

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)**

BETWEEN:

GLEN L. RESLER, IN HIS CAPACITY AS CHIEF ELECTORAL OFFICER

APPELLANT

(Respondent)

-and-

JOSEPH V. ANGLIN

RESPONDENT

(Appellant)

**FACTUM OF THE APPELLANT,
GLEN L. RESLER, IN HIS CAPACITY AS CHIEF ELECTORAL OFFICER**
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I - OVERVIEW AND STATEMENT OF FACTS

A. OVERVIEW

1. This case is about the integrity of the Canadian electoral system. The question before the Court is whether an unsuccessful election candidate may bring a private action against an election officer for the “loss of chance” to be elected.

2. The Appellant, Glen Resler, is the former Chief Electoral Officer for Alberta. The Respondent, Joseph Anglin, was an unsuccessful candidate in the 2015 provincial General Election. The exclusive remedy for a candidate who seeks to challenge the fairness or integrity of an election is the controverted election process set out in the *Election Act*.¹ Mr. Anglin did not challenge the fairness of the election through the controverted election process. Instead, Mr. Anglin sued the Chief Electoral Officer, alleging that he acted to “create an unfair advantage for Anglin’s opponents and to deny him a fair election and his chance of re-election.”²

3. The Chief Electoral Officer applied to strike the claim as an abuse of process. The Alberta Court of King’s Bench struck Mr. Anglin’s claim, finding:

“...there is an obvious inconsistency in a defeated candidate saying, on the one hand, “I am not challenging the election; I recognize the winning candidate as such” and, on the other “I am entitled to damages for election unfairness causing my loss” i.e. effectively, “I am the true winner.”³

¹ *Election Act*, RSA 2000, c E-1, Part 7: Controverted Elections. **Note:** All references to the *Election Act*, RSA 2000, c E-1 are to the version in force between December 17, 2014 and December 10, 2015 (“Election Act”). There have been changes to the Election Act since the version in effect at the time of the 2015 Election, however there has been no substantive changes to the provisions at issue in this matter. A copy of the *Election Act*, as it was between December 17, 2014 and December 10, 2015 is included in the Book of Authorities (“BOA”) at Tab 13.

² Court of Kings Bench File No. 1703 06642, Amended Statement of Claim filed June 22, 2022 at para 7, Record Volume II, Tab 8 page 10.

³ *Anglin v Resler*, 2022 ABQB 477 at [para 38](#).

4. The Alberta Court of Appeal erred by reinstating Mr. Anglin’s claim in part, finding that Mr. Anglin’s claim was analogous to the claim in *Telezone*⁴ and Mr. Anglin was not limited to a controverted election petition as a remedy.⁵

5. An unsuccessful candidate has no private entitlement to seek a monetary remedy for loss of an election:

To sit in parliament is a service in the member, for the benefit of the king and kingdom; and not for the particular profit of the member.⁶

6. The Chief Electoral Officer asks this Court to quash the decision of the Court of Appeal and reinstate the decision of the Court of King’s Bench.

B. THE FACTS

7. Below, the Chief Electoral Officer sets out a summary of:

- i. the background facts;
- ii. the legal framework applicable to elections in Alberta; and
- iii. the Statement of Claim including the remedies sought.

i. Background Facts

8. Mr. Anglin was an unsuccessful independent candidate in the 2015 Alberta General Election (“2015 Election”). He received 1,871 votes out of 16,628 votes cast (11.3%) and finished in fourth place.⁷ The winning candidate received 6,670 votes.⁸

⁴ [Canada \(Attorney General\) v TeleZone Inc, 2010 SCC 62](#). [“Telezone”]

⁵ *Anglin v Resler*, 2024 ABCA 113 at [para 52](#).

⁶ *Barnardiston v Soame (1674)*, 6 How. St. Tr. 1063 at 1102, Book of Authorities (“BOA”), Tab 1, page 20.

⁷ Legislative Assembly of Alberta - Sessional Paper 72-2016 Report of Chief Electoral Officer; Record Volume II, Tab 9 page 91.

⁸ Legislative Assembly of Alberta - Sessional Paper 72-2016 Report of Chief Electoral Officer; Record Volume II, Tab 9 page 91.

9. Mr. Anglin did not challenge the results of the 2015 Election through the controverted election provisions in the *Election Act*.⁹

10. During the 2015 Election, the Chief Electoral Officer received complaints regarding Mr. Anglin's election signs. The Chief Electoral Officer ultimately removed 25 signs and issued an administrative penalty of \$250 for failure to comply with s. 134(3) of the *Election Act* and the Chief Electoral Officer Guidelines for Election Advertising.¹⁰ Mr. Anglin appealed, and the Court of Queen's Bench (as it then was) and Court of Appeal upheld the administrative penalty.¹¹

11. On April 6, 2017, nearly two years after the 2015 Election, Mr. Anglin filed a Statement of Claim against the Chief Electoral Officer and other defendants.

ii. Summary of the Applicable Legal Framework

(a) Overview

12. The authority of the Legislative Assembly over its own membership was constitutionally confirmed when Alberta joined confederation in 1905.¹² Today, the *Legislative Assembly Act*

⁹ Statement of Claim filed April 6, 2017; Record Volume II, Tab 6 pages 1-6; Amended Statement of Claim filed June 22, 2022, Record Volume II, Tab 8 pages 10-15.

¹⁰ *Anglin v Alberta (Chief Electoral Officer)*, 2017 ABQB 595 at [para 10](#), see also at [para 26](#). See also Letter from Chief Electoral Officer to J. Anglin dated March 22, 2016 Record Volume III, Tab 14 pages 34-45. **Note**, The Court of Appeal upheld the striking of all Mr. Anglin's malicious prosecution claims relating to administrative penalties issued and held reformulating them as misfeasance in public office would be an abuse of process *Anglin v Resler*, 2024 ABCA 113, at [paras 53-61](#). Paragraphs 11-15 were upheld as being struck.

¹¹ [Anglin v Alberta \(Chief Electoral Officer\)](#), 2017 ABQB 595; [Anglin v Chief Electoral Officer](#), 2018 ABCA 296, application for leave to appeal to the Supreme Court of Canada refused [Joseph Anglin v Chief Electoral Officer](#), 2019 CanLII 37484 (SCC).

¹² [The Alberta Act, 1905](#), 4-5 Edw. VII, c. 3 (Can.), ss. 13-14 provides the Legislative Assembly has authority to pass laws governing its own composition and the election of members.

provides that the election of members to the Alberta Legislative Assembly (the “Legislature”) is conducted under the *Election Act*.¹³

13. The *Election Act* establishes the system under which electors exercise their right to vote, and candidates seek office in the Legislature, including:

- i. creating the position of Chief Electoral Officer to supervise elections (ss. 2-7);
- ii. establishing rules respecting advertising by candidates including authority for the Chief Electoral Officer to remove non-compliant signs (ss. 134-135);
- iii. providing a mechanism for a judicial recount of ballots (ss. 144-148);
- iv. providing for post-election inspection of election documents for a 30-day period following the publication in The Alberta Gazette of the name of the candidate declared elected (s. 152);
- v. providing a mechanism for challenging the validity of an election through the controverted election process and imposing strict time limits for those challenges (ss. 185-201);
- vi. providing a mechanism for the Chief Electoral Officer to conduct inquiries and investigate breaches of the *Election Act* (ss. 4.2-4.4);
- vii. providing for the imposition of a reprimand or an administrative penalty if the Chief Electoral Officer is of the opinion that a person has contravened a provision of the *Election Act* (s. 153.1); and
- viii. for appeals to the Court of King’s Bench from those administrative penalties (s. 153.1).

¹³ *Legislative Assembly Act*, RSA 2000, c L-9, s 1(2). **Note:** All references to the *Legislative Assembly Act*, RSA 2000, c L-9 are to the version in force between May 27, 2013 to December 10, 2015.

