

1989 CarswellOnt 2338  
Ontario Court of Appeal

Martini v. Toronto (City)

1989 CarswellOnt 2338, 36 O.A.C. 47, 47 M.P.L.R. xxxix, 64 D.L.R. (4th) 382, 70 O.R. (2d) 637

## Re Martini and City of Toronto et al. and two other applications

Brooke J.A., Goodman J.A., Krever J.A.

Judgment: November 15, 1989  
Docket: CA 563/89, 576/89, 577/89

Proceedings: Affirmed, [68 O.R. \(2d\) 73 at 90](#), [57 D.L.R. \(4th\) 481 at 498](#), [35 O.A.C. 304](#), 1989 CarswellOnt 1010 (Ont. Div. Ct.); Additional reasons, 41 M.P.L.R. 220, [68 O.R. \(2d\) 73](#), [32 O.A.C. 52](#), [57 D.L.R. \(4th\) 481](#), 1989 CarswellOnt 494 (Ont. Div. Ct.)

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Subject: Public; Public

### Per Curiam:

1 These cases concern the counting of votes by a vote tabulator in municipal elections and in particular to recounts conducted pursuant to the statute and regulation. The facts in each of the cases is different and they are fully set out in the judgment of Mr. Justice Reid in the Divisional Court, so it is unnecessary to repeat them here. Counsel have carefully dealt with the facts of each case, the provisions of the statute and the regulations in question.

2 We are not persuaded that Mr. Justice Reid made any error in the reasons for judgment which he delivered in these cases. Indeed, we agree with what he said and we agree with the result that the Divisional Court arrived at in each of the cases. The essence of this statute and its regulations must be that the election is completed in accordance with the intention of the voters and the interpretation of the statutes and the regulation by the Divisional Court ensures that this will be so.

3 Accordingly, we are not prepared to interfere with the result arrived at by the Divisional Court in any of the cases. As to the issue of whether the proceedings were properly taken by way of judicial review in the particular circumstances of these cases, we think the Divisional Court was right in exercising its discretion to proceed in this way. The cases, on their facts, are different from the case before McLaughlin J. in [Rose v. the City of Cranbrook \(1982\)](#), [133 D.L.R. \(3d\) 474](#), [18 M.P.L.R. 131 \(B.C.S.C.\)](#). Here, the recount had not been certified and the clerk had not yet declared the election following the recount. The Rose case was quite different.

4 As to the costs, costs are, of course, in the discretion of the court. We are not persuaded that the Divisional Court made any error in the exercise of its discretion save that we think that no order should have been made as to the costs of the non-judicial proceedings. To this extent only, the judgments of the Divisional Court are varied. In all other respects,

those judgments are affirmed and the appeals are dismissed. Each is dismissed with costs, including the motion for leave to appeal.

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