

**COURT OF APPEAL OF ALBERTA**

**Form AP-5**  
[Rule 14.87]

COURT OF APPEAL FILE NUMBER: 1801-0069  
TRIAL COURT FILE NUMBER: 1701-15300  
REGISTRY OFFICE: Calgary  
PLAINTIFF/APPLICANT: LARRY ROBER HEATHER  
STATUS ON APPEAL: Appellant  
DEFENDANT/RESPONDENT: NAHEED KURBAN NENSHI  
STATUS ON APPEAL: Respondent  
DOCUMENT: **FACTUM**



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Appeal from the Decision of  
The Honourable Madame Justice K. Nixon  
Dated the 2nd day of February, 2018  
Filed the 6th day of February, 2018

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**FACTUM OF THE APPELLANT, VOL. ONE, PAGES 1-22**

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Larry R. Heather, self-  
represented

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Solicitor, City of Calgary Law Dept.

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Prepared by Appellant above

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## STATEMENT OF FACTS

**(i) Appellant Standing/Actions to Apply for Fiat to trial of Quo Warranto**

1. The appellant Larry Heather, was a candidate for the office of Mayor and a voter for the mayoral election of October 16<sup>th</sup>, 2017 in the City of Calgary. He therefore had standing to bring before the Courts an action concerning the violation of a prohibited practice under the Local Authorities Election Act (LAEA) Part 5

(Court Appeal Record Part 1, Pleadings P.2 para 2)

2. Part 5 – section 124 of the LAEA requires that a proceeding against a candidate for undue influence in an election must be commenced within six weeks of the Election Day. (October 16<sup>th</sup>, 2017) On direction from the Chamber Justice J. McCarthy, the plaintiff Mr. Heather, filed an originating motion on Friday November 10<sup>th</sup>, 2017. This application being for the purpose of examining the plaintiff's November 10<sup>th</sup>, 2017 sworn affidavit showed reasonable grounds for the granting of a fiat to a trial of Quo Warranto examine the validity on the election of Mayor Naheed Nenshi on October 17<sup>th</sup>, 2017.

( Court Appeal Record Part 1, Pleadings P.2, para 3,7 )

(Books Of Authorities, Vol.1 , Tab. F LAEA p.76, Section 127(1))

3. The plaintiff was directed to serve the respondent Naheed Nenshi with the documents, as well as to distribute the documents to Paul Denys, head of Elections and Census Calgary, and the Honorable Shaye Anderson, Minister of Municipal Affairs. Their attendance was requested for input at a Chambers date in early December 2017. This notifications were made with a Chambers date set on December 7<sup>th</sup>, 2017.

( Court Appeal Record Part 1, Pleadings P.2, para 8 )

4. Madame Justice Campbell on December 7<sup>th</sup>, 2017, after being apprised of the ex parte request at hand, found the matter too complex in morning

chambers to be dealt with, so she ordered it adjourned to a half-day special application on January 24<sup>th</sup>, 2018 at 2 pm.

5. This hearing was held before Madame Justice K. Nixon on January 24<sup>th</sup>, 2018 with briefs submitted by the plaintiff and the City Solicitor Colleen Sinclair, now appearing as a friend of the Court and not directly representing the Respondent. After the presentation of arguments, Madame Justice reserved her decision, which was presented on February 2<sup>nd</sup>, 2018.

(Court Appeal Record Part 3, Transcript p. 1, lines 1-11 )

6. In her ruling on February 2<sup>nd</sup>, 2018, Madame Justice Nixon stated she did not find reasonable grounds that Undue Influence by Intimidation and the use of a Contrivance was committed by the Respondent (Naheed Nenshi) in the election and the action was thereby dismissed.

(Court Appeal Record Part 2, Final Documents F1 )

7. Although the original application was served on Naheed Nenshi personally, for reasons unclear to the Applicant, it was turned over to the City Solicitor for representation of the Respondent, and then ended with the City Solicitor serving only as a Friend of the Court in the January hearing.

