Court of Queen's Bench of Alberta

Citation: Cherry v Alberta (Chief Electoral Officer), 2021 ABQB 672

Date: 20210823
Docket: 2010 00828
Registry: Red Deer

Between:

Brenda Lee Cherry

Applicant

- and -

Elections Alberta

Respondent

Memorandum of Decision
of the
Honourable Madam Chief Justice M.T. Moreau

I. Introduction

[1] This is an appeal from the decision of the Chief Electoral Officer and Election Commissioner [Election Commissioner] that the Appellant was a not a citizen of Canada but voted in the 2019 Alberta General Election contrary to s 167(a) of the *Election Act*, RSA 2000, c E-1 [the *Act*]. The Election Commissioner imposed a penalty of $5,500 pursuant to s 153.1 of the *Act*.

[2] The Appellant is self-represented and seeks to overturn the Election Commissioner's decision on liability and penalty.

[3] Justice John William Hopkins heard the appeal on December 1, 2020 and reserved his decision. Justice Hopkins passed away on May 23, 2021 prior to issuing his decision.

[4] Rule 13.1 of the *Alberta Rules of Court*, Alta Reg 124/2010, provides:

> When one judge may act in place of or replace another
>
> 13.1 One judge may act in place of or replace another judge if
>
> (a) that other judge dies,
>
> (b) that other judge ceases to be a judge, or
>
> (c) it is inconvenient, improper, inappropriate or impossible for that other judge to act.

[5] Based on the provisions of r 13.1(a), I assumed conduct of this matter. The parties to this appeal were contacted and they confirmed that this matter could be fairly decided on the Certified Record of Proceedings [Record], their written materials submitted on the appeal and a transcript of the appeal hearing before Justice Hopkins.

II. Background Facts

[6] The Appellant, Brenda Lee Cherry, is a citizen of the United States of America. She is a permanent resident of Canada. She is married to a Canadian citizen, Terry Tapper.

[7] On April 9, 2019, the Appellant attended an advance poll in the riding of Innisfail-Sylvan Lake to ask whether she could vote in the 2019 Alberta General Election as a permanent resident in Canada. Rae Anne Ornella, a Deputy Returning Officer [DRO], advised her that she could not as she was not a Canadian citizen.

[8] Following her initial inquiry, the Appellant received a "Where to Vote" card addressed to Brenda Lee Tapper (her husband's last name). On April 16, 2019, the Appellant attended the polling station and cast a ballot with her "Where to Vote" card. After voting, she sighted the DRO who, at the advance poll on April 9, 2019, had advised her against voting. The Appellant told the DRO that she had just voted. Subsequently, the DRO filed an Elections Alberta incident report indicating that the Appellant had voted despite her status as a permanent resident in Canada.

[9] On July 17, 2019, Elections Alberta transferred the matter to the Office of the Election Commissioner. In January 2020, the Election Commissioner commenced an investigation to determine whether the Appellant had breached ss 16 and 167(a) of the *Act*. Compliance and Enforcement Investigator Tom Farquhar [Farquhar] received the file and started an investigative review.

Investigation

[10] Farquhar contacted the Canada Border Services Agency to confirm the Appellant's legal name and her status as a permanent resident in Canada. He also interviewed the DRO who filed the incident report.

[11] On March 11, 2020, the Appellant received a Notice of Investigation, which cited ss 3 and 4 of the *Public Inquiries Act,* RSA 2000, c P-39. The Notice of Investigation made no reference to the specific offence for which the Appellant was being investigated or the possible penalties she faced if found in violation of the *Act*.

