Federal Court  Cour fédérale

Date: 20120719

Dockets: T-616-12
T-619-12
T-620-12
T-621-12
T-633-12
T-634-12
T-635-12

Citation: 2012 FC 916

Toronto, Ontario, July 19, 2012

PRESENT: Madam Prothonotary Milczynski

BETWEEN:

Docket: T-616-12

LEEANNE BIELLI

Applicant

and

ATTORNEY GENERAL OF CANADA, MARC MAYRAND (CHIEF ELECTORAL OFFICER), URMA ELLIS (RETURNING OFFICER FOR DON VALLEY EAST), JOE DANIEL, YASMIN RATANSI, MARY TRAPANI HYNES, AKIL SADIKALI, RYAN KIDD

Respondents

AND BETWEEN:

Docket: T-619-12

SANDRA MCEWING AND BILL KERR

Applicants

and

ATTORNEY GENERAL OF CANADA, MARC MAYRAND (CHIEF ELECTORAL OFFICER), JOHANNA GAIL DENESIUK (RETURNING OFFICER FOR WINNIPEG SOUTH CENTRE), JOYCE BATEMAN, ANITA NEVILLE, DENNIS LEWYCKY, JOSHUA MCNEIL, LYNDON B. FROESE, MATT HENDERSON

Respondents

AND BETWEEN:

Docket: T-620-12

KAY BURKHART

Applicant

and

ATTORNEY GENERAL OF CANADA, MARC MAYRAND (CHIEF ELECTORAL OFFICER), DIANNE CELESTINE ZIMMERMAN (RETURNING OFFICER FOR SASKATOON-ROSETOWN-BIGGAR), KELLY BLOCK, LEE REANEY, VICKI STRELIOFF, NETTIE WIEBE

Respondents

AND BETWEEN:

Docket: T-621-12

JEFF REID

Applicant

and

ATTORNEY GENERAL OF CANADA, MARC MAYRAND (CHIEF ELECTORAL OFFICER), LAUREL DUPONT (RETURNING OFFICER FOR ELMWOOD-TRANSCONA), JIM MALOWAY, ILONA NIEMCZYK, LAWRENCE TOET, ELLEN YOUNG

Respondents

AND BETWEEN:

Docket: T-633-12

KEN FERANCE AND PEGGY WALSH CRAIG

Applicants

and

ATTORNEY GENERAL OF CANADA, MARC MAYRAND (CHIEF ELECTORAL OFFICER), DIANNE JAMES MALLORY (RETURNING OFFICER FOR NIPPISSING-TIMISKAMING), JAY ASPIN, SCOTT EDWARD DALEY, RONA ECKERT, ANTHONY ROTA

Respondents

AND BETWEEN:

Docket: T-634-12

YVONNE KAKFA

Applicant

and

ATTORNEY GENERAL OF CANADA, MARC MAYRAND (CHIEF ELECTORAL OFFICER), ALEXANDER GORDON (RETURNING OFFICER FOR VANCOUVER ISLAND NORTH), JOHN DUNCAN MIKE HOLLAND, RONNA-RAE LEONARD, SUE MOEN, FRANK MARTIN, JASON DRAPER

Respondents

AND BETWEEN:

Docket: T-635-12

THOMAS JOHN PARLEE

Applicant

and

ATTORNEY GENERAL OF CANADA, MARC MAYRAND (CHIEF ELECTORAL OFFICER), SUSAN J. EDELMAN (RETURNING OFFICER FOR YUKON), RYAN LEEF, LARRY BAGNELL, KEVIN BARR, JOHN STREICKER

Respondents

REASONS FOR ORDER AND ORDER

Background - The Applications

[1] The main applications comprising the within proceedings are seven separate applications brought under section 524(1)(b) if the *Canada Elections Act*, S.C. 2000, c.9, to contest the results of the May 2, 2011 federal general election in each of the seven respective ridings to which the applications relate:

- Don Valley East
- Winnipeg South Centre
- Saskatoon-Rosetown-Biggar
- Elmwood-Transcona
- Nipissing-Timiskaming
- Vancouver Island North
- Yukon

[2] The grounds for the applications are stated in an essentially identical manner in each of the seven notices of applications, that "during the course of the election, a person or persons unknown engaged in fraudulent or corrupt or illegal activities and practices that affected the result of the election in the riding by attempting to prevent electors from voting in the election, or by inducing them to refrain from voting for a particular candidate".