14. The Chief Electoral Officer is an independent officer of the Legislature, charged with the guidance, direction and supervision of the conduct of all elections under the *Election Act*.¹⁴ The Chief Electoral Officer reports to the Legislature, through the Standing Committee on Legislative Offices.¹⁵

15. The Chief Electoral Officer can be removed from office for misconduct or neglect of duty by the Lieutenant Governor in Council, on address of the Legislature.¹⁶

16. The Chief Electoral Officer supports the Legislature and the democratic process by:

- i.** providing guidance, direction and supervision respecting the conduct of all elections under the Act;¹⁷
- ii.** applying and enforcing election finance laws (under the *Election Finances and Contributions Disclosure Act*, the Chief Electoral Officer administers registrations and financial reporting for political parties, constituency associations, candidates, leadership contestants, nominations contestants and third party advertisers);¹⁸ and
- iii.** issuing to election officers any guidance, direction and information the Chief Electoral Officer considers necessary to ensure the effective carrying out of their duties under the Act.¹⁹

17. The Chief Electoral Officer and other election officers are shielded by a statutory immunity.²⁰

¹⁴ *Election Act*, RSA 2000, c E-1, [s 2\(1\)](#) and [s 4\(1\)\(a\)-\(c\)](#).

¹⁵ *Election Act*, RSA 2000, c E-1, [s 4\(1\)\(6\)](#).

¹⁶ *Election Act*, RSA 2000, c E-1, [s 3\(4\)](#).

¹⁷ *Election Act*, RSA 2000, c E-1, [s 4\(1\)\(a\)](#).

¹⁸ *Election Act*, RSA 2000, c E-1, [s 4\(1\)\(b\)](#).

¹⁹ *Election Act*, RSA 2000, c E-1, [s 4\(1\)\(c\)](#).

²⁰ *Election Act*, RSA 2000, c E-1, [s 5.1](#).

(b) The Electoral Process

18. Elections are complex events that take place on very short timelines. Each element of the electoral process is designed to move quickly to see a duly elected candidate take their seat in the Legislature. The *Election Act* sets out a comprehensive timeline for the conduct of elections, including:

- i. authorizing a writ of election, which triggers the dates for nominations (10 days after the writ (s. 39(c))) and voting (28 days after the writ (s. 39(d)));
- ii. the unofficial count following the close of polls, and an official count and announcement of official results on the 10th day following election day (ss. 111-113, 138);
- iii. publication of the election results by the Chief Electoral Officer in the Alberta Gazette (ss. 140, 150); and
- iv. a process and deadlines for challenging the results of an election through judicial recount and a controverted election petition (ss. 144-148 and Part 7 – Controverted Elections).

(c) Controverted Elections

19. Part 7 of the *Election Act* sets out the process in respect of controverted elections.

20. The controverted election process is initiated by an application filed with the Court “to void an election by reason of undue return or undue election of a candidate”.²¹ The application must be filed within 30 days of the publication of the election results in The Alberta Gazette.²² The application must be served on the Chief Electoral Officer within 20 days of filing.²³ If the applicant does not have the matter heard within one month, the application may be dismissed.²⁴

²¹ *Election Act*, RSA 2000, c E-1, [s 185\(1\)](#).

²² *Election Act*, RSA 2000, c E-1, [s 185\(2\)\(a\)-\(b\)](#) subject to [185\(2\)\(c\)](#).

²³ *Election Act*, RSA 2000, c E-1, [s 188\(1\)](#).

²⁴ *Election Act*, RSA 2000, c E-1, [s 193](#).

21. Only a defeated candidate or a person who on polling day was qualified to vote in an election may bring an application to void an election.²⁵

22. Where the Court determines there were irregularities, fraud, or corrupt or illegal practices that affected the result of the election, the Court may find an undue return or undue election.²⁶ The sole remedy if a candidate was unduly returned or elected is a declaration that the election is void.²⁷

23. “Undue election” is a broad term:

As to what constitutes an “undue” election or return, the generality of this expression allows for the inclusion of any type of wrongdoing or lack of legal capacity which can be said to have resulted in an election that was not valid.²⁸

24. In determining whether an election should be void, the Court will consider “whether the irregularities are such as to call into question the integrity of the electoral process.”²⁹

25. All jurisdictions in Canada have controverted election provisions in their legislation.³⁰

²⁵ *Election Act*, RSA 2000, c E-1, [s 185\(2\)\(a\)](#).

²⁶ J. Patrick Boyer, *Election Law in Canada: the Law and Procedure of Federal, Provincial and Territorial Elections*, 1987, Buttersworth, Toronto ON, Volume II Page 1053 [*Election Law in Canada*] BOA Tab 7, page 128.

²⁷ *Election Act*, RSA 2000, c E-1, [s 195\(2\)](#).

²⁸ *Election Law in Canada* Page 1062, BOA, Tab 7, page 131.

²⁹ *Opitz v Wrzesnewskyj*, 2012 SCC 55 at [para 23](#); see also *McEwing v Canada (Attorney General)*, 2013 FC 525 at [paras 251-257](#).

³⁰ *Canada Elections Act*, SC 2000, c 9; Part 20 Contested Elections; *Election Act*, RSBC 1996, c 106; Part 8 Invalid Elections; [The Controverted Elections Act, RSS 1978, c C-32](#); [The Elections Act, CCSM c E30](#); Part 15 Challenging and Election; *Election Act*, RSO 1990, c E.6 ; Contested Elections; [Election Act, CQLR c E-3.3](#); Title V Contestation of Elections; [Elections Act, RSNB 1973, c E-3](#); Setting Aside an Election; [Controverted Elections Act, RSNS 1989, c 96](#); [Elections Act, 1991, SNL 1992, c E-3.1](#); Part II Controverted Elections; [Controverted Elections \(Provincial\) Act, RSPEI 1988, c C-22](#); [Elections Act, RSY 2002, c 63](#); Part 5 Validity of Elections (Begins at page 121); [Elections and Plebiscites Act, SNWT 2006, c 15](#); Part 8 Contested Elections (Begins at page 139); [Nunavut Elections Act, CSNu, c N-60](#); [Voiding an Election \(Begins at page 50\)](#).

iii. The Statement of Claim and Remedies

26. Mr. Anglin alleges that the Chief Electoral Officer and others undertook actions:

- i. “with the intention to create an unfair advantage for Anglin’s opponents and to deny him a fair election and his chance of re-election.”³¹
- ii. “exercising public powers for an improper or ulterior motive, knowing that it was likely to cause harm to Anglin and his chances of being re-elected.”³²

Further, the Statement of Claim alleges:

- iii. “Resler knew or should have known his actions would probably injure Anglin with respect to his chances of being re-elected...”³³
- iv. “the actions of Resler... had a negative impact on Anglin’s re-election chances and he was not re-elected.”³⁴

27. Mr. Anglin’s requested relief³⁵ includes:

- i. “\$400,000.00 for the loss of chance of being re-elected due to the wrongful interference with the election”;³⁶
- ii. \$400,000 for the loss of future employment;³⁷

³¹ Amended Statement of Claim at para 7, Record Volume II, Tab 8 page 12.

³² Amended Statement of Claim at para 8, Record Volume II, Tab 8 page 12.

³³ Amended Statement of Claim at para 9, Record Volume II, Tab 8 page 12.

³⁴ Amended Statement of Claim at para 10, Record Volume II, Tab 8 page 12.

³⁵ Note: a statement of claim must state the specific remedy sought, including the type of damages claimed as well as the provision of any enactment which may take another party by surprise, *Alberta Rules of Court*, Alta Reg 124/2010, [r 3.25](#) and [13.6\(2\)\(c\)\(i\)](#) and [13.6\(3\)\(r\)](#).

³⁶ Amended Statement of Claim at para 16(iii), see also para 18(iii), Record Volume II, Tab 8 page 14.

³⁷ Amended Statement of Claim at para 16(iv), Record Volume II, Tab 8 page 14.