(Court Appeal Record, Part 3 Transcript p. 5, lines 39-41)

8. On February 28<sup>th</sup>, 2018 an appeal of the Court of Queens decision, was filed with service to the Respondent, by the Appellant to the Calgary registry of the Appeal Court of Alberta.

(Court Appeal Record Part 2, Final Documents F2-4)

**(ii) Nature Of The Issues Under Consideration In LAEA Election Law**



9. The originating application of November 10<sup>th</sup> was for a fiat to a motion of Quo Warranto, to conduct a judicial review of the events leading up to the 2017 Municipal Calgary Election. In particular, to examine whether the current Mayor Naheed Nenshi has warrant for continuing in office, or if a violation of a prohibited practice of Undue Influence, disqualifies him from office. This would thereby result in the Court action to appoint the runner-up, or order the conduct of a new Mayoral race.

(Books of Authorities, Vol. 1, Tab F, LAEA. P.80, Section 138(1))

10. The Applicant must have the lower court decision set aside by the Appeal Court, and a fiat granted to proceed to then conduct a proper hearing on viva voce evidence in a Quo Warranto trial at Court of Queens chambers,, to determine the validity of the election winner.

(Books of Authorities, Vol. 1, Tab F, LAEA. P.80, Section 146)

11. In at least two Facebook

12. video addresses to voters prior to the election, an appeal was made by Candidate and Incumbent Mayor Nenshi, warning of the participation in the vote of supporters of his opponents who were racist and haters, and that his hearers needed to vote for him to prevent the subversion of democracy. These videos and reports thereof, were widely circulated and cause an intense discussion and questioning in the local media as to whether such remarks by an Incumbent Mayor were appropriate.

(Extracts of Key Evidence, Vol.1, Exhibit A2, ppA6-8)

As a Candidate for Mayor, and a voter, the Applicant felt compelled to take this matter to the Courts for an examination and a remedy in the result of a successful motion

## PART 2 GROUNDS OF APPEAL

**Ground No. 1:** The chambers judge committed an error of law by failing to follow and apply the Supreme Court of Canada precedent in *Brassard v. Langevin*.

**Ground No. 2:** The chambers judge committed a palpable and overriding error by too narrowly considering the definition of Undue Influence by *Intimidation* in the Election legislation and Criminal Code to include only physical threats by the Mayor personally and excluding the use of a third party to carry out implied threats.

**Ground No. 3:** The chambers judge committed a palpable and overriding error by misapprehending the evidence which indicated reasonable grounds to detect the existence of a calculated contrivance by the Candidate Naheed Nenshi (the Respondent) to instill fear into the hearts of voters as to the nature of his opponent's supporters.

## PART 3 STANDARD OF REVIEW

13. The application of *Brassard v. Langevin* to the facts in this case (the first ground of appeal) is a question of law and reviewable on the standard of correctness.

*Housen v. Nikolaisen*, 2002 SCC 33 at paras 8-9  
[2002] 2 S.C.R. 235 [*Housen*] [not reproduced].

14. The misapprehension of the legislation (under the second ground concerning Undue Influence and the Use of Intimidation is an issue of mixed fact and law and is reviewable on a standard of a palpable and overriding error.

*Housen*, supra at paras 10,11

15. The failure of the chambers judge to consider all the evidence before her, and to recognize, consider and address the existence of a contrivance delivered through a nebulous 3<sup>rd</sup> party to instill fear into the hearts of targeted groups of voters. (the third ground of appeal). It is reviewable on a standard of a palpable and overriding error.

*Housen*, supra at paras 10,11

## **PART 4 ARGUMENT**

### **I. The Chambers Judge committed an error of law by failing to follow and apply the Supreme Court of Canada precedent in Brassard v. Langevin.**

#### **(i) The similarities between Brassard v. Langevin and Mr. Heather's Case are close.**

- (a) Issues concerning the undue influence of those holding a public office or running for election are compelling.

