

Court File No. CU-19-00000242-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**NAUSHERWAN DANİYAL HAYDER**

Applicant

- and -

**THE TOWN OF OAKVILLE**

Respondent

**APPLICATION UNDER SECTION 83 OF THE MUNICIPAL ELECTIONS ACT, 1996, S.O.  
1996, C. 32, SCH (The "MEA")**

**NOTICE OF APPLICATION**

**TO THE RESPONDENT(S):**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the applicant. The claim made against you is set out in the following pages.

**THIS APPLICATION** will come on for a hearing on 14<sup>th</sup> (day), Feb (date), at 2019 Milton Courthouse at 491 Steeles Avenue East, Milton ON L9T 1Y7.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a Notice of Appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your Notice of Appearance, serve a copy of the

evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than **2 days before** the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: Jan 18, 2019

Issued by: M. Tomczyk  
Local Registrar

**Address of Court Office:**

491 Steeles Avenue East  
Milton, Ontario L9T 1Y7

TO: Town of Oakville  
1225 Trafalgar Road  
Oakville Ontario L6H 0H3

## APPLICATION

### 1. THE APPLICANT MAKES APPLICATION FOR:

- (a) An interlocutory Order, requiring the Town of Oakville to produce to the lawyers for the Applicant, all relevant records of the municipal election of October 22, 2018 in respect of Wards 6 and 7 of the Town of Oakville, including, but not limited to:
  - (i) All records, emails, correspondence and other communications, whether in written or electronic form, relating in any way to the issuance of voter information cards in respect of Wards 6 and 7 and alleged or actual errors in the issuance of same, all steps taken to investigate any such errors, steps taken to correct actual errors, communications related to uncorrected errors or allegations that errors were not corrected, and reports or complaints regarding voters resident in Ward 7, who were refused the opportunity to vote in Ward 7 or who in fact voted in Ward 6 or who have stated that, due to any such errors, they did not vote in the Ward in which they were otherwise entitled to vote;
  - (ii) The preliminary list of all electors eligible to vote in Ward 6 or Ward 7, including name, address and polling subdivision as provided to the Town of Oakville by the Municipal Property Assessment Corporation in accordance with Section 19 of the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sch (the "MEA");
  - (iii) All records and lists relating to corrections made in accordance with Section 22 of the MEA by the Clerk of the Town of Oakville (the "Clerk"), of errors in the preliminary list;

- (iv) The voters' list, as prepared by the Clerk in accordance with Section 23 of the MEA.
- (v) All records of applications and determinations made in respect thereof, for additions, removals or amendments to the voters' list, in accordance with Section 24 of the MEA, and made during the period referred to in Subsection 24(1), including, but not limited to the name, address and polling subdivision of each person named in such applications and determinations;
- (vi) The interim list of changes to the voters' list prepared by the Clerk in accordance with Section 27 of the MEA;
- (vii) The certified list of voters prepared by the Clerk in accordance with Section 28 of the MEA;
- (viii) All lists prepared in accordance with Subsection 43(5) of the MEA, of persons who voted at advance votes held in accordance with Section 43 thereof;
- (ix) All statutory declarations as to identity made in accordance with Subsection 52(1) of the MEA;
- (x) Lists of all electors who registered to vote on voting day or at an advance vote including name, address and polling subdivision;
- (xi) Lists of all electors who voted on voting day including name, address and polling subdivision, including both paper lists maintained at the polling places and electronic records of such activity;

- (xii) Lists of all electors who voted in advance, including name, address and polling subdivision, including both paper lists maintained at the polling places and electronic records of such activity;
  - (xiii) All maps, lists, poll keys and other records that were prepared by, or which were, or could have been used by the Clerk or her staff to determine the ward and polling subdivision within the Town of Oakville, associated with any voter or potential voter;
  - (xiv) The nomination papers of each candidate for Town Councillor, or for Town and Regional Councillor, including the name and stated qualifying address of each person providing an endorsement of the candidacy, filed in accordance with section 33 of the MEA;
  - (xv) Such other documents and materials related to the election as referred to in section 88 of the MEA, as counsel may advise and this Honourable Court may permit;
- (b) An interlocutory Order, pursuant to subsection 88(3) of the MEA, requiring that the Town of Oakville retain and not destroy any ballots or other documents and materials relating to the election until such time as this Application and any potential appeal therefrom has been finally disposed of;
- (c) An interlocutory Order, providing direction as to the manner of receipt of evidence in light of the direction contained in Subsection 83(3) of the MEA, which provides that "The application shall be dealt with in a summary manner, without application records or factums."

