

ELECTIONS

Judicial review of decisions by Chief Electoral Officer (CEO) refusing to exercise discretion to recommend change in date of federal general election scheduled for October 21, 2019 — Applicants, Orthodox Jews, arguing date of federal election conflicting with Jewish High Holiday of Shemini Atzeret — During this period, orthodox observance involving refraining from numerous activities, including voting, campaigning — As result of conflicts, ability of Orthodox Jewish voters, candidates to participate in activities leading up to election, polling day restricted — Applicants arguing *Canadian Charter of Rights and Freedoms* (Charter), ss. 2, 3, 15 rights infringed — CEO maintaining that Elections Canada not choosing date of election, CEO cannot now recommend change in date of election — Moving 2019 election date negatively affecting general election, presenting logistical concerns — Elections Canada focused on providing voting opportunities for observant Jewish community — Whether CEO's decision not to recommend that election date be moved reasonable — CEO's decision failing to address, balance specific Charter issues raised by applicants — Decision therefore not justifiable, transparent, intelligible — Administrative decision makers having to act consistently with Charter when exercising their statutory discretion — Charter considerations in *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395, *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, [2018] 2 S.C.R. 293 applying to CEO in exercise of his statutory duties pursuant to *Canada Elections Act*, S.C. 2000, c. 9, s. 56.2(1) — CEO required to engage in full consideration of statutory, factual contexts — Having to consider if applicants' observance of religious freedom interfering with their rights to "meaningful participation" in general election — CEO's position grounded on position that fixed date of October 21, 2019, immutable — CEO required to assess impact of election date being in conflict with day of "religious significance", to consider discretion granted by Parliament pursuant to s. 56.2(1) — Record not disclosing that CEO giving proper consideration to this discretion — CEO required to consider exercise of his discretion as option or avenue reasonably open to him to reduce impact on applicants' Charter rights and still allow CEO to further relevant statutory objectives — Court cannot defer to decision not providing any explicit or implicit evidence of proportionate Charter balancing — Impossible for Court herein to determine if balancing was proportionate — Outcome disproportionate, not protecting Charter values as fully as possible in light of statutory objectives — Matter remitted back to CEO for reconsideration — *Mandamus* not appropriate remedy — Application allowed.

ARYEH-BAIN V. CANADA (CHIEF ELECTORAL OFFICER) (T-948-19, 2019 FC 964, McDonald J., amended reasons for judgment dated July 26, 2019, 24 pp.)