

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Todd v. Coleridge,***  
2009 BCSC 688

Date: 20090526  
Docket: S088894  
Registry: Vancouver

Between:

**Matthew Edward Todd**

Petitioner

And

**James Coleridge and City of White Rock**

Respondent

Before: The Honourable Madam Justice Gerow

## **Reasons for Judgment**

Counsel for the Petitioner:

J.G. Frame

Counsel for the Respondent,  
James Coleridge:

J.B. Baker

Counsel for the Respondent,  
The Corporation of the City of White Rock:

M.C. Woodward

Date and Place of Hearing:

February 9-11, 2009  
Vancouver, B.C.

[1] The petitioner, Matthew Todd, seeks a declaration that the election of the respondent, James Coleridge, in the 2008 general local election for the City of White Rock is invalid because he was in contravention of s. 152 of the *Local Government Act*, R.S.B.C. 1996, c. 323. Mr. Todd alleges that Mr. Coleridge either authored or authorized the publication of an email in which misleading and untrue accusations were levelled against his political rivals, including Mr. Todd, and then knowingly made false statements about the authorship of the email.

## **BACKGROUND**

[2] Mr. Todd was a candidate for councillor in the 2008 local election for the City of White Rock and was unsuccessful. Mr. Coleridge a successful candidate for councillor.

[3] During the election Mr. Coleridge participated in concealing the identity of the author of an email that came to be referred to as the "Slate Email." The Slate Email was sent on October 23<sup>rd</sup>, 2008, purportedly by Alison Baker with an email address of catsanddogs415@yahoo.com. The email was sent to candidates in the election and stated:

For those candidates that are not on Stewarts slate, oh they will deny it exists, but it will come out in the last week....here is some information which accidentally was found so wanted to pass it on to all the candidates. Please pass it around, I think it will be tough for anyone to get on Council and predict that this 'Real Estate Slate' is going to be elected with perhaps Doug McLean and James Coleridge getting back.

Keep up the great efforts we all love some of the new fresh faces.

Alison and Tom

[4] The attachment contains the names of six candidates, including Mr. Todd, and describes the manner in which each of the candidates has supported the development of high-rise buildings in the community. The attachment concludes:

Brought to you by development companies interested in White Rock  
Get up or get out of the way – it is time for building the future

[5] At the hearing of the petition, Mr. Coleridge testified that the email was drafted and sent by his wife, Anna Coleridge, under the pseudonym Alison Baker without his knowledge when he was out of the house on the afternoon of October 23<sup>rd</sup>, 2008. He had earlier drafted the document that was attached to the email. When he returned home, Mr. Coleridge discovered the email on his computer as he was one of the recipients. A discussion ensued and his wife admitted to being the author of the Slate Email.

[6] Mr. Coleridge's evidence is that he had been collecting information for a number of years on each of the six candidates named in the attachment, and had found that since the 1998 election they had worked together and would advertise as a group or slate just prior to election day. He testified that he wrote the attachment as a mock advertisement for the "Real Estate Slate" which emerges each election just before election day.

[7] Mrs. Coleridge testified that she had been helping Mr. Coleridge collate the information about the candidates and thought the information should get out. She decided to send the Slate Email, attaching the document which she and Mr. Coleridge had been working on, when Mr. Coleridge was out of the house. Her

evidence is that she is in marketing, where it is not unusual to use pseudonyms, and that is the reason she signed it Alison and Tom rather than using her own name.

[8] On the same day and after his wife had admitted to him that she had sent the Slate Email, Mr. Coleridge sent an email responding to “Allison” and commented on another reply that “Alison” had received from Glenda Bartosh, one of the candidates named in the Slate Email. Mr. Coleridge’s email commenced:

Allison,

As you will probably get many emails back, I wanted to make sure you had another piece to the puzzle, especially given the email below.

[9] Mr. Coleridge goes on in the email to expand on the facts set out by his wife in the Slate Email and to provide additional information that he says supports the Bakers’ position that the individuals named in the Slate Email are pro-high-rise buildings. He ends the email with:

Thanks for the email, please call again if you have any more questions or clarifications of the spin some people put on their positions. Let the voters decide and please send to the group you suggested over the phone ...thanks again.

James

[10] Both Mr. Todd and Ms. Bartosh responded to the person they thought was Alison Baker. On October 26<sup>th</sup>, Mrs. Coleridge sent another email, purportedly authored by Tom Baker, addressed to Mr. Todd and copied to a large number of individuals. This email includes comments that Mr. Todd is sarcastic, accuses him of criticizing seniors, and comments that after speaking to his neighbours he (Mr. Baker) thinks Mr. Todd’s days on Council are numbered. Mr. Coleridge admits that

he was aware on October 26<sup>th</sup> that his wife sent the email to Mr. Todd under the pseudonym “Tom Baker”. Mr. Coleridge’s evidence is that he and his wife were upset about Mr. Todd responding to the Slate Email and putting his response on his blog.