[12] On March 15, 2020, Farquhar conducted an interview with the Appellant and her husband, Terry Tapper, at the Sylvan Lake RCMP detachment. During the interview with the Appellant, she stated as follows:

- she attended at the advance polls and was advised by the DRO that she could not vote because she was a permanent resident;
- she met a man in the hallway [at the advance polls venue] who told her that there were exceptions for certain permanent residents who have been in Canada for a long time. The man looked like he was going to inquire about voting; she did not think the man worked there;
- after departing from the advance polls, she received a "Where to Vote" card in the mail;
- she attended at the poll on Election Day, confirmed her address with the poll clerk and that her name was: "Brenda Tapper"; Brenda Tapper is not her legal name, but she uses the name.

[13] Mr. Tapper stated in his interview of March 15, 2020 that he did not recall anyone attending at his house about the election in reply to questioning regarding the Appellant's receipt of a "Where to Vote" card.

[14] On or about May 19, 2020, the Investigator submitted an Investigation Report to the Election Commissioner, which concluded that:

- the Appellant attempted to vote at the advanced poll and was turned away by [DRO Ornella] with a clear explanation about why the Appellant was ineligible to vote. She therefore knew, or ought to have known, that she was not eligible to vote in the provincial general election;
- the Appellant returned to the polling station on Election Day with an uninformed belief or suspicion that because she had received a paper in the mail, she may have been an exception to the citizenship rule. She presented herself at the polling booth as Brenda Tapper, did not disclose to the official that she was not a Canadian citizen, did not disclose that she had been turned away from voting at the advanced poll, and proceeded to vote;
- the Appellant's actions and the decisions she took in this regard were more than a simple honest error. She knew or ought to have known she was ineligible to vote. She took insufficient steps to determine whether she was an exception to the citizenship rule (which she was not), misrepresented herself to an election official, did not disclose her true citizenship, led the official to believe she was an eligible voter, and voted;
- to some degree, the Appellant may have been misinformed, misunderstood, or was genuinely confused. However, prior to voting on Election Day she did not take sufficient measures to clarify her eligibility and was not completely honest when she presented herself to officials at the polling booth. Her deception was passive;
- the Appellant was forthcoming with the investigator and participated in the investigation.

[15] On June 23, 2020, the Election Commissioner sent a Notice of Investigation Findings to the Appellant informing her that the evidence before him suggested a contravention of s 167(a) of the *Act*. The Commissioner provided the Appellant with the opportunity to present her position and any evidence before making a determination on the issue. The Notice of Investigation did not disclose the penalties the Appellant was facing in the event of a determination that she had contravened s 167(a) of the *Act*.

[16] On July 11, 2020, the Appellant responded in writing to the Election Commissioner and confirmed all the information she had earlier provided to the Investigator. The Appellant clarified that she believed she had been selected as a permanent resident when she received the "Where to Vote" card in the mail. She also stated that:

- neither she nor her husband had any recollection of an enumerator attending at their door in September 2018;
- in 2019, she found out she was pregnant. Her doctor informed her it was a high-risk pregnancy due to her age. She worked part-time and had to conceal her pregnancy. She struggled with mental health at the time and saw a therapist;
- when Farquhar contacted her husband and they all met at the Sylvan Lake police department in March 2020, she thought it was a misunderstanding about her name;
- she and her husband were unaware of how they were registered. Her husband would not have registered her to vote as he understood that she was not permitted to vote as a permanent resident. They did not recollect anyone registering them at their door.

[17] On July 24, 2020, the Election Commissioner issued his Notice of Administrative Penalty Decision that is being challenged by the Appellant in these proceedings.

III. The Legislation

[18] The following provisions of the *Election Act* are relevant:

> Persons entitled to be listed as electors
>
> 16 Subject to section 45, a person is eligible to have the person's name included on a list of electors if that person as of a date fixed by the Chief Electoral Officer
>
> > (a) is a Canadian citizen,
> >
> > (b) is at least 18 years of age, and
> >
> > (c) repealed 2017 c29 s14,
> >
> > (d) is ordinarily resident in the electoral division and subdivision for which that person is to have the person's name included on the list of electors.
>
> […]
>
> Duties and powers of the Election Commissioner
>
> 153.09(1) The Election Commissioner may, on the Election Commissioner's own initiative or at the request of the Chief Electoral Officer or another person or

organization, conduct an investigation into any matter that might constitute an offence under this Act.

