

Office of the
Chief Electoral Officer
of Ontario



Bureau du directeur
général des élections
de l'Ontario

March 21, 2013

Caroline Hallsworth
Executive Director, Administrative Services and
City Clerk
City of Greater Sudbury
200 Brady Street
P.O. Box 5000, Station A
Sudbury, Ontario
P3A 5P3

Dear Ms. Hallsworth:

This is to thank you very much for your assistance in the planning for the hearing, held on February 26, on the appeals of the municipal by-law.

Both Mr. Christie and Melanie Martin-Griem join with me in expressing to you our gratitude. We found the meeting room that you had selected for the hearing was very well suited to the conduct of the hearing. It accommodated, quite comfortably, all of the individuals who wished to take part. We were also appreciative of the fact that it was outfitted with the audio-visual equipment that had been requested.

Mr. Christie also asked me to extend to you his appreciation for the materials that you forwarded to our office with your Checklist. He found the documents extremely well-organized and helpful in his preparations for the conduct the hearing.

Thank you again for your assistance.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Loren A. Wells'.

Loren A. Wells
Deputy Chief Electoral Officer and
Registrar, Municipal Appeals

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Dear Ms. Hallsworth:

On behalf of the Chief Electoral Officer, I am enclosing for you a copy of the Order of the Chief Electoral Officer in the matter of the appeals of the wording of **By-law No. 2012-242**, as it was enacted by the Council of the City of Greater Sudbury. I am also enclosing for you a copy of the Reasons for Decision in this matter.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Loren A. Wells".

Loren A. Wells
Deputy Chief Electoral Officer and
Registrar, Municipal Appeals

Enclosures

In The Matter Of Three Appeals brought by Wayne Jones, Fred Slade and the Greater Sudbury Chamber of Commerce under subsection 8.1(6) of the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, as amended, to determine whether the questions enacted by By-law No. 2012-242, A By-law of the City of Greater Sudbury to Submit Certain Questions to the Electors in the 2014 Municipal Election complies with paragraphs 3 and 4 of subsection 8.1(2) of the said *Act*.

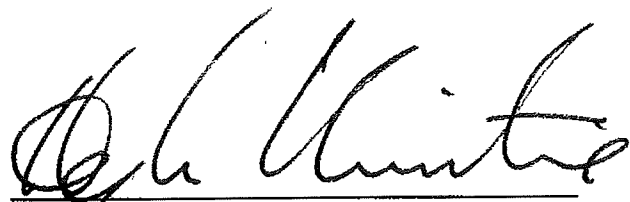
Before Mr. Hugh Christie)
(Designate of the Chief Electoral Officer)) Hearing held
) the 26th day of February, 2013
) in Sudbury
)

ORDER

It is hereby ordered that By-law 2012-242 be amended so that the questions to be submitted to the electors in the 2014 municipal election read as follows:

- a. **Are you in favour of retail business establishments having the choice to open to the public on December 26?**
- b. **Are you in favour of retail business establishments having the choice to open to the public on the Civic Holiday, the first Monday in August?**
- c. **Are you in favour of allowing retail business establishments to choose the hours when they are open to the public?**

March 21, 2013



Hugh Christie
On behalf of the Chief Electoral Officer

In The Matter Of Three Appeals brought by Wayne Jones, Fred Slade and the Greater Sudbury Chamber of Commerce under subsection 8.1(6) of the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, as amended, to determine whether the questions enacted by By-law No. 2012-242, A By-law of the City of Greater Sudbury to Submit Certain Questions to the Electors in the 2014 Municipal Election complies with paragraphs 3 and 4 of subsection 8.1(2) of the said *Act*.

Before Mr. Hugh Christie)
(Designate of the Chief Electoral Officer))
)
)
)

Hearing held
the 26th day of February, 2013
in Sudbury

REASONS FOR DECISION

1. The hearing of these similar appeals were conducted together. All parties present agreed that I had jurisdiction to hear the matter pursuant to the *Municipal Elections Act, 1996*, and agreed that the hearing was properly constituted.
2. On December 11, 2012 City Council for the City of Greater Sudbury passed By-law No. 2012-242, enacting as follows:

Each of the following questions shall be put to the electors of the City of Greater Sudbury as part of the 2014 municipal elections:

- (a) Are you in favor of retail business establishments opening on December 26?;
 - (b) Are you in favor of retail business establishments opening on the Civic Holiday, the first Monday in August?; and
 - (c) Are you in favor of allowing retail business establishments to set their opening hours?
3. Such referendum questions must comply with section 8.1(2) of the *Municipal Elections Act, 1996*, S.O. 1996, c.32, as amended, which reads as follows with respect to any such question:

a.