[3] Specifically, the Applicants state that they received live and/or automated telephone calls that:

(i) represented the call as one from or on behalf of Elections Canada;

(ii) advising that there was a change in their polling station; and

(iii) misdirecting them to a non-existent polling station, sometimes in an inconvenient or far away location.

[4] Certain of the Applicants also allege that they received telephone calls during the election campaign that were of an abusive or harassing nature, designed to be linked (falsely) to a particular candidate that the recipient of the call might have supported.

[5] The Applicants allege that these live and automated (or "robo") calls were not isolated incidents, errors or pranks, but part of a deliberate, widespread and concerted campaign to manipulate, interfere with or suppress the vote, with the intent of influencing the outcome of the election in each of the ridings where this campaign was executed. The Applicants also allege that the recipients of these calls were specifically targeted to receive them. They state that only supporters of the Liberal, New Democratic and Green parties received the fraudulent calls, after having responded to earlier calls canvassing their support for the Conservative Party of Canada ("CPC"), and where the recipient of the call indicated that they would not be supporting the CPC candidate in their riding.

Issue on Motions and Summary of Disposition - Motions Dismissed

[6] The seven Respondents who were the successful CPC candidates on May 2, 2011 and are the current sitting Members of Parliament, have each filed a motion to strike the application that relates to their respective riding that is in issue. These motions are brought at this preliminary stage, before all evidence has been filed, cross-examinations conducted and a full record, including argument has been placed before the Court and a hearing is conducted on the merits of the applications.

[7] The Respondent MPs seek an exceptional remedy, but it is one available under the *Canada Elections Act* to guard against abuses of the ability to contest elections. Elections are the democratically expressed will of the electorate and should not lightly be overturned. Nor should the ability to contest elections be used for improper purposes, where a candidate or elector simply disagrees with or does not like the result. Applications brought under the *Act* can be struck and dismissed in a summary way at any time, where the grounds for such motion have clearly been made out.

[8] In the case of the within motions and for the reasons below, however, I am not satisfied that the applications should be struck at this juncture.

[9] The Respondent MPs submit on these motions that the applications are frivolous and vexatious and on their face are fatally flawed. They submit that the notices of application, as drafted, fail to plead sufficient material facts to sustain a finding that in fact there was a campaign of voter suppression, that any number of ballots were prevented from being cast and that consequently, there could be no impact on the election results in each of the ridings in issue, having regard to the margins of victory of each of the Respondent MPs in their ridings. The Respondent MPs also submit that the applications are a nullity on the grounds that they were each commenced well beyond the thirty day time limit within which an application can be commenced under the *Canada Elections Act* to contest election results.

[10] Notwithstanding these submissions, however, and wwhatever hurdles the Applicants may face on these applications as identified by the Respondent MPs on this motion, I cannot conclude

that it is so clear or without doubt that the applications will fail on those grounds so as to lead to the applications being struck at this stage. It is not a certainty that the notices of application, as drafted, are so fatally flawed that no allegation could ever be proven or remedy granted. The issues and objections raised by the Respondent MPs are better raised and argued on a full record at the hearing of the applications on their merits.

[11] Far from being frivolous or vexatious, or an obvious abuse, the applications raise serious issues about the integrity of the democratic process in Canada and identify practices that if proven, point to a campaign of activities that would seek to deny eligible voters their right to vote and/or manipulate or interfere with that right being exercised freely - all of which if permitted to escape even the prospect of judicial scrutiny, could shake public confidence and trust in the electoral process and in those who in good faith stand for public office.