16. In Brassard the influential position occupied by the priests in a parish over the voters, is in a modern municipality exceeded by the influence an incumbent Mayor can hold over voters in such a secularized municipality as Calgary. Such a power if used unwisely or unlawfully in a public address, can be destructive to the freedoms of the citizens who hear it.

17. Concerning the taint of turpitude by association by those in a position of influence in society, Justice J. Taschereau in Brassard states the following:

*"The principle which should govern in cases of the like nature is the following, to wit, that the minister who so far forgets himself in the pulpit as to revile or defame any person, does not speak of religion, does not define doctrine or discipline, but puts aside his sacred character, and is considered like any other man as satisfying his personal revenge, or as acting through interest, and, in consequence, he is not held to be in the exercise of his spiritual functions."*

(Book of Authorities, Tab A *Brassard* supra at p. 21, para1)

18. Likewise, an Incumbent Mayor of two terms and a Candidate for office in upcoming term ought not to disdain whole classes of voters supporting other candidates, from the rightful exercise of their franchise.

19. Again in Brassard the words of Justice J. Ritchie emphasize that there is no distinction between the freedoms of the clergy and the freedoms of the laity. Says Justice Ritchie:

*"The law says, in language not to be mistaken, and not to be disregarded, there shall be no undue influence or intimidation to force an elector to vote or to restrain him from voting in a particular manner. The layman cannot use undue influence or intimidation, neither can the priest; many things, in themselves perfectly legal, may become corrupt,"*

Note the terms undue influence and intimidation are used synonymously by Justice Ritchie.

*(Books of Authorities, Brassard supra Tab A at paras 4 page 29)*

20. It is clear from Brassard that a third party can be the vehicle through which Undue influence can be channelled and that conviction of such prohibited actions can lead to the reversal of an elected office. This case remains a prime precedent on how subsequent instances of Undue Influence in Elections should be judged.

**(ii) Conclusion: The Chambers Judge failed to follow the deciding rationale in the decision of Brassard.**

21. For the Applicant to succeed he must establish that

\* Mayor Nenshi devised a contrived 3<sup>rd</sup> party to make the threats to selected blocks of voters.

\* That the position of Mayor today in a municipality, has at least as much if not more influence than the parish priest of yesteryear. It is clear the positions of influence should be considered as functional equivalents.



**II. The chambers judge committed a palpable and overriding error by too narrowly considering the definition of Undue Influence by *Intimidation* in the Election legislation and Criminal Code to include only physical threats by the Mayor personally and excluding the use of a third party to carry out indirect threats.**

22. The City Solicitor, acting as a Friend of the Court in the half day hearing, suggested a very narrow definition of the word intimidation to include only direct threats of violence or harm by the Respondent himself. This misapprehension was followed by the Chambers Justice despite evidence and legislation to the contrary.

23. The entire brief of the applicant in the half-day special hearing pointed to an indirect, contrived threat through a third party was the issue related to an act of Undue Influence. *Any Manner of Intimidation* is the phrase used in LAEA legislation and alerts us to the wider definition of Undue Influence which we find in the deceptive pressures found in cases of Wills and Estates.

To quote my words in the special hearing concerning section 117:

21 MR. HEATHER: -- you see in 1 and 2 that it is covering the threats 22 of violence and physical intimidation, that sort of thing. But section 3 is different. It's

23 referring to more the -- the mental clouding of the mind, or -- 24 25 THE COURT: Right.

26 27 MR. HEATHER: -- oppression, suppression against the inner 28 recesses of the mind. So that's what I am referring to. So the -- that over-mastering of the

29 will, in a divorcement from the convincing of the mind is what we are dealing with here.

30 If I thought that I had evidence that there was physical threats or anything of that nature by 31 the respondent, I would not waste the Court's time in a frivolous or a vexation manner.

