

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  
(Respondents)

-and-

**JOSEPH V. ANGLIN**

RESPONDENT  
(Appellant)

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**FACTUM OF THE RESPONDENT  
JOSEPH V. ANGLIN**

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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**Constitutional Law Institute of Canada**  
102 Glenview Avenue  
Toronto, Ontario M4R 1P8

**Donald F. Bur**  
Tel.: 647-649-1867  
Email: [Donald.F.Bur@gmail.com](mailto:Donald.F.Bur@gmail.com)

**McCuaig Desrochers LLP**  
1801-10088 102 Avenue  
Edmonton, Alberta T5J 2Z1

**C. Vincent Kurata**  
Tel: 780-441-3423  
Email: [cvkurata@mccuaig.com](mailto:cvkurata@mccuaig.com)

Counsel for the Respondent, Joseph V. Anglin

**Supreme Law Group**  
440 Laurier Ave. West, Suite 200  
Ottawa, ON K1R 7X6

**Moira S. Dillon**  
Tel: 613-691-1224  
Email: [mdillon@supremelawgroup.ca](mailto:mdillon@supremelawgroup.ca)

Ottawa Agents to Counsel for the Respondent

ORIGINAL TO: **THE REGISTRAR OF THE SUPREME COURT OF CANADA**

AND TO:

**Shores Jardine LLP**  
Suite 2250, Bell Tower  
10104-103 Avenue  
Edmonton AB T5J 0H8

**M. Joseph Redman**  
Tel.: 780-448-9275  
Fax: 780-423-0163  
Email: [joseph@shoresjardine.com](mailto:joseph@shoresjardine.com)

**Lake Law**  
#359 13548 97 St  
Edmonton, AB T5E 4E2

**Kathleen Elhatton-Lake**  
Tel. 587-936-4195  
Email: [kathleen@lake-law.ca](mailto:kathleen@lake-law.ca)

Counsel for the Appellant, Glen L. Resler, in  
his capacity as Chief Electoral Officer

AND TO INTERVENORS:

**Élections Québec**  
1045, boulevard Wilfried-Pelletier  
Québec (Québec) G1W -C5

M<sup>e</sup> Olivier Cournoyer Boutin  
Tél: 418 644 1090, poste 5238  
Télec.: 418 646 6105  
Courriel: [ocboutin@electionsquebec.qc.ca](mailto:ocboutin@electionsquebec.qc.ca)

Avocats du le directeur general des elections  
du Québec

**DENTONS CANADA LLP**  
99 Bank Street, Suite 1420  
Ottawa, ON K1P 1H4

**David R. Elliott**  
**Corey Villeneuve (Law Clerk)**  
Tel.: 613-783-9699  
Fax: 613-783-9690  
Email: [corey.villeneuve@dentons.com](mailto:corey.villeneuve@dentons.com)

Ottawa Agents to Counsel for the Appellant,

**Noël & Associés, s.e.n.c.r.l.**  
225, Montée Paiement, 2<sup>e</sup> étage  
Gatineau (Québec) J8P 6M7

M<sup>e</sup> Pierre Landry  
M<sup>e</sup> Sylvie Labbé  
Tél: 819 771 7393  
Télec.: 819 771 7397  
Courriel: [p.landry@noelassocies.com](mailto:p.landry@noelassocies.com)  
[s.labbe@noelassocies.com](mailto:s.labbe@noelassocies.com)

Correspondant du le directeur general des  
elections du Québec

**Attorney General for Ontario  
Crown Law Office – Civil**  
720 Bay Street, 8th Floor  
Toronto, ON M7A 2S9

Susan Keenan | Andrea Huckins  
Tel: 416-898-1301 | 416-909-5573  
Fax: 416-326-4015  
Email: [susan.keenan@ontario.ca](mailto:susan.keenan@ontario.ca)  
[andrea.huckins@ontario.ca](mailto:andrea.huckins@ontario.ca)

Counsel for the Attorney General for Ontario

**Ministry of Attorney General of British  
Columbia**  
Legal Services Branch  
1301 – 865 Hornby Street Vancouver  
BC V6Z 2G3

David Brownell & Samrah Mian  
Tel.: 604-660-3441  
Fax: 604-660-3567  
[david.brownell@gov.bc.ca](mailto:david.brownell@gov.bc.ca)  
[samrah.mian@gov.bc.ca](mailto:samrah.mian@gov.bc.ca)

Counsel for the Attorney General of British  
Columbia

**CONWAY BAXTER WILSON LLP/S.R.L.**  
400-411 Roosevelt Avenue  
Ottawa ON K2A 3X9

M. Alyssa Holland  
Tel: (613) 288-0149  
Fax: (613) 688-0271  
Email: [aholland@conwaylitigation.ca](mailto:aholland@conwaylitigation.ca)

Emma Williams  
Tel: (613) 288-0149  
Fax: (613) 688-0271  
Email: [ewilliams@conwaylitigation.ca](mailto:ewilliams@conwaylitigation.ca)

Lawyers for the Chief Electoral Officer of the  
Northwest Territories

**Borden Ladner Gervais LLP**  
World Exchange Plaza  
1300 – 100 Queen Street  
Ottawa, ON K1P 1J9

Nadia Effendi  
Tel: 613.787.3562  
Fax: 613.230.8842  
Email: [neffendi@blg.com](mailto:neffendi@blg.com)

Agent for the Attorney General for Ontario

**Michael J Sobkin**  
331 Somerset Street West  
Ottawa, ON K2P 0J8  
Tel.: 613-282-1712  
[msobkin@sympatico.ca](mailto:msobkin@sympatico.ca)

Agent for the Attorney General of British  
Columbia

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## PART 1: OVERVIEW, STATEMENT OF FACTS AND JUDGMENTS

### A. Overview – Correct Characterization of Case

- [1] This case is not, as the Appellant argues, about the integrity of the Albertan or Canadian electoral system.
- [2] The within appeal and substantially all the Appellant’s arguments proceed from the false premise that Anglin is challenging the legitimacy of the 2015 Alberta general election and the validity of the election result. Anglin makes no such challenge, whether directly or indirectly. The validity and finality of the election result are instead the foundation upon which Anglin’s claim proceeds.
- [3] The correct analysis of this appeal and Anglin’s underlying claim requires a proper identification of Anglin’s causes of action and his claimed remedy.
- [4] As a candidate in the 2015 Alberta general election, Anglin had rights flowing from sections 2(b) and 3 of the *Charter*. His statement of claim is founded in part on the allegations that Resler infringed those rights and abused the power of his public office by *inter alia*: (i) telling the local newspapers, in breach of the Alberta *Election Act*, that Anglin’s signs were illegal and would be taken down; (ii) demanding that Anglin cover over certain words on his election signs; (iii) tearing down or destroying all of Anglin’s signs during the election, whether or not the signs complied with the law and his demands; (iv) working with Anglin’s competitors; and (v) initiating administrative prosecutions against Anglin after the election had been completed in order to justify Resler’s actions during the election. Anglin’s statement of claim pleads the requisite elements of numerous torts, including misfeasance in public office, malicious prosecution, conspiracy, and trespass to chattels.
- [5] If Anglin’s rights have been infringed, he is entitled to a remedy. Anglin has claimed damages for his loss of chance to be re-elected, which includes his loss of chance to earn income as an MLA. “Loss of chance” is “a recognized head of damage”.<sup>1</sup> The Court of

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<sup>1</sup> *Dupuis v Syndicat canadien des communications, de l’énergie et du papier, section locale 130*, [2008] QCCA 837 at para 99. *Trillium Motor World Ltd. v. Cassels Brock & Blackwell LLP*,

Appeal of Alberta has described loss of chance damages as follows:

Loss of chance damages arise in circumstances where the plaintiff has been deprived of a chance or opportunity to profit as a result of the defendant's wrongdoing. [...] The leading case in this area is *Chaplin v Hicks*, [1911] 2 KB 786, where the court found that recovery was available for the loss of a chance, even if the loss suffered is contingent on factors outside the plaintiff's control.<sup>2</sup> (emphasis added)

- [6] To the extent that Anglin's claim for loss of chance damages contemplates his loss of chance to earn income as an MLA, his claim can be analogized to a loss of chance claim in the employment context.
- [7] As a baseline, the common law allows a wrongfully dismissed employee to claim damages for the remuneration they would have earned over the reasonable notice period, but for the wrongful termination. Those damages flow from the employee's actual, extant entitlement to remuneration from the employer. A prospective employee, who is not terminated but is instead wrongfully prevented from securing employment due to the employer's discriminatory hiring practices, has a claim based on *the chance* they lost to be paid that income; it is not based on actual, extant entitlement to remuneration.<sup>3</sup>
- [8] As a head of damage, loss of chance in the above example is not used to challenge the job

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2017 ONCA 544 at para. 260 et seq for the discussion of the issue, and para. 404 for the application. *PMM Assurance & Services Inc. v. Michaud*, 289 N.B.R. (2d) 310 (NBCA).

