

CANADA / JUDGMENT

Michetti v. Veach

2022 BCSC 2421

COURT

Supreme Court of British Columbia

DECIDED

2 December 2022

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2022 BCSC 2421 Michetti v. Veach IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Michetti v. Veach, 2022 BCSC 2421 Date: 20221202 Docket: S229113 Registry: Vancouver Between: Lorraine Michetti Petitioner And Danielle Veach and The Village of Pouce Coupe Respondents Before: The Honourable Justice Branch Oral Ruling re: No Evidence Motion In Chambers Counsel for the Petitioner: N.J. Baker K.G. Ho Counsel for the Respondent, Danielle Veach: M.R. Voell R.E. Vallance Counsel for the Respondent, The Village of Pouce Coupe: S.S. Manhas Place and Dates of Hearing: Vancouver, B.C. December 2, 2022 Place and Date of Judgment: Vancouver, B.C. December 2, 2022

- [1] THE COURT: Within this challenge to a municipal election, the individual respondent seeks to bring a no evidence motion at the close of the presentation of the witnesses called by the petitioner. The petitioner argues that such a motion should not be allowed to be brought in the circumstances.
- [2] Leaving aside the question of whether such a motion can properly be brought at this stage, I find that I should exercise my discretion not to allow it in any event. Section 154.1 of the Local Government Act, R.S.B.C. 2015, c. 1, provides that the court must hear and determine an application under s. 153 as soon as practical and for those purposes, must ensure that the proceedings are conducted as expeditiously as possible. I find that this section provides the court with a discretion in terms of the management of the proceeding in order to meet those objectives. Here, I find that this motion is more likely to cause delay than to allow for an expeditious result.
- [3] The motion would require substantial argument on the quality of the evidence heard to this point and the legal principles to be applied to it. Then, if the motion is refused, we would still need to hear the balance of the evidence in any event, just within a more compressed timeline.

- [4] I have already extended this hearing by two sequential days to ensure that we complete in a timely fashion, and I am concerned that the argument and the provision of reasons on this motion could jeopardize even this revised schedule. If the motion is granted, it creates a risk that the judgment on this point itself would be appealed, such that the status of the election will remain uncertain. Again, the respondent's proposed evidence may need to be called in any event, should any appeal be successful.
- [5] Further, as a matter of fairness, given the compressed timelines in the statute, I directed that "will say" statements be provided on a very tight schedule. It is possible, and not unreasonable, that the petitioner may have perceived that the proposed evidence intended to be called by the individual respondent would fill certain gaps in their own evidence, or that they were confident that additional evidence could be extracted on cross-examination that could have that effect. This is not as much of a factor in standard trials, as the moving party has the ability to read-in discovery evidence, and/or has time to seek more formal admissions. But in this hybrid and compressed structure under the Local Government Act, those tools were not as readily available.
- [6] Further, on a strict matter of construction, s. 154 arguably only provides for one alteration to the usual petition structure, that being that affidavits are replaced with witness testimony. But in a standard petition, the petitioner would have all the respondent's evidence "up front", and the matter would go straight to substantive argument without even the opportunity to consider bringing such a motion.
- [7] Hence, I do not find that it is essential that a right to bring a no evidence motion be provided to the respondent.
- [8] Finally, on a broader level, on an application of this type, where fundamental democratic rights are being considered, I find that the court should err on the side of ensuring as fulsome a presentation of the facts and evidence as the compressed timeline allows. We have now organized ourselves in a way that allows for all of the proposed evidence to be heard during one sequential series of court dates. There is a benefit to ensuring that the court hears all the evidence in order to ensure that the most accurate outcome for the people of Pouce Coupe is achieved.
- [9] As such, I am exercising my discretion not to allow the no evidence motion to be brought at this time. "The Honourable Mr. Justice Branch"

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