32 But it -- so is a much wider definition of any manner of intimidation.

( Appeal Court Record, Part 3 Transcript, p.8, lines 21-32)

24. The chambers justice on pm page 40 of the Transcript states

9." *Intimidation is not defined in section 117 of the LAEA.*"

This is not true in that it is first classed as a type of Undue Influence, and secondly preceded by the word 'any' which precludes a narrow definition of the word. Intimidation is a sub-species of Undue Influence and it purposefully given a wide range.

(Appeal Court Record, Pt.3 Transcript, p.40, line 9)

**25. Local Authorities Election Act Section 117 (RSA 2000) Part Five  
Controverted Elections, Section  
117..... A**

**Undue influence**

117 A person commits the offence of undue influence who  
(a) directly or indirectly by himself or herself or by any other  
person on his or her behalf,

(i) makes use of or threatens to make use of any force,  
violence or restraint,

(ii) inflicts or threatens the infliction personally or by or  
through any other person of any injury, damage, harm or  
loss, or

**(iii) in any manner practises intimidation,**  
**on or against any person in order to induce or compel any**  
**person to vote or refrain from voting, or to vote for or**  
**against a particular candidate, bylaw or question, at an**  
**election, or on account of an elector having voted or**  
**refrained from voting at an election,**  
**or**

(b) by abduction, duress or any fraudulent device or **contrivance**

(i) **impedes, prevents or otherwise interferes with the free**  
**exercise of the franchise of an elector, or**

(ii) **compels, induces or prevails on an elector to give or**  
**refrain from giving the elector's vote, or to vote for or**  
**against a candidate, bylaw or question, at an election.**

**1983 cL-27.5 s1170**

(Books of Authorities, Vol. 1, Tab ??, LAEA. P.80, Section 117, pp.71,72)

26. The chambers justice effectively cancels out her assertion that Section 117 of the LAEA does not define the term Intimidation by her comments in line 35 of page 40 of the transcript when she says Section 117 contains the same requirement for threats of negative consequences to influence conduct.

She states:

*"The same requirement*

*36 for threats of negative consequences used to influence conduct is reflected in section 37 117(a)(1) and (2) of the LAEA."*

And note that she refers only to sub-sections 117(a) (1) and (2) where my entire argument is based on(a) (3) and (b) ie. A Contrivance. The reasoning here is circular and exclusionary to my evidence.

( Appeal Court Record, Pt.3 Transcript p. 40, line 35,36)

27. Both the provincial Alberta Elections Act [2000] rev.2016 and the Canada Elections Act [2000] make a distinction between Intimidation & Duress

The Alberta Election Act, Section 175 again like the LAEA uses a (i) & (ii) separation between force or threats and (iii) In any manner practises intimidation.

Instead of contrivance the words any false or fraudulent pretence is used

**Undue influence**

**175(1)** A person commits a corrupt practice who,

- (a) either personally or by any other person on the person's behalf,
  - (i) uses or threatens to use force or restraint,

113

Section 176

ELECTION ACT

RSA 2000  
Chapter E-1

- (ii) inflicts or threatens to inflict harm or loss, or

(iii) in any manner practises intimidation,

on or against an elector in order to induce or compel the elector to vote or not to vote, or on account of the elector having voted or not having voted, or

- (b) by abduction, duress or any false or fraudulent pretence or device

- (i) prevents or interferes with the free exercise of the franchise of an elector, or
  - (ii) induces or prevails on an elector to vote or refrain from voting.

(Books Of Authorities, Tab G, Alberta Provincial Election Act 176)

The Federal Elections Act simply separates the words into the words 482 (a) Intimidation and Duress and the phrase, 482 (b) by any pretence or contrivance.