[11] On October 28<sup>th</sup>, Mr. Coleridge was interviewed by the local press about the Slate Email. Mr. Coleridge was quoted as saying that: “I don’t think they’re (the “Bakers”) that far off.” On another occasion, Mr. Coleridge was asked by the local press if he knew Alison Baker and his reported response was “I heard she worked on the Sea Festival. We are all wondering who this is. I don’t know who they are or what their politics are.”

[12] On November 7<sup>th</sup>, 2008, Mr. Coleridge was interviewed again about the Slate Email by the local press. When confronted with evidence that his home was the source of the Slate Email, Mr. Coleridge responded that he did not know the email senders, that the email did not come from him, and that he had been the victim of identity theft. At the hearing, Mr. Coleridge testified that he told the press the email did not come from him because his wife sent it. He admitted that the other two responses were lies.

[13] It was not until after the election and the commencement of these proceedings that Mr. Coleridge admitted that he had played a role in the Slate Email. Mr. Coleridge testified at the hearing that he had responded to the Slate Email and lied to the press to protect his wife. He did not want her to be the subject of media attention because she was pregnant and had previously had miscarriages.

**ANALYSIS**

[14] The application is brought pursuant to the *Local Government Act*. The relevant sections provide:

143(1) The right of an elected candidate to take office or the validity of an election may not be challenged except by an application under this section.

(2) An application may be made in accordance with this section to the Supreme Court for a declaration regarding the right of a person to take office or the validity of an election.

...

(4) An application may be made only by a candidate in the election, the chief election officer or at least 4 electors of the jurisdiction for which the election was held.

(5) An application may be made only on one or more of the following bases:

...

I that an election or the election of a candidate should be declared invalid because section 151, 152 or 153 (2) (a) was contravened.

...

145(2) On the hearing of an application under section 143 regarding the validity of an election, the court may

(a) declare that the election is confirmed as valid,

(b) declare that the election is invalid and that another election must be held to fill all positions for that office that were to be filled in the election that was declared invalid,

I declare that the election of a candidate is invalid and that the office is vacant, or

(d) declare that the election of a candidate is invalid and that another candidate is duly elected.

...

(4) The court may confirm the election of a candidate in relation to which the court finds there was a contravention of section 151 or 152 if the court is satisfied that

(a) the candidate did not contravene the applicable section, and

(b) the contravention did not materially affect the result of the election.

(5) If the court declares that a candidate is not qualified to hold office or that the election of a candidate is invalid, the court may order the candidate to pay the municipality or regional district for which the election was held a sum of money not greater than \$20 000 towards the expenses for the election required to fill the vacancy.

152 (3) A person must not, by abduction, duress or fraudulent means, do any of the following:

(a) impede, prevent or otherwise interfere with a person's right to vote;

(b) compel, persuade or otherwise cause a person to vote or refrain from voting;

I compel, persuade or otherwise cause a person to vote or refrain from voting for a particular candidate.

(4) A person prohibited from doing something by this section must not do the prohibited act directly, indirectly or by another person on behalf of the first person.

***Should the election of Mr. Coleridge be declared invalid?***

[15] For the following reasons, I have concluded that it is appropriate to declare that the election of Mr. Coleridge is invalid.

[16] Mr. Todd takes the position that the election of Mr. Coleridge should be declared invalid because Mr. Coleridge used fraudulent means to compel, persuade or otherwise cause a person to vote or refrain from voting for a particular candidate.

Mr. Todd submits that Mr. Coleridge has not met the standard of accuracy, honesty and candour expected by those running for public office. Mr. Todd asserts that Mr. Coleridge's successful spinning and hiding of the truth resulted in his election.

[17] Mr. Coleridge concedes that he misrepresented his knowledge of who authored and sent the Slate Email, but says that the misrepresentation was not of a material fact. He takes the position that when a candidate in the course of an election lies to the media about a fact that is not material – such as the origin of the Slate Email – that does not influence anyone to vote for him, and should not be used as a basis to declare his election invalid. Mr. Coleridge argues that in order to declare the election of an individual invalid, the lies have to be about a material fact that relates to the political issues within the election. Where the underlying lie is not about a material issue, there should not be a presumption that the lie affects the election.

[18] Mr. Coleridge submits that the suggestion that the group named in the Slate Email are in favour of the development of high rise buildings is a matter of opinion or comment, and that the attachment contained fair comment.