[12] This is not to say that every application that is ever filed that alleges fraudulent, corrupt or illegal activity should survive a motion to dismiss and proceed to a hearing. The Court on a motion to strike must be vigilant so as to not permit the abusive or improper casting of doubt on the integrity of the electoral process. Permitting an obviously frivolous and vexatious application to proceed itself diminishes the electoral process. An application to set aside election results must be brought in good faith, on grounds that are clear and based on a reasonable foundation. Accusations and bare assertions will not sustain an application to annul the results of an election.

[13] In the within applications, the allegations of voter suppression and an organized campaign of fraudulent and harassing telephone calls, particularly on the scale alleged, has never been the subject of an application under section 524(1)(b) of the *Canada Elections Act*. Despite considerable jurisprudence about electoral irregularities, the cases generally deal with irregularities at polling stations, the eligibility of electors or the propriety or validity of ballots that are "in the box". Despite the able argument of counsel for the Respondent MPs, it cannot be concluded at this stage of the proceedings that the same approach, test or evidentiary requirements that apply in those types of cases, apply in the same way in the circumstances of the within applications. It has not yet been determined in a case like the within applications – (1) how to ascertain the true effect of fraudulent calls and/or determine what votes if any, did not make it "into the box", or (2) how to evaluate whether or how the fraudulent calls had an impact on the results of the election. This is a case of first instance, and it is not a foregone conclusion how a court will approach such issues on the merits.

[14] The Applicants have set out their allegations of wrongdoing within the scope of section 524(1) (b) and have identified and/or set out in their material the evidence they intend to adduce to prove the allegations of fraudulent, corrupt and illegal practices, and their impact on the election results. The admissibility and sufficiency of this evidence ought not to be determined on a motion to strike – particularly in light of the *Canada Elections Act* requirement that the applications be determined in a summary way and without delay. It is a determination properly left to the hearing on the merits.

[15] With respect to whether the seven applications were commenced out of time, this is an issue that requires a full evidentiary record. It cannot be concluded at this juncture simply on the basis of inference and argument that the Applicants as a group or any of them, sat on their rights until after the time for bringing the application had expired. It is an open and unresolved issue at this stage, whether the applications were commenced within 30 days after the later of the day the election results were certified and the day on which the Applicant(s) first knew or should have known of the occurrence of the alleged fraud, or corrupt or illegal practice. What the individual Applicants knew or should have known cannot be determined on what is before the Court on this motion and requires their evidence and cross-examination for a finding of fact to be made in this regard.

Legislative Framework

> ***Canada Elections Act***
>
> **Means of contestation**
> 522. (1) The validity of the election of a candidate may not be contested otherwise than in accordance with this Part.
>
> **Contestation of election**
> 524. (1) Any elector who was eligible to vote in an electoral district, and any candidate in an electoral district, may, by application to a competent court, contest the election in that electoral district on the grounds that….
> (*b*) there were irregularities, fraud or corrupt or illegal practices that affected the result of the election;
>
> **Rules of procedure**
> 525. (3) An application shall be dealt with without delay and in a summary way. The court may, however, allow oral evidence to be given at the hearing of the application in specific circumstances;
>
> **Time limit**
> 524(1) (*b*) must be filed within 30 days after the later of

> (a) the day on which the result of the contested election is published in the *Canada Gazette*, and
> (*b*) the day on which the applicant first knew or should have known of the occurrence of the alleged irregularity, fraud, corrupt practice or illegal practice
>
> **Dismissal of application and Court Decision**
> 531. (1) The court may at any time dismiss an application if it considers it to be vexatious, frivolous or not made in good faith.
>
> (2) After hearing the application, the court may dismiss it if the grounds referred to in paragraph 524(1) (*a*) or (*b*), as the case may be, are not established and, where they are established, shall declare the election null and void or may annul the election, respectively.
>
> **Appeal**
> 532. (1) An appeal from a decision made under subsection 531(2) lies to the Supreme Court of Canada on any question of law or fact, and must be filed within eight days after the decision was given.
> Procedure
> (2) The Supreme Court shall hear the appeal without delay and in a summary manner.

