

**COURT OF APPEAL OF ALBERTA****Form AP-5**  
[Rule 14.87]

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REGISTRY OFFICE: Calgary

PLAINTIFF/APPLICANT: LARRY R. HEATHER,  
[REDACTED]  
CAROLINA (CARLA) EVERS

STATUS ON APPEAL: Appellants

DEFENDANT/RESPONDENT: ELECTIONS CALGARY,  
POSMEDIA CALGARY,  
CALGARIANS FOR A  
PROGRESSIVE FUTURE,  
JYOTI GONDEK MAYORAL  
CAMPAIGN

STATUS ON APPEAL: Respondents

DOCUMENT: **FACTUM**

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Appeal from the Decision of  
The Honourable Mr. Justice N.E. Devlin,  
Dated the 13th day of January, 2022  
Filed the 9th day of February, 2022

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**FACTUM OF THE APPELLANTS, VOL. ONE, PAGES 1-14**


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## PART 1

### STATEMENT OF FACTS

#### **Appellants Standing/Actions to Apply for Fiat to trial of Quo Warranto**

1. The Appellants are residents of Calgary and were candidates and voters in the October 18th, 2021 Calgary Civic Election.
2. Part 5 – section 124 of the LAEA requires that a proceeding against a particular or several election participants must be commenced within six weeks of the Election Day. (October 16<sup>th</sup>, 2021) The Applicants raised six grounds of objection as to why the 2021 Calgary Civic Election needed closer scrutiny by the Court.
3. The application was commenced and filed on November 23<sup>rd</sup>, 2021 within the six week window. The Applicants, due to Covid-19 Court delays, were unable to obtain a morning court date within the six week window and were scheduled for the first date available before the Court in morning chambers January 4<sup>th</sup>, 2022. The objective was to obtain a fiat for the judicial review of the Calgary Civic Election of 2021 in the nature of Quo Warranto by a viva voce witness trial.
4. In the equivalent of a Special Application Hearing before Justice N. Devlin in morning chambers on January 4th, 2022, the matter was heard in Court over a two hour period and all grounds of objection were heard, and preliminary objections by the Respondents. Larry Heather and Carolina Evers appeared as the applicants, but Benjamin Shepherd was absent due to overly broad media reports of Courts being cancelled that week.
5. Justice Devlin released his reasons for judgment on January 13th, 2022. The Justice stated that the applicants had failed to show reasonable grounds that the election was improperly conducted or that the election of any candidate was the product of unlawful activity. Thus the leave to proceed with the application for quo warranto fiat was accordingly denied.
6. Section 146 of the Alberta Local Authorities Election Act (Current as of Jan. 1st, 2021) grants the right of appeal to cases ruled upon based upon this legislation. The Civil Notice of Appeal was filed with the Alberta Court of Appeal on February 9<sup>th</sup>, 2022. The ruling of the Justice concerning the actions of Elections Calgary alone as the respondent, are the issues under challenge.

(Books Of Authorities, Vol.1 , Tab.E - Local Authorities Election Act 2000 L21 ( LAEA) p.76, Section 127(1) )

## PART 2

### GROUNDS OF APPEAL

- I.     **The Chambers Judge committed a mixed error of fact and law in his January 13, 2022 Reasons for judgment VI. b. Ground of Objection #1 Failure to Comply with Section 84(2.4) of the LAEA.**  
.....pp.6-7
  
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## PART 3

### STANDARD OF REVIEW

- 7. The application of Ground of Objection #1 to the facts in this case (the first ground of appeal) is a question mixed fact and law and reviewable on the standard of palpable and overriding error.

*Housen v. Nikolaisen*, 2002 SCC 33 at paras. 10, 11

[2002] 2 S>C>R> 235 [*Housen*] (Tab D Book of Authorities)

- 8. The misapprehension of the facts under Grounds of Objection #2 and #3 are issues of fact and are reviewable on a standard of palpable and overriding error.

