

Plaintiff: Drew Barry Simpson

Counsel: self-represented

Defendants: Elections Ontario

Counsel: S. Lemke

Before: Justice J.C. George

Date Heard: June 26, 2018

Endorsement Release Date: June 26, 2018

ENDORSEMENT

[1] Before the court is a statement of claim. In it, the plaintiff seeks a “new election and an inquiry by the Office of the Lieutenant Governor under s. 111 of the elections act”. The purported grounds are that “the Ontario elections of 2018 have come into question due to ongoing corruption of the electoral system and perversion of the special ballots program”

[2] Also before the court, and apparently returnable today (although I haven’t been able to make much sense of the file) is a motion. In it the plaintiff essentially seeks relief identical to that set out in his main claim. That is, he challenges the validity of the Ontario election under ss. 99 and 111 of the *Elections Act*. The grounds are stated somewhat differently – the plaintiff alleges that “the validity of the Ontario election may be called into question by anyone whom feel it is in the public interest to be commenced”.

[3] The Defendant has filed a motion, returnable July 17, that seeks a dismissal of the action as it discloses no reasonable cause of action. I have determined that that motion should be brought forward which means that I am, today, effectively addressing all outstanding issues, the first being whether the plaintiff’s claim discloses a reasonable cause of action. This question is determinative as, if it doesn’t, that ends the matter. I would have no choice but to dismiss both the plaintiff’s motion and statement of claim.

[4] I will first say that there are several irregularities with the materials before me. One could argue that, on its face, the claim is frivolous. I hesitate to frame it quite like that as I had a hard time even making sense of it. There are a host of other issues including, at least in respect of the plaintiff’s motion, whether I even have jurisdiction to grant such relief on an interim basis. There is also the question of whether the matter is properly before the court as the plaintiff has not posted the appropriate bond as required by the legislation (although s. 99(5) seems to apply to those plaintiffs who do not reside in Ontario). Defendant counsel takes

a different view arguing that s. 99(5) is not limited only to those plaintiffs who reside outside of Ontario. Quite frankly, I don't know the answer to this question. In any case, the materials are plainly deficient in many other respects.

[5] I am not going to elaborate upon these irregularities as I am not inclined to dispose of this matter on any of the aforementioned grounds. As indicated I am prepared to address the Defendant's motion which is a request that - after taking the Plaintiff's claim at its highest and after accepting everything he pleads as true - I find it discloses no reasonable cause of action.

[6] In the result, I share the Defendant's view and am prepared to grant its motion. I do so for these reasons:

-s. 99 of the *Elections Act* does grant to this court jurisdiction to hear and determine an action where the validity of the election in any electoral district, or of the election of any person to the assembly, or of the right of any person to sit in the Assembly is called into question. The determination must be specific to these narrow questions. The pleadings do not address this in any way. To the extent I could discern his submissions, the plaintiff seems to have launched an all out assault on the electoral system. He raises broad constitutional questions about the province's efforts to protect the right of citizens to vote; he questions the numbers of seats. Specific to the 2018 election he, I think, generally contends that certain ridings were not properly constructed and that the rights of some electors were unduly curtailed. None of this falls within the confines of s. 99, not to mention the fact that there is no evidence of corrupt practices, which is the ground upon which the plaintiff seeks an inquiry.

-s. 111 of that Act is also very clear - it confers upon the Lieutenant Governor in Council, upon the recommendation of the Assembly, the authority to inquire into whether corrupt practices extensively prevailed in an election. Of particular note is this section provides that the *Public Inquiries Act* applies. It does not give to me the authority to do as the plaintiff asks.

[7] I find that the plaintiff's claim is unfounded. It contains bare allegations with no supporting evidence. With respect to s. 99, the plaintiff's claim fails to meet the minimum level of material fact disclosure and will therefore be struck in its entirety. Furthermore, I have no jurisdiction to grant any relief, or provide any direction, pursuant to s. 111.

[8] The Defendant's motion is granted. The statement of claim is dismissed as disclosing no reasonable cause of action. The plaintiff's motion is dismissed as well.

[9] The Defendant requests that I direct staff, should the plaintiff once again file suit and challenge the validity of the election in this or any other district, to collect from the plaintiff security for costs in the amount of \$2,000.00. This position is obviously consistent with its view that s. 99(5) applies to all plaintiffs, including those resident in Ontario. As I indicated earlier in these reasons, I am not confident in answering this question, and counsel was unable to provide any authority that would bring clarity to my concerns. I note that if the Defendant is incorrect in its interpretation of s. 99(5), and should the plaintiff once again file, the Defendant

could bring a motion requesting that bond be posted. There would be other available remedies including a request that Mr. Simpson be declared a vexatious litigant. No such motion is before me today.

[10] Costs to the Defendant fixed at \$1500 "all in". These costs must be paid before the plaintiff can proceed with any further action under the provisions of the *Elections Act*.



George J.