Applicable Test on Motion to Strike under *Canada Elections Act*

[16] A motion to strike an application commenced under section 524(1)(b) of the *Canada Elections Act* is brought pursuant to section 531(1) of the *Act*, which makes clear that the court may at any time dismiss an application that it considers to be vexatious, frivolous or not made in good faith. An application to contest an election under section 524(1) (b) of the *Canada Elections Act* is not an application for judicial review brought under the section 18.1 of the *Federal Courts Act*. It is also not an action, governed by the *Federal Court Rules* relating to pleadings and the conduct of an action.

[17] Accordingly neither the test to strike an application under section 18.4 of the *Federal Courts Act* nor the test to strike an action under Rule 221 of the *Federal Courts Rules* strictly

apply to the within motions brought under the *Canada Elections Act*, but they do inform the analysis as to when and on what basis or grounds it is appropriate for the Court to extinguish a proceeding at an early stage. The analysis and cases considering the meaning of "scandalous, frivolous or vexatious" under Rule 221(c) of the *Federal Courts Rules* are particularly helpful. Actions may be dismissed where:

> (i) The statement of claim is so deficient that the opposing party does not know the case to meet or make full answer and defence;
> (ii) The statement of claim does not plead sufficient material facts so as to sustain a cause of action; and/or
> (iii) The claim is so clearly futile that it is "plain and obvious" that it cannot succeed.

[18] In the within case, the Court must review the notice of applications and determine on the face of the applications, whether the Respondent MPs can understand the allegations being made, whether there is any complaint or allegation that if proven, could lead to the remedy sought, or whether an application is clearly vexatious or frivolous, or not brought in good faith. Such finding may be made in cases where the pleading is abusive, scandalous or wholly lacking in material facts, containing only bare assertions, conclusions of law or bald statements or argument.

[19] In the within applications, I agree with the Respondent MPs that the Applicants must at a minimum set out in their Notice(s) of Application:

> (i) that there was conduct which if proven, would constitute an "irregularity, fraud, corrupt practice or illegal practice;
> (ii) that the alleged conduct "affected the result of the election" in each of the challenged ridings; and

(iii) that the impact or "affect" on the election in the riding was material – in the sense that election result would have been different but for the alleged conduct.

[20] The application of this test, requiring a proceeding to be "clearly futile" or "plain and obvious" to be without merit, is consistent with the approach taken in other cases where statutes provide for the early dismissal of applications on grounds that they are "scandalous, frivolous or vexatious". Appropriate reference is made to test of striking of actions under Rule 221 of the *Federal Courts Rules* (see for example: *Pfizer Canada Inc. v. Apotex Inc* 1999 CanLII 8371 (FC); and *Sanofi-Aventis Canada Inc. v. Novopharm Ltd.* 2007 FCA 163).

Are the Applications Out of Time?

[21] As noted above, section 527 of the *Canada Elections Act* requires that an application to contest an election be filed within 30 days after the later of (1) the day the result of the contested election is published in the Canada Gazette, and (2) the day the applicant first knew or should have known of the occurrence of the alleged irregularity, fraud, or corrupt or illegal practice.

[22] What an applicant "should have known" is a factual inquiry, guided by the principles developed in the case law with respect to discoverability and the reasonable inferences that can be drawn from the facts and surrounding circumstances of a particular case. It is not a determination based on the subjective or individual perception or experience, but what is reasonable to conclude regarding what a person ought to have known in the circumstances.

[23] The Respondent MPs submit that even as acknowledged by each of the Applicants and as set out in the Notices of Application, it is uncontested that before and/or on election day, the Applicants received a live and/or automated telephone call advising them of a polling station change that they knew immediately or shortly thereafter to be information that was incorrect. With the exception of the Applicant Leeanne Bielli, all of the Applicants voted. The Respondent MPs also submit that with respect to the harassing telephone calls disguised as canvassing calls, the Notices of Application suggest that the recipients of those calls knew they were bogus or at least suspicious and were not influenced by them in how they voted.