(2) For the purpose of conducting an investigation under this Act, the Election Commissioner has all the powers of a commissioner under the Public Inquiries Act as though the investigation were an inquiry under that Act.

[….]

153.1(1) If the Election Commissioner is of the opinion that a person has contravened a provision of this Act, the Election Commissioner may serve on the person either a notice of administrative penalty requiring the person to pay to the Crown the amount set out in the notice, or a letter of reprimand.

(2) A notice of administrative penalty must contain the following information:

> (a) the name of the person required to pay the administrative penalty;
>
> (b) the particulars of the contravention;
>
> (c) the amount of the administrative penalty and the date by which it must be paid;
>
> (d) a statement of the right to appeal the imposition or the amount of the administrative penalty to the Court of Queen's Bench.

(3) In determining the amount of an administrative penalty required to be paid or whether a letter of reprimand is to be issued, the Election Commissioner must take into account the following factors:

> (a) the severity of the contravention;
>
> (b) the degree of wilfulness or negligence in the contravention;
>
> (c) whether or not there were any mitigating factors relating to the contravention;
>
> (d) whether or not steps have been taken to prevent reoccurrence of the contravention;
>
> (e) whether or not the person has a history of non-compliance;
>
> (f) whether or not the person reported the contravention on discovery of the contravention;
>
> (g) any other factors that, in the opinion of the Election Commissioner, are relevant.

(4) The amount of an administrative penalty that may be imposed under subsection (1) must not exceed the maximum fine that could be imposed for the corresponding offence under sections 154 to 163.

…

> (6) A person who has been served with a notice of administrative penalty shall pay the amount of the administrative penalty within 30 days from the date of service of the notice.
>
> [….]
>
> *Appeal of administrative penalty*
>
> 153.3(1) A person or entity who is served with a notice of administrative penalty under section 153.1 may appeal the Election Commissioner's decision by filing an application with the Court within 30 days from the date the notice was served.
>
> (2) The application must be accompanied with a copy of the notice of administrative penalty and state the reasons for the appeal.
>
> (3) A copy of the application must be served on the Election Commissioner not less than 30 days before the appeal is to be heard.
>
> (4) The Court may, on application either before or after the time referred to in subsection (1), extend that time if it considers it appropriate to do so.
>
> (5) On hearing the appeal, the Court may confirm, rescind or vary the amount of the administrative penalty.
>
> [….]
>
> *Fraudulent voting*
>
> 167 A person commits a corrupt practice who votes or attempts to vote when the person knows or ought to know that the person is not qualified to vote …
>
> [….]
>
> *Corrupt practice offence*
>
> 177(1) A person who commits a corrupt practice is guilty of an offence and liable to a fine of not more than $50 000 or to imprisonment for not more than 2 years or to both fine and imprisonment.
>
> (2) An offence under this Part shall be tried in the Court of Queen's Bench under the procedure set out in the *Provincial Offences Procedure Act*.

IV. The Election Commissioner's Decision

[19] On the issue of liability, the Election Commissioner concluded in his written reasons that the Appellant:

> [F]raudulently voted in the 2019 Alberta General Election by casting a ballot when she was not entitled to do so, contrary to section 167 of the *Election Act*. A contravention of section 167 of the *Election Act* is deemed, within this *Act*, to constitute the commission of a corrupt practice. The maximum penalty for committing a corrupt practice is $50,000.

[20] Regarding penalty, the Election Commissioner stated that he was:

> [G]uided by statute, in addition to various Court decisions, to consider seven specific factors in determining any administrative penalty. These factors can be found in section 153.1(3) of the *Election Act*. To ensure the fair, measured and systematic application of monetary penalties, [the] Penalty Framework (Appendix A) is utilized.

