

CANADA / JUDGMENT

Whalen v. Cambridge (City)

2026 ONCA 23

COURT

Court of Appeal for Ontario

DECIDED

15 January 2026

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Whalen v. Cambridge (City) Collection Decisions of the Court of Appeal Date 2026-01-15 Neutral citation 2026 ONCA 23 Docket numbers COA-25-CV-1472 Judges Monahan, Patrick J. Subject Civil Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Whalen v. Cambridge (City), 2026 ONCA 23 DATE: 20260115 DOCKET: COA-25-CV-1472 Monahan J.A. (Motion Judge) BETWEEN Nathan Whalen Applicant (Appellant) and Corporation of the City of Cambridge Respondent Heard: in writing REASONS FOR DECISION

- [1] The applicant has submitted a request for a fee waiver under the Administration of Justice Act, RSO 1990, c. A.6 (the “AJA”). The registrar has reviewed the applicant’s fee waiver request and determined that it does not meet the financial conditions for a fee waiver to be granted by the clerk or registrar under s. 4.3 of the AJA. Accordingly, the applicant’s fee waiver request has been forwarded to me for review under s. 4.4 of the AJA.
- [2] I must determine whether the applicant satisfies the conditions set out in s. 4.4 (7) of the AJA, namely whether:
- (i) the applicant cannot “without undue hardship, afford to pay the fees relating to the proceeding”; and (ii) the proceeding “is not frivolous, vexatious or otherwise an abuse of the process of the court.”
- [3] The applicant argues that he satisfies the “undue hardship” requirement on two separate grounds:
- (a) he was a candidate for councilor in the 2022 municipal elections in the City of Cambridge (the “City”). He has commenced an application under s. 83 of the Municipal Elections Act, 1996, S. O. 1996, c. 32 (the “MEA”) for a review of alleged irregularities in the election and for a declaration that the election was invalid. He argues that if he is required to pay the court fees associated with the filing of a Notice of Appeal, he will be subject to prosecution for having incurred expenses relating to a s. 83 proceeding beyond the period of time permitted by the MEA; and

- (b) although he and his spouse have a gross annual household income of \$133,170, the vast majority of that income (i.e. \$115,855) is earned by his spouse, who has refused to fund this litigation. The applicant argues that he lacks the financial means to pay the necessary court fees on his income of \$17,315.
- [4] I am not persuaded by either of these arguments.
- [5] First, the suggestion that the applicant would be subject to prosecution by the City under the MEA if he were to pay the necessary court fees is entirely speculative. The applicant has not filed any evidence indicating that the City is contemplating commencing such a prosecution. Instead, he simply refers the court to an unsuccessful 2011 prosecution brought by City of Vaughan against a mayoral candidate in the 2006 Vaughan municipal election who expended money and received contributions in relation to post-election litigation costs (see *The Corporation of the City of Vaughan v. Michael Di Biase*, 2011 ONCJ 144). However, that prosecution was dismissed on the basis that a voter was not bound by the regulatory provisions of the MEA that would otherwise apply to a candidate. The applicant has not identified any case anywhere in the province in which a candidate for municipal office has been successfully prosecuted for breach of the MEA on account of payment of court fees associated with an appeal to this court. I see no air of reality to the claim that the applicant is risking prosecution under the MEA unless he is granted a fee waiver.
- [6] That said, if there was credible evidence indicating that the City was contemplating such a prosecution, depending on the circumstances some form of judicial remedy might well be appropriate. But the fee waiver process is ill-suited for that purpose. Fee waivers are intended to provide a mechanism so that individuals “who might otherwise be denied access to justice because of their financial circumstances can be excused from paying fees”: *AJA*, s. 4.1 (emphasis added). As such, the “undue hardship” inquiry under s. 4.4 is focused exclusively on the applicant’s financial means. This is reflected in the information required in the form of affidavit that must be completed in support of a fee waiver request, which requires the applicant to provide information needed in order to determine whether they meet the prescribed financial eligibility requirements. Other forms of potential hardship associated with the bringing of an appeal to this court, including the possibility of proceedings under the MEA, fall outside of the narrow scope of the fee waiver mechanism.
- [7] As for the argument that the income of the applicant’s spouse need not be considered in assessing his fee waiver request, the Fee Waiver regulation enacted under the *AJA* expressly provides that the applicable financial threshold is determined based on “household income”: see Ontario Reg. 2/05, ss. 1(1), 2(1), 2(2) and 2.1(3). Therefore, the income of the applicant’s spouse is necessarily taken into account in determining his financial eligibility for a fee waiver.
- [8] In short, I am not persuaded that the applicant lacks the financial means needed to pay fees related to his appeal. The application for a fee waiver is therefore dismissed. “P.J. Monahan J.A.”

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