- iii. \$400,000 for harm to reputation, damage to his self-esteem and emotional well-being and loss of future employment opportunities;³⁸ and
- iv. “The actions of Resler in interfering with the fairness of an election, when he is specifically tasked with the responsibility of ensuring fair elections, should be condemned by this court with an award of punitive or exemplary damages.”³⁹

C. PROCEDURAL HISTORY

i. Application to Strike

28. On March 1, 2018, the Chief Electoral Officer applied to strike Mr. Anglin’s Statement of Claim as an abuse of process, as:

- (a) the allegations within the Statement of Claim would require the Court to inquire into the validity of an election, which can only be done under the controverted election provisions of the *Election Act*;
- (b) the Statement of Claim disclosed no reasonable cause of action; and
- (c) the Statement of Claim has no reasonable prospect of success because the Chief Electoral Officer is immune from liability for the actions alleged, and to the extent that the Statement of Claim strives to plead artfully around the immunity, it fails.⁴⁰

ii. Court of King’s Bench

29. At the Court of King’s Bench, Justice Lema struck Mr. Anglin’s Statement of Claim as an abuse of process. Justice Lema found that the claim was “in large part, an attempt to bypass the (applicable) controverted election process.”⁴¹ He held that the Court had no jurisdiction to inquire into the validity of an election outside the controverted election process set out in the *Election Act*.⁴²

³⁸ Amended Statement of Claim at para 16(iv), Record Volume II, Tab 8 page 14.

³⁹ Amended Statement of Claim at para 17, Record Volume II, Tab 8 page 14.

⁴⁰ Application to Strike filed March 1, 2018, Record Volume II, Tab 7 page 8.

⁴¹ *Anglin v Resler*, 2022 ABQB 477 at [para 10](#).

⁴² *Anglin v Resler*, 2022 ABQB 477 at [paras 14-17](#).

30. Justice Lema rejected Mr. Anglin’s argument that his claim was not contesting the validity of the 2015 Election as “[h]is claim for damages for that alleged loss would require this Court to investigate alleged unfairness in the election process.”⁴³

31. Justice Lema set out the exclusive nature of the controverted election process as a remedy for an unfair election:

[19] If the election was conducted fairly, no controverted-election recourse is available. If it was conducted unfairly, void-election recourse may be available under the controverted-election provisions. If such recourse were available (or possibly available) under those provisions but was not pursued, the effective result is an election implicitly deemed to have been conducted fairly i.e. with no challenge brought to it.

[20] There is no halfway position i.e. of an election regarded as unfair but left unchallenged, with “unfairness” recourse elsewhere.

[21] Anglin faced a choice here: challenge the election for its perceived unfairness, per the controverted-election process, or let it be.

[22] He chose not to challenge it via that process.

[23] The result is that no “election was unfair” recourse is available via that process (too late now, in view of the controverted-election-process deadlines) or otherwise at all.⁴⁴

32. Justice Lema rejected Mr. Anglin’s argument that a claim for “loss-of-chance” arising from *Telezone* could succeed. Justice Lema found that the Plaintiff’s claim attacked the underlying administrative decision, being the 2015 Election.⁴⁵

⁴³ *Anglin v Resler*, 2022 ABQB 477 at [para 13](#).

⁴⁴ *Anglin v Resler*, 2022 ABQB 477 at [paras 19-23](#).

⁴⁵ *Anglin v Resler*, 2022 ABQB 477 at [paras 38-39](#).

iii. Court of Appeal

33. The Court of Appeal allowed Mr. Anglin’s appeal in part and reinstated his claims for misfeasance in public office;⁴⁶ however, upheld the striking of claims for malicious prosecution.⁴⁷

34. The Court of Appeal found that Justice Lema’s characterization of the claim was incorrect on the basis that Mr. Anglin’s claim for loss of chance of re-election did not seek to challenge the outcome of the 2015 Election.⁴⁸

35. The Court found: “As held in *Telezone*, [Mr. Anglin] is not required to bring an application setting aside the result of the election to pursue his claim. Whether this could be done through the controverted election procedures is therefore irrelevant.”⁴⁹

PART II – QUESTIONS IN ISSUE

36. The question before this Court is whether an unsuccessful candidate for election can bring a private action against an election officer for the loss of chance of being elected?

37. Mr. Anglin’s claim must be struck because:

- (a) The controverted election process is the only means by which the court can inquire into the fairness of an election; and
- (b) Mr. Anglin’s claim is an abuse of process as:
 - (i) it is a “thinly veiled pretense” to a controverted election petition; and

⁴⁶ The Court of Appeal allowed the claim for trespass to chattels to be maintained only as a “one particular of the misfeasance in public office claim”. *Anglin v Resler*, 2024 ABCA 113, at [para 70](#).

⁴⁷ *Anglin v Resler*, 2024 ABCA 113, at [para 61](#).

⁴⁸ *Anglin v Resler*, 2024 ABCA 113, at [para 48](#).

⁴⁹ *Anglin v Resler*, 2024 ABCA 113, at [para 52](#).

- (ii) it undermines the integrity of the electoral process by requiring the Court to consider the fairness and outcome of the 2015 Election.

PART III – STATEMENT OF ARGUMENT

A. The Controverted Election Process Is The Only Means By Which The Court Can Inquire Into The Fairness Of An Election

*The controverted election statutes afford the only way in which, by a judicial proceeding, the validity of an election can be inquired into.*⁵⁰

38. The controverted election process set out in the *Election Act* was the exclusive remedy available to Mr. Anglin to challenge the fairness and outcome of the 2015 Election. The Legislature is the guardian of its own prerogatives and privileges and has delegated to the Court a narrow scope to review the fairness of an election through the controverted election process.

39. Through Part 7 of the *Election Act*, the Legislature has endorsed a process for challenging an election that balances the oft competing electoral values of certainty, fairness, promptness, finality, legitimacy and efficiency.⁵¹ Unfairness in an election is a pure public wrong, and the controverted election process provides a public law remedy.⁵²

40. Where an individual seeks to challenge the fairness of an election through an avenue other than the controverted election process, it is appropriate for the Court to strike the claim. The Legislature has not delegated the authority to consider a tort claim for “loss of chance” to be elected to the Court. Proceedings that cannot succeed or that have no reasonable expectation to provide relief must be struck.⁵³

⁵⁰ Election Law in Canada, page 1057. BOA, Tab 7, page 130.

⁵¹ *Opitz v Wrzesnewskyj*, 2012 SCC 55 at [para 44](#); See also *Harper v Canada (Attorney General)*, 2004 SCC 33 at [para 103](#).

⁵² See Manitoba Law Reform Commission, *Report on Controverted Elections*, April 21, 1980 page 6-7. BOA, Tab 10, pages 174-175.

⁵³ *O’Connor Associates Environmental Inc. v MEC OP LLC*, 2014 ABCA 140 at [para 14](#); see *R. v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at [paras 19](#) and [25](#).

i. The Legislature is the Guardian of its Own Prerogatives and Privileges

41. The privileges enjoyed by Canada’s Parliament and Legislative Assemblies are inherited from the United Kingdom.⁵⁴ This includes “all matters touching the election of their own members”.⁵⁵

42. Parliamentary privilege is one of the ways the separation of powers is respected. The protection of parliamentary privilege is essential to permit the Legislature to fulfil its function.⁵⁶

Our democratic government consists of several branches: the Crown, as represented by the Governor General and the provincial counterparts of that office; the legislative body; the executive; and the courts. It is fundamental to the working of government as a whole that all these parts play their proper role. It is equally fundamental that no one of them overstep its bounds, that each show proper deference for the legitimate sphere of activity of the other.⁵⁷

43. Parliamentary privilege is “a wise principle that the courts and Parliament strive to respect each other’s role in the conduct of public affairs. Parliament, for its part, refrains from commenting on matters before the courts under the *sub judice* rule. The courts, for their part, are careful not to interfere with the workings of Parliament.”⁵⁸

