapko went on to say that if he could count on Van Eck's support one way or the other in the upcoming election, he'd see what he could do. Van Eck said his response was to tell him to forget it. In fact, Van Eck made arrangements from another source to obtain a load of gravel, but within a short period, a second load of gravel was delivered.

[20] Van Eck's testimony exhibited some uncertainty respecting the precise words which were employed. I have no doubt that in his mind he felt what he has related occurred, that in fact Chrapko had solicited his support in the coming election in return for his efforts to deliver a load of gravel.

[21] Chrapko denies that aspect of the conversation entirely. He gave an entirely plausible explanation for providing a second load of gravel. He said that if the County had made a mistake in failing to consult Van Eck about the location to spread the gravel, it was entirely proper that the County should provide a substitute load or half load. In fact, a half load would have been enough.

[22] In considering the whole matter of bribery, I must admit this has caused me the greatest of concern in this case. A high standard of proof is required. I accept the law as put before me by the Applicant, but it is a matter which has serious civil consequences. It seems to me that the standard of proof must be a very high standard. It amounts to practically a criminal standard. And on all the evidence, I am not satisfied an offer or promise was made which amounted to bribery. Chrapko probably did ask for support in the forthcoming election, which was within a month, but I am not satisfied he linked the request for support to a load of gravel. So I dismiss the allegation of bribery against the Respondent.

[23] But it follows from my finding with respect to the persons who voted who were not eligible that I order the removal from office of Victor Chrapko as a councillor for the County of Two Hills.

[Argument omitted.]

[24] Yes, as far as the matter of costs is concerned, as I indicated, I don't believe Mr. Babiuk should be penalized for raising the allegation of bribery. There was substantial evidence in that respect. Although he was unsuccessful on that head, I am not going to penalize him for that. It appears to me to be a proper case where costs should be paid by the County on both the Applicant and the Respondent. The question is the column.

[25] I note that the degree of fault certainly appears to be a matter of consideration. In Justice Boyd McBride's case [*R. v. Clay*, [1945] 2 W.W.R. 193 (Alta. Dist. Ct.)], there was very sloppy work carried out by the County, the municipal district in that case, many irregularities on the part of the election officials. That's not the case here, although it has been pointed out by counsel for the Applicant and the Respondent that the preparation of a voters' list probably would have prevented the present difficulty, what led to these proceedings.

[26] It appears to me that a compromise in the situation would be to increase col. 1, but I do so only to the degree of ordering that costs be on col. 2. So the costs of the Applicant and the Respondent on col. 2 will be paid by the County, plus all reasonable disbursements.

[27] Anything further? Counsel have leave to come back to me if anything should arise that poses a difficulty.

[Discussion omitted.]

Application allowed.