Jamie Cassells & Elizabeth Adjin-Tetty, *Remedies: The Law of Damages*, 2d ed (Toronto: Irwin Law, 2008) at 341–42, Respondent's Book of Authorities Tab 3; Jane Stapleton, "The Gist of Negligence Part II: The Relationship Between 'Damage' and Causation" (1988) 104 *Law Q Rev* 389, Respondent's Book of Authorities, Tab 10; See also Nils Jansen, "The Idea of a Lost Chance" (1999) 19:2 *Oxford J Leg Stud* 271, Respondents Book of Authorities, Tab 6; Kevin Joseph Willging, "Falcon v. Memorial Hospital: A Rational Approach to Loss of Chance Tort Actions", Case Comment, (1993) 9:1 *J Contemp Health & Pol'y* 545, Respondent's Book of Authorities, Tab 15; SM Waddams, "The Valuation of Chances" (1998) 30:1 *Can Bus LJ* 86, p. 95, Respondents Book of Authorities, Tab 13; Ernest J Weinrib, "Causal Uncertainty" (2016) 36:1 *Oxford J Leg Stud* 135, Respondent's Book of Authorities, Tab 14; Rui Cardona Ferreira, "The Loss of Chance in Civil Law Countries: A Comparative and Critical Analysis" (2013) 20:1 *MJECL* 56, Respondent's Book of Authorities, Tab 5.

<sup>2</sup> *Strategic Acquisition Corp v Starke Capital Corp*, 2017 ABCA 250 at para. 68. Also see *Eastwalsh Homes Ltd. v. Anatal Developments Ltd.* (1993), 12 OR (3d) 675 (CA) at para. 34.

<sup>3</sup> For example, see *Commission des droits de la personne et des droits de la jeunesse c. Centre hospitalier universitaire de Sherbrooke*, 2012 QCCA 306 at paras. 1, 43 per Bouchard J.A. (dissenting). An analogous situation can be found in *Chaplin v. Hicks*, [1911] 2 K.B. 786 (CA).

that was given preferentially to some other person. The remedy is not to oust the other person as having being hired illegitimately, or even to say that the plaintiff should have been hired instead of that other person. In the same way, Anglin’s action does not “challenge the election” itself, nor does it challenge the legitimacy of the candidate who won in Anglin’s riding. His claim does not seek his appointment to the Legislative Assembly of Alberta. Instead, the election is simply the contextual backdrop for the quantification of Anglin’s loss of chance damages.

## **B. Statement of Facts**

[9] Anglin has a long history of political engagement and activism in Alberta. For example, he was the leader of the Alberta Green Party in 2008, and in 2010 he was elected to the Rimbey Town Council. He was elected in 2012 as the Wildrose Party MLA for Rimbey-Rocky Mountain House-Sundre, and he obtained more than 50% of all votes cast in the constituency. During his time in the Legislature, he was the opposition energy and environment critic, and the caucus whip.<sup>4</sup>

[10] Anglin left the Wildrose Party in 2014 and ran for re-election in 2015 as an independent candidate. During his 2015 campaign, he placed with the electorate approximately 2,000 lawn signs (a picture of one is included below) and 100 larger signs.<sup>5</sup>



<sup>4</sup> Affidavit of Joseph Anglin, sworn September 17, 2019, at paras. 3-9, Respondent’s Record, Volume II, Tab 5, pp. 2-3 (hereinafter, the “2019 Affidavit”).

<sup>5</sup> 2019 Affidavit, *supra* note 4 at para. 22, Respondent’s Record, Volume II, Tab 5, pp. 5 and Exhibit 11, p. 86.

[11] Election signs were used by all of Anglin’s rival candidates, and such signage is of course designed to capture the attention and influence the vote of the electorate.

[12] Alberta’s *Election Act* requires campaign signage to include specific sponsorship information, namely: “the sponsor’s name and contact information and [...] whether the sponsor authorizes the advertisement.”<sup>6</sup> Anglin’s sponsorship read:

Sponsored and Authorized by the agent for  
the Campaign to Re-elect JOE ANGLIN  
780-621-3442 <sup>7</sup>

[13] Resler, as Chief Electoral Officer, additionally instituted Guidelines requiring sponsorship information on campaign advertisements to be in a font at least 25% the size of the main text of the advertisement, and Anglin’s evidence is that his lawn signs complied with this requirement too.<sup>8</sup>

[14] The NDP and Alberta Party signs from this election are reproduced below for comparison. The sponsorship information on NDP signs, which appears in tiny font on the bottom right of the signs (so tiny it is imperceptible in the photo below), read: “Authorized and paid for by the Official Agent of the Candidate,” with no additional contact information.<sup>9</sup> The Alberta Party signs did not include any sponsorship information at all.



[15] There are no known administrative charges against the NDP or Alberta party, or any of their

<sup>6</sup> *Election Act*, R.S.A. 2000 c. E-1, s. 134(2)(a).

<sup>7</sup> 2019 Affidavit, *supra* note 4 at para. 27, Respondent’s Record, Volume II, Tab 5, p. 6, Exhibit 11, p. 86, and Exhibit 20, p. 114.

<sup>8</sup> 2019 Affidavit, *supra* note 4 at para. 24-30, Respondent’s Record, Volume II, Tab 5, pp. 5-6.

<sup>9</sup> 2019 Affidavit, *supra* note 4 at para. 64 Respondent’s Record, Volume II, Tab 5, p. 11 and Exhibits 31 to 33, Respondent’s Record, Volume II, pp 175-183.

candidates, flowing from their use of these signs.<sup>10</sup>

[16] By letter dated April 23, 2015, received by Anglin on April 24, 2015, Resler demanded that Anglin cease using “MLA” in his political speech – despite “MLA” being the office for which Anglin was running – and to generally “cease and desist” election advertising that did not comply with the Guidelines. Resler additionally stated:

I have the authority to cause a non-compliant advertisement to be removed or discontinued. If the lawn sign, and any other sign like it, do not immediately come into compliance, I shall cause the lawn signs to be removed without further delay.<sup>11</sup>

[17] The election campaign was at a crucial stage, and Anglin had no time or practical ability to dispute Resler’s demands, so he complied with them.<sup>12</sup> Although he wanted to campaign by showing the electorate that he was going to be an “Independent MLA,” he was required to cover the letters “MLA” on all of his signs with blue duct tape.<sup>13</sup> Further, although his signs contained all of the sponsorship information required by the *Election Act*, he printed out larger sponsorship information and put it on his larger signs to ensure he was also complying with Resler’s demands regarding the size of that information.<sup>14</sup>

[18] Anglin emailed Resler on April 24, 2015 (i.e. the same day he received Resler’s “cease and desist” letter) and advised Resler that his signs “have been or are in the process of being altered” to comply with Resler’s demands.<sup>15</sup> He followed up with Resler by further email a few days later, confirming “These adjustments are being made as we speak,” and he included a photograph demonstrating his compliance with Resler’s edicts (i.e. by taping over “MLA” and appending sponsorship information in larger font).<sup>16</sup> That photo is reproduced below:

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<sup>10</sup> 2019 Affidavit, *supra* note 4 at paras. 63, 64, Respondent’s Record, Volume II, Tab 5, pp. 10-11 and Exhibits 29 to 33, Respondent’s Record, Volume II, pp. 171-183.

<sup>11</sup> 2019 Affidavit, *supra* note 4 at para. 24, Respondent’s Record, Volume II, Tab 5, p. 5 and Exhibit 12, Respondent’s Record, Volume II, p. 88.

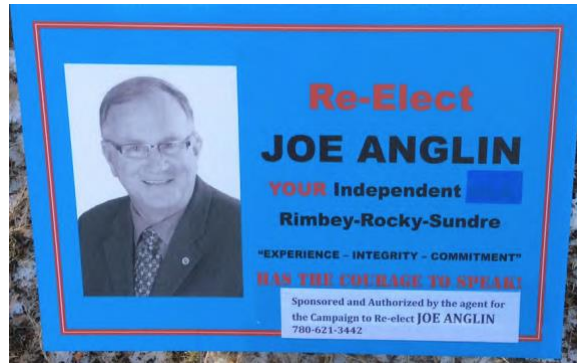
<sup>12</sup> 2019 Affidavit, *supra* note 4 at paras. 24, 30, Respondent’s Record, Volume II, Tab 5, pp. 5, 6.