[21] The "Penalty Framework" that is used by the Election Commissioner to adjust penalty is shown below:

STAGE 1

	Administrative Penalty Baseline *(percentage of the maximum penalty)*	
1)	Corrupt Practice	10%
2)	Financial Reporting	10%
3)	Exceeding Contribution or Expense Limits	10%
4)	Failure to Register	10%
5)	Election Advertising	10%

STAGE 2

	Administrative Penalty Adjustment *(percentage of the maximum penalty adjusted to statutory factors contained in section 51.01(4) of the EFCDA or section 153.1(3)(a-g) of the Election Act)*	
1)	The severity of the contravention.	(+) 5% to 25%
2)	Is there a degree of wilfulness of negligence in the contravention?	(+) 5% to 25%
3)	Are there any mitigating factors relating to the contravention?	(-) 5% to 25%
4)	Were steps taken to prevent reoccurrence of the contravention?	(-) 5% to 25%
5)	Does the subject have a history of non-compliance?	(+) 5% to 25%
6)	Did the subject report the contravention on discovery of the contravention?	(-) 5% to 25%
7)	Are there any other factors that, in the opinion of the Election Commissioner, are relevant?	(+/-) *
*	*Adjusted as appropriate, depending on all investigative information and any mitigating or aggravating circumstances*	

[22] The Election Commissioner assessed the Appellant's Baseline calculation at $5,000 (10% of the maximum penalty) to which he added 5% ($2,500) for the severity of her contravention and 5% ($2,500) for the degree of wilfulness or negligence.

[23] The Election Commissioner reduced the penalty by 5% ($2,500) based on his consideration of: (a) the Appellant's statement that she was pregnant and struggling with mental health issues when she received the "Where to Vote" card, and may have been experiencing some degree of confusion that impacted her decision-making abilities; and (b) her cooperation and participation in the investigation.

[24] The Election Commissioner reduced the penalty by a further $2,000 in consideration of "any other factors that, in the opinion of the Election Commissioner, are relevant" (s 153.1(3)(g)) which include: (a) Appellant's co-operation with the investigation; (b) her admission that she committed the violation; and (c) her offer of an apology for her actions. This brought the total penalty payable by the Appellant to $5,500.

V. Issues

[25] There are two issues for determination in this appeal:

(i) Did the Election Commissioner err in determining that the Appellant was in contravention of s 167(a) of the *Election Act*?

(ii) Did the Election Commissioner err in imposing a penalty of $5,500?

VI. Standard of Review

[26] I accept the Respondent's submission that the appropriate standard of review on appeals from administrative decision-makers following ***Canada (Minister of Citizenship and Immigration) v Vavilov***, 2019 SCC 65 [***Vavilov***] on questions of mixed facts and law is that of palpable and overriding error.

[27] As noted in ***Housen v Nikolaisen***, 2002 SCC 33 at para 4, the reviewing court's role is to:

> ...review the reasons in light of the arguments of the parties and the relevant evidence, and then to uphold the decision unless a palpable error leading to a wrong result has been made by the trial judge.

[28] In ***Canada v South Yukon Forest Corporation***, 2012 FCA 165 at para 46, the Court stated:

> Palpable and overriding error is a highly deferential standard of review: *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401; *Peart v. Peel Regional Police Services* (2006), 217 O.A.C. 269 (C.A.) at paragraphs 158-59; […]. "Palpable" means an error that is obvious. "Overriding" means an error that goes to the very core of the outcome of the case. When arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall.

VII. Application for Fresh Evidence

[29] The Appellant applied to introduce an Affidavit sworn by her on August 19, 2020 in connection with this appeal. The Respondent opposed the admission of the Affidavit on the basis that it did not meet the four-pronged test for admission of fresh evidence set out in ***R v Palmer***, [1980] 1 SCR 759 [***Palmer***].

