

MAYOR CLEARED IN COURT

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KEVIN MARTIN

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Heather argued comments made during the October 2017 campaign amounted to undue influence under the

provincial legislation.

The unsuccessful mayoral candidate said three comments Nenshi made that were posted to Facebook violated the act.

Nenshi made the comments to a campaign rally and during a radio interview whose primary audience was "said to be the Punjabi Sikh community," the appeal judges noted.

Nenshi commented "that there are forces out there in the community ... to get people out who don't believe in

diversity," "to get people who might be racists, or haters out to vote," and "we cannot allow for a vote that subverts democracy."

But the appeal judges agreed with Court of Queen's Bench Justice Kim Nixon that Nenshi's comments fell short of instilling fear in voters such that they would be inclined to vote a certain way.

Heather compared Nenshi's comments to those of several priests who were found to have unduly influenced a federal election in

January 1876.

In that case, the election of a Member of Parliament in Quebec was declared void because the priests, on several Sundays preceding the vote, told members of their congregations that those who voted for a certain candidate "would be guilty of a grave sin."

But the appeal judges agreed with Nixon's findings that Nenshi threatened no such dire results in the comments he made.

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mayor made no threats that harm or negative consequences would befall anyone if they failed to vote," they said in a written decision.

"She found that there was no evidence before her that Mayor Nenshi's comments interfered with anyone's right to exercise the vote in accordance with his or her own free will."

They noted Nixon considered the Quebec case and found it wasn't similar to the mayor's comments.

"The chambers judge considered the facts in (that case), as well as Mr. Heather's argument, drawing an analogy between Mayor Nenshi's conduct and that of the clergy-men who ran afoul of the election rules," they said.

"(She) found that Mr. Heather did not establish reasonable grounds to suppose that the mayor was guilty of undue influence, whether by intimidation, fraudulent device, or contrivance."



HEATHER



NENSHI

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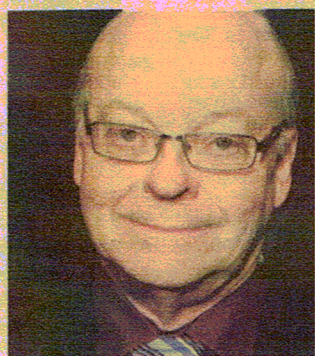
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wed, March 27/2018

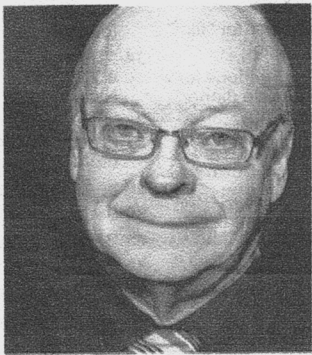
2019 CALGARY HERALD **A11**

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Last-gasp effort failed to sway judges

You have to give former mayoral candidate Larry Heather credit for giving it the ol' college try.

The perennial fringe candidate in just about every vote in Calgary for the past several decades launched a legal challenge to Mayor Naheed Nenshi's re-election in 2017 — a vote in which Heather failed to garner even 1% of the popular vote.

Heather didn't like the fact that Nenshi raised the spectre that there were people vying to get onto city council who might not represent the views of Calgary's diverse population.

The Nenshi comments for which Heather took umbrage were statements the mayor made during a campaign rally to supporters and in a radio interview whose primary audience was said to be the Punjabi Sikh community — both of which were posted on Facebook videos.

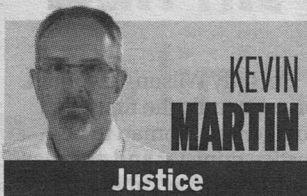
Nenshi said: "There are forces out there in the community ... to get people out who don't believe in diversity," and "to get people who might be racists, or haters, out to vote," and "we cannot allow for a vote that subverts democracy."

Heather, who represented himself both in his initial application before a Court of Queen's Bench judge and his later appeal of his unsuccessful bid, wanted Nenshi's election to be declared void because the mayor was guilty of using undue influence on voters.

Heather relied on an 1877 (no that is not a type) Supreme Court decision in which the election of a federal candidate in Quebec was nullified because several parish priests used undue influence on their congregations to dissuade people from voting for the losing candidate.

The nation's top judges found Hector-Louis Langevin (yes, the same politician whose name has recently been stripped from public structures as a result of his involvement in residential schools) benefitted from the undue influence of the priests, who had told member of their flocks they "would be guilty of a grave sin," if they voted for Langevin's opponent.

Heather's problem was that putting the fear of God and perhaps eternal damnation into the hearts and minds of voters is a little more influential than pointing out there



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are people out there who don't believe a Muslim should be the mayor of our city.

As the Alberta Court of Appeal ruled last week, Nenshi's conduct fell far short of what the Catholic priests did to get Langevin (who later retained his seat in a byelection necessitated by the Supreme Court ruling) re-elected.

The three appeal judges agreed with Justice Kim's assessment that "there were no reasonable grounds to suppose the mayor frightened anyone, or compelled anyone to vote against his or her own free will."

The appeal court also noted "there was no reasonable basis to conclude that the mayor's description of his opponents as 'racists and haters' interfered with the free exercise of anyone's franchise rights."

"The special chambers judge found that Mr. Heather did not establish reasonable grounds to suppose that the mayor was guilty of undue influence, whether by intimidation, fraudulent device, or contrivance," the appeal judges said.

"She found there was no evidence before her that Mayor Nenshi's comments interfered with anyone's rights to exercise the vote in accordance with his or her own free will.

"She found that the mayor made no threats that harm or negative consequences would befall anyone if they failed to vote. Nor was there evidence that anyone's free exercise of his or her vote was influenced by fear as a result of the mayor's comments," they said.

"We do not accept the analogy Mr. Heather advances, nor did the special chambers judge. Unlike the clergymen in (the Langevin case), Mayor Nenshi made no suggestion to his audience that they would personally suffer severe harm or negative consequences by voting for a particular candidate."

But good try, anyway, Larry.