<sup>13</sup> 2019 Affidavit, *supra* note 4 at para. 31, Respondent’s Record, Volume II, Tab 5, p. 6.

<sup>14</sup> 2019 Affidavit, *supra* note 4 at paras. 31-32, Respondent’s Record, Volume II, Tab 5, p. 6.

<sup>15</sup> 2019 Affidavit, *supra* note 4 at para. 33, Respondent’s Record, Volume II, Tab 5, p. 6-7.

<sup>16</sup> 2019 Affidavit, *supra* note 4 at para. 34, Respondent’s Record, Volume II, Tab 5, p. 7 and Exhibit 16, Respondent’s Record, Volume II, p. 100.



[19] At the time of this correspondence between Resler and Anglin regarding Anglin’s signage, section 4.4 of the *Election Act* provided as follows:

Except as provided in subsections (2) and (3), the Chief Electoral Officer, any former Chief Electoral Officer and every person who is or was employed or engaged by the Office of the Chief Electoral Officer shall maintain the confidentiality of all information and allegations that come to their knowledge in the course of an inquiry or investigation.<sup>17</sup> (emphasis added)

[20] Notwithstanding the confidentiality requirement in the *Act*, Elections Alberta made public statements impugning the legality of Anglin’s signs to the Rocky Mounty House Mountaineer and Sundre Roundup newspapers shortly after Resler’s cease and desist letter to Anglin. Elections Alberta specifically stated, “His signs are illegal and we’ll be taking further actions if he doesn’t take them down himself; we’ll be taking them down for him.”<sup>18</sup>

[21] Notwithstanding that: (i) Resler’s complaints and edicts all dealt with political speech; (ii) Anglin had demonstrated he was complying with Resler’s directions, and (iii) there was only about nine days left in the election campaign; on the night of April 26, 2015, all of Mr. Anglin’s signs were either taken down or destroyed.<sup>19</sup>

<sup>17</sup> *Election Act*, R.S.A. 2000 c. E-1, s. 4.4. This provision was later repealed by *An Act to Strengthen and Protect Democracy in Alberta*, S.A. 2017, c 29, s. 8.

<sup>18</sup> 2019 Affidavit, *supra* note 4 at paras. 38-39, Respondent’s Record, Volume II, Tab 5, p. 7 and Exhibits 17 and 18, Respondent’s Record, Volume II, pp. 104, 106.

<sup>19</sup> 2019 Affidavit, *supra* note 4 at para. 40, Respondent’s Record, Volume II, Tab 5, p. 17. Resler takes the position, in para. 10 of the Appellant’s Factum, that he only “removed 25 signs”. There are, however, numerous inconsistencies with this statement. First, the source is Resler’s decision of March 22, 2016, Appellant’s Record Vol. III, p. 41, where he says: “My staff

- [22] Anglin’s evidence is that all his lawn signs were removed or destroyed – i.e. including those where Resler’s only complaint was use of “MLA” and on which “MLA” had been redacted. Although Resler started an investigation into Anglin’s use of “MLA,” this investigation was later abandoned as there is nothing in the *Election Act* prohibiting the use of those letters.
- [23] It is significant that Anglin’s signs were all removed or destroyed at the same time. The Rimbey-Rocky Mountain House-Sundre constituency is very large, geographically, and there were 2000+ signs. The precipitous removal and destruction of all these signs evidently required coordination between several individuals.
- [24] Meanwhile, the Defendant Pieter Broere (who was working for the campaign of Jason Nixon, the Wildrose candidate) was posting photos of himself destroying Anglin’s signs (such as the one below) and bragging that he was working with a “small group of people who are really staying in contact with Alberta Elections till Joe is total (sic) finished off.”<sup>20</sup>

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removed 25 signs”. This is the same decision where Resler found that Anglin had signs with no sponsorship, and signs with no telephone numbers, and then conceded at the appeal that this was not correct. Resler’s affidavit has not otherwise been tested. Second, Resler’s counsel wrote on May 2, 2027, Appellant’s Record Vol. II, p. 190, that “The warehouse at Elections Alberta *still* contains about 25 signs...”, suggesting that at one time there were more signs in the warehouse. Third, pictures provided by Resler, Respondent’s Record, Volume II, Tab 5, Exhibit 20, pp. 113-135 show that there are more than 25 signs in Resler’s possession. Finally, Anglin’s statement of claim also alleges that Resler worked with Anglin’s competitors, and the reference to signs in Resler’s possession does not take into account the removal of signs by other individuals that he may have authorized.

<sup>20</sup> 2019 Affidavit, *supra* note 4 at para. 55, Respondent’s Record, Volume II, Tab 5, p. 9. Affidavit of Robert Ketcheson, sworn May 2017, at para. 4, Respondent’s Record Volume II p. 148, and part of Exhibit A, Respondent’s Record, Volume II, pp. 155-158.



**Pieter Broere**

Sorry we had to have some fun when we were doing all this bullshit

[25] Anglin’s signs were taken down on April 26-27, 2015. Yet, Resler did not start (i) an investigation into Anglin’s use of “MLA” until November 2, 2015;<sup>21</sup> (ii) an investigation into the sponsorship information on Anglin’s signs until November 2, 2015;<sup>22</sup> and (iii) an investigation into Anglin’s use of the List of Electors until October 26, 2015.<sup>23</sup> In other words, if Anglin’s signs had breached the *Election Act* and the Guidelines, the punishment for that breach took place before the investigation. If Anglin’s signs complied with the *Act*, as Anglin asserts, the punishment had already taken place.

## C. PROCEDURAL HISTORY

### (i) Initiating Claim and seeking Production of Documents

[26] Anglin filed his statement of claim on April 6, 2017.<sup>24</sup> That document was served on Resler on February 9, 2018.<sup>25</sup>

[27] On March 1, 2018, Resler brought an application to strike Anglin’s claim, arguing that it is frivolous, irrelevant, improper, discloses no reasonable claim, constitutes an abuse of process, that the claim is without merit, and that the claim is contrary to the public interest.<sup>26</sup>

<sup>21</sup> 2019 Affidavit, *supra* note 4 at para. 69, Respondent’s Record, Volume II, Tab 5, p. 11.

<sup>22</sup> 2019 Affidavit, *supra* note 4 at para. 72, Respondent’s Record, Volume II, Tab 5, p. 12.

<sup>23</sup> 2019 Affidavit, *supra* note 4 at para. 93, Respondent’s Record, Volume II, Tab 5, p. 15.

<sup>24</sup> Filed Statement of Claim, Appellant’s Record, Vol. II, p. 6.

<sup>25</sup> Application for Direction at para. 6, Respondent’s Record, Volume I, Tab 2, p. 8.

<sup>26</sup> Application to Strike, Appellant’s Record, Vol. II, Tab 7, p. 7.

[28] Rule 3.42 of the *Alberta Rules of Court* (the “*Alberta Rules*”) operates to immunize defendants who have filed an application to strike a claim from being noted in default until the application has been decided.<sup>27</sup> To this day, Resler has not filed a statement of defence in the action.

[29] On April 19, 2018, Anglin served his affidavit of records on all parties.<sup>28</sup>

[30] Rule 5.5(3) of the *Alberta Rules* provides that the “defendant must serve an affidavit of records on each of the other parties within 2 months after the date the defendant is served with the plaintiff’s affidavit of records.” To this day, Resler has not provided an affidavit of records.<sup>29</sup>

**(ii) Applications Before Justice Gill – Court of King’s Bench**

[31] Anglin brought an application to compel Resler to provide an affidavit of records.<sup>30</sup> That application was denied by Mr. Justice Gill, based in part on the misunderstanding that the “essence of the case” was the administrative “investigation and decisions of Resler”,<sup>31</sup> and that decision was upheld by the Court of Appeal:

[38] An affidavit of records is a routine requirement in civil litigation, but a responding party cannot insist on the filing of an affidavit of records before the hearing of an application to strike, or an application for summary judgment [...]. Requiring the moving party to exhaust all of the pretrial discovery procedures before applying for summary judgment would not make any such judgment very “summary”. As *Burns Memorial Trust* shows, there are situations where the court can require an affidavit of records before an application for summary judgment is heard, but that is primarily where all of the documents are under the control of one of the parties [...].<sup>32</sup>

[32] Resler brought an application for directions, seeking to be allowed to rely on unsworn

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<sup>27</sup> [\*Alberta Rules of Court, Alta Reg 124/2010, Rule 3.42.\*](#)

<sup>28</sup> Affidavit of Joseph V. Anglin, sworn April 28, 2022 (“2022 Affidavit”), at paras. 19-21, Respondent’s Record, Volume II, Tab 8, pp. 526-527.