⁵⁴ [Marc Bosc and André Gagnon, \(Ottawa: House of Commons, 2017\) 3rd ed, Chapter 3 - Privilege Since Confederation.](#)

⁵⁵ See [Harvey v New Brunswick \(Attorney General\)](#), [1996] 2 SCR 876, McLachlin J. (as she was then) concurring at para 64 quoting May, Thomas Erskine, Sir, *Treatise on the Law, Privileges, Proceedings, and Usage of Parliament*, 5th ed. London: Butterworths, 1863 at p. 54; see also *Erskine May’s Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 25th ed. by David Natzler and Mark Hutton, eds. London: LexisNexis, 2019, para 12.8 Privilege with respect to membership of the House’, *McLeod v Noble et al* (1897), 28 OR 528 at para 29; *Re Prince Albert Provincial Election; Strachan v Lamont* (1906), 3 W.L.R. 571 at para 4 (NWT Chambers), aff’d *Re Prince Albert Provincial Election; Strachan v Lamont*, (1906) 4 W.L.R. 411 (NWT Full Court): see also [Marc Bosc and André Gagnon, \(Ottawa: House of Commons, 2017\) 3rd ed, Chapter 3 – Parliamentary Privilege: A Definition.](#)

⁵⁶ [New Brunswick Broadcasting Co. v Nova Scotia \(Speaker of the House of Assembly\)](#), [1993] 1 SCR 310 at p 379-385.

⁵⁷ [New Brunswick Broadcasting Co. v Nova Scotia \(Speaker of the House of Assembly\)](#), [1993] 1 S.C.R. 319 p 389.

⁵⁸ [Canada \(House of Commons\) v Vaid](#), 2005 SCC 30 at para 20.

ii. Questions Relating To Membership Remain In The Control Of The Legislature

44. The Legislature maintains its privilege over matters related to the election of its members, and the ability of a member to sit in the assembly;⁵⁹ except where those powers have been expressly delegated.⁶⁰

45. For over 125 years, Canadian Courts have taken an appropriately circumspect role when considering matters adjacent to provincial and federal elections. Courts frequently note their role in reviewing the conduct of elections and election officers is limited to those powers expressly delegated by the Legislature or Parliament:

- i. *McLeod v Noble*, (1897), 28 O.R. 528, [1897] O.J. No. 144 (QL) (Ont. H.C.)
 ... no jurisdiction is committed to the Provincial Courts as such to interfere with the functions and statutory duties of Dominion election officers... Unless provision is made by the Dominion for regulating or dealing with the contradictory commands upon the returning officer in this case, he must be left to do the best he can to observe his oath and the direction of the statute - leaving it to the House of Commons to rectify any error or miscarriage that may arise – if no redress is sought by election petition to the Judges.⁶¹

⁵⁹ See Manitoba Law Reform Commission, *Report on Controverted Elections*, April 21, 1980 page 24-27 BOA, Tab 10, pages 192-195 regarding there being no right of appeal to the Supreme Court of Canada from the decision of an provincial appeal court on a controverted election, including quoting from [Cross v Carstairs, 47 SCR 559](#) (1913) at page 564, Idington J. “The provincial legislatures are each entitled to declare how the members of its legislative assembly are to be elected, the validity of their elections are to be tested and determined, in the case of dispute thereabout, and how the proceedings adopted to apply such test and procure such determination are to be had and the consequences of such determination.”

⁶⁰ [Lorje v Karwacki \(1999\), 182 DLR \(4th\) 623](#) at [para 24](#) and [para 26](#) (SK CA).

⁶¹ *McLeod v Noble et al* (1897), 28 OR 528 (Ont. Div Ct) at para 47, see also paras 29-30, 35-36 and 48. BOA, Tab 2, pages 36-37, 37-38 and 40.

ii. ***Re Prince Albert Provincial Election; Strachan v Lamont (1906), 3 W.L.R. 571 (NWT Chambers)***

It is an essential principle of the common law of Parliament that that body as a whole is the guardian and arbiter of its prerogatives and privileges, and the same is true of each of its branches in its distinct and proper sphere.

With respect to the House of Commons (and the same may be said of the House of Lords) the right to pronounce upon all questions as to the status of its members has ever been held one of its principal privileges, and perhaps the most essential, as it seems to be at the root of all others.⁶²

iii. ***Lamb v McLeod, [1932] 1 W.W.R. 206:***

In acting in cases of election petitions, the court is not exercising its ordinary civil or criminal jurisdiction. The assembly is the guardian of its own prerogatives and privileges, and the courts have nothing to do with questions affecting its membership except in so far as they have been specially designated by law to act in such matters.⁶³

iv. ***Rex ex rel. Tolfree v Clark, [1943] O.R. 501 (CA), Laidlaw J.***

The power of determining matters touching the election of its members is peculiar to "the Commons". "This right had been regularly claimed and exercised since the reign of Queen Elizabeth, and probably in earlier times, although such matters had been ordinarily determined in chancery": May's Parliamentary Practice, 13th ed., p. 64. This power exists, in my opinion, in the Legislative Assembly of this Province, although it is not expressly conferred by statute. It is inherent, and it must be presumed that it was the intention that such jurisdiction should be given at the time when the constitution of the Legislature was created by the Imperial Parliament. It could not be supposed that the parliament of this Province should possess fewer privileges and rights of this kind than are enjoyed by the mother parliament, through whom it came into being.

...

The Legislature has surrendered part of its jurisdiction by Acts relating to controverted elections. But those Acts must be construed strictly and literally. They do not take away

⁶² *Re Prince Albert Provincial Election; Strachan v Lamont* (1906), 3 W.L.R. 571 (NWT Chambers) at paras 3-4 BOA, Tab 3, page 44.; aff'd *Re Prince Albert Provincial Election; Strachan v Lamont*, (1906) 4 W.L.R. 411 (NWT Full Court) at para 8 BOA, Tab 4, page 50.

⁶³ *Lamb v McLeod (No. 1)*, [1932] 1 WWR 206, 1931 CanLII 196 (SK CA) at [para 5](#).

from the Legislative Assembly all power to deal with matters pertaining to election of its members.⁶⁴

- v. ***Storey v Zazelenchuk (1983), 21 Sask. R. 158, (SK QB)***
 The position of courts in this province in election matters is that the approach must be one of care and caution and the exercising only of that authority which is clearly set out in the statute.⁶⁵
- vi. ***Friesen v Hammell, (1997), 47 B.C.L.R. (3d) 308, (B.C.S.C.)***
 The *Class Proceedings Act* cannot override the constitutionally protected right of the legislature to adjudicate the outcome of elections or, alternatively, to design and delegate means of adjudicating elections to the Supreme Court...
 I have already recognized that the *Election Act* does raise special considerations by virtue of the history Parliamentary privilege and that it is unique and distinguishable from many other statutes for that reason...⁶⁶
- vii. ***Lorje v Karwacki (1999), 182 DLR (4th) 623 (SK CA)***
 The legislatures of the provinces have exclusive inherent jurisdiction to deal with election issues. The jurisdiction of the courts is limited to that conferred upon them by legislative enactments⁶⁷ [emphasis in original]
 ...
 Parliament or the legislature, as the case may be, is the guardian of its own prerogatives and privileges and the courts have nothing to do with questions affecting membership except insofar as they have been specifically designated by law to act in such matters.⁶⁸

46. Consistent with this long line of jurisprudence, the Alberta Court of King's Bench found that the Court had no role in hearing an unfair election case outside of the controverted election process. Justice Lema found that Mr. Anglin's claim for damages "would require [the] Court to

⁶⁴ [Rex ex rel. Tolfree v Clark, \[1943\] O.R. 501 \(C.A.\), Laidlaw J.](#)

⁶⁵ *Storey v Zazelenchuk* (1983), 21 Sask. R. 158 (SK KB) at [para 6.](#)

⁶⁶ *Friesen v Hammell*, (1997), 47 B.C.L.R. (3d) 308, (BCSC) at [paras 60-61.](#)

⁶⁷ *Lorje v Karwacki* (1999), 182 DLR (4th) 623 (SK CA) at [para 24.](#)

⁶⁸ *Lorje v Karwacki* (1999), 182 DLR (4th) 623 (SK CA) at [para 26.](#)

investigate alleged unfairness in the election process”.⁶⁹ This reasoning should be endorsed by the Supreme Court.