*Housen v. Nikolaisen*, 2002 SCC 33 at paras. 10, 11

[2002] 2 S>C>R> 235 [*Housen*] (Tab D Book of Authorities)

## PART 4

### ARGUMENT

#### 1. **The Chambers Judge committed a mixed error of fact and law in his January 13,2022 Reasons for judgment VI. b. Ground of Objection #1 Failure to Comply with Section 84(2.4) of the LAEA.**

To quote the Chambers Judge:

[36] The Applicants begin by demonstrating a shortcoming in the Election Bylaw. Namely, Section 84 of the *LAEA* creates mandatory provisions that *must* be included in any municipal election bylaw that permits the use of electronic voting machines.

#### **Alternative voting equipment**

84(1) An elected authority may by bylaw provide for the taking of the votes of electors by means of voting machines, vote recorders or automated voting systems.

...

(2.4) If the bylaw referred to in subsection (1) prescribes directions for the use of tabulators, the bylaw must require that the equipment must not be part of or connected to an electronic network, except that the equipment may be securely connected to a network after the close of polls for the purpose of transmitting information to the local jurisdiction.

...

[Emphasis added]

(Appeal Court Record Part 2, Final Documents, Judge Devlin January 13<sup>th</sup>,2021- Reasons for judgment VI. a).para.[36])

9. An attempt by Counsel for the Mayor to use section 3 of the Bylaw to overcome omission. The Justice responds:

[37] “There is no obvious language to this effect in the Election Bylaw. When pressed, counsel for the City of Calgary fairly conceded that it does not meet the dictates of section 84(2.4).

Counsel for the Mayor suggested that section 3 of the Election Bylaw functionally satisfies this statutory requirement. That provision deals with discrepancies between the Election Bylaw and the *LAEA*, providing that:

#### **Application**

3(1) This bylaw applies to all elections in the City of Calgary that are governed by the *Act*.

(2) If there is any conflict between a provision of this Bylaw and a provision of (i) the *Act*;

...

the latter prevails.

Section 3 of the Election Bylaw does not assist the Respondents. This is not a case of conflict between the two instruments. Rather, the statute creates a mandatory requirement that every election bylaw contain specific language governing the network connectivity of vote counting machines. The Election Bylaw does not contain this language. That is not a conflict with the *LAEA*, but rather a failure to do what the statute requires. I am satisfied that the Applicants have demonstrated that the Election Bylaw fails to comply with section 84(2.4) of the *LAEA*.

(Appeal Court Record Part 2, Final Documents, Judge Devlin January 13<sup>th</sup>, 2021- Reasons for judgment VI. a).para.[37])

10. **RESPONSE:** At para. 37 the learned Justice only gives a summary statement of the concerned portion of the Calgary Election Bylaw, but not a direct quote as he did with the corresponding LAEA section 84  
Here is the actual bylaw language:

Post Vote Procedures (1) After a *voting station* closes, except as modified for special *ballot*, institutional and advance vote *voting stations* as deemed necessary by the *Returning Officer*, the presiding deputy must ensure that the following functions are performed:

(f) election results are transmitted to the *Returning Officer* in the manner prescribed by the *Returning Officer*;

(Book of Authorities, Tab F - 35M2018 The Elections Bylaw – Office Consolidation)

As can be seen, the bylaw does deal with the transmitting of election results, but what is absent is the timing of the transmittal (after closing of the polls) and no mention of transmission of vote counts over a secure network.

11. In the above [37] the learned Justice says,  
“that is not a conflict with the LAEA, but rather a failure to do what the statute requires,”  
This statement is not one that can understood logically. If bylaw has failed to do what the statute requires, is it not a non-sequitur to say it is not in conflict?  
It is apparent that the language in 17(f) must have be written in knowledge of the existing requirements of the LAEA, but the bylaw has instead markedly altered the requirements. There is no valid reason for this statement to be inserted in the bylaw without a prior acknowledgement of what it replaces.
12. This is no mere ‘drafting error’ as suggested by the Justice in [43] but a deliberate attempt to revise the conditions required. This is no ‘legislative lacuna’ as suggested by the Justice. [41] The statement as crafted in the bylaw provides reasonable grounds that by deduction, the intent was to alter the conditions. In other words a ‘pre-build’ into the bylaw in order to facilitate irregular and/or unlawful practices.  
(Appeal Court Record Part 2, Final Documents, Judge Devlin January 13<sup>th</sup>, 2021- Reasons for judgment VI. b).para.[43] [41])