<sup>29</sup> 2022 Affidavit, *ibid*, at para. 19, Respondent’s Record, Volume II, Tab 5, p. 526.

<sup>30</sup> Application for an Order that Glen L. Resler provide an Affidavit of Documents, Respondent’s Record, Volume I, Tab 1, p. 1.

<sup>31</sup> Reasons for Judgment of the Honourable Mr. Justice J.J. Gill, May 13, 2022, lines 27-28, Respondent’s Record, Volume I, Tab 4, p. 20, lines 27-28.

<sup>32</sup> [\*Anglin v Resler, 2024 ABCA 113\*](#) at [paras. 38-39](#) per Slatter and Wooley JJ.A. Wakeling J.A., at [para. 265](#).

evidence in support of his application to strike.<sup>33</sup> Mr. Justice Gill not only allowed this application, but also suggested that all of the evidence from the two prior administrative hearings be included as evidence – even though this decision admitted over 800 pages of unsworn testimony that Anglin had had no opportunity to challenge through cross-examination.<sup>34</sup> This decision was set aside by the majority of the Court of Appeal:

[31] Admitting the entirety of the certified record filed on a judicial review application, or proceedings such as the sanction appeals, is more problematic. As the appellant pointed out, those documents contain hundreds of pages of unsworn and hearsay evidence, and were admitted sight unseen. Even if they could be introduced under R. 6.11(f) as having been filed in another action they would be of little probative value.

[32] However, even though the respondent was entitled to introduce all of the documents he tendered, that is only part of the answer. Neither R. 6.11 nor the *Alberta Evidence Act* have the effect of changing the nature of the evidence introduced or enhancing its credibility and reliability. These documents can be introduced as being true copies, but they are not necessarily evidence of the truth of their contents, or conclusive evidence of anything [...].<sup>35</sup>

[33] As part of Resler’s application for directions, Resler sought to introduce his own affidavit of April 28, 2017,<sup>36</sup> but only if Anglin were not allowed to cross-examine on it.<sup>37</sup> Justice Gill allowed the application.<sup>38</sup> This decision was set aside by the Court of Appeal.<sup>39</sup>

[34] As part of Resler’s application for directions, Resler sought an order that “the parties may not file any further affidavit evidence” or alternatively “an order directing the procedure for filing of any additional evidence the parties may rely on”.<sup>40</sup> In his reasons of May 13, 2022,

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<sup>33</sup> Application for Directions, Respondent’s Record, Volume I, Tab 2, pp. 5-6.

<sup>34</sup> Reasons for Judgment of the Honourable Mr. Justice J.J. Gill, May 13, 2022, Respondent’s Record, Volume I, Tab 3, pp. 20-21, lines 35-40.

<sup>35</sup> [Anglin v Resler, 2024 ABCA 113](#) at [paras. 31-32](#) per Slatter and Wooley JJ.A. Also see para. [259](#) per Wakeling J.A.

<sup>36</sup> Application for Directions, Respondent’s Record, Volume I, Tab 2, p. 17.

<sup>37</sup> Transcript of Argument dated May 11, 2022, Respondent’s Record, Volume II, Tab 7, p. 511 lines 36-41, and p. 512 lines 1-5.

<sup>38</sup> Reasons for Judgment of the Honourable Mr. Justice J.J. Gill, May 13, 2022, lines 5-11, Respondent’s Record, Volume I, Tab 3, pp. 21-22.

<sup>39</sup> [Anglin v Resler, 2024 ABCA 113](#) at para. [22](#) and para. [33](#) per Slatter and Wooley JJ.A. Also see Justice Wakeling at para. [267](#).

<sup>40</sup> Application for Directions, Respondent’s Record, Volume 1, Tab 2, pp. 12-13.

Mr. Justice Gill made no mention of which of these alternatives he ordered.<sup>41</sup> That decision only appeared when Mr. Justice Gill signed and entered the order on May 26, 2022,<sup>42</sup> and it had the effect of precluding Anglin from adducing and relying on an expert report from Mr. Lorne Gibson, the former Chief Electoral Officer of Alberta. There is no indication that Gill J., at any stage, exercised a “gatekeeper function” of weighing the probative value of the Gibson report. The Court of Appeal ultimately set aside this order.<sup>43</sup>

[35] In making these decisions, Gill J. made it clear that the “judge hearing the application” to strike would be the ultimate arbiter of what evidence would be considered in the application to strike.<sup>44</sup> An ensuing application to a single Justice of the Court of Appeal for a stay was denied in part because the discretion regarding the evidence in the application to strike lay with the application judge.<sup>45</sup> However, when Mr. Justice Lema heard the application to strike, he decided that he had no discretion because the matter had already been decided by Justice Gill.<sup>46</sup>

[36] In responding to the application to strike, Anglin was barred from relying on the Gibson report, he was barred from cross-examining Resler on the material Resler had submitted in support of application, including on Resler’s own affidavit, and he did not have Resler’s affidavit of records or document production.

**(iii) Justice Lema’s Decision, Court of King’s Bench, and the Response of the Court of Appeal of Alberta**

[37] On June 15, 2022, the application to strike was heard, and on July 11, 2022, Lema J. struck out and dismissed Anglin’s statement of claim.

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<sup>41</sup> Reasons for Judgment of the Honourable Mr. Justice J. J. Gill, May 13, 2022, Respondent’s Record, Volume I, Tab 3, p. 13-25.

<sup>42</sup> Order of the Honourable Mr. Justice J. J. Gill filed May 26, 2022, para. 4, Respondent’s Record, Volume I, Tab 4, pp. 30-31.

<sup>43</sup> [\*Anglin v Resler\*, 2024 ABCA 113](#) at paras. 40-41.

<sup>44</sup> Reasons for Judgment of the Honourable Mr. Justice J. J. Gill, May 13, 2022, Respondent’s Record, Volume I, Tab 3, p. 21.

<sup>45</sup> [\*Anglin v Resler\*, 2022 ABCA 213](#) at para. 6.

<sup>46</sup> [\*Anglin v Resler\*, 2022 ABQB 477](#) at para. 100.

[38] Lema J. characterized Anglin’s action as “an attempt to bypass the (applicable) controverted-elections process,”<sup>47</sup> and he concluded:

... Anglin’s only recourse for an election perceived to have been unfair is limited to the controverted-elections process or any mechanism (not identified by him) offered by the Legislature itself i.e. does not include a damages action in this Court, with such not provided for in the *Election Act*.<sup>48</sup>

Lema J. further concluded that Anglin’s claim was an abuse of process on the basis that “in part it would require the Court to inquire into the validity of an election, which can only be done under the controverted-elections provisions of the *Election Act*”.<sup>49</sup>

[39] In coming to that decision, Justice Lema relied upon a number of cases, none of which support the proposition that Anglin’s only remedy, for the tort of misfeasance in a public office or for the infringement of his *Charter* rights, was the controverted-elections provisions of the *Election Act*. Instead, each of these cases specifically dealt with a challenge to an election result: election recount appeal,<sup>50</sup> petition for recount,<sup>51</sup> petition to declare election void,<sup>52</sup> appeal of a recount decision,<sup>53</sup> a return issued in violation of an injunction,<sup>54</sup> and an application to certify a class action to challenge the election of the winners of a number of ridings.<sup>55</sup>

[40] The Court of Appeal unanimously allowed the appeal and set Lema J.’s decision aside. Both the majority judgment (Slatter J.A. and Wooley J.A.) and the minority judgment (Wakeling J.A.) concluded that Anglin’s claim did not attack the validity of the 2015 election. To the contrary, they concluded that Anglin’s claim is premised on the finality of the 2015 election.

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<sup>47</sup> [\*Anglin v Resler\*, 2022 ABQB 477 at para. 10.](#)

<sup>48</sup> [\*Anglin v Resler\*, 2022 ABQB 477 at para. 18.](#)

<sup>49</sup> [\*Anglin v Resler\*, 2022 ABQB 477 at para. 92.](#)

<sup>50</sup> [\*Lorje v Karwacki\* \(1999\), 182 DLR \(4<sup>th</sup>\) 623 \(SKCA\).](#)

<sup>51</sup> [\*In Re Pinto Creek Elections\*, \(1912\) 6 DLR 111, \[1912\] 3 WWR 33 \(Sask. QB\).](#)

<sup>52</sup> [\*Storey v Zazelenchuk\* \(1982\), 21 Sask. R. 158 \(Sask. QB\), \*Storey v Zazelenchuk\* \(1984\), 36 Sask. R. 103 \(CA\) at 123.](#)

<sup>53</sup> [\*Byers v Bjarnson\* \(1968\), 63 WWR \(ns\) 253 \(Sask. QB\); \*Lamb v McLeod\* \(1932\), 1 WWR 206 \(Sask. CA\).](#)

<sup>54</sup> [\*Davis v Barlow\* \(1910\), 15 W.L.R. 49 \(Man. QB\).](#)

<sup>55</sup> [\*Friesen v Hammell\* \(1997\), 47 B.C.L.R. \(3d\) 308 \(BCSC\).](#)

[41] In this regard, Slatter J.A. and Wooley J.A. wrote:

[48] The main basis on which the claim was struck was that it was a collateral attack on the 2015 election, and the only method for attacking the outcome of an election was through the controverted election provisions of the *Election Act*. This may be a correct statement of the law of elections, but it mischaracterizes the nature of the appellant's claim. The appellant does not seek to challenge the outcome of the election; his claim is in fact based on the assumption that the outcome of that election is unimpeachable.