47. The Legislature’s decision to delegate a narrow scope of review to the Court should be respected. Intervention by the Courts in matters of elections, outside of the scope specifically delegated to them, “would inevitably create delays, disruption, uncertainties and costs which would hold up the [Assembly’s] business and on that account would be unacceptable even if” the conduct of the election was vindicated as entirely proper.⁷⁰ The Court of Appeal failed to engage with the issues of parliamentary privilege or the public interest against Court intervention in an election process. Therefore, the Court of Appeal decision should be overturned.

iii. The Chief Electoral Officer’s Conduct Of An Election Is Subject To Parliamentary Privilege

48. The extent to which parliamentary privilege shields the Chief Electoral Officer from private law claims is unsettled law.⁷¹ The Chief Electoral Officer is subject to parliamentary privilege while conducting his statutory duty to provide guidance, direct and supervise the conduct

⁶⁹ *Anglin v Resler*, 2022 ABQB 477 at [para 13](#).

⁷⁰ See *Canada (House of Commons) v Vaid*, 2005 SCC 30 at [para 20](#).

⁷¹ J. Patrick Boyer describes the legal characterization of the functions undertaken by electoral officers as “complex and often seems to defy analysis” *Election Law in Canada*, at 256 BOA, Tab 7, page 125; Maingot writes “In reviewing to this point the evolution on the issue of jurisdiction, one of the themes that is most evident is the complete lack of confidence that would be felt by any litigant of the day in the area of parliamentary privilege and, for that matter, the trepidation that would be felt by counsel for such a litigant and for themselves.” Maingot, J.P. Joseph, *Parliamentary Immunity in Canada*, 2016 LexisNexis Canada Inc. Toronto ON at 264 BOA, Tab 9, page 166.

of an election and return of members to the Legislature. However, parliamentary privilege does not protect the Chief Electoral Officer from every claim that may arise during an election.⁷²

49. Parliamentary privilege must protect the Chief Electoral Officer from “loss-of-chance” claims. The adjudication of a “loss-of-chance” claims will always require the Court to inquire into either the integrity, fairness, or results of an election event. In the case before you, the Court would be required to inquire into all three: Mr. Anglin’s pleadings impugn the conduct of the Chief Electoral Officer, the fairness of the 2015 Election, and his damages claimed are directly tied to the results of the election and membership in the Legislature.

50. The Chief Electoral Officer should be shielded by parliamentary privilege against this “loss-of-chance” claim because the claim involves the integrity of the vote and the return of a duly elected candidate. This Court should adopt the reasoning set out in *McLeod v Noble*, where the Ontario High Court found:

Thus early marked was the distinction between the right of the elector to vote and the right of the candidate to the seat. As to the former it was for the Courts to investigate; as to the latter, it was for the Parliament. And involved in the right of the candidate was the power to deal with the votes (or ballots), the conduct of the election officers and all other matters arising out of the contested election, with a view to determine its legality and affirm or amend the return of the duly elected candidate⁷³

51. Questions regarding the conduct of election officers and the legality of the return of a candidate to the Assembly are within the sole purview of the Assembly except as delegated to the

⁷² For example in *Canada (Human Rights Commission) v Lane*, [1990] 2 FC 327 at 331, the Court held it had jurisdiction to consider if the right of disabled voters to vote had been infringed.

⁷³ *McLeod v Noble et al* (1897), 28 OR 528 at para 36. BOA, Tab 2, page 38. In making these observations, the Court considered the English cases of *Barnardiston v Soame*, [1674] 6 Howell 1063 (where a claim against the election officer was that he acted to deprive the plaintiff of a seat in Parliament, was not allowed to proceed), and *Ashby v White*, [1703] 1 Sm. L. C., 6th Am. ed., 353, 354 (where a claim against a returning officer was allowed to proceed).

Courts by statute. There has been no delegation to the Courts to consider a claim of the nature brought by Mr. Anglin; therefore, Mr. Anglin's claim cannot succeed. Proceedings that cannot succeed or that have no reasonable expectation to provide relief must be struck as an abuse of process.⁷⁴

52. In the alternative, even where a claim falls outside the protection of parliamentary privilege, the Chief Electoral Officer and other election officers are protected by common law and statutory immunity.⁷⁵ These immunities protect the Chief Electoral Officer in their performance, duties and functions under a range of legislation, ranging from conduct of elections to election financing.

53. The statutory immunity set out in section 5.1 of the *Election Act* must be construed remedially,⁷⁶ and does not limit the common law immunity enjoyed by the Chief Electoral Officer. A statutory immunity is not an invitation to the Court to consider questions regarding the integrity or fairness of an election unfairness outside the controverted election provisions.

B. The Statement Of Claim Is An Abuse Of Process And Must Be Struck

54. The Court has inherent power to prevent misuse of its procedure in a manner that would bring the administration of justice in dispute.⁷⁷ Where a Statement of Claim is an abuse of process or discloses no reasonable claim it should be struck.

55. Rule 3.68 of the *Alberta Rules of Court* codifies the common law,⁷⁸ and permits the Court to strike all or any part of a claim when the claim contains one or more of the following deficiencies:

3.68(2) The conditions for the order are one or more of the following:

⁷⁴ *O'Connor Associates Environmental Inc. v MEC OP LLC*, 2014 ABCA 140, at [para 14](#); see *R. v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at [paras 19](#) and [25](#).

⁷⁵ *Election Act*, RSA 2000, c E-1, [s 5.1](#).

⁷⁶ *Shaw v Trudel*, 1988 Canli 5702 (MB CA); 53 DLR (4th) 481 at [para 26](#).

⁷⁷ *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63 at [para 37](#); see also *British Columbia (Workers' Compensation Board) v Figliola*, 2011 SCC 52 at [para 34](#).

⁷⁸ [Hunt v Carey Canada Inc., \[1990\] 2 SCR 959](#) at 968.

- (a) the Court has no jurisdiction;
- (b) a commencement document or pleadings discloses no reasonable claim or defence to a claim;
- (c) a commencement document or pleading is frivolous, irrelevant or improper;
- (d) a commencement document or pleading constitutes an abuse of process;
- (e) an irregularity in a commencement document or pleading is so prejudicial to the claim that it is sufficient to defeat the claim.⁷⁹

56. “The doctrine of abuse of process is flexible, and it exists to ensure that the administration of justice is not brought into disrepute.”⁸⁰ The broader doctrine of abuse of process includes collateral attack as one of its facets.⁸¹ Mr. Anglin’s claim is a collateral attack on the outcome of the 2015 Election, and an inquiry into the fairness of the 2015 Election outside of the controverted election process would bring the administration of justice into disrepute.

57. Mr. Anglin’s claim is, at its core, a claim for controverted election, with “only a thin pretence to a private wrong.”⁸² He asks the Court to consider the fairness and outcome of the 2015 Election; which the Court cannot do through a “loss of chance” claim. Justice Lema correctly characterized Mr. Anglin’s claim as an abuse of process – recognizing the inherent contradiction of a Court finding that Mr. Anglin is entitled to damages for loss of the 2015 Election, while another candidate sat in the Legislature.⁸³

58. The Court of Appeal failed to consider if allowing Mr. Anglin’s litigation to proceed is an abuse of process. The Court did not consider whether a “loss-of-chance” claim would: undermine

⁷⁹ *Alberta Rules of Court*, Alta Reg 124/2010, [r. 3.68\(2\)](#).

⁸⁰ *Behn v Moulton Contracting Ltd.*, 2013 SCC 26 at [para 41](#); see also *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63 at [para 37](#); *British Columbia (Workers' Compensation Board) v Figliola*, 2011 SCC 52 at [paras 32-35](#).