[19] In *Friesen v. Hammell*, 1999 BCCA 23, 117 B.C.A.C. 1, the Court of Appeal considered s. 256(2) of the *Election Act*, R.S.B.C. 1996, c. 106, which is a mirror provision of s. 152(3), and stated at paras. 74–77 and 82:

[74] In our view, the primary object of provisions such as s. 256 of the *Election Act* is to maintain and enhance the integrity of the electoral process. In that regard, it is reasonable to conclude that, in enacting s. 256 and its predecessors, the Legislature intended to safeguard the public from fraudulent conduct on the part of, or on behalf of, a

candidate or a political party, which was of sufficient import that it influenced the judgment of potential voters by causing them to vote other than they would have but for the fraudulent conduct. We are unable to find any sound justification for interpreting the legislation so narrowly as to permit electoral candidates or political parties to fraudulently mislead the public with respect to material issues which could reasonably be expected to affect their decision for whom to vote. We are not persuaded that an interpretation of s. 256 such as that signalled in *Mainwaring* would give rise to the chaotic consequences suggested by the MLAs and the NDP. In our view, holding political candidates and parties to a standard of non-fraudulent dealing with the public is in accord with maintaining the integrity of the electoral process. ...

[75] That is not to say that every misrepresentation, no matter how trivial, would give rise to an offence under s. 256 of the Act. In our view, the type of misrepresentations which would fall under “fraudulent means” within the meaning of s. 256(2) would be misrepresentations of material fact which were intended to, and did, lead voters to vote for a candidate or party for whom the voter would not otherwise have voted, and which were made by or on behalf of a candidate or political party knowing that they were false, or without regard to their truth or falsity.

[76] Statements of intention or belief, and statements which any reasonable person would attribute to mere puffery would not constitute fraudulent means within the meaning of this section.

[77] In response to the argument that such an interpretation of s. 256 would have a chilling effect on freedom of political speech, or that it would otherwise be inimical to Charter values, we would adopt the statement of Lander J. in *Cameron* quoted at para. 71 of these reasons. Freedom of speech is a cherished value in our society, but we are unable to conclude that this value is diminished by an interpretation of s. 256 which penalizes fraudulent misrepresentations concerning material facts which go to the heart of the voter’s decision for whom to vote. As noted in the Australian decisions to which we have referred, freedom of speech, even political speech, knows some limits.

...

[82] In our view, the wording of s. 256 in the context of the Act as a whole, the legislative history, and the intent and object of the Legislature, taking into account the policy and constitutional considerations to which we have referred, all support the interpretation of s. 256 contended for by the petitioners. In summary, “fraudulent

means” in s. 256 includes fraudulent misrepresentations of material fact, made knowingly or recklessly, which induce potential voters to vote for a party or candidate other than the one the voter would have voted for but for the misrepresentation

[20] As stated above, Mr. Coleridge takes the position that the statements he made as to the authorship of the Slate Email were not misrepresentations of a material fact. He points to the fact that early on he declared that he was in agreement with and supported the statements made in the Slate Email, as evidenced by the fact that he responded to “Allison”, and the other recipients of the Slate Email, on the same day he received the email, indicating his agreement with her comments.

[21] Mr. Coleridge agrees that he described himself to the electorate in his campaign materials as a person someone could come to for straight answers. During the election, he was endorsed by the White Rock Citizens for Positive Renewal, which has as one of its goals to “Restore Public Trust.” Mr. Coleridge testified that he did not think the fact that he lied to and deceived the public about his participation in the Slate Email would have impacted his endorsement by the Citizens for Positive Renewal or impacted his campaign if the matter had come to the surface before the election. Mr. Coleridge stated at the hearing that he was quite uncomfortable that he was not telling the truth, but thought the people of White Rock trusted him because of the work he had done for the electorate over the years when he had been an elected official. He states that he is of the view that the electorate still trust him because people still come to him for his assistance even after this issue became public knowledge.

[22] Mr. Coleridge admits that he lied on a number of occasions but says that the lies were about an immaterial fact. He argues that in order to be in violation of s. 152 of the *Local Government Act*, there must have been the use of fraudulent means, and his false statements about the Slate Email do not come within the definition of fraudulent means as they are not false statements or lies about a material fact.

[23] Mr. Coleridge submits that a material fact is one that is related to the political issues within an election, whereas an immaterial fact is something that is not important to the election itself. In this case, he says that the issue of who authored and sent the Slate Email, and his participation in the ongoing deception surrounding the authors, are immaterial. Mr. Coleridge argues that the fact he lied to and deceived the public in that regard does not fall within the definition of fraudulent means and is not a basis for declaring his election invalid.

[24] Mr. Coleridge argues that if he had replied to the Peace Arch News reporter truthfully on November 7, 2008, he would have said: I did not send the email. My wife sent the email under an assumed name. She used materials I assembled and I maintain that everything in the ad is correct. I lied because she is in her first trimester, and I did not want her to be stressed out. He says if he had told the truth it is more likely he would have enjoyed an even greater plurality. That may be so, but he did not take the opportunity to tell the truth. Rather Mr. Coleridge told another lie and continued the deception by stating that he must be a victim of identity theft.