**Intimidation, etc.**

**482** Every person is guilty of an offence who

(a) by intimidation or duress, compels a person to vote or refrain from voting or to vote or refrain from voting for a particular candidate at an election; or

(b) by any pretence or contrivance, including by representing that the ballot or the manner of voting at an election is not secret, induces a person to vote or refrain from voting or to vote or refrain from voting for a particular candidate at an election.

(Books Of Authorities , Tab H, Canada Election Act)

28. In is at this point I refer to the Canadian Abridgement Words & Phrases 5722 in its citations of the explanations of the phrase Undue Influence.

Alberta:

- **Undue Influence** is a species of fraud and as such, any allegation of it must be scrutinized carefully. Moreover, there is a distinction between influence and **undue influence** such that the mind of a testator is overborne. (*Penno v. Penno* (2012), 2012 CarswellAlta 463, 2012 ABQB 183, 78 E.T.R. (3d) 216 (Alta. Q.B.) at para. 43 Belzil J.)

**[Subject(s): Estates and trusts]**

(Books of Authorities, Tab E , p.2, para 3)

**Undue influence** has been defined as the unconscientious use by one person of power possessed by him over another in order to induce the other to enter a contract.

(*Klymas v. Burkholder* (1976), 1976 CarswellOnt 68, 22 C.B.R. (N.S.) 216 (Ont. Co. Ct.) at para. 23, 25, 26 Dymond Co. Ct. J.)

**[Subject(s): Contracts]**

(Books of Authorities, Tab E , p.6, para 2)

- "Kerr on Fraud and Mistake" (7th Ed.), at p. 223, sets out the court's position in cases of **undue influence** when he states:

The principle on which the court acts in relieving against transactions on the ground of inequality of footing between parties is not confined to cases where a fiduciary relation can be shown to exist, but extends to all the varieties of relations in which dominion may be exercised by one man over

another, and applies to every case where influence is acquired and abused, or where confidence is reposed and betrayed.

( Books of Authorities, Tab E , p. 10, para 3)

The point besides the mind of the testator being overborne by the influencer, is in the 2<sup>nd</sup> and 3<sup>rd</sup> citations ,that there exists in undue influence a power imbalance by the perpetrator of the act and those whom he unconscientiously influences to exercise their will in suspension of their judgement. The Courts will take into account evidence of one party dominating another which may create circumstances falling short of actual coercion, yet, constitute a sufficiently hidden for one party to engage in a transaction not based on his/her will.

29. The chambers justice cites at p. 40, line 11 Central Canada Potash v.

Saskatchewan as a civil tort defining Intimidation in para 71. But para 75 of the same decision also makes it clear that this decision has been mentioned in Canadian cases so far only in relation to the awarding of exemplary damages. The appeal before the Court here is not dealing with a tort injury. It is inapplicable to the nature of Election law.

(Appeal Court Record, Pt.3 Transcript p. 40, line 11)

*"As the trial judge pointed out in the present case, that decision has been mentioned in a number of Canadian cases but, so far, only in relation to what it decided in respect of the awarding of exemplary damages. I do not, however, consider it is necessary presently to determine that issue, because it is my view that for other reasons the appellant is not entitled to succeed."*

( Books of Authorities, Tab. B, Central  
Canada Potash v. Saskatchewan , p 19. Para 75)

30. The chambers judge cites the Saskatchewan Court of Appeal at p.40 , line 39 Miller v. Boxall on the granting of a fiat to challenge an election and quotes para 11 referring to a question or reasonable grounds to suspect the timing of certain town bylaws to exclude specified voters from the franchise in the next election. But the case argues against her ruling.

( Appeal Court Record, Pt.3 Transcript, p. 40, line 39)

31. Miller v. Boxall is clear to mention the words, 'directly or indirectly'. That case is not about direct physical threats of a candidate upon voters in a trailer court, but an indirect manipulation through a third party, the town Council, of bylaws which would exclude trailer court residents from their franchise in the next municipal election. A post-election contrivance as it were, which evidenced reasonable grounds for a fiat to a trial of Quo Warranto.