13. Note the actual bylaw language modifies three things:
  - a. No requirement that the election results be transmitted only after the close of polls.
  - b. No mention of results transmittal over a secure network.
  - c. The locus of the requirements are transferred from the authority of the LAEA to the much more nebulous discretion of the Returning Officer. This seems to be an act of deliberation by the drafters.
  
14. One must reason that the reason for the legislative requirements in section 84 of the LAEA is to:
  - a. Prevent anyone from knowing the vote totals before the close of the polls, thus opening the possibility to alter the vote totals ahead of time to ensure a desired result.
  - b. To provide a secure network for the transmittal to avoid a third parties from accessing the vote totals, and altering the results outside of the election official's purview. If the network was insecure, the very individual machines at the polls could be changed, even before transmittal of the results.
  
15. The Justice in [Reasons for Judgment VI b [40] states:
 

“Sections 84(1) and 84(2.1)(b) of the *LAEA* permit municipal bylaws to provide for the use of voting machines and automated voting systems, including the tabulators complained of by the Applicants. The core requirement is that the use of such systems “follow the provisions of [the *LAEA*] as nearly as possible”: section 84(2.2). My review of the Election Bylaw indicates that it complies with this requirement. Detailed post-voting procedures are laid out in section 17 of the Election Bylaw, and tabulators are explicitly referenced therein. If these post-voting procedures were complied with, and the tabulators were not connected to an electronic network, except as specified in section 84(2.4) of the *LAEA*, the Election was lawfully conducted.  
(Appeal Court Record Part 2, Final Documents, Judge Devlin January 13<sup>th</sup>, 2021- Reasons for judgment VI. b).para.[40])
  
16. **RESPONSE:** The bylaw 17(f) is in no way complying with the LAEA. It is a complete ‘miss’ of something that is stated to be a ‘must’. 84:2(4) The Justice supplies conjecture that if the LAEA was followed, all was lawfully conducted, but provides no reasonable grounds of probability that it was so.
  
17. The learned Justice at several points seems to be asking for actual evidence of unlawful conduct to be produced. [39] – see also [40] [41] [42] [43] To Quote:
 

[39] “That finding, however, is not coextensive with reasonable grounds to believe that the Election was unlawful. Section 127 does not authorize challenges to election validity on the basis of a defect in the relevant bylaw, but rather requires a proffer of evidence that the impugned election was *conducted* unlawfully.”  
(Appeal Court Record Part 2, Final Documents, Judge Devlin January 13<sup>th</sup>, 2021- Reasons for judgment VI. b).para.[39])



18. **RESPONSE:** The bylaw defect is in no way exempted under section 127.

On the local civic level, the election officials are bound to govern themselves by the bylaw, no doubt trusting that Council has done its diligence regarding its compliance to the LAEA. The bylaw compels the workers, including the Returning Officer, to conduct themselves according to its local direction

19. At this point, the argument made by the Justice about the reasonable grounds standard should be addressed. The Justice remarks:

Reasons for Judgement VI - a. [35] The Reasonable Grounds Standard

Section 127 places a burden of proof on applicants to show *reasonable grounds* that an election was conducted unlawfully, or that the election of certain individual candidates was the result of bribery, undue influence, or other impropriety. This standard is well known in law. “Reasonable grounds” is the point at which “credibly-based probability replaces suspicion”: *Hunter et al v Southam Inc*, [1984] 2 SCR 145 at 167. Proof to this standard requires less than a *prima facie* case or a showing on a balance of probabilities. It does, however, require more than mere suspicion, and connotes a degree of *probability*, as opposed to mere possibility. “[R]easonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information”: *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114. Determining whether that standard has been met involves “a practical, non-technical, and common-sense assessment of the totality of the circumstances”: *R v Ballendine*, 2011 BCCA 221 at para 53.