⁸¹ *British Columbia (Workers' Compensation Board) v D & G Hazmat Services Ltd.*, 2024 BCCA 127 at [para 41](#).

⁸² *Canada (Attorney General) v TeleZone Inc.*, 2010 SCC 62 at [para 78](#).

⁸³ *Anglin v Resler*, 2022 ABQB 477, at [para 38](#).

the integrity of the electoral process; or, run contrary to the electoral values of certainty, fairness, promptness, finality, legitimacy and efficiency.⁸⁴

59. Challenges to the fairness of elections outside the controverted election process are attacks on the institution of elections, and the credibility of the electoral system as a whole. Public trust in institutions is harmed when decision makers reach inconsistent outcomes stemming from a single event.⁸⁵ Allegations of unfairness in an election, even when proven unfounded, damage public trust in the democratic system.⁸⁶ To paraphrase this Court in *British Columbia (Workers' Compensation Board) v Figliola* – the harm to the electoral system lies not in challenging the correctness or fairness of an election in the proper forums, it comes from inappropriately circumventing them.⁸⁷

60. Mr. Anglin's civil claim is also contrary to the electoral value of promptness. His statement of claim was filed nearly two years after the outcome of the Election. The civil litigation process cannot resolve allegations of unfairness in an electoral process with any speed, leaving doubts about the integrity of the electoral system in the mind of the public for years. The outcome of the electoral process cannot be left as an open question, alleged to be unfair but not determined one way or another for years. Questions of this nature must be addressed expediently.

61. Mr. Anglin's "loss of chance" claim in tort (if even available)⁸⁸ would require him to establish that:

⁸⁴ *Opitz v Wrzesnewskyj*, 2012 SCC 55 at [para 44](#). See also *Harper v Canada (Attorney General)*, 2004 SCC 33 at [para 103](#).

⁸⁵ *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63 at [para 56](#) quoting from Doherty J.A. in the Court below.

⁸⁶ Samuel Issacharoff, "Weaponizing the Electoral System" (2021) 74 Stan L Rev Online 28 at page 36, BOA, Tab 11, pages 210-211.

⁸⁷ *British Columbia (Workers' Compensation Board) v Figliola*, 2011 SCC 52 at [para 30](#).

⁸⁸ See *Longley v Canada (Attorney General)*, (2006) 82 OR (3d) 481 (ON SCJ) at [paras 1\(c\) & 42](#) in which the Court refused a claim for "loss of political opportunities", the cross-appeal in respect of this finding was refused, 2007 ONCA 852 at paras. [4, 24 & 128](#); see also *Cassels Brock & Blackwell LLP v Trillium Motor World Ltd.*, 2017 ONCA 544 at [para 261-262](#) "The

- i. the Chief Electoral Officer took actions “with the intention to create an unfair advantage for Anglin’s opponents and to deny him a fair election and his chance of re-election”;
- ii. but for the Chief Electoral Officer’s conduct, he had a sufficiently real and significant chance of winning the 2015 Election that rises above mere speculation; and
- iii. he had the right to be elected and that the chance of being elected “had some practical value”.⁸⁹

62. A Court in undertaking the first and second inquiries would be in effect, considering a controverted election claim. In respect of the third, the “loss” of membership in the Assembly is not an injury that should be compensated at tort law.⁹⁰

i. Mr. Anglin’s Claim Is A “Thinly Veiled Pretense” To A Controverted Election Petition

63. The essential character of Mr. Anglin’s claim is that of a controverted election with only a thinly veiled pretense to a claim for damages.⁹¹ The pleadings raise the same issues that would be

question whether an action for damages for a lost chance sounds in tort is unsettled under the current Canadian jurisprudence... The distinction between loss of chance claims in contract and claims for damages in tort is important because, in contract law, proof of damage is not part of the liability inquiry. In contrast, in tort law, liability rests not only on proof of a breach of the applicable duty of care but, as well, on a showing by the plaintiff that the defendant’s conduct caused a loss.”

⁸⁹ *Folland v Reardon* (2005), 74 O.R. (3d) 688 (CA) [at para 73](#).

⁹⁰ *Barnardiston v Soame* (1674), 6 How. St. Tr. 1063 at 1102 BOA, Tab 1, page 20. See also *Longley v Canada (Attorney General)*, (2006) 82 OR (3d) 481 (ON SCJ) at [paras 1\(c\)](#) and [42](#) in which the Court refused a claim for “loss of political opportunities”, the cross-appeal in respect of this finding was refused, 2007 ONCA 852 at paras [4, 24 and 128](#)

⁹¹ *Canada (Attorney General) v TeleZone Inc.*, 2010 SCC 62 at [para 78](#); *Manuge v Canada*, 2010 SCC 67 at [para 19](#).

addressed in a controverted election petition. The addition of a claim for damages does not create jurisdiction for the Court.⁹² The Court should exercise its discretion to strike the claim.

64. Mr. Anglin’s claim is an attack on the lawfulness of the Chief Electoral Officer’s decisions, raising issues of jurisdiction, limits of statutory authority, process, and fairness.⁹³ The Chief Electoral Officer’s exercise of authority during the 2015 Election is not an “essential underlying [fact] on which all the parties to the action may rely”⁹⁴; questions about the fairness of his exercise of authority would be the central question in a controverted election action.

65. The Court of Appeal erred in finding that the nature of Mr. Anglin’s claim is “directly analogous to the claim launched by *Telezone*.”⁹⁵ In reaching this conclusion, the Court failed to consider the Court’s discretion to stay an action where it is premised on public law considerations, and further failed to consider subsequent jurisprudence of this Court.⁹⁶ In *Ernst*, this Court noted that the nature of the duties of the state actor and potential availability of other remedies were relevant factors in assessing whether a claim should be permitted to proceed. The Court further cautioned against overstating the holding of *Telezone* and *Manuge* beyond that a successful judicial review was not a prerequisite for damages.⁹⁷

66. Justice Lema distinguished *Telezone* and recognized the inherent contradiction presented by the Respondent’s “loss of chance” claim in the context of an election.

[38] In the present (election) case, there can be only one winner. And there is an obvious inconsistency in a defeated candidate saying, on the one hand, “I am not challenging the election; I recognize the winning candidate as such” and, on the other “I am entitled to damages for election unfairness causing my loss” i.e. effectively, “I am the true winner.”

[39] That would create the spectre of two winning candidates: one ostensibly elected, the other effectively

⁹² *Weisenburger v College of Naturopathic Physicians of British Columbia*, 2024 BCSC 1047 at [para 48](#).

⁹³ See *Stewart v Clark*, 2013 BCCA 359 at [para 77](#).

⁹⁴ *Stewart v Clark*, 2013 BCCA 359 at [para 77](#).

⁹⁵ *Anglin v Resler*, 2024 ABCA 113 at [para 51](#).

⁹⁶ *Manuge v Canada*, 2010 SCC 67 at [paras 18-19](#).

⁹⁷ *Ernst v Alberta Energy Regulator*, 2017 SCC 1 at [para 40](#).

anointed by the Court, via a “wrongful loss” damages award, as the actual winner, albeit not seated in the Legislature.⁹⁸

67. The administrative act of returning a candidate to the Legislature is fundamentally different than a government decision to award a bidder a telecommunications contract. The election of a candidate to the Legislature is inherently public in nature. Challenges premised on public law considerations must be brought through public law actions.

ii. Ms. Anglin’s Claim Undermines the Integrity of the Electoral Process

68. There are important public policy considerations as to why private law remedies should not apply to electoral events. Challenges to the fairness of an election outside of a controverted election petition are an attack on the electoral system and undermine the integrity of the electoral process and electoral values.⁹⁹ Remedies to electoral misconduct must be provided quickly, so that the Legislature can proceed with its business.¹⁰⁰ Finally, there is no “right” to a seat in the Legislative Assembly outside of being elected.