(Appeal Court Record, Pt.3 Transcript p. 41, line 3)

9 The relevant sections of the Act read:

4 Every person who directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of force, violence or restraint, or inflicts or threatens to inflict by himself or by or through any other person any injury, damage, harm or loss, or in any manner practises intimidation upon or against any person in order to induce or compel that person to vote or refrain from voting at an election or at the voting upon a bylaw or question or on account of that person having voted or refrained from voting thereat, or who by abduction, duress or a fraudulent device or contrivance impedes, prevents or otherwise interferes with the free exercise of the franchise of a voter, or thereb;<sup>1</sup> compels, induces or prevails upon a voter to give or refrain from giving his vote at an election or at the vote upon a bylaw or question, shall be deemed to have committed the offence of undue influence.

( Books of Authorities, Tab C, Miller v. Boxall  
p.4 , para 2 Saskatchewan)

32. The chambers judge using the proceeding civil cases, augments her ruling by the citing of Criminal Code Section 423 which lays out the definition of Intimidation in relation to labor cases brought before the Courts. The emphasis, following the suggestion of the Counsel as the Friend of the Court, gives a narrow definition of the word Intimidation as relating to a first person physical threat of harm.

( Appeal Court Record, Pt.3 Transcript p. 40, line 22)



33. While paras (a) and (b) mention just such direct action by threats of harm four other divisions deal with indirect threats such as following, watching and besetting, or blocking a highway. It is instructive to note that the code titles all of these actions, direct or indirect, 1<sup>st</sup> person or 3<sup>rd</sup> person, as a type of Intimidation.

(Appeal Court Record, Pt.3 Transcript p. 40, line 26)

**III. The chambers judge committed a palpable and overriding error by misapprehending the evidence which indicated reasonable grounds to detect the existence of a calculated contrivance by the Candidate Naheed Nenshi (the Respondent) to instill fear into the hearts of voters as to the nature of his opponent's supporters.**

34. At page 42, line 1, The chambers judge summarizes that the Applicant, "Mr. Heather has not established a reasonable ground to suppose that the Mayor was guilty of undue influence, whether by intimidation or a fraudulent device or contrivance."

( Appeal Court Record, Pt.3 Transcript p. 42, line 1)

The evidence presented to her suggests otherwise. The Applicant was not permitted to play the DVD clips in chambers during the hearing, which showed the non-verbal aspects of the Mayor's formulaic statements. In fact, it is apparent that the Respondent constructed a fallacious third party contrivance through which potential threats of harm were channeled. This contrivance appears to separate the contriver of the scheme from the contrivance. The contrivance of nebulous third party forces, making the initiator appear a harmless bystander merely reporting the facts, instead of, in reality, concocting them.

35. The existence of a 'special relationship' of the Incumbent Mayor and the citizens he was elected to rule over. His comments in the Facebook videos



clearly provide reasonable grounds that Undue Influence may indeed have been used in his attempts to be re-elected for his third term.

Since when would it be appropriate for an Incumbent Mayor to slice and dice the electorate into worthy and unworthy participants in the exercise of their franchise?

36. Here are the quotes that raise such suspicions.

Video One (to Pakistani community)

"To get people who don't believe in diversity"

"To get people who might be racists or haters out to vote."

"Don't let them divide us."

(Extracts of Key Evidence, 1<sup>st</sup> Video clip, Vol.1 Affidavit Exhibits A1 & A2 pp A5 & A7)

Video Two (to Sikh community)

"There are forces organizing to bring people who'd I.... I would call racists and haters to the polls.

"Whether you like me or not, we cannot allow for a vote, that subverts democracy."

(Extracts of Key Evidence, Vol. 1, Affidavit Exhibits A1 & A2, 2nd video clip, p. A8)

37. In relation to racists and haters brought out to the polls by supporters of Naheed Nenshi's opponents the Respondent utters these calculated statements which clearly evidence a made up contrivance. From what source would the presiding Mayor drawn such stunning data insights as:

"Those people never voted before. They hate government."