[49] The basis of the appellant's claim is that he lost the chance to win the 2015 election because of the misconduct of the respondent. A loss of chance claim of this type does not depend on the plaintiff setting aside the underlying decision that marked the frustration of his opportunities.

[50] This argument was resolved by the Supreme Court of Canada in *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62, [2010] 3 SCR 585. TeleZone was one of the unsuccessful applicants for a licence to provide personal communication services. ... It argued that this type of claim could not be brought unless the plaintiff first brought a judicial review application to set aside the decision granting the licences.

[51] The Supreme Court of Canada rejected this argument:

[ ... ]

64 *TeleZone* is not seeking to “avoid the consequences of [the ministerial] order issued against it” (*Garland v Consumers’ Gas Co.*, 2004 SCC 25, [2004] 1 SCR 629, at para. 72). On the contrary, the ministerial order and the financial losses allegedly consequent on that order constitute the foundation of the damages claim. This was the result in *Garland* itself, where Iacobucci J. held for the Court:

Based on a plain reading of this rule, the doctrine of collateral attack does not apply in this case because here the specific object of the appellant's action is not to invalidate or render inoperative the Board's orders, but rather to recover money that was illegally collected by the respondent as a result of Board orders. Consequently, the collateral attack doctrine does not apply. . . .

79 *TeleZone* is not attempting to nullify or set aside the Minister's order. Its case is that the Minister, in deciding not to issue a licence to *TeleZone*, acted in breach of his contractual and equitable duties or in breach of a duty of care. *TeleZone* does not say that the Minister's decision should be quashed. On the contrary, *TeleZone's* causes of action in contract, tort and equity are predicated on the finality of that decision excluding *TeleZone* from participation in the telecommunications market, thereby (it says) causing it financial loss. Nor does *TeleZone* seek to deprive the Minister's decision of any legal effect. It does not challenge the licences issued to its competitors. It does not seek to undo what was done. [ ... ] (emphasis added by the ABCA)

The appellant's claim is directly analogous to the claim launched by TeleZone. The claims of both the appellant and TeleZone were based on the loss of an opportunity or chance to obtain a particular benefit.

[52] The appellant's claim is premised on the finality of the outcome of the 2015 election. His argument is that the election is over and final, he lost, but he was deprived of the chance he had to win that election as a result of the misconduct of the respondent. As held in *TeleZone*, he is not required to bring an application setting aside the result of the election to pursue this claim. Whether this could only be done through the controverted election procedures is therefore irrelevant."<sup>56</sup>

[42] Wakeling J.A. came to the same conclusion, noting that Anglin's claim was the opposite of what Resler was characterizing it to be:

[185] Nothing in Mr. Anglin's amended statement of claim supports the notion that he contests the validity of the May 5, 2015 Alberta general election or makes any claim which would otherwise require a court to inquire into the validity of the May 5, 2015 election. Mr. Anglin does not seek a declaration voiding and setting aside the election.

[186] Just the opposite is the case. Mr. Anglin relies on the fact that he lost the May 5, 2015 election to buttress his damage claim against the Chief Electoral Officer.

[187] A fair reading of Mr. Anglin's claim discloses an unequivocal assertion that Mr. Resler committed tortious acts in his capacity as the Chief Electoral Officer that harmed the plaintiff. [...]

[188] Mr. Anglin's action is a tort claim for misfeasance in a public office and malicious prosecution. It is not a collateral attack on the validity of the May 5, 2015 Alberta general election."<sup>57</sup>

[43] The evidence before Mr. Justice Lema regarding the various administrative proceedings Resler had brought against Anglin was that (i) Resler had brought an investigation against Anglin regarding his use of "MLA" on his signs, when there was nothing in the *Election Act* that prohibited same;<sup>58</sup> (ii) the List of Electors proceeding was struck because Resler had been unfair;<sup>59</sup> and (iii) in the Sponsorship Proceeding, Resler conceded on the day of the

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<sup>56</sup> [\*Anglin v Resler\*, 2024 ABCA 113 \(CA\) at paras. 48-52.](#)

<sup>57</sup> [\*Anglin v Resler\*, 2024 ABCA 113 at paras. 185-188 \(CA\) \(footnotes omitted\).](#)

<sup>58</sup> 2019 Affidavit, *supra* note 4 at paras. 67-71, Respondent's Record, Volume II, Tab 5, pp. 11-12.

<sup>59</sup> 2022 Affidavit, *supra* note 28 at para. 37, Respondent's Record, Volume II, Tab 8, p. 530; [\*Anglin v Alberta \(Chief Electoral Officer\)\*, 2021 ABQB 353.](#)

appeal that there was no evidence whatsoever to support his finding and the imposition of a fine on Anglin.<sup>60</sup> These charges have a nexus with the actions Resler had taken during the election – i.e. in requiring Anglin to cover portions of his signs, and in taking down and/or destroying all of Anglin’s signs. Notwithstanding this evidence, Mr. Justice Lema struck out eight paragraphs of Anglin’s Statement of Claim.<sup>61</sup>

[44] In arriving at this decision, Mr. Justice Lema made a number of mistakes. First, he decided that the “MLA” issue was a “non-event” because it did not lead to a conviction,<sup>62</sup> although this determination ignored the fact that Resler had exercised his power over Anglin during the election by requiring him to modify his election speech. The penalty imposed was not a two or three hundred dollar fine after the election; it was the loss of free speech and the announcement in newspapers during the election that Anglin’s signs were illegal.

[45] Similarly, Justice Lema ruled that Resler’s incorrect allegation that Anglin’s signs had “no sponsorship information at all’ ... did not lead to any administrative penalty or prosecution.”<sup>63</sup> Yet, in Resler’s Notice of Administrative Penalty, he fined Mr. Anglin \$250 and he apparently used that incorrect allegation to justify taking down Anglin’s signs.<sup>64</sup>

[46] Finally, with regard to the Sponsorship proceeding, Justice Lema focused solely on the legal challenge in the administrative appeal – i.e. the fact that the courts determined the Guidelines to be part of the *Election Act*. However, that decision may not have had any effect on the removal and/or destruction of Anglin’s signs given that (i) Anglin’s evidence is that all 2,000+ of the lawn signs were already in compliance with the Guidelines; and (ii) Anglin immediately worked to put the larger signs in compliance.<sup>65</sup>

[47] When the Court of Appeal dealt with the earlier administrative proceedings, it took a

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<sup>60</sup> 2019 Affidavit, *supra* note 4 at para. 88, Respondent’s Record, Volume II, Tab 5, p. 14, and Transcript of Proceeding, Exhibit 46, Respondent’s Record Volume II, Tab 5 pp. 336-337.

<sup>61</sup> [Anglin v Resler, 2022 ABQB 477](#) at paras. 45, 90.

<sup>62</sup> [Anglin v Resler, 2022 ABQB 477](#) at para. 53.

<sup>63</sup> [Anglin v Resler, 2022 ABQB 477](#) at para. 76.

<sup>64</sup> 2019 Affidavit, *supra* note 4 at para. 81, Respondent’s Record, Volume II, Tab 5, p. 14; and Resler’s Decision, Exhibit 42, Respondent’s Record, Volume II, Tab 5, p. 294.