[25] Mr. Coleridge argues that the question is whether he persuaded or caused anyone to vote for or to refrain from voting for someone else by alleging the matters set out in the Slate Email, by using an assumed name, and later by repeatedly denying it.

[26] However, that is not the question in my view. The question in my view is whether Mr. Coleridge persuaded or caused anyone to vote for him by stating that in his campaign material that he was someone the electorate could come to for a straight answer, i.e. that he was someone you could trust. Mr. Coleridge ran on his reputation that he was a candidate who could be counted on to tell the public the truth.

[27] Rather than telling the truth about what he says is an immaterial fact, Mr. Coleridge participated in the creation of a fictitious couple, and then lied about his knowledge of the couple, and used the couple as support for his platform. This is not a case where Mr. Coleridge was silent when he found out that his wife had sent out the Slate Email under a pseudonym. Instead he responded to the concerned citizen "Allison" the same day indicating his support of the facts contained in her email, and embellished and expanded on those facts. Mr. Coleridge continued the deception by stating to local reporters that he felt that the concerned citizens, the "Bakers", were correct in their views about Mr. Todd and the other candidates named in the Slate Email. He used the pretence that there were concerned citizens who shared his views as support for his views. In other words, Mr. Coleridge chose to use this deception to further his own political ends.

[28] Mr. Coleridge displayed a willingness to continue to lie and deceive the public despite being presented with a number of occasions when he could have told the truth. In my opinion, if a candidate puts his character in issue and runs on his integrity and honesty, then his character, including his integrity and honesty, is a material fact.

[29] In my view, Mr. Coleridge fraudulently misrepresented a material fact – that he was straightforward – when he was anything but, as evidenced by his willingness to continue the deception. Further, he misrepresented the fact that there were members of the public who had the same views of the other candidates as he did, as support for his own platform. It is likely that misrepresentations of this nature would induce a potential voter to vote for Mr. Coleridge who would not have voted for him if they had known he did not in fact give straightforward answers to questions, but rather engaged in deceit and lies about what he considered to be immaterial matters, and used the deceit and lies to support his own political ends.

[30] For the above reasons, I conclude that Mr. Coleridge was in violation of s. 152(3) of the *Local Government Act*. Accordingly, I declare that the election of James Coleridge is invalid.

***Should the office be declared vacant?***

[31] For the following reasons, I conclude that the appropriate remedy in this case is to declare the office vacant, and to order that Mr. Coleridge pay \$20,000 to the City of White Rock towards the cost of running a by-election to fill the vacancy.

[32] As set out earlier, s. 145 provides that if the election of a candidate is declared invalid there are two options: one option is to declare that the office is vacant and the other option is to declare that another candidate is duly elected.

[33] Both the City of White Rock and Mr. Todd submit that a declaration should be made that the office is vacant. The City of White Rock submits that if a declaration is made that the election of Mr. Coleridge is invalid and the office is vacant pursuant to s. 145(2) of the *Local Government Act*, an order should be made that Mr. Coleridge pay the City of White Rock \$20,000 towards the expenses of the election required to fill the vacancy.

[34] The evidence is that a by-election in the City of White Rock for a councillor would cost between \$26,000 and \$37,000.

[35] Mr. Coleridge takes the position that the next runner-up should be declared elected, and that he should not have to be penalized by having to contribute to the cost of a by-election.

[36] At the time of the hearing, the election was three months old, and is now more dated. Mr. Coleridge received 2,202 votes and the next runner-up received 1,589 votes. I agree with counsel for the City of White Rock that it is not appropriate to speculate to which candidate those other votes would go. As stated earlier, Mr. Coleridge takes the position that it is likely the votes would have gone to him at the time of the election even if he had told the truth. Counsel for the City of White Rock takes the position that there is nothing that prevents either Mr. Coleridge or Mr. Todd from running in the by-election.

[37] In the circumstances, I am of the view that it is appropriate to declare the office vacant, and to make an order that Mr. Coleridge pay the City of White Rock the sum of \$20,000 towards the expenses of the by-election.

**Conclusion**

[38] I have concluded that it is appropriate to make a declaration pursuant to s. 145(2) of the *Local Government Act* that the election of Mr. Coleridge is invalid and that the office held by Mr. Coleridge is vacant. Mr. Coleridge is to pay \$20,000 to the City of White Rock towards the expenses of the election required to fill the vacancy. Mr. Todd is entitled to his costs from the City of White Rock pursuant to s. 146(1) of the *Local Government Act*. The City of White Rock is entitled to recover the costs to be paid to Mr. Todd from Mr. Coleridge pursuant to s. 146(2).

“Gerow J.”