(a) Civil Claims for Loss of Election are attacks on the Electoral System

69. Electoral Officials exercise their roles in a hyper-partisan, time sensitive environment. They must balance competing “rights and privileges of the participants in the electoral process: candidates, political parties, third parties and voters”,¹⁰¹ a role which is inconsistent with being liable to an individual claimant in damages.¹⁰² They are vulnerable to claims of wrongdoing motivated by political or personal gain.¹⁰³ In particular, extra-legal attacks alleging wrongdoing

⁹⁸ *Anglin v Resler*, 2022 ABQB 477 at [paras 38-39](#).

⁹⁹ Steven F. Huefner, “Remedying Election Wrongs” (2007) 44 Harv J. on Legislation 265 at page 288. BOA, Tab 12, page 236.

¹⁰⁰ See *Election Law in Canada* Page 1126 BOA, Tab 7, page 133, where Boyer describes a period of time prior to modern controverted election provisions where “over half of one session of the legislature was spent dealing with a controverted election return from one county”.

¹⁰¹ See *Harper v Canada (Attorney General)*, 2004 SCC 33 at [para 87](#).

¹⁰² *Ernst v Alberta Energy Regulator*, 2017 SCC 1 at [para 47](#) and [paras 53-55](#); *Ontario (Attorney General) v Clark*, 2021 SCC 18 at [para 61](#).

¹⁰³ Samuel Issacharoff, “Weaponizing the Electoral System” (2021) 74 Stan L Rev Online 28 at page 36, BOA, Tab 11, page 211.

form the basis for harassment of election officers, intended to break down the electoral system.¹⁰⁴ To expose the Chief Electoral Officer to claims for liability for a loss of an election creates potential plaintiffs out of every candidate and political party.¹⁰⁵

70. The *Election Act* explicitly authorized the Chief Electoral Officer and other election officers to take steps to ensure the fair and free conduct of the election, including the ability to remove or discontinue advertising that is not in compliance with the *Election Act* or *Election Finances and Contributions Disclosure Act*.¹⁰⁶

71. Chief Electoral Officers do not owe specific private law duties to candidates with respect to how they direct and supervise an election.¹⁰⁷ However, they are not without oversight: in the conduct of elections, Chief Electoral Officers are held accountable by the Courts through the controverted election process, and by the Legislative Assembly.¹⁰⁸ Chief Electoral Officers owe duties to the electorate as a whole.¹⁰⁹

72. The Chief Electoral Officer's independence and the integrity of the electoral process are threatened by claims for damages for "loss of an election".¹¹⁰ The Chief Electoral Officer's actions taken to ensure the fair and free conduct of the election cannot be perceived as influenced by potential civil liability.¹¹¹ By exposing the Chief Electoral Officer to claims for damages by candidates for loss of an election, the Court risks distorting the public interest that the Chief Electoral Officer serves. The public confidence in the independence and objectivity of Chief

¹⁰⁴ Samuel Issacharoff, "Weaponizing the Electoral System" (2021) 74 Stan L Rev Online 28 at page 35-36, BOA, Tab 11, pages 210-211.

¹⁰⁵ *Ernst v Alberta Energy Regulator*, 2017 SCC 1 at [para 53](#).

¹⁰⁶ *Election Act*, s. 134 and s. 135(3); *Election Finances and Contributions Disclosure Act*, RSA 2000, c E-2, s 44.8 as in effect between January 1, 2013 and June 28, 2015

¹⁰⁷ *Ernst v Alberta Energy Regulator*, 2017 SCC 1 at [para 47](#); *Ontario (Attorney General) v Clark*, 2021 SCC 18 at [para 47](#).

¹⁰⁸ *Election Act*, RSA 2000, c E-1, s 3(4) and s 4(1)(6).

¹⁰⁹ See *Ernst v Alberta Energy Regulator*, 2017 SCC 1 at [paras 44 and 47](#); *Edwards v Law Society of Upper Canada*, 2001 SCC 80 at [para 14](#); *Ontario (Attorney General) v Clark*, 2021 SCC 18 at [para 47](#).

¹¹⁰ *Ontario (Attorney General) v Clark*, 2021 SCC 18 at [para 53](#), *Ernst v Alberta Energy Regulator*, 2017 SCC 1 at [para 47](#) and [para 54](#).

¹¹¹ *Ernst v Alberta Energy Regulator*, 2017 SCC 1 at [para 47](#).

Electoral Officers is threatened where their actions are perceived as defensive – undermining democratic norms.¹¹²

73. Political actors must not have the option to use the civil litigation process for partisan or political gain. Civil claims for damages, separate and apart from a controverted election claim, permit political opportunism whereby a political actor could challenge the composition of the Assembly – including its governing party - long after the election.

74. In allowing political actors to advance claims for damages for loss of chance to be elected, the Court of Appeal has created a parallel path for political actors to attack the validity of an election and the Assembly by attacking election officials – to the detriment of all participants in the electoral process and at the risk of the democratic system.¹¹³ To allow the use of the courts in such a manner is an abuse of process.

(b) Interference with an Election is a Public Wrong, and the Controverted Election Process Provides a Public Law Remedy

A controverted election is no mere civil dispute but an examination of the very roots of parliamentary authority in the democratic election of those who will serve in the House.¹¹⁴

75. Interference in an election is by its very nature, a public wrong. For democracy to thrive, it is essential that the electorate have confidence in the integrity and finality of the election process as it forms the basis of lawmaking authority.¹¹⁵ An election is the process by which the people choose those who govern them. Claims regarding the legitimacy or fairness of an election are not

¹¹² *Ontario (Attorney General) v Clark*, 2021 SCC 18 at [para 56](#).

¹¹³ Samuel Issacharoff, "Weaponizing the Electoral System" (2021) 74 Stan L Rev Online 28 pages 31-32 BOA, Tab 11, pages 206-207.

¹¹⁴ Manitoba Law Reform Commission Report on Controverted Elections, April 21, 1980 page 6 BOA, Tab 10, page 174.

¹¹⁵ *Harper v Canada (Attorney General)*, 2004 SCC 33 at [para 103](#); Andrew Geddis, *Resolving Disputed Elections in Canada and New Zealand*, David Aspen Centre for Constitutional Rights, Toronto, 24 October 2012, page 7 BOA, Tab 5, page 61 see also *Ontario (Attorney General) v Clark*, 2021 SCC 18 at [para 56](#).

mere private disputes between litigants, but questions that go to the bedrock of our democratic system.

76. A challenge to the validity of an election is not only a challenge to the election in that electoral division, but to the composition of the Assembly and the validity of the laws made by that Assembly. For example, where a “loss of chance” to be elected claim questions the validity of the election of a member of a political party that forms a narrow minority government, the validity of that government could be called into question. A claim that the election process was not followed “has the potential to undermine the normative basis of lawmaking and government in a given democracy”.¹¹⁶

77. Public law remedies are most apt where the underlying question is the lawfulness of fairness of a public decision, and where there is no clear private law analogue.¹¹⁷ Controverted election petitions become matters of public or quasi-public interest once filed. They are not on the same footing as private litigation.¹¹⁸ For example, it would be absurd to permit a party who interfered with an election to settle a matter through a private claims process. This could result in the arguably lawfully elected candidate taking monetary damages while the unlawful winner sits in the Legislature. An outcome that frustrates the democratic will of the electorate cannot be permitted to stand.

¹¹⁶ Andrew Geddis, *Resolving Disputed Elections in Canada and New Zealand*, David Aspen Centre for Constitutional Rights, Toronto, 24 October 2012, page 6 BOA, Tab 5, page 60.; see also Joshua A. Douglas, Discouraging Election Contests, 47 U. RICH. L. REV, page 1018-1019, 1024-1026 BOA, Tab 8, pages 138-139 and 144-146; see also [United Nations Office of the High Commissioner for Human Rights, “2024 elections are testing democracy’s health” March 1, 2024.](#)

¹¹⁷ See Honourable Justice Malcolm Rowe & Manish Oza, "Tort Claims Against Public Authorities" (2022) 60:1 Alberta LR 1 at 3; BOA, Tab 6, page 91 addressing the difficulty in applying tort law to claims which have no clear private analogue.

