

CITATION: Vezina v. City of Mississauga, 2019 ONSC 5925
COURT FILE NO.: CV-4207
DATE: 2019-10-11

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Greg Vezina

AND:

City of Mississauga

BEFORE: Justice James Stribopoulos

COUNSEL: Mr. G. Vezina, on his own behalf / Applicant

Mr. M.E. Miknowski, Counsel for the City of Mississauga / Respondent

HEARD: October 11, 2019

ENDORSEMENT

[1] The Applicant, Mr. Vezina, is a candidate in the riding of Mississauga Centre in the upcoming 2019 federal general election. The election is scheduled to take place on October 21, 2019.

[2] On this application, which was brought on short service (the City of Mississauga only having been served with formal notice this morning), Mr. Vezina seeks injunctive relief, as follows:

- i. An order that the City of Mississauga not enforce, as against him, s. 21 of the City of Mississauga Sign By-Law 0054-2002, which regulates the erection of election signs, until at least 72 hours after the polls close on October 21, 2019.

- ii. An order that the City of Mississauga neither organize, nor permit to be held on any city property, any candidates' debates until after the October 21, 2019 election, unless Mr. Vezina is invited to participate on an equitable basis.

[3] Section 21 of the sign by-law regulates election signs. It does so by placing limits on when, where, and how such signs may be affixed, erected or otherwise displayed. The by-law also restricts the potential size of election signs to a "maximum sign area" of 1.5 square metres with the exception of billboard signs. On its face, the by-law appears to place reasonable limits on election signs to protect against their use either causing a public nuisance or a threat to public safety.

[4] Mr. Vezina does not challenge the constitutionality of s. 21 of the sign by-law *per se*. Rather, he takes issue with what he claims is the manner of its enforcement. It confers authority on the Commissioner of Planning and Building of the City of Mississauga "or his designate" to remove election signs that have been affixed, erected or otherwise displayed in contravention of the by-law. Mr. Vezina claims that city staff have been removing his election signs even though they comply with the requirements of the by-law.

[5] To be sure, the removal of a political candidate's election signs by city staff, despite compliance with the by-law's requirements, would represent a significant encroachment on two of the most fundamental freedoms guaranteed by the *Canadian Charter of Rights and Freedoms*. It is difficult to conceive of rights more fundamental to the integrity of our constitutional democracy than the rights to freedom of expression,

guaranteed by s. 2(b) of the *Charter*, and the right of every citizen to participate in the electoral process, guaranteed by s. 3 of the *Charter*.

[6] Mr. Vezina's complaint is directed at how the by-law is being applied. He is not mounting a challenge to its facial validity. Claims of this kind do not impugn the law but the actions of those charged with its enforcement. The legislature, or a municipal council, "is entitled to proceed on the basis that its enactments 'will be applied constitutionally' by the public service.": *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69, [2000] 2 S.C.R. 1120, at para. 71.

[7] Should it happen that Mr. Vezina is charged with violating the by-law, he would be entitled to raise what he says is the misapplication of the law by city staff as a full defence to any such charge. Further, should city staff exercise their authority in a manner that exceeds their powers under the by-law, and thereby violate Mr. Vezina's *Charter* rights, he would be entitled to seek damages for any resulting constitutional violation: see *Vancouver (City) v. Ward*, 2010 SCC 27, [2010] 2 S.C.R. 28.

[8] Of course, all of that is of little comfort to Mr. Vezina. The constitutional rights which he asserts on this application matter most *before* rather than after the election. Nevertheless, the court is hard-pressed to fashion any kind of injunctive relief in these circumstances. To issue an injunction directing city staff to comply with the by-law would essentially require them to do no more than the law already demands. That is, to act both lawfully and constitutionally. In that regard, an injunction would have little to no practical effect. At the same time, to go as far as Mr. Vezina asks, and exempt him from the by-law, would give rise to other constitutional pitfalls.

[9] First, this would mean that Mr. Vezina would be free to affix, erect or otherwise display his election signs as he sees fit. This would be entirely untenable. The City of Mississauga has a legitimate public interest in regulating election signs, to prevent them from either causing a public nuisance or jeopardizing public safety. An injunction that serves to make any individual a law unto himself is not something this court can countenance.

[10] Second, the effect of granting Mr. Vezina the injunctive relief he seeks would place him in a position of advantage over other candidates in the election. The potential impact on the *Charter* rights of those candidates cannot be understated. The court would effectively be conferring an advantage on Mr. Vezina in this election. That would obviously not be appropriate.

[11] As a result, Mr. Vezina's application for injunctive relief involving his election signs must be dismissed. That said, if there is any merit to Mr. Vezina's claim that city staff are unlawfully removing his election signs, the court's endorsement should serve as a stark warning to them. If Mr. Vezina were to ultimately establish that city staff violated his *Charter* rights, the fact that such violations took place after today would undoubtedly be a significant aggravating factor in the court's determination of the appropriate damage award.

[12] The second aspect of the injunctive relief sought by Mr. Vezina relates to the City of Mississauga organizing candidates debates while excluding him from participating in them. It would appear, based on the material filed in support of the application, that this is precisely what the city did in the lead up to the June 7, 2018 provincial election.

During submissions, Mr. Miknowski assured the court that the city has no intention of organizing candidates' debates before the federal election on October 21, 2019.

[13] Where constitutional rights are involved, the very same test applies that governs the issuance of an injunction where private rights are implicated. This means that the court is to consider: (i) whether there is a serious issue to be tried; (ii) whether absent an injunction there will be irreparable harm to the individual seeking the injunction; and (iii) the balance of convenience: see *Harper v. Canada (Attorney General)*, 2000 SCC 57, [2000] 2 S.C.R. 764, at para. 4.

[14] Turning to the first question, is there a serious issue to be tried? Although trite, it deserves mention that the City of Mississauga forms part of the government and its actions are subject to the *Charter*: see *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844. The idea that the government would take responsibility for organizing political debates and, in the process, invite certain candidates for public office to participate while excluding others, raises serious constitutional concerns. As the Supreme Court of Canada has noted, participation in political debate “is ... the primary means by which the average citizen participates in the open debate that animates the determination of social policy”: *Figuroa v. Canada (Attorney General)*, 2003 SCC 37, [2003] 1 S.C.R. 912, at para. 14.

[15] The organization of political debates by the government in the lead up to an election, with government actors choosing which candidates will be permitted to participate and which candidates will be excluded, represents a significant intrusion on the expressive and political rights guaranteed to all citizens under the *Charter*. As

Dickson C.J. stated in *R. v. Keegstra*, [1990] 3 S.C.R. 697, at p. 765: “[t]he state ... cannot act to hinder or condemn a political view without to some extent harming the openness of Canadian democracy and its associated tenet of equality for all.”

[16] It would seem to run afoul of fundamental *Charter* guarantees for the city to organize candidates’ debates in the lead up to an election and decide to invite certain candidates to participate while also excluding others. If such a debate were scheduled, I would not hesitate in granting Mr. Vezina the injunctive relief he is seeking. However, at this point, the possibility that such a debate will be organized remains, at very best, highly speculative. Speculation about a potential *Charter* violation taking place in future is not something that furnishes a basis for the court to issue an injunction: see *Operation Dismantle Inc v Canada*, [1985] 1 S.C.R. 441.

[17] For all of these reasons, the application is dismissed.

[18] In the circumstances, given the public interest at stake, I do not think this is an appropriate case for the court to make an order for costs.

Signed: Justice James Stribopoulos

Date: October 11, 2019