<sup>65</sup> 2019 Affidavit, *supra* note 4, paras. 31-34, Respondent’s Record, Volume II, Tab 5, p. 6-7.

different approach. Although Anglin’s statement of claim pleaded the requisite elements of numerous torts, including *inter alia* malicious prosecution and misfeasance in public office, the Court of Appeal assessed the earlier administrative proceedings only within the context of malicious prosecution, and omitted the broader context of misfeasance in public office.<sup>66</sup>

[48] The result was that the majority of the Court was able to conclude that Justice Lema had properly struck those paragraphs in the Statement of Claim.<sup>67</sup> Mr. Justice Wakeling, also considering these earlier administrative proceedings within the context of malicious prosecution, concluded that, with the exception of paragraph 11(ii) of the statement of claim, Mr. Anglin should be given the opportunity to amend his pleadings.<sup>68</sup>

[49] After making these decisions and restoring the bulk of the statement of claim, the Court of Appeal remitted the summary judgment application “back to the trial court for adjudication once the record has been perfected.”<sup>69</sup>

[50] Accordingly, pursuant to Rule 3.42 of the *Alberta Rules*, Resler continues to oppose this action through a summary judgment application, apparently free of any obligation to file a Statement of Defence and any obligation to serve an affidavit of records.

[51] Resler obtained leave to appeal the decision of the Court of Appeal of Alberta,<sup>70</sup> and he has appealed the whole decision of the Court.<sup>71</sup> The within appeal is an appeal at large; it is not limited to any particular or discrete issues.

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<sup>66</sup> [Anglin v. Resler, 2024 ABCA 113 at para. 53-61.](#)

<sup>67</sup> [Anglin v. Resler, 2024\] ABCA 113 at para. 61.](#)

<sup>68</sup> [Anglin v. Resler, 2024\] ABCA 113 at para. 235-245.](#)

<sup>69</sup> [Anglin v. Resler, 2024\] ABCA 113 at para. 75 per Slatter J.A. and Wooley J.A. and para. 280\(d\) per Wakeling J.A.](#)

<sup>70</sup> [Glen L. Resler, in his capacity as Chief Electoral Officer v. Joseph V. Anglin, 2024 CanLII 111481 \(SCC\).](#)

<sup>71</sup> Notice of Appeal on behalf of the Appellant, Glen L. Resler, in his Capacity as Chief Electoral Officer, December 16, 2024.

## PART II QUESTIONS IN ISSUE

[52] There is no dispute between the parties about the importance of a fair, and final, election. In fact, Anglin would have liked to have had one.

[53] Anglin does not dispute that the controverted-elections provisions of the *Election Act* (the “C-E Provisions”) were designed to provide an exclusive mechanism for the courts to determine who has the legal right to sit in the Legislative Assembly and whether an election is valid.<sup>72</sup> Anglin also accepts that if there is some doubt about who has won an election, the dispute should be resolved quickly as its implications may affect more than the specific candidate or riding at issue.

[54] However, the issues in this case do not involve a question about the validity or finality of an election. Instead, this case is about misfeasance in a public office and *Charter* rights, and in particular about the remedies that flow from the breach of these rights.

## PART III STATEMENT OF ARGUMENT

### A. No Right Without a Remedy

[55] The principle that there is no right without a remedy is an ancient one, forming the foundation of equity and tort law.<sup>73</sup>

[56] The principle was incorporated into English law through the decision in *Ashby v. White*. There, the plaintiff sued a returning officer because he had been denied the chance to vote. Relying on the ancient principle that there is no right without a remedy, the UK House of Lords allowed a private claim to proceed against the returning officer even though that claim

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<sup>72</sup> J. Patrick Boyer, *Election Law in Canada: the Law and Procedure of Federal, Provincial and Territorial Elections*, (1987, Butterworths, Toronto), Volume II Page 1057, Appellant’s Book of Authorities, Tab 7, p. 133.

<sup>73</sup> Regarding equity, see Jeff Berryman, “Equity’s Maxims as a Concept in Canadian Jurisprudence” (2012), 43(2) *Ottawa Law Review* 165, 170, Respondent’s Book of Authorities, Tab 2, pp. 31, 34. Regarding torts, note the comment by Lord Scarman in *Sidaway v. Board of Governors of the Bethlem Royal Hospital*, [1985] 1 A.C. 871 at 884 (H.L.). Also see Tracy Thomas, “Ubi Jus, Ibi Remedium: The Fundamental Right to a Remedy under Due Process (2004), 41 *San Diego Law Rev.* 1633, Respondent’s Book of Authorities, Tab 12, p. 262.

had arisen in the public context of an election.<sup>74</sup> There was no suggestion at the time that, by allowing the plaintiff a private remedy, the plaintiff would be challenging the whole election.

[57] Subsequent to *Ashby*, the foundational principle that there is no right without a remedy has become axiomatic in both Canadian tort law<sup>75</sup> and Canadian public law,<sup>76</sup> and it has been incorporated into section 24 of the *Charter*.<sup>77</sup> In *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, the majority of this Court stated:

A purposive approach to remedies in a *Charter* context gives modern vitality to the ancient maxim *ubi jus, ibi remedium*: where there is a right, there must be a remedy. More specifically, a purposive approach to remedies requires at least two things. First, the purpose of the right being protected must be promoted: courts must craft responsive remedies. Second, the purpose of the remedies provision must be promoted: courts must craft effective remedies.<sup>78</sup> (emphasis in original)

## B. Rights that are in Issue

[58] Since at least this Court's decision in *Roncarelli v. Duplessis*,<sup>79</sup> the tort of misfeasance in public office or abuse of public office has been recognized. The elements of this tort were summarized by this Court in *Odhavji Estate v. Woodhouse*:

22 What then are the essential ingredients of the tort [...]? In *Three Rivers*, the House of Lords held that the tort of misfeasance in a public office can arise in one of two ways, what I shall call Category A and Category B. Category A involves conduct that is specifically intended to injure a person or class of persons. Category B involves a public officer who acts with knowledge both that she or he has no power to do the act complained of and that the act is likely to injure the plaintiff. ...

<sup>74</sup> *Ashby v White* (1703), 92 E.R. 126 (H.L.).

<sup>75</sup> For example, see *Nevsun Resources Ltd. v. Araya*, [2020] 1 SCR 166 at para 120 per Abella J. (Wagner C.J., Karakatsanis, Gascon and Martin JJ. concurring), and at para. 214 per Brown and Rowe JJ.

<sup>76</sup> *Nevsun Resources Ltd. v. Araya*, [2020] 1 SCR 166, itself a torts case, referred to this principle at para. 120 per Abella J. (Wagner C.J., Karakatsanis, Gascon and Martin JJ. concurring). *Kazemi Estate v. Islamic Republic of Iran*, [2014] 3 SCR 176 at para 159 per LeBel J. (McLachlin C.J., Rothstein, Cromwell, Moldaver and Karakatsanis JJ. concurring).

<sup>77</sup> *Canadian Charter of Rights and Freedoms*, s. 24(1).

<sup>78</sup> *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 SCR 3 at para 25 per Iacobucci and Arbour JJ. (McLachlin C.J., and Gonthier and Bastrache JJ. concurring). In the US, see *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163-66 (1803), citing Blackstone *Commentaries*, Vol. 3, p. 23.

<sup>79</sup> *Roncarelli v. Duplessis*, [1959] SCR 121.

23 In my view, there are two such elements. First, the public officer must have engaged in deliberate and unlawful conduct in his or her capacity as a public officer. Second, the public officer must have been aware both that his or her conduct was unlawful and that it was likely to harm the plaintiff. What distinguishes one form of misfeasance in a public office from the other is the manner in which the plaintiff proves each ingredient of the tort. In Category B, the plaintiff must prove the two ingredients of the tort independently of one another. In Category A, the fact that the public officer has acted for the express purpose of harming the plaintiff is sufficient to satisfy each ingredient of the tort, owing to the fact that a public officer does not have the authority to exercise his or her powers for an improper purpose, such as deliberately harming a member of the public. In each instance, the tort involves deliberate disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiff.<sup>80</sup>

[59] As the majority of the Court of Appeal noted:

[64] The claim as pleaded by the appellant seems to engage both branches of the test. The allegations include that the respondent conspired with others in a deliberate attempt to defeat the appellant in the election, which would fall under Category A. The pleading also implies that the respondent intentionally engaged in activities to deprive the appellant of the opportunity to win the election, which he knew was beyond the mandate of the Chief Electoral Officer, and accordingly falls into category B.

[65] This claim must be measured in its statutory context. As noted, s. 134(5) the *Election Act* specifically authorizes the Chief Electoral Officer to remove non-compliant signs. Section 5.1 provides him with a general indemnity over anything done in good faith in the exercise of his powers under the *Act*. In short, to get around s. 5.1 all of the pleaded claims must rely on an absence of good faith. Conduct that meets the *Odhavji Estate* test would generally overcome the barrier that no action can be maintained against the Chief Electoral Officer if he acted in good faith: *Gay* at para. 40; *Wolfert v Shuchuk*, 2003 ABCA 109 at para. 3, 15 Alta LR (4th) 5.