(Appeal Court Record Part 2, Final Documents, Judge Devlin January 13<sup>th</sup>, 2021- Reasons for judgment VI. a).para.[35])

(Cases cited found in Tabs A, B, and C – Appellants’ Book of Authorities)

20. **RESPONSE:** There is a high probability that the Election was conducted in conformance with the bylaw. To repeat a portion of the above,

*“Proof to this standard requires less than a prima facie case or a showing on a balance of probabilities. It does, however, require more than mere suspicion, and connotes a degree of probability, as opposed to mere possibility.”* Italics Added.

But in fact, the learned Justice seems to be asking for *prima facie* evidence. This kind of evidence is simply not available as it is in the proprietary custody of Elections Calgary alone. Only during a judicial inquiry of the type sought in this application, could such evidence be ascertained. But indeed, probability replaces suspicion here if there was local compliance to the instructions of the City Bylaw. It is more on the level of suspicion, to expect that the bylaw language governing the local civic election norms, the one most immediate to the election officials, would be in practice superseded by the higher legislation, like a compass needle pointing to true north. That is not how sociological behavior or chain of command works.

21. Furthermore, the City Council having approved such a discrepancy to the LAEA in the Elections bylaw. It is highly unlikely that the Returning Officer would not exercise the freedoms given to them. It is here that the Court has the obligation and aegis to examine

what actual standards were followed.

The evidence that the learned Justice is asking for is found in the use of a crafted statement in the bylaw. It is clearly based on prior knowledge of the restrictions it was replacing. Surely there is a way to set the parameters of a judicial review that if a key probability of unlawful activity is found not to be so, other avenues of the inquiry would not be pursued.

## **II. The Chambers Judge misapprehended the facts in in his January 13<sup>th</sup>, 2022 Reasons for judgment VI. c. Ground of Objection #2: Use of Voting Machines.**

22. In light of the past 2021 Civic election being the first time the voting tabulators have been used in a general Calgary civic election, one must understand what a sea change this is from former elections. For the first time, no human eyes were, save for spoiled ballots, were allowed to observe the marked ballots of voters physically. The role of scrutineer was greatly diminished or even neutered altogether. Anomalies such as a Candidate for Mayor winning convincingly in all 14 wards were seen by many to be an improbable result.
23. In the light of all the many instances of hacking into supposedly secure computer databases world-wide, citizens right have concerns about the 'hackability' of a system set aside for the counting of our most important right, the exercise of our democratic franchise.
24. The possibility that the vote transmission system used by Elections Calgary was accessible to other business units of the City of Calgary, and the potential for intrusion via those other portals by 3<sup>rd</sup> parties is a valid concern.(i.e. Microsoft's "Election Guard" software and Back Door Cryptographic Algorithms) – opens the ability to alter vote totals or swap out ballots. Again, the fact that a secure system is not mentioned as a must in the Calgary Elections bylaw as pointed out in the first grounds of objection gives sufficient grounds to have the matter investigated by the Court.  
In a normal hand-counted Election there is no single person could undetectably defraud the entire election, but with a software back door, whether by flaw or design, such an event is now possible.
25. The learned Justice in paragraph [45] Reasons for Judgment states:  
  
“In support of this complaint, the Applicants offer a series of printouts from the Internet, from websites of unknown reliability that make certain assertions regarding corporate entities and election practices in other jurisdictions. These materials fall far short of showing reasonable grounds to believe anything improper took place with the City of Calgary’s voting equipment.”  
(Appeal Court Record Part 2, Final Documents, Judge Devlin January 13<sup>th</sup>,2021- Reasons for judgment VI. c).para.[45])

26. **RESPONSE:** Exhibit 2D of the Appellants' Affidavit "Chinese parts, hidden ownership, growing scrutiny" Dec.-2019 is sourced from the NBC News website, hardly a website of unknown reliability.