[30] My review of the Record raises some procedural fairness concerns that are relevant to the admissibility of the Affidavit:

1. The Appellant was first notified of the Elections Canada investigation in a letter to her dated March 11, 2020 from Farquhar, stating: "Elections Alberta is attempting to contact you in reference to an investigation we are conducting in which you have been named as a subject. It is important to meet with the investigator to further assist with your version of the facts in respect to this matter".

   There was no indication given to her of the nature and purpose of the investigation nor the penalties she faced by way of fine or imprisonment (or both) in the event she was found to be in violation of the *Act*. The March 11, 2020 Notice was not included

in the Record. It was attached as an Exhibit to the Affidavit the Appellant seeks to admit on her appeal. I find that the Notice should have been included in the Record as part of "(e) anything else in our possession relevant to the decision or act, namely (i) all related correspondence."

2. Nor was there evidence in the Record of any oral communication to Ms. Cherry of the purpose of the Farquhar interview or the penalties she faced by way of fine or imprisonment (or both) under the *Act* before the Farquhar interview at the Sylvan Lake RCMP detachment on March 15, 2020.

3. A blank Interview Data Sheet/Preamble was included as Tab R in the Record which presumably serves as a guide for persons conducting interviews in relation to investigations under the *Act*. The form includes details as to the time and length of the recorded interview and a preamble presumably to be read to the interviewee prior to questioning. The form states as follows in bullet form under the heading "Introduction and Explanation of Investigators Role and Purpose":

   - Personal Introduction
   - Role as Investigator – Authorities, Limitations – outcome of investigation not determined by me/us. Election Commissioner makes all rulings/decisions at conclusion of any investigation
   - Confidentiality/Anonymity
   - Timelines for interview and potentially the investigation
   - Potential remedies

     Caution Letters

     Letter of Reprimand

     Adverse Finding – Penalty

     Compliance Agreements

     Prosecutions

     Injunctions

   - Expand on nature of allegation/s if necessary
   - If you experience any negative repercussions as a result of having spoken with me today it is important that you make someone, myself included, aware that has/is occurring.
   - Do you have any questions before we commence?

   An audio recording and a transcript of the interview of Ms. Cherry by Farquhar were included in the Record (respectively Tab S and Tab GG).

   The transcript contains no indication that Farquhar provided the Appellant with any details that the outcome of the investigation was not determined by him or any discussion regarding potential remedies and penalty <u>prior to</u> embarking on his

questioning of the Appellant. A discussion regarding penalty only arose after he elicited information from her, at which time he indicated that it could be:

> …anything from a fine. When I – it could be something to where they just send a letter out, to a fine, to – and typically we don't deal with this that often is to – a heavy fine and jail. Remember, that's not what we're dealing with.

When asked by the Appellant about possible ramifications of her actions on an eventual application for citizenship, Farquhar responded:

> I don't know what the criteria is for that; right? So a lot of this is just a misunderstanding. … A lot of this is just a misunderstanding here. But, I mean, when you apply and everything else, and if they ask you, you can – you can talk about, well, I was confused about the last election, and I voted in it, right.
>
> So I wouldn't get worried about that. That's not what this government is looking at, right.

Concerning is the characterization by Farquhar that "a lot of this is just a misunderstanding" coupled with the fact that he was not the decision-maker and that he had not provided her with any information regarding penalties for violations of the *Act* prior to questioning her.

4. The Election Commissioner sent to the Appellant a Notice of Investigation Findings on June 23, 2020 notifying her of the results of the investigation and encouraging her to prepare and provide a response to the Notice. Although the Notice referred to "Relevant Statutory Provisions" including the maximum penalty for a corrupt practice offence under s 177(1), the Notice did not refer to the statutory factors to be considered by the Election Commissioner in determining an appropriate penalty. The Notice simply stated:

> I remind you that, where the Election Commissioner issues an administrative penalty or a letter of reprimand, publication of the findings, decisions, and any additional information that the Election Commissioner considers to be appropriate is required under s. 5.2(3)(a) of the *Election Finances and Contributions Disclosure Act.* This means the outcome of this investigation will be published on our website.