[66] In analysing the appellant’s allegations of misfeasance in public office, no relevant distinction exists between the respondent’s pre-election conduct and post-election conduct.

[67] There are various elements of the amended statement of claim that contain facts that could meet the *Odhavji Estate* test for misfeasance in public office. It is alleged that the respondent worked with other individuals, including the other defendants, who were opposed to the appellant’s reelection. The respondent is alleged to have authorized other individuals to remove or damage the appellant’s signs. It is alleged that the respondent “singled out” the appellant and intended “to create an unfair advantage for Anglin’s opponents and to deny him a fair election”.<sup>81</sup>

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<sup>80</sup> *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 SCR 263 at paras. 22-23. This case followed the House of Lords in *Three Rivers District Council v. Governor and Company of the Bank of England (No. 3)*, [2001] UKHL 16, [2003] 2 A.C. 1 (H.L.).

<sup>81</sup> *Anglin v. Resler*, 2024] ABCA 113 at paras 64-65.

[60] Unlike malicious prosecution, which depends upon a successful acquittal of the criminal or administrative charge,<sup>82</sup> the tort of misfeasance in public office focuses on the actions of the public officer in the operational<sup>83</sup> use of his powers.<sup>84</sup> If the tort of misfeasance of a public office is committed through an administrative decision, there is no requirement of the plaintiff to set aside that decision.<sup>85</sup> Instead, as in the instant case, the existence of such a decision is one of the foundations for the tort. As Professor Chamberlain observed:

Claims based on administrative decisions (e.g. licensing, municipal planning) make up a large portion of the Canadian jurisprudence on misfeasance in a public office.<sup>86</sup>

[61] In fact, much of the early case law on misfeasance in a public office arose out of situations where administrative decisions were made in an electoral context:<sup>87</sup> denial of the right to vote,<sup>88</sup> irregularities in marking ballots,<sup>89</sup> and the refusal to hold a poll.<sup>90</sup>

[62] In Alberta, the office of the Chief Electoral Officer has been designed in a manner that allows for and is prone to abuse. Resler had the authority to create and amend Guidelines that are enforceable as part of the *Election Act*.<sup>91</sup> He also had the ability to initiate complaints,<sup>92</sup> to

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<sup>82</sup> [Bahadar v Real Estate Council of Alberta, 2021 ABQB 395 at paras. 29-31.](#)

<sup>83</sup> Honourable Justice Malcolm Rowe & Manish Oza, “Tort Claims Against Public Authorities” (2022) 60:1 *Alberta LR* 1 at 3, 4; Respondent’s Book of Authorities, Tab 9, pp. 197 and 204.

<sup>84</sup> [Odhavji Estate v. Woodhouse, 2003 SCC 69, \[2003\] 3 SCR 263 at para. 26.](#) [Garrett v. Attorney-General, \[1997\] 2 N.Z.L.R. 332, 350 \(CA\)](#) per Blanchard J.; Erika Chamberlain, *Misfeasance in a Public Office* (Thomson Reuters, 2016) p. 29, Respondent’s Book of Authorities, Tab 4, p. 70.

<sup>85</sup> For examples of this proposition see [McGillivray v. Kimber, \[1915\] 52 SCR 146](#) and [Roncarelli v. Duplessis, \[1959\] SCR 121](#). Also see [Three Rivers District Council v. Governor and Company of the Bank of England \(No. 3\), \[2000\] 2 WLR 1220, \[2000\] UKHL 33](#) per Lord Hobhouse. The same proposition is true for other causes of action. See [Canada \(Attorney General\) v. TeleZone Inc., \[2010\] 3 SCR 585 at para. 19.](#)

<sup>86</sup> Erika Chamberlain, *Misfeasance in a Public Office* (Thomson Reuters, 2016) p. 201, Respondent’s Book of Authorities, Tab 5, p. 72.

<sup>87</sup> Erika Chamberlain, *Ibid*, p. 25, Respondent’s Book of Authorities, Tab 5, p. 68.

<sup>88</sup> [Ashby v White, \(1703\) 92 E.R. 126 \(H.L.\)](#); [Cullen v. Morris \(1819\), 171 E.R. 741, \(Nisi Prius\)](#).

<sup>89</sup> [Pickering v. James, \[1873\] L.R. 8 C.P. 489 \(C.P.\)](#), Respondent’s Book of Authorities, Tab 1.

<sup>90</sup> [Turner v. Sterling \(1671\), 86 E.R. 214, 1 East 555 \(Eng. K.B.\)](#).

<sup>91</sup> [Anglin v Chief Electoral Officer, 2018 ABCA 296](#), leave to appeal to S.C.C. refused, [2019 CanLII 37484](#).

<sup>92</sup> 2019 Affidavit, *supra* note 4 at para 97, Respondent’s Record, Volume II, Tab 5, p. 15.

investigate and then prosecute those complaints,<sup>93</sup> and ultimately to act as arbiter in deciding whether an individual is in breach of the *Act*. He is authorized to be the legislator, complainant, investigator, prosecutor, and arbiter.<sup>94</sup>

- [63] A motion to strike is not the place to assess whether there is sufficient evidence to support an allegation of malice, because “[s]o much depends upon the testimony of the witnesses and the inferences and nuances to be drawn from that evidence” and therefore the “proper test to be applied is whether it is plain and obvious that the material facts as pleaded could not lead to a finding of malice”.<sup>95</sup> Bearing this in mind, Anglin also alleged that Resler:
- (i) announced to the press in Anglin’s riding that Anglin’s signs were illegal,<sup>96</sup> contrary to provisions of the *Election Act*,<sup>97</sup> which conduct would come within category A;
  - (ii) forced Anglin to cover over the letters “MLA”,<sup>98</sup> the use of which was not prohibited by the *Election Act* (the only statute pursuant to which Resler had jurisdiction), which conduct would come within category B;
  - (iii) initiated an investigation into Anglin’s use of “MLA”<sup>99</sup> when there was nothing in the *Election Act* that prohibited it, which conduct would come within category B;
  - (iv) initiated an investigation of Anglin “for failing to put sponsorship information on some signs” and “for failing to put a telephone number contact in the sponsorship information”,<sup>100</sup> and then concluded that Anglin had breached the *Act*, when Resler knew or should have known that there was no evidence to support these findings (in

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<sup>93</sup> 2019 Affidavit, *supra* note 4 at paras 69, 71, 72, 94-97, Respondent’s Record, Volume II, Tab 5, pp. 11, 12, 15.

<sup>94</sup> 2019 Affidavit, *supra* note 4 at paras 74, 79, 103-104, Respondent’s Record, Volume II, Tab 5 pp. 12, 13, 18.

<sup>95</sup> [\*Miguna v. Toronto \(City\) Police Services Board\*, 2008 ONCA 799 at para 32.](#)

<sup>96</sup> Amended Statement of Claim at para. 6(ii), Appellant’s Record, Vol. 2, p. 16; 2019 Affidavit, *supra* note 4 at paras 32-34, Respondent’s Record, Volume II, Tab 5, pp. 6-7.

<sup>97</sup> [\*Election Act\*, R.S.A. 2000 c. E-1, s. 4.4, repealed by \*An Act to Strengthen and Protect Democracy in Alberta\*, S.A. 2017, c 29, s. 8.](#)

<sup>98</sup> Amended Statement of Claim at para. 6(1), Appellant’s Record, Vol. II, p. 16; 2019 Affidavit, *supra* note 4 at paras 31-34, Respondent’s Record, Volume II, Tab 5, pp. 106-07.

<sup>99</sup> Amended Statement of Claim at paras. 11(i) and 12, Appellant’s Record, Vol. 2, p. 17; 2019 Affidavit, *supra* note 4 at paras. 67-71, Respondent’s Record, Volume II, Tab 5, pp. 11-12.

<sup>100</sup> Amended Statement of Claim at para. 13, Appellant’s Record, Vol. 2, p. 18; 2019 Affidavit, *supra* note 4 at paras. 78-89, Respondent’s Record, Volume II, Tab 5, pp. 13-14.

fact, Resler later admitted there was no evidence to support these conclusions),<sup>101</sup> which conduct would come within either category A or B;

- (v) in this same investigation, produced a record certifying that he had “attached all records as required by Rule 3.19(1)”, and then, five days before the Appeal of the decision following that investigation, he produced a Supplemental Record comprising some 92 pages and certifying that these documents “were inadvertently omitted from the Certified Record of Proceedings”.<sup>102</sup> An analysis of the evidence in this latest production showed that evidence had been fabricated,<sup>103</sup> resulting in Resler’s concession that there were no signs without sponsorship information, despite his previous finding<sup>104</sup> – all of which conduct would come within either category A or B;
- (vi) initiated an investigation respecting a List of Electors that had been given to Anglin, then decided against Anglin, which decision was set aside by Ross J. of the Court of Queen’s Bench for lack of fairness;<sup>105</sup> Ross J.’s decision required that Resler include as part of the record an affidavit that contained exculpatory evidence, which evidence had been provided to the investigator, but which was conspicuously absent from Resler’s original record<sup>106</sup> – both of which come within category A.