Exhibit 2E of the Appellants' Affidavit "The Market for Voting Machines is Broken" is sourced from ProPublica, a non-profit organization ([www.propublica.org/about](http://www.propublica.org/about)) "founded in 2007-2008 with the belief that investigative journalism is critical to our democracy.... the important work of exposing corruption, informing the public about complex issues, and using the power of investigative journalism to spur reform." This source is hardly a lightweight fly by night operation.

(Exhibit 2D p.1 "Chinese parts, hidden ownership, growing scrutiny" NBC News, p.1 This article highlights questions that need to be asked about E.S. & S (Elections Systems and Software) machines which were used by nearly half of voters in the 2020 American Election. Quote:

"A new level of scrutiny of the election system, spurred by Russia's interference in the 2016 election, has put ES&S in the political spotlight. The source of the nation's voting machines has become an urgent issue because of real fears that hackers, whether foreign or domestic, might tamper with the mechanics of the voting system.

That has led to calls for ES&S and its competitors, Denver-based Dominion Voting Systems and Austin, Texas-based Hart Intercivic, to reveal details about their ownership and the origins of the parts, some of which come from China, that make up their machines.

But ES&S still faces questions about the company's supply chain and the identities of its investors, although it has said it is entirely owned by Americans. And the results of its government penetration tests, in which authorized hackers try to break in so vulnerabilities can be identified and fixed, have yet to be revealed."

(Exhibit 2D p.1 "Chinese parts, hidden ownership, growing scrutiny" – NBC News Tab A - Extracts of Key Evidence)

27. These questions are very relevant to voters in the past 2021 Calgary Civic Election.
- What is the history and ownership of the company supplying the machines?
  - What are the possible vulnerabilities to hackers?
  - Are 3<sup>rd</sup> Party Testing Results available?
  - What is the supply chain origin of the components/ parts?
28. An examination by elected officials in the USA at the secrecy of ES&S is also relevant to Canada. As Exhibit 2D says on p.2:

“The secrecy of ES&S and its competitors has pushed politicians to seek information on security, oversight, finances and ownership. This month, a group of Democratic politicians sent the private equity firms that own the major election vendors a letter asking them to disclose a range of such information, including ownership, finances and research investments.

"The voting machine lobby, led by the biggest company, ES&S, believes they are above the law," said Sen. Ron Wyden, D-Ore., a member of the Intelligence Committee who co-signed the letter. "They have not had anybody hold them accountable even on the most basic matters."

(Exhibit 2D p.2 "Chinese parts, hidden ownership, growing scrutiny" – NBC News, Tab A - Extracts of Key Evidence)

A closer look at supply chain sources is also merited:

"NBC News examined publicly available online shipping records for ES&S for the past five years and found that many parts, including electronics and tablets, were made in China and the Philippines, raising concerns about technology theft or sabotage.

During the tour, Burt said the overseas facilities are "very secure." He said the final assembly of voting machines takes place in the U.S.

Chinese manufacturers can be forced to cooperate with requests from Chinese intelligence officials to share any information about the technology and therefore pose a risk for U.S. companies, NBC News analyst Frank Figliuzzi, a former assistant director of the FBI for counterintelligence, said. That could include intellectual property, such as source code, materials or blueprints. There is also the concern of machines shipped with undetected vulnerabilities or backdoors that could allow tampering."

(Exhibit 2D p.3 "Chinese parts, hidden ownership, growing scrutiny" – NBC News, Tab A Extracts of Key Evidence)

29. There are reasonable grounds for the Courts to investigate on behalf of voters these questions in what is currently solely in the custody of Elections Calgary. What was the nature of the contract with ES&S? Were the above considerations researched before the signing of the contract?
30. Further Evidence from the Exhibit 2E ProPublica Article – The Market For Voting Machines is Broken. Highlight past failures in the glare of hotly contested USA 2018 elections.