[24] Aware that they received incorrect or improper telephone calls, the Respondent MPs state that the clock immediately began to run on the 30 days and that at the latest, the Applicants needed to commence their applications to contest the election on or before June 20, 2011, the day the results were published in the Canada Gazette.

[25] The Applicants submit that although concluding the calls were strange and conveying incorrect information at around the time they were received, they had no way to know, no reason to believe or even suspect, that the calls were not an isolated or random prank call, but part of what they now allege to be a wider scheme of voter suppression, interference and manipulation – possibly constituting a fraudulent, or corrupt or illegal practice within the meaning of the *Canada Elections Act*.

[26] The Notices of Application also state that the Applicants were unaware of any alleged fraudulent, corrupt or illegal practices until the media began reporting in February-March of

2012, the "robo-call" story affecting the riding of Guelph, Ontario and the ongoing investigation conducted by Elections Canada. It was then that the Applicants say they "connected the dots" and concluded that what had happened to them so many months earlier was the same thing and part of something that was organized and deliberate.

[27] The Applicants state that they had no reason to suspect that any person or persons would engage in a campaign of voter suppression or dirty tricks as is now alleged, and that it is not reasonable to find that they or any other elector who received such calls were required to immediately report them or commence an application under the *Canada Elections Act* to contest the election. The Applicants state that at the time they received the strange, dubious or erroneous call(s), they had no reason to believe it was not something received in isolation, and had no reason to know or believe that it might be part of something bigger or orchestrated.

[28] This issue of whether the applications were commenced out of time and are now barred from proceeding cannot be determined on this summary motion to dismiss. When should have the Applicants known? It is not as clear as the Respondent MPs submit, that any reasonable person aware of all of the facts and surrounding circumstances would have known, as the Applicants should have known at the time they received the call(s) that they were or could have been part of a fraud or corrupt or illegal practice committed during the election campaign and that their time to commence an application to contest the results of the election began to run. If a clear and certain disposition of the issue cannot be made on the material filed on this motion, then the issue of timeliness must and can only be determined on a full record at the hearing of the applications on their merits.

Are the Applications Fatally Flawed and Certain to Fail?

[29] The Respondent MPs submit that the test under section 524(1) of the *Canada Elections Act* for annulling an election, requires the Applicants to prove that:

> (i) there was an irregularity, fraud, corrupt or illegal practice;
> (ii) that affected the result of the election; and
> (iii) that the impact on the election results be established by proving that the number of votes affected by the irregularity/fraud/corrupt or illegal practice, was greater than the margin of victory.

[30] The Respondent MPs submit that in the manner the Applicants have framed the proceedings, and taking account the material facts pleaded, it is impossible for the Applicants to satisfy this test. The Respondent MPs address the first branch of the test – whether the Applicants have pleaded sufficient material facts that if proven, establish that there was fraud, or corrupt or illegal practices committed during last federal general election (submitting they do not). They also rely on the second and third branches of the test and submit that on the basis of what is pleaded, the Applicants without doubt, cannot establish that to the extent there were any improper practices, that those practices affected the results of the election or that the margin of victory of the Respondent MPs should or would be decreased or eliminated so as to set aside the result. They state that it is essentially a foregone conclusion that the Court will be unable to find that any irregularity or improper practices affected an amount of votes equal to or greater than the margin of the majority claimed, and that consequently the applications would be an essentially futile abuse if they proceed (*Blanchard v. Cole*, [1950] 4 DLR 316 (NSCA); *O'Brien v. Hamel*, [1990] 73. O.R. (2d) 87 (H.C.).