(Extracts of Key Evidence, 2<sup>nd</sup> video clip, Vol.1 affidavit exhibits A1 & A2 on pp.A5 & A8)

38. At the same time as Elections Calgary is making concerted effort to bring out as many of the electorate to exercise their franchise the Incumbent Mayor and Candidate for a third term is actively denigrating a proportion of the

electorate as racists and haters who will subvert democracy if they show up at the polls in sufficient numbers. He plays to the fears of his targeted audiences by using the most emotionally charged terms of the current milieu, haters and racists, the functional equivalent of appellations given to Nazi's and Klansman of the past. How could this not be a use of undue influence by the specialized variety of intimidation?

39. The Mayor's video clips were replayed widely in the popular mainstream media as well as on social media. Among others, 3<sup>rd</sup> runner-up candidate and former Councillor Andre Chabot who is quoted on CBC.

Mayoral hopeful and former city councillor Andre Chabot says Nenshi mentioning his opponents in that context was unfair. 'It suggests that we are all in collusion somehow and doing something nefarious,' he said.

(Extracts of Key Evidence, Affidavit Exhibit B CBC Online, p.A11)

Surely one can detect a definite change in tactics by Mayor Nenshi from his first two campaigns, his tactics turning desperate once he has a close competitor.

40. Licia Corbella of the Herald in speaking of Nenshi's approach in his first term win of 2010 says,

"After he won, he was fond of telling media around the world that in Calgary people don't ask, 'Who's your daddy. They care more about what you can bring to the table.' Now it seems like he's saying that the people who have elected him mayor twice have suddenly turned racist. It simply doesn't add up."

(Extracts of Key Evidence, Vol.1 Affidavit Exhibit 'E', p. A14)

41. What amounts to Undue Influence will differ according to the circumstances. There is no need for actual threats or physical violence to find Undue Influence, the Court can infer Undue Influence from all of the facts.

In the U.K. case of Schrader v. Schrader the Court made a finding of undue influence despite the lack of direct evidence of coercion.

In the words of Justice Mann:

*96. It will be a common feature of a large number of undue influence cases that there is no direct evidence of the application of influence. It is of the nature of undue influence that it goes on when no-one is looking. That does not stop its being proved. The proof has to come, if at all, from more circumstantial evidence. The present case has those characteristics. The allegation is a serious one, so the evidence necessary to make out the case has to be commensurately stronger, on normal principles.*

(Book of Authorities, Tab D Schrader v. Schrader, [2013] EWHC 466 (ch 96)

It is instructive to note that in the case of the Respondent as a Candidate for Mayor, this Contrivance and act of Undue Influence, never took place at a general mayoral election forum. It was within the closed confines of a specified groupings of electors. Without the existence of the Facebook video clips, the issue might have never come to light.

42. Lastly the chambers justice in her ruling said this:

*I do not find in the evidence before me that Mayor Nenshi's comments 4 interfered with anyone's right to exercise his or her vote in accordance with his or her own 5 free will. The mayor made no threats that harm or negative consequences would befall 6 anyone if they failed to vote. There is no evidence that anyone's free exercise of his or her 7 vote was influenced by fear as a result of the mayor's comment. 8 9 So there are no reasonable grounds to suppose that the mayor frightened anyone or 10 compelled anyone to vote against his own free will, and there's no reasonable basis to 11 conclude that the mayor's description of his supporters of his opponents as racist and haters 12 interfered with the free exercise of anyone's franchise rights. In the result -- end, Mr. 13 Heather's application for a fiat is dismissed. All right.*

(Appeal Court Record, Part Three – Transcript p.42, lines 3-13)

43. Here the chambers justice fails to apprehend the evidence pointing to the use of a contrived 3<sup>rd</sup> party agent (one that, in fact, cannot credibly exist, due



to the unsourced exaggerations that the Mayor states in his formulaic speeches.) The Mayor indeed does not appear to be making direct threats, but indirect threats abound as delineated in my remark in the special hearing on the threats implied in Video clip two to the Sikh community.