“In Georgia, where the race for governor had drawn national interest amid concerns about election integrity, ES&S-owned technology was in use when more than 150,000 voters inexplicably did not cast a vote for lieutenant governor. In part because the aged ES&S-managed machines did not produce paper backups, it wasn’t clear whether mechanical or human errors were to blame. Litigation surrounding the vote endures to this day.

In Indiana, ES&S’ systems were plagued by mishaps at the local level. In Johnson County, for instance, the company’s brand-new machines faltered in ways that made it difficult to know whether some people had voted more than once.

... The vote in 2006 in Sarasota, Florida, was just one. There, ES&S machines lost around 18,000 votes; it is still unclear why. The loss was far more than the margin of victory, and a lawsuit followed that ultimately resolved little.”

Exhibit 2E, p.1 The Market for Voting Machines Is Broken – ProPublica, Tab B - Extracts of Key Evidence. (Highlighted)

31. The record on ES&S aggressive legal tactics gives one pause for thought as to what could happen in Calgary:

“A ProPublica examination of ES&S shows it has fought hard to keep its dominance in the face of repeated controversies. The company has a reputation among both its competitors and election officials for routinely going to court when it fails to win contracts or has them taken away, suing voting jurisdictions, rivals, advocates for greater election security and others.

In September 2018, ES&S [filed a federal lawsuit](#) against Cook County, Illinois, after the county awarded a \$30 million voting machine contract to another company. ES&S later dropped the lawsuit, but the dispute delayed the implementation of Cook County’s new machines, and the Chicago mayoral election this spring ultimately was conducted using the same machines that were meant to be replaced.

ES&S’ lawsuits and threats of lawsuits have helped delay or thwart progress toward better voting technology even when the litigation is unsuccessful, more than two dozen election officials and voting technology experts said in interviews.”

(Exhibit 2E, p.2 The Market for Voting Machines Is Broken – ProPublica, Tab B Extracts of Key Evidence.)

32. A number of controversial tactics by ES&S are top of mind when thinking of what may have been involved in the securing of the contract with Elections Calgary.

“Along with going to court, ES&S had held onto the lion’s share of the nation’s election technology business by using a variety of controversial tactics, its critics

say. For years, ES&S has required states and counties that buy its machines to sign long-term deals that often obligate them to purchase a vast array of other equipment and supplies from the company. ES&S also has made it a practice to hire former election officials as lobbyists in statehouses around the country. And it has donated to individual campaigns and spent money to lobby local and federal politicians at levels far higher than its competitors.”

Exhibit 2E, p.3 The Market for Voting Machines Is Broken – ProPublica, Tab B - Extracts of Key Evidence. (Highlighted)

33. As to the vulnerabilities that can be discovered in the software code, some testing methods include the Public Intrusion Test (PIT) ,which is open to anyone who was interested to see if they are weaknesses or errors in the code that could. If the source code remains proprietary to the company making the machines, there is no way for an outside party to check it without a Court Order.

### **III. The Chambers Judge misapprehended the facts in his January 13<sup>th</sup>,2022 Reasons for Judgment VI. d. Grounds of Objection #3: Lack of a Verified Voter’s List.**

34. In His reasons for Judgment the Justice states in paragraphs 46 & 47:

[46] The Applicants’ third complaint is that Calgary City Council refused to order the production and release of a verified voters list. Mr. Heather argued that it is “a conflict of interest” for City Council to determine whether this list is produced, and suggested that there is no way to check for multiple votes at advance polls in the absence of such a list.”

[47] This complaint suffers two flaws. First, section 49 of the *LAEA* permits, but does not mandate, the production of such a list. City Council was well within its statutory rights to not produce it. Second, the Applicants, again, do not offer evidence that any voting irregularities took place. That is what section 127 requires.