[31] The Respondent MPs also point out that with the exception of the Applicant Ms. Bielli, all of the other Applicants cast their vote in either the advance polls or on election day, and that there is no direct evidence described by the Applicants as forthcoming that will establish that any voter was influenced by or prevented from voting as a consequence of receiving one of the impugned live or automated telephone calls, (as required to set aside an election: *Di Biase v. Vaughan (City)*, 2007 CarswellOnt 8775 (C.A.) aff'g 2007 CarswellOnt 5876 (S.C.J.). – see also *Gross v. Wiebe,* [1976], W.W.R. 394 (Sask.C.A.)).

[32] In the written representations filed by each of the Respondent MPs, they state:

> In lieu of factual accounts of actual electors who failed to vote, the applicants rely on "empirical analysis of voter turnout and trends" and claim that a so-called "voter suppression" campaign resulted in a decline in voter turnout "of an average of 3%".

The Respondent MPs submit that such social science evidence is not sufficient, and that in the absence of any other material facts, the Court will be unable to conclude that the results of the election were affected at all, or to the requisite extent such that a Court could order that the election result ought to be annulled.

[33] The Applicants do not dispute or disagree with the Respondent MPs regarding the general framework or test the Court must apply on any determination of an election challenge on its merits. The Applicants acknowledge it is their burden to establish that (1) there was fraud or corrupt or illegal practices; (2) that affected the results of the election; such that (3) the plurality or margin of victory should be diminished or eliminated, requiring the results to declared null and void or annulled. The difference between the parties is what evidence is relevant and admissible, and how the analysis should be conducted by the Court to make its findings.

[34] The Applicants state that in election challenges that deal with votes that were never cast due to fraud or corrupt or illegal practices (such as voter suppression or voter intimidation cases), it is impossible to conduct a reliable or realistic vote or body count and engage in a meaningful analysis of whether these phantom or non-existent votes affect the margin of victory of any of the Respondent MPs. It cannot simply be a quantitative or arithmetic exercise in such cases – because the court cannot count what is not there. The Applicants also submit that it is unreasonable and even improper to expect individual eligible electors to self-identify en masse to facilitate such non-vote count analysis.

[35] With respect to the Notices of Application, the Applicants set out in detail, what practices they allege constitute voter suppression or harassment and the manner in which they were conducted, including calls directing them to incorrect polling stations. The Applicants rely on newspaper reports of "robo-calls" and the ongoing Elections Canada investigations into allegations of voter suppression in other ridings.

[36] In support of the applications, the individual Applicants have filed affidavits setting out their own experience with live and automated telephone calls during the election campaign. The Applicants also rely on the affidavit of Annette Desgagne, a former employee of RMG, a company retained by the CPC and some CPC candidates to call voters during the election campaign. There is also the affidavit of Robert Penner, described as "an expert in the development and implementation of sophisticated voter contact programs" who sets out his information about how supporters of a candidate are identified and contacted; and his opinion regarding the character and source of the

misdirecting and harassing calls in the seven ridings in issue in the within applications. Finally, the Applicants rely on the affidavit of Frank Graves, of EKOS Research Associates Inc., who is described as an expert in research methodology and statistical analysis, and whose evidence includes his expert opinion, based on his survey of electors, about the impact the live and automated calls had on the results of the elections in each of the seven ridings in issue.

[37] With respect to how the results of the election in the seven ridings were affected, and the possible impact on the margin of victory or plurality, the Applicants state in the Notices of Application:

> The effectiveness of voter suppression techniques, such as those that have been reported to have taken place during the election, can be estimated through empirical analysis of voter turnout and trends. This analysis suggests that techniques, such as calls misdirecting voters to the wrong poll, or harassing calls intended to discourage voters from supporting political opponents, resulted in a decline in voter turnout of an average of 3%.
>
> A 3% reduction in voter turnout is equivalent in a typical riding to 2,500 eligible voters that did not go to the polls.

[38] Whether this material is sufficient is not the issue on this motion; it is not for the Court to assess or determine the admissibility or sufficiency of the evidence on a motion strike. The Applicants and Respondent MPs clearly take a different approach as to what evidence can or must be adduced and what analysis be conducted in voter suppression cases.