- (d) An Order pursuant to Section 83 of the MEA, determining that the municipal election of October 22, 2018 in the Town of Oakville, for the office of Town Councillor, or for the office of Town and Regional Councillor, or both of them, was not valid, and that a by-election should be held;
- (e) An Order, pursuant to Subsection 83(5) of the MEA, requiring that the Town of Oakville compensate each candidate in the Ward 7 election of October 22, 2018 who seeks election in a by-election ordered by the Court, in an amount equal to the amount of election expenses incurred by that candidate in the original election, and declaring that, for the purposes of the election finance provisions of the MEA, such funds were contributed to the candidates by the same contributors, and in the same amounts, as the originally expended funds were contributed to the candidates in the original election, and that such compensation is to be deposited into the campaign account of the respective candidate;
- (f) The Applicant's costs of this matter on a full indemnity basis, to be paid by the Town of Oakville or by a candidate who was successful in the election of October 22, 2018, and who has not been relieved from liability for costs pursuant to subsection 84(7) of the MEA; and
- (g) Such further and other relief as counsel may advise and the Court may find just.

**2. THE GROUNDS FOR THE APPLICATION ARE:**

- (a) Municipal elections were held throughout Ontario, including in the Town of Oakville, on October 22, 2018.

- (b) In accordance with the MEA and the by-laws of the Town of Oakville, the municipality was divided into seven Wards, each of which was to elect one person to serve as an Oakville Town Councillor, and one person to serve both as an Oakville Town Councillor and as a Regional Councillor for the Regional Municipality of Halton ("Town and Regional Councillor");
- (c) The election contest for the position of Town Councillor for Ward 7 was decided by a margin of 19 votes, and the contest for the position of Town and Regional Councillor was decided by a margin of 68 votes:

<b>Ward 7 Town Councillor</b>		
Adrian PARIS	455	
Ajay ROSHA	420	
Jasvinder SANDHU	551	ELECTED
Saima ZAIDI	532	
<b>Ward 7 Town and Regional Councillor</b>		
Shahrez Daniyal HAYDER	502	
Amir HENRY	371	
Shahab KHAN	108	
Nav NANDA	491	
Pavan PARMAR	570	ELECTED

- (d) It is the practice of the Town of Oakville to distribute, a number of weeks prior to the election, to each elector, a voter information card bearing the name and address of the elector, the ward in which the elector is eligible to vote (based upon his or her qualifying address, which may be derived from the residency of the elector, or the elector's status as a tenant or owner of the relevant property).
- (e) As a result of what has been reported to have been an error of the Municipal Property Assessment Corporation it was reported that the voter information cards distributed to 179 households located in Ward 7 incorrectly advised the voters in those households that they were to vote in Ward 6. The number of voters in the

affected households is unknown to the Applicant, but it may be inferred that more than one voter resides in a significant number of these households.

- (f) It was further reported that corrected voter information cards were hand delivered to 96 voters, representing an unknown number of the affected households, that 12 cards were not so replaced in the belief that they had been issued to voters no longer at the relevant address or who were otherwise ineligible to vote, and that "the remaining cards" were mailed to voters on October 1, in advance of the commencement of advance voting on October 6.
- (g) Despite the measures stated to have been taken, a number of voters resident in Ward 7 attempted to vote in that Ward in the advance vote and on election day but were told that they must vote in Ward 6.
- (h) Sushila Desai and Mahendra Desai reside at 305-150 Sabina Drive in Oakville, which is situated in Ward 7. They received voter information cards that incorrectly indicated that they were to vote in Ward 6. When they attended at the advance vote at the Town Hall on or about October 16, 2018, they advised the poll officials that they in fact lived in Ward 7, but were denied the opportunity to vote in respect of Ward 7, and were required to vote in respect of Ward 6, despite the fact that they did not live there.
- (i) Inquiries have been made of the Town in an effort to determine the scope of this issue in terms of voters who did not vote in Ward 7 as a result of this problem, either due to being unaware of the correction, or due to advice received from election officials of the Town of Oakville that they must vote in Ward 6, but the provision of the relevant documentation was refused by the Town.