Including the statutory factors in the Notice would have provided someone in the Appellant's position with guidance as to what factors both personal and situational were relevant to the assessment of penalty.

In this case, there was no informed opportunity for the Appellant to provide evidence on the various statutory factors the Election Commissioner was required to consider in imposing a penalty. She was not notified of these factors during any interview or from any document forwarded to her prior to that point.

[31] The Election Commissioner found the Appellant to be in violation of s 167(a) of the *Act*. As this section is not contained within ss 154 to 163 of the *Act*, it is not subject to the maximum penalty provisions set out in s 153.1(4). The Election Commissioner has taken the position that the maximum administrative penalty should not exceed the maximum penalty on conviction for

that offence. He used $5,000 (10% of the maximum fine for the offence of a corrupt practice under s 177) as a baseline for the imposition of the administrative penalty.

[32] Against this background, I turn to the admissibility of the Appellant's August 19, 2020 Affidavit. Counsel for the Respondent referred to the comments of Feehan J. (as he then was) in ***Anglin v Alberta (Chief Electoral Office)r***, 2018 ABQB 309 at para 57, regarding the admission of new evidence on appeal:

> … the general rule is that review of a decision is conducted based on the record which was before the decision maker. Additional affidavits are exceptional. Generally speaking, applicants are not entitled to turn a review into a trial *de novo* on the merits of the issue before the decision maker. There is a difference between administrative law and civil litigation.

[33] In a subsequent decision in the same proceeding (***Anglin v Alberta (Chief Electoral Officer)***, 2020 ABQB 131), Ross J. permitted Mr. Anglin to adduce certain affidavits based on the ***Palmer*** test (***Palmer*** at 775):

> (1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal cases as in civil cases…
>
> (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.
>
> (3) The evidence must be credible in the sense that it is reasonably capable of belief, and
>
> (4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

[34] Having reviewed the Appellant's Affidavit, I am of the view that requirements (2), (3) and (4) of the ***Palmer*** test are met. The evidence does bear on proof of the violation and penalty, at least some aspects of which are reasonably capable of belief. If believed and when taken with the other evidence adduced before the Commissioner, the evidence could be expected to have affected the result. As to the first requirement of the ***Palmer*** test, there was no notice given to the Appellant of the statutory factors the Election Commissioner was obliged to consider at the penalty phase. I therefore allow the Affidavit to be considered on the appeal as it provides a response on these statutory factors.

VIII. Liability

[35] The Appellant was forthcoming and cooperative with the investigation. She admitted attending the advanced polling station, and asked an election official about her eligibility to vote. She showed her permanent resident card and, not being a Canadian citizen, she was advised she was ineligible to vote.

[36] I have considered paras 1-4 and 6 of the Appellant's Affidavit that relate to liability under the *Act*. The Record clearly shows that the Appellant voted when she was not eligible to do so after having been advised by an election official at an advanced poll that she was not a Canadian citizen and therefore ineligible to vote. Rather, she relied on an unnamed man she saw at the advanced poll and the "Where to Vote" card.

[37] Para 5 of the Affidavit states: "We were told by Tom Farquhar "We didn't need an attorney"." I have reviewed the transcript of the interview and there is no indication whatsoever of this representation having been made by Mr. Farquhar to the Appellant and her husband during the interview.

[38] I find that the Election Commissioner did not commit a palpable and overriding error in finding that the Appellant voted in breach of s 167(a) of the *Election Act* on the strength of all of the information available to him, which included the witness statement and interview of DRO Ornella and the interview of the Appellant and Mr. Tapper. There was ample evidence to conclude that the Appellant had voted when not a Canadian citizen in violation of s 167(a) of the *Election Act.*

IX. Penalty

[39] The Election Commissioner determined that an administrative penalty was appropriate under s 153.1(1) of the *Act* and in the Notice dated June 23, 2020, gave the Appellant an opportunity to respond to its determination, which she did.