- b.
 - c. It shall be clear, concise and neutral.
 - d. It shall be capable of being answered in the affirmative or the negative and the only permitted answers to the question are "yes" or "no".
4. No appellant says that any question offends d. above.
 5. These appeals were brought claiming that these questions did not comply with paragraph c. above.
 6. Wayne Jones appealed the third proposed question only. He did not appear at the hearing, and no one spoke on his behalf. The matters raised by his appeal were canvassed thoroughly at the hearing. I have dismissed his appeal.
 7. Fred Slade appealed the third question only. I quote from his written appeal as follows:

The series of questions have [sic] the potential to cause unnecessary confusion.

On their own, the first two are relatively clear.

The last question does not address the issues at hand. It is not only potentially confusing it is also arguably incomplete, as it does not address closing hours, thereby leaving unresolved actual hours of unrestricted operation.

The first two questions are not necessary if the last one is properly worded.

My suggestion is to only have one question, worded as follows:

Are you in favour of allowing retail business establishments to set their hours of operation without restriction?

8. The Greater Sudbury Chamber of Commerce (the "Chamber") appealed the wording of all three questions. It initially suggested the following changed order and wording for each question:
 - a. **Are you in favour of allowing retail business establishments to choose their hours of operation?**
 - b. **Are you in favour of allowing retail business establishments the choice to open on December 26th?**
 - c. **Are you in favour of allowing retail business establishments the choice to open on the Civic Holiday on the first Monday in August?**

Submissions re Questions 1 and 2

9. All agreed these two questions are sufficiently similar to be dealt with together. All agreed that the added description in question ii to specify the first Monday in August as the Civic Holiday was appropriate. Mr. Slade encouraged me to remove the first two questions and amend the third. By the close of submissions, however, Mr. Slade had accepted that the Council might well want the information asked for in the first two questions, and left the hearing.
10. The Chamber encouraged me to prefer wording which asked whether stores should be allowed to choose their opening hours, not simply whether the voter was in favour of opening.

Submission re Question 3


11. The Chamber also asked that I substitute "hours of operation" for "opening hours", as it claimed the latter was confusing.
12. The City responded that "opening hours" was sufficiently clear to comply with the *Act*. More importantly, it advised that it was only the hours a retail business establishment is open to the public that the City may regulate. In particular, s. 148 (1) of the *Municipal Act* reads as follows:
 - a. Without limiting sections 9, 10 and 11, a local municipality may require that retail business establishments be closed to the public at any time. 2006, c. 32, Sched. A, 81(1).
13. This, it argued, made the phrase "opening hours" preferable.
14. The Chamber again focussed on the concept of choice to open. Ultimately, it conceded the point regarding the City's objection to "hours of operation", rooted in the *Municipal Act*, with regard to all three questions.
15. In the end, the City asked that I phrase the third question in the most clear and concise fashion I could, given the submissions I had heard. I am prepared to do so in that circumstance.
16. Before I do so, I want to congratulate all three parties on the quality of their submissions, the civility with which they dealt with each other and the sensitivity to each others' positions they exhibited. By the end of submissions, the issues had been significantly, and helpfully narrowed, and illuminated.

17. After hearing and weighing all of the submissions made, and being encouraged to do so by all parties, I hereby order that the three questions be worded as follows:

- a. Are you in favour of retail business establishments having the choice to open to the public on December 26?
- b. Are you in favour of retail business establishments having the choice to open to the public on the Civic Holiday, the first Monday in August?
- c. Are you in favour of allowing retail business establishments to choose the hours when they are open to the public?

Dated:

March 21, 2013


Hugh Christie
On behalf of the Chief Electoral Officer