[39] The Respondent MPs urge the approach relied upon in cases that deal with challenges to the eligibility of electors or to the votes or ballots actually cast - - whether they should be found to be

valid and counted, or set aside. As noted in *Wrzesnewskyj v. Attorney General (Canada)*, 2012 ONSC 2873 (CanLII), at paras. 70-72:

> 70. This takes me to the heart of the test: What is required to establish that an irregularity affected the result of the election?
>
> 71. The case law suggests that this is a narrow question and generally, the parties agree. "[I]f the number of irregular votes exceeds the plurality of the votes case, the election cannot stand….The plurality, the number of votes that must be set aside before an election can be declared invalid, has been referred to in cases such as this as a magic number ….
>
> 72. The question to be asked in determining whether an election should be set aside has been expressed in different ways:
> - Were there ballots in the box that should not have been there?...
> - Were there persons who voted who"…should not have been permitted to vote…?

These questions require a reviewing court to identify the irregularity and the consequence of its impact, analyze each impugned ballot, individually or as part of a group that may be subject to the same irregularity, and then if applicable, total up the ones that should not have been included and determine whether the number of ballots set aside, equals or exceeds the plurality.

[40] The Respondent MPs submit it is necessary in a similar manner, for the Applicants to specifically identify and quantify the affected voters and ballots that should have been in the box but were prevented from being cast, and that there be a sufficient number of these "but for" ballots that would affect the result of the election. The Applicants submit a different evidentiary basis or analysis must be adopted to establish whether or how election results were affected in voter suppression cases. Which is the correct test or approach in a case alleging voter suppression is not clear.

[41] In the absence of clear authority on this issue, it cannot be concluded that the applications are "utterly devoid of merit" so as to warrant their summary dismissal. The Respondent MPs' motions must be dismissed, and the matters of the sufficiency of evidence and the appropriate test be determined at the hearing of the applications on the merits.

Conclusion

[42] The Notices of Application set out the allegations, the basis on which the allegations are made and the remedy sought. Whether or not they will succeed is not certain, but I am not satisfied that the applications are so flawed in the manner argued by the Respondent MPs, that it would be a clearly futile and wasteful exercise to proceed to a hearing on the merits.

[43] As the Applicants point out, Elections Canada does not have the authority to annul or otherwise set aside the result of an election that may have been affected by fraud or corrupt or illegal activity. That authority is exclusively accorded to a court as defined by the *Canada Elections Act*, upon the application of a candidate or an elector eligible to vote in the riding in question.

[44] Both parties point out that applications under section 524(1) of the *Canada Elections Act* must be determined in a summary way, without delay. Accordingly, the parties are referred to the order of the lead Case Management Judge, Prothonotary Aronovitch dated May 25, 2012 as subsequently revised, and are urged to move these applications along to a hearing as quickly as possible.

ORDER

THIS COURT ORDERS that:

1. The motions be and are hereby dismissed.

2. In the event the parties cannot agree on costs, each may file written submissions no longer than three pages in length within 10 days of the date of this Order.

"Martha Milczynski"
Prothonotary,
Case Management Judge

Federal Court  Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

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DOCKET:	T-635-12
STYLE OF CAUSE:	THOMAS JOHN PARLEE v. ATTORNEY GENERAL OF CANADA, MARC MAYRAND (CHIEF ELECTORAL OFFICER), SUSAN J. EDELMAN (RETURNING OFFICER FOR YUKON), RYAN LEEF, LARRY BAGNELL, KEVIN BARR, JOHN STREICKER
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	June 25, 2012
REASONS FOR ORDER AND ORDER:	Milczynski, P
DATED:	July 19, 2012

APPEARANCES:

Mr. Steven Shrybman Ms. Lucy Draper-Chislett(student)	FOR THE APPLICANTS
Mr. Arthur Hamilton	FOR THE RESPONDENT

Mr. Ted Frankel
Mr. Chris Selby(student)

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