[40] In imposing the penalty of $5,500, the Election Commissioner assessed the factors set out in s 153.1(3) and considered the relevant mitigating factors including the Appellant's mental health and pregnancy at the time, her receipt of the "Where to Vote" card, her cooperation with the investigation and her apology.

[41] Nevertheless, s 153.3(5) of the *Act* provides that: "On hearing the appeal, the Court may confirm, rescind or vary the amount of the administrative penalty."

[42] In exercising this statutory jurisdiction and discretion, I note the Supreme Court of Canada's statement in ***Vavilov*** at para 139:

> Where a court reviews an administrative decision, the question of the appropriate remedy is multi-faceted. It engages considerations that include the reviewing court's common law or statutory jurisdiction and the great diversity of elements that may influence a court's decision to exercise its discretion in respect of available remedies.

[43] Para 7 of the Appellant's Affidavit refers to her mental and physical state at the time of the investigation and her indication that "[t]he level of personal stress was overwhelming."

[44] Para 8 of her Affidavit requests that the Court take her personal circumstances into consideration if the penalty stands and states: "I am a stay at home mom with no income. This fine is a burden to my family financially. My husband has been impacted due to the Covid-19 impact on the economy and we do not have the means to pay $5500 by September 7, 2020."

[45] I also note an earlier reference in Farquhar's March 15, 2020 interview of Mr. Tapper (included in the Record) to his probable lay-off due to the price of oil at the time, which was not referred to in the Election Commissioner's decision on penalty.

[46] In addition, while the Election Commissioner's decision referred to the Appellant's pregnancy and her struggles with her mental health as mitigating factors, there was no reference to her pregnancy being "high risk" due to her age and her having been working "as a part time cashier at Michaels, where I had to conceal my pregnancy for a total of seven months, to which I had to see a therapist for." The Election Commissioner allotted the minimum reduction of 5% on

the penalty, based on the Administrative Penalty table, for health-related factors, the Appellant's receipt of the "Where to Vote" card and her cooperation with the investigation. He also allotted under "any other factors that in the opinion of the Election Commissioner are relevant" her full cooperation in the investigation, her admission of the violation and her offer of an apology for which he reduced the penalty by a further $2,000.

[47] The COVID-19 pandemic with its attendant impact on the Appellant's circumstance referred to in para 8 of her Affidavit – which include financial hardships on the Appellant – overlapped some parts of the investigation which extended from January 2020 to May 19, 2020, when the Investigator submitted an Investigation Report, to July 24, 2020, when the Election Commissioner issued his Notice of Administrative Penalty Decision.

[48] I am of the view that a larger reduction in penalty for mitigating factors is required to recognize the seriousness of the health-related concerns and stresses being experienced by the Appellant at the time of the offence, including the impact of COVID-19 and the Alberta economy on the stability of her husband's employment as set out in her Affidavit. I therefore adjust the penalty for mitigating factors (having regard to the spectrum of (-) 5% to 25% in the table) from -5% (-$2,500) to -12.5% (-$6,250).

[49] The adjusted total to be paid by the Appellant is therefore reduced from $5,500 to $1,750.

Disposition

[50] The appeal on liability is dismissed. The appeal on penalty is allowed and the penalty is reduced to $1,750.

Heard on the 1st day of December, 2020.
Dated at the City of Red Deer, Alberta this 23rd day of August, 2021.

M.T. Moreau
C.J.C.Q.B.A.

Appearances:

Brenda Lee Cherry
Appeared on her own behalf
for the Applicant

Kathleen Elhatton-Lake
Shores Jardine LLP
for the Respondent