

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

GUY DESROSIERS

Applicant

- and -

VANCE P. J. GOUGH, REFORM PARTY OF ALBERTA, O. BRIAN FJELDHEIM
as DEPUTY CHIEF ELECTORAL OFFICER FOR THE PROVINCE OF
ALBERTA, and THE CHIEF ELECTORAL OFFICER FOR THE PROVINCE OF
ALBERTA

Respondents

MEMORANDUM OF JUDGMENT
of the
HONOURABLE MR. JUSTICE E. P. MACCALLUM

[1] The Applicant Desrosiers asks, by way of Originating Notice, for an order declaring Gough to be disqualified from running as an Independent in the upcoming "Senator-in-Waiting" election.

[2] Alternatively, I am asked to order that he be identified on the ballot as a Reform Party of Alberta candidate.

[3] The Writ for this election was issued on June 19, 1998. Two persons are to be elected. The election will be conducted in conjunction with municipal elections in some 300 municipalities this fall. The earliest is set for October 5th. Ballots have been prepared by the Office of the Chief Electoral Officer. Four names will appear as follows:
Bert Brown

Reform Party of Alberta

Guy Desrosiers
Independent

Vance Gough
Independent

Ted Morton
Reform Party of Alberta

(Affidavit of O. Brian Fjeldheim)

[4] Named as Respondents are Gough, the Reform Party of Alberta, and Fjeldheim in his capacity as Deputy Chief Electoral Officer.

[5] No Constitutional or jurisdictional issues have been raised.

[6] In chronological order, Desrosiers filed nomination papers as an Independent in the Senator-in-Waiting election. The Reform Party held an election for two official candidates in which Gough placed third.

[7] Gough then filed nomination papers as an Independent and Fjeldheim had the ballots prepared as described.

[8] Desrosiers says that the ballot is misleading. Gough is not, in fact, an Independent. He is a Reformer whose candidacy is being promoted by the Reform Party. The democratic right to vote enshrined in s. 3 of the Charter carries with it the implicit right to be informed on the issues. *Reform Party of Canada v. Canada (Attorney General)* (1995), 165 A.R. 161 at 179-180; *Canada (Attorney General) v. Somerville*, (1996), 39 Alberta Law Reports (3d) 326 at 345.

[9] The Applicant urges that part of the information needed by the elector is knowledge of a candidate's party affiliations. That knowledge will be hidden from them in the ballot as it now reads. In the result, a voter might be led to vote for Gough as an Independent when he would not have voted for Gough as a Reformer. Desrosiers will thus be harmed by drawing away some of the Independent vote.

[10] The evidence before me was in the form of Affidavits, upon which examinations have not been held. There has not been time. Elections are imminent and the Chief Electoral Officer must have a prompt answer as to the form of the ballot.

[11] Nevertheless, I can reach findings of fact necessary to the disposition of this matter. I find that:

- (1) Gough was a longtime member of the Reform Party (Desrosiers' Affidavit, Exhibit A);
- (2) Gough contested his party's election on September 12, 1998 for official candidates and lost;
- (3) Some Reform Party candidates, on September 10, 1998, publically stated their intention to run as Independents should they not win official candidate status. The reason given was to ensure that an election was held. If Desrosiers dropped out, only the two official Reform Party candidates would remain and they would be named by acclamation as Senators-in-Waiting. The election would be cancelled. The process would thus lose the legitimacy of voter support and the cause of Senate reform would suffer.
- (4) Gough gathered some of the 1500 signatures needed for his candidature in the Senator-in-Waiting election at the Reform Party Convention, at which its official candidate election was held. His nomination papers were filed on September 21, 1998 with the Office of Elections Alberta, and the \$4000.00 deposit was made, by a representative of the Reform Party.
- (5) Gough was not an official candidate of the Reform Party when his nomination was filed, but he enjoyed the support of the Reform Party for his candidature as an Independent.
- (6) On the available evidence, I cannot decide whether the Reform Party's motive was to ensure that an election be held, as they say, or to run a third Reformer, disguised as an Independent, as Desrosiers claims.

[12] With these facts in mind, I find that Gough's nomination paper is valid on its face. (s. 11, *Senatorial Selection Act*).

[13] Its validity is challenged by Desrosiers on the basis of noncompliance with s.s. (2) of s. 11 which reads:

If the person being nominated is the candidate of a registered political party, he shall, at the time of filing his nomination paper, file a Certificate in the prescribed form stating that the person is a candidate for that registered political party.

[14] Desrosiers submits that Gough is in substance, if not in name, the candidate of the Reform Party of Alberta. Section 19, s.s. (2) of the Act says:

The name of each candidate shall be printed on each ballot together with

- (a) The name of the registered political party for which he is the candidate, or
- (b) The word "Independent" if the candidate is not a candidate for a registered political party.

[15] I find that the ballot as described earlier reflects the facts as they were made known to the Deputy Chief Electoral Officer in the nomination papers. I see no legislative requirement that would compel, or indeed justify, him in looking behind the declarations in the nominating paper in search of *bona fides*.

[16] It seems clear that Gough was a Reformer when he filed nomination papers as an Independent and for the sake of argument I will assume that he still is a Reformer and will remain so right up to the time of the election.

[17] Nevertheless, I find no legal impediment to his candidacy as an Independent by virtue of that fact. He is not, as I have found, an official candidate of the Reform Party. Section 11(2) quoted above does not, of course, speak of "official candidate". The words used are "candidate of a registered political party". But, even if that means something wider than "official candidate", to hold that Gough had breached s. 11 would require a finding of fact by me that the Reform Party was fielding a candidate disguised as an Independent as opposed to merely supporting one of its members as an Independent.

[18] As the Applicant's written argument (para. 5) correctly states:

Section 3 [of the Charter] encompasses the two aspects of voting - the right to vote and the right to become a candidate for membership in Government.

[19] For the Reform Party it is argued that to deny someone the right to run as an Independent because of past or present political affiliation is a serious infringement of his right to run for office. I agree.

[20] I further agree with counsel for the Applicant when he argues that the right to run cannot override the right of electors to be informed and not to be misled. But the onus of showing that they would be misled by Gough's designation as an Independent rests with the Applicant and it has not been met.

[21] Accordingly, the Application is dismissed. If the parties cannot agree on costs, I invite them to make brief submissions by letter within 30 days.

DATED at Edmonton, Alberta this 30th day of September, 1998.

J.C.Q.B.A.

APPEARANCES:

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(Ackroyd, Piasta, Roth & Day)
For the Applicant

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(Salmon & Company)
For the Respondent - Vance P. J. Gough

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For the Respondent - Deputy Chief Electoral
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