- (j) Several electors endorsed the nomination paper of a candidate for Town and Regional Councillor in Ward 7 and on the nomination paper declared their qualifying address to be within the Town of Oakville, but not within the boundaries of Ward 7.
- (k) While it is not required that an elector who provides such an endorsement have a qualifying address within the relevant Ward, the qualifying address provided corresponds to the address that determines the Ward in which such an elector shall vote. An elector who endorsed the nomination of a Ward 7 candidate with a qualifying address within the Town of Oakville, but not within the boundaries of Ward 7 is not entitled to vote in Ward 7 in the absence of unusual circumstances such as a change of residence taking place between the date that the endorsement was provided and the date of the election.
- (l) The names of a number of the electors described in the preceding subparagraphs appear on records of the advance vote for Ward 7, as having voted in Ward 7.
- (m) Navneal Parmar and Nirmal Parmar endorsed the nomination paper of candidate Pavan Parmar having provided a qualifying address of 2047 Oakmead Blvd. in Oakville, a residence located in Ward 5. Title for the property at 2047 Oakmead Drive has been held by Nirmal Parmar since 1994. The names of both Navneal Parmar and Nirmal Parmar appear on a list of "Electors who Voted At Advanced Voting Dates and Locations" produced by the Clerk and provided to candidates in accordance with Subsection 43(6) of the Act as having voted in Ward 7, with a stated address of 382 Wheat Boom Drive. That address, unlike the Oakmead Drive address, is situated in Ward 7, and is the stated address of candidate Pavan Parmar as set out in her nomination paper.

- (n) Nanak Parmar also endorsed the nomination paper of candidate Pavan Parmar having provided a qualifying address of 2047 Oakmead Blvd. It is believed that he also voted in Ward 7.
- (o) It is believed that several other persons endorsed candidate nomination papers with declared qualifying addresses outside of Ward 7 but nonetheless voted in Ward 7 at the advance vote and on voting day, October 22, 2018. The Applicant is unable to discern the extent to which this may in fact have taken place in the absence of the ability to review all of the relevant election records that are required to be retained by the Clerk in accordance with section 88 of the Act and seeks an Order of the Court requiring that all such records be made available to him, as set out in greater detail in paragraph 1, above.
- (p) The name of Balwant Singh appears on a list of "Electors who Voted At Advanced Voting Dates and Locations" produced by the Clerk and provided to candidates in accordance with Subsection 43(6) of the Act as having voted in Ward 7, with a stated address of 145 Masterman Cres. Balwant Singh had been the owner of 145 Masterman Crescent from 2014 until August 30, 2018, on which date the property was sold to two individuals with a different surname. On or about August 31, 2018, Balwant Singh acquired, and commenced to reside at a residence situated in the Town of Oakville, but outside of Ward 7, at 2462 Pine Glen Road, and was therefore required, if he voted, to vote in respect of the Ward in which 2462 Pine Glen Road is situated.
- (q) In the event that 19 or more voters who:
  - (i) were properly qualified to vote in Ward 7 were deprived of the opportunity to vote in Ward 7 as a result of the circumstances described above, or

(ii) were not properly entitled to vote in Ward 7 but nevertheless voted in Ward 7,

or any combination of voters numbering 19 or more fall into the descriptions contained in clauses (i) or (ii) above, then the result of the election was affected by one or more irregularities, and the election for Town Councillor in Ward 7 should be determined by the Court not to be valid, and a by-election should be held.

(r) In the event that 68 or more voters who:

(i) were properly qualified to vote in Ward 7 were deprived of the opportunity to vote in Ward 7 as a result of the circumstances described above, or

(ii) were not properly entitled to vote in Ward 7 but nevertheless voted in Ward 7,

or any combination of voters numbering 68 or more fall into the descriptions contained in clauses (i) or (ii) above, then the result of the election for Town and Regional Councillor was affected by one or more irregularities, and the election for Town and Regional Councillor in Ward 7 should be determined by the Court not to be valid, and a by-election should be held.

(s) The MEA, and in particular, sections 19, 22, 24, 27, 28, 33, 43, 52, 83, 84 and 88 of the MEA.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

(a) In light of the direction, in subsection 83(3) of the MEA that "The application shall be dealt with in a summary manner, without application records or factums," the

direction of the Court is required, and shall be sought by motion, with respect to the manner in which evidence (and any written form of argument) is to be received.

January 18, 2019

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