Here are the core of those remarks in video two present in Exhibit A2:

*Naheed Nenshi: "...is that in this crazy, angry, bitter world of ours, one thing we know is happening. It (sic) that there are forces organizing to bring people who'd I... I would call racists and haters to the polls. Those people never voted before. They hate government. And right now there's some very sophisticated work going on to identify these people and make sure they vote. And in a low voter turnout election like we saw in November twenty-sixteen in the US,, those people will make a difference. So we cannot allow that to happen. Whether you like me or not, we cannot allow for a vote that subverts democracy..."*

(Key Extracts of Evidence, Vol.1, Exhibit A2,p A6)

44. In the Special Hearing I gave a summary of the implied threats through a 3<sup>rd</sup> party that are packed into this formulaic statement of the Respondent.
- First, fear of the malevolent voter who would threaten to harm or remove diverse minorities in Calgary.
- Secondly, the fear of political violence
- Thirdly, the fear of not voting for Nenshi
- Fourthly, the fear of the subversion of democracy.
- To quote my remarks in the transcript on pages 24 & 25

28 So I do have fears recap of video clip 2, fear of the malevolent voter that  
in this crazy,  
29 angry bitter world of ours, one thing we know is happening, that there are  
forces out there  
30 organizing to bring who I would call racist and haters to the polls. An  
appeal to fear.  
31 32 Second, the fear of political violence. The reference to the 2016 US



election in which  
33 violence did erupt on occasion.  
34 35 Third, fear of not voting for Nenshi. Quote, we cannot allow this to  
happen whether you  
36 like me or not. No reference to policy, or past history, or anything of such  
things. You  
37 cannot allow it to happen, it's not based on whether you like me or not.  
Unquote. So this  
38 is the crux of the contrivance. He appeals to people's fear, even those  
who don't like him,  
39 that they must vote for him or the opponents will bode evil effects on them  
should they  
40 win. 41

(Appeal Court Record, Part 3 – Transcript, p24, Lines 28-41)

Lastly, on this second clip, quote, We cannot allow for a vote that subverts  
democracy.  
2 This is another unsubstantiated claim implying a harmful a harmful  
consequence for not  
3 voting for Naheed Nenshi. Let us reflect on the fact that most inhabitants of  
Calgary would  
4 not make a separation from the authority of the mayor and the  
independence of Elections  
5 Calgary. To most it would appear to them as one in the same. All this from  
an incumbent  
6 mayor of a city of over 1.2 million people. The person seen as the most  
authoritative and  
7 powerful spokesman for the entire administration and despite being a  
candidate for a short  
8 month of time of four weeks, the influence continues throughout the  
campaign.  
9 10 So the statements here and the contrivance constitute by Mayor  
Nenshi both voter  
11 compression and voter suppression.

(Appeal Court Record, Part 3 – Transcript, p25, Lines 1-11)

**PART FIVE  
RELIEF SOUGHT**

**45.** It is respectfully submitted that the appeal be allowed, with a declaration that the lower Court ruling is reversed, and the Court will issue a fiat to proceed with a trial for Quo Warranto in line with the provisions of the Alberta Local Authorities Election Act. (LAEA) It must be recognized that I have not tried to prove the case for Undue Influence, which can only be done by a witness oral trial and not by an affidavit. I have merely tried to show there are reasonable grounds to investigate by a trial of Quo Warranto that such a prohibited practice under LAEA may have taken place.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 30<sup>TH</sup> DAY OF  
JULY, 2018

**Larry Heather**

Self-Represented

Estimated time of argument: 45 minutes

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