(Appeal Court Record Part 2, Final Documents, Judge Devlin January 13<sup>th</sup>,2021- Reasons for judgment VI. c).para.[46] & [47])

35. **RESPONSE:** A permanent Elector’s Register is being confused with a List of Electors for use at the polls. The Election Bylaw requires the production of a permanent Elector’s Register, but not a List of Elector’s. The Returning Officer (Kate Martin) may produce such a List. There is an irregularity in the Bylaw here, because a permanent Elector’s

Registry is to exist by bylaw requirement. And obviously information from it is used to publish the total number of qualified electors (847,556) and the percentage of qualified electors who turned out to vote (46.38% or 393,090), etc.

To quote the Bylaw:

**BYLAW NUMBER 35M2018**

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**PART 2 – PERMANENT ELECTORS REGISTER**

4. (1) The *secretary* is hereby directed to prepare a permanent electors register of residents in the City who are entitled to vote in *elections*.

(2) The *Returning Officer* may use the permanent electors register to create a list of electors who are entitled to vote in an *election*.

(Calgary Elections Bylaw 35M2018, Tab F, Appellants' Book of Authorities)

36. The List of Electors has essentially the same information as the Electors registry but formatted in a different way. Candidates in past elections have had access to such lists for a fee, and lists were being used at the polls. Older voters in past elections would distinctly remember voter's lists being checked off the poll list by the poll clerk. There is nothing in the bylaw that says the Returning Officer needs the permission of Council to produce the list of Electors. It is at the Returning Officer's discretion. Yet the Appellants' exhibit 3A, "No Voter's List for 2021 Civic Vote" implies it is solely the decision of Council.

(Exhibit 3A, "No Voter's List for 2021 Civic Vote", Tab C - Extracts of Key Evidence)

37. This sets up an irregular practice, for a permanent Voter's Registry exists, and it is probable that certain members of Council may have gained access to it in the course of their term. One must note that there are no restrictions in the Elections Bylaw as to the secure keeping of this Elector's Registry, or who has access to it. Yet as far as non-incumbent Candidates go, they are have no access to this information, nor is the public assured that a check is in place at the polls against multiple voters or non-citizens because of the same information not being released for use. We do feel this is a conflict of interest situation that can be used to the advantage of incumbents connected interest groups.
38. Of course, the formation of the Calgary Elector's Registry is based on an interplay of information from the City's Census Department and the Provincial Voter's Registry

and those who are involved in wielding such databases together. Parties having access to the Provincial Voter Registry also have another avenue of gaining the non-published lists that are not available at the polls or to the Candidates in general.

## **PART FIVE**

### **RELIEF SOUGHT**

1. The Appellants request that the January 13th, 2022 decision of the Honourable Mr. Justice N.E.Devlin to refuse leave via a fiat be set aside.
2. The Appellants ask the Alberta Court of Appeal to request the Court of Queen Bench Justice grant a fiat to proceed with a judicial review in the nature of Quo Warranto concerning the validity of the Calgary Civic Election of October 18th, 2021 as laid out in section 127 of the Alberta Local Authorities Election Act.
3. That the nature of the Judicial Review be restricted initially to the following questions:
  - a.. A Court examination to determine whether the transmission of the election results was or was not commenced before the close of polls in violation of the Provincial LAEA legislation.
  - b. A Court examination of whether or not, the results were transmitted over a secure network to Elections Calgary alone. ( i.e. Not a system accessible by other City departments or outside agents.)
  - c. A Court examination of the adequacy of Chain of Custody documents in which the results of the votes were secured at the end of each voting session including the 34 weekday and 29 weekend stations in Advance Polls.
  - d. A Third party forensic examination of the software of the ES and S vote tabulators and whether the tabulators were capable of ‘backdoor’ hacking or access by outside agents, and any evidence thereof.
  - e. An examination of the closed circuit video surveillance of the Five public vote drop boxes to determine if such boxes are secure without the presence of Election officials, or if any suspicious ballot drops were made.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4<sup>TH</sup> DAY OF AUGUST,  
2022

**Larry Heather, Carolina (Carla) Evers, Benjamin Shepherd**

Self-Represented

Estimated time of argument: 45 minutes



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