¹¹⁸ Manitoba Law Reform Commission Report on Controverted Elections, April 21, 1980 page 6-7 quoting Garrow J.A. in *Re North Renfrew (Prov.): Wright v Dunlop* (1904) 8 OLR 359 BOA, Tab 10, pages 174-175.

(c) The integrity of the electoral system requires the validity of an election to be determined expeditiously

78. Elections take place on short timelines and the statutory processes that permit challenges to the validity of an election provide for similarly short timelines.¹¹⁹

79. Challenges to an election “should be tried and settled as quickly as possible.”¹²⁰ Once a writ of election has been issued, the Legislative Assembly is dissolved. The Legislative Assembly only reforms after the election, consisting of the persons elected pursuant to the *Election Act*.¹²¹ Delays in the adjudication of election challenges can impact the ability of the Legislature to conduct its business, and in cases of close elections could impact the ability of a party to form government.

80. The short timelines recognize that the life of a Legislature is limited.¹²² In respect of a claim for which candidate should sit in the Legislature “the matter in dispute is not a perpetual privilege or right”.¹²³ The Courts have equally recognized the importance of tight timeframes to the integrity of the election process.¹²⁴ The “delays of civil litigation... are inapt when applied to political officers acting under statutory powers within prescribed limits of time.”¹²⁵

¹¹⁹ Election Act, RSA 2000, c E-1, [s. 151\(2\)](#).

¹²⁰ Manitoba Law Reform Commission Report on Controverted Elections, April 21, 1980 page 27 BOA, Tab 10, page 195. See also Andrew Geddis, *Resolving Disputed Elections in Canada and New Zealand*, David Aspen Centre for Constitutional Rights, Toronto, 24 October 2012, page 7 BOA, Tab 5, page 61.

¹²¹ *Legislative Assembly Act*, RSA 2000, c L-9, [s 1\(2\)](#).

¹²² The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11, [s. 4](#).

¹²³ Manitoba Law Reform Commission Report on Controverted Elections, April 21, 1980, page 27 BOA, Tab 10, page 195.

¹²⁴ *McEwing v Canada (Attorney General)*, 2013 FC 525 [at para 88](#), “Parliament’s intent appears to be that such applications should be brought and dealt with without delay.” *McLeod v Noble et al* (1897), 28 OR 528 at para 49 BOA, Tab 2, page 40.; *Friesen v Hammell*, (1997), 47 B.C.L.R. (3d) 308, (BCSC) at [para 56](#); *Quinn v Deyell*, 2013 SKQB 6 at [paras 13-14](#); see also *Thérien v Psenak*, 2010 QCCS 1274 at [para 69](#); *Roy v Lamontagne*, 2019 QCCQ 3674 at [paras 73-77](#); Manitoba Law Reform Commission Report on Controverted Elections, April 21, 1980 page 7 BOA, Tab 10, pages 174-175.

¹²⁵ *McLeod v Noble et al* (1897), 28 OR 528 at para 49; cited in *Friesen v Hammell*, (1997), 47 B.C.L.R. (3d) 308, (BCSC) at [para 56](#); *Quinn v Deyell*, 2013 SKQB 6 at [para 14](#).

81. The statutory requirements for retention of election records are also not conducive to civil litigation. For example, the *Election Act* provides that the Chief Electoral Officer shall retain all election documents for three months after either receiving them from the returning officer or after the final determination of a recount or appeal, after which the documents and information shall be destroyed.¹²⁶

82. Mr. Anglin filed his claim approximately two years after the 2015 Election, well into the life of the Assembly. In the time since Mr. Anglin filed his claim, there have been two provincial general elections in Alberta. His claim impugns the validity and integrity of a Legislature that has long since dissolved. His claim undermines the balance “between allowing for some means of reviewing failures in, and bringing a measure of finality to, the election process”.¹²⁷

(d) *There is no private entitlement to a seat in the Assembly*

83. A candidate has no private entitlement to seek a remedy for loss of an election:

To sit in parliament is a service in the member, for the benefit of the king and kingdom; and not for the particular profit of the member.¹²⁸

¹²⁶ *Election Act*, RSA 2000, c E-1 s. 151(2).

¹²⁷ Andrew Geddis, *Resolving Disputed Elections in Canada and New Zealand*, David Aspen Centre for Constitutional Rights, Toronto, 24 October 2012 at page 17. BOA, Tab 5, page 71.

¹²⁸ *Barnardiston v Soame (1674)*, 6 How. St. Tr. 1063 at 1102 BOA, Tab 1, page 20. at 209; *McLeod v Noble et al (1897)*, 28 OR 528 at para 48 BOA, Tab 2, page 40 “it does not appear to me that the right to a recount and the proceedings connected therewith can be classed under the category of "civil rights." They are rights of a political character in the Dominion, in the assertion of which the individual applicant does not act for himself so much as for the body of the electorate. It is different from the right to cast a vote which, being wrongfully denied, creates a personal and individual grievance that is actionable in the ordinary Courts; but the right to recount is of wider compass, affecting the applicant therefore only as representative of a larger body”

84. The outcome of an election is based on the electorate, who decides who sits in the Legislative Assembly to govern them. There is no private wrong that founds a cause of action if an election is interfered with – the right is a representative right of a larger body of the electorate.

85. Even if Mr. Anglin could establish the underlying facts of his claim, it would require the Court to place a monetary value on:

- i. the office of a Member of the Legislative Assembly;
- ii. the opportunities that could arise as a result of serving as a Member of the Legislative Assembly; and
- iii. the emotional pain that may result from the loss of an election.

86. Being a Member of the Legislative Assembly, while a remunerated office, is intended to be a public service:

“A member of the Legislative Assembly holds a "seat", and may be appointed to some office in the body. He is a representative of the people, and a delegate elected by the majority of voters. But his position is not such as arises by virtue of charter or Act of Parliament, within the meaning and intention of the law.”¹²⁹

87. It is particularly concerning that Mr. Anglin asks the court to value additional benefits that might be derived from the office. Such a valuation would be contrary to public policy.¹³⁰

¹²⁹ [Rex ex rel. Tolfree v Clark, \[1943\] O.R. 501 \(C.A.\), Laidlaw J.](#)

¹³⁰ [Conflicts of Interest Act, RSA 2000, c C-23:](#)

[s. 2\(1\)](#) A Member breaches this Act if the Member takes part in a decision in the course of carrying out the Member’s office or powers knowing that the decision might further a private interest of the Member, a person directly associated with the Member or the Member’s minor or adult child.

[s. 3](#) A Member breaches this Act if the Member uses the Member’s office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further a private interest of the Member, a person directly associated with the Member or the Member’s minor child or to improperly further another person’s private interest.

88. Mr. Anglin had a remedy for any alleged unfairness in the 2015 Election – a controverted election petition. He is not entitled to an automatic or unlimited number of remedies.¹³¹

PART IV – SUBMISSIONS ON COSTS

89. The Chief Electoral Officer seeks its costs for this appeal and the proceedings below.

PART V - ORDER REQUESTED

90. The Chief Electoral Officer asks that this Court set aside the decision of the Court of Appeal and restore the Order of the Honourable Justice M. Lema striking the Plaintiff’s claim.

PART VI - SUBMISSIONS ON SEALING OR CONFIDENTIALITY ORDER

91. Not applicable.

Dated at Edmonton, in the Province of Alberta this 24th day of February, 2025.

ALL OF WHICH IS RESPECTFULLY SUBMITTED





SHORES JARDINE LLP
M. Joseph Redman

LAKE LAW
Kathleen Elhatton-Lake

¹³¹ *Kazemi Estate v Islamic Republic of Iran*, 2014 SCC 62, at [para 159](#).

PART VII – TABLE OF AUTHORITIES

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