[64] Individually, each of these claims satisfy the requirements of the tort of misfeasance in public office. Collectively, the evidence is overwhelming. Yet, in in upholding Lema J.’s striking of the paragraphs from Anglin’s statement of claim that dealt with the prior administrative proceedings, the majority of the Court of Appeal analyzed the impugned paragraphs only through the narrow lens of malicious prosecution, and ultimately concluded, “[a]ttempting

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<sup>101</sup> Transcript of Proceedings before Justice Clackson, May 16, 2017, 2019 Affidavit, *supra* note 4 at para. 88 and Exhibit 46, Respondent’s Record, Volume II, Tab 5, p. 14 and 336

<sup>102</sup> 2019 Affidavit, *supra* note 4 at paras. 82-83, Respondent’s Record, Volume II, Tab 5, p. 14.

<sup>103</sup> Affidavit of Joseph Anglin sworn May 9, 2017, Exhibit 44 to the 2019 Affidavit, *supra* note 4, Respondent’s Record, Volume II, Tab 5, pp. 306-330.

<sup>104</sup> Transcript of Proceedings before Justice Clackson, May 16, 2017, 2019 Affidavit, *supra* note 4 at para 88 and Exhibit 46, Respondent’s Record, Volume II, Tab 5, p. 14 and p. 336.

<sup>105</sup> [\*Anglin v Alberta \(Chief Electoral Officer\)\*, 2021 ABQB 353 at para. 25.](#)

<sup>106</sup> [\*Anglin v Alberta \(Chief Electoral Officer\)\*, 2020 ABQB 131 at para. 13.](#) 2019 Affidavit, *supra* note 4, para. 103, Respondent’s Record, Volume II, Tab 5, p. 18 and Affidavit of Cody Johnston, affirmed February 9, 2018, Exhibit 49, Respondent’s Record, Volume II, Tab 5, p. 468.

to reformulate these prosecutions as an aspect of misfeasance in public office would be an abuse of process.”<sup>107</sup> Justice Wakeling, in his separate decision, concluded that many of these paragraphs could be amended instead of being struck.<sup>108</sup>

[65] Significantly, Resler’s misfeasance during the election resulted in breaches of Anglin’s section 2(b) and 3 *Charter* rights. Political expression lies at the very heart of Anglin’s section 2(b) rights,<sup>109</sup> and the state cannot choose which candidate can be allowed to succeed in an election.<sup>110</sup> Moreover, section 3 guarantees Anglin’s right to run as a candidate for membership in a legislative assembly.<sup>111</sup> As the Supreme Court of Nova Scotia stated in a similar case, “it is inescapable that a purported order imposing limits on political speech limits *Charter* rights.”<sup>112</sup>

[66] While Anglin’s rights under sections 2(b) and 3 of the *Charter* can be subject to those “reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”, any limitation must be minimally impairing.<sup>113</sup> The administrative

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<sup>107</sup> [Anglin v Resler, 2024 ABCA 113 at para 59](#), per Slatter J.A. and Woolley J.A.

<sup>108</sup> [Anglin v. Resler, 2024 ABCA 113 at paras. 234, 279](#) per Wakeling J.A. Justice Wakeling did, however, order paragraph 11(ii) to be struck.

<sup>109</sup> [R. v. Guignard, \[2002\] 1 SCR 472 at para. 20](#). [Vann Media Group Inc. v. Oakville \(Town\), 2008 ONCA 752 at para. 35](#): “Also see [Harper v. Canada \(Attorney General\), \[2004\] 1 SCR 827 at para. 41](#)

<sup>110</sup> [Vezina v. City of Mississauga, 2019 ONSC 5925 at para. 15](#). [R. v. Keegstra, \[1990\] 3 SCR 697](#), at 765 per Dickson C.J.

<sup>111</sup> [Harvey v. New Brunswick \(Attorney General\), \[1996\] 2 SCR 876 at para. 28](#), per LaForest J. (Sopinka, Gonthier, Cory, Iacobucci and Major JJ. concurring).

<sup>112</sup> [Nova Scotia Liberal Party v. Chief Electoral Officer, 2024 NSSC 172 at para. 64](#).

<sup>113</sup> [RJR-MacDonald Inc. v. Canada \(Attorney General\), \[1995\] 3 SCR 199 at para. 160](#); see also [Harper v. Canada \(Attorney General\), \[2004\] 1 SCR 827 at para. 32](#). Also see [Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component, 2009 SCC 31 at para. 80](#).

[R. v. Guignard, \[2002\] 1 SCR 472 at para. 31](#): “Finally, the impact of the by-law on Guignard’s freedom of expression is disproportionate to any benefit that it secures for the municipality. In this respect, we have seen that posting signs is an optimum means of expression for individuals (see *Ramsden*, at p. 1102). By limiting that means of expression, the by-law amounts to a serious and unjustified infringement of a form of expression that has been commonly used for a long time and is closely connected to the values underlying the protection of freedom of

proceedings commenced by Resler against Anglin, which provided *ex post facto* justification for Resler's actions in removing or destroying Anglin's signs, are at the very least relevant to whether Resler's violation of Anglin's *Charter* rights can be justified.

[67] In this case, minimal impairment would have meant taking pictures of potentially illegal signs and charging Anglin after the election was over rather than (i) declaring to the press that Anglin's signs were illegal; (ii) forcing Anglin to cover over and alter the political speech on his signs under threat of removing those signs; and (iii) actually taking down and destroying signs.

[68] It is clear that Anglin had *Charter* and common law rights relevant to this action, both during the 2015 election and afterward. If Anglin's rights were violated as his claim alleges (and for the purpose of a striking application, allegations pleaded in a statement of claim are assumed to be true),<sup>114</sup> then Anglin is entitled to a remedy unless it can be shown that those rights have otherwise been eliminated or extinguished.

**(i) Do the Controverted-Election Provisions Eliminate Anglin's Rights?**

[69] Resler asserts that Anglin is not entitled to sue him, and that Anglin's only procedural option was to challenge the election itself.<sup>115</sup> Alternatively, Resler takes the position that Anglin's claim is a "collateral attack on the outcome of the 2015 election" and an abuse of process.<sup>116</sup>

[70] As noted above, Resler's argument is based on the false premise that Anglin's claim seeks to set aside or invalidate the 2015 election result, whether directly or indirectly. Even if it were possible for Anglin to do so 10 years post-election (and to be clear, it is not possible), Resler's argument fundamentally mischaracterizes Anglin's action. Anglin's claim is for damages against certain individuals who caused him harm, and that claim is based in part on the fact that Anglin lost the election. Rather than challenging the 2015 election, the validity

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expression."

<sup>114</sup> *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24, [2011] 2 SCR 261 at para. 20.

<sup>115</sup> Appellant's factum, Part III(A), referencing Patrick Boyer, *Election Law in Canada: the Law and Procedure of Federal, Provincial and Territorial Elections*, p. 1057, Appellant's BOA, Tab 7, p. 130.

<sup>116</sup> Appellant's factum, Part III(B), paras. 54 to 62.

and finality of the election result is fundamental to Anglin's claim.

[71] Still, assuming for the purposes of argument that the C-E Provisions are relevant to Anglin's claim for a remedy, it is important to note three points.

[72] First, certain laws explicitly exclude private action.<sup>117</sup> For example, in *Thibodeau v. Air Canada*, this court concluded that a private action could not be maintained in the face of Article 29 of the *Montreal Convention*.<sup>118</sup> That provision read as follows:

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.<sup>119</sup> (emphasis added)

[73] There is no such explicit language in the C-E Provisions of the *Election Act*.

[74] Second, the *Election Act* recognizes that individuals have rights of private action against the Chief Electoral Officer. Section 5.1 of the Act, discussed in more detail below, prohibits actions against the Chief Electoral Officer when he has acted in "good faith". The "good faith" qualification acknowledges that actions for bad faith conduct are permitted, and bad faith is central to the tort of misfeasance in public office.

[75] Third, while the exclusion of private actions can be implied in theory, there is nothing in this case to suggest such an implication. In considering whether Ontario's *Personal Health Information Protection Act* ousted the jurisdiction of the Superior Court to hear a common

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<sup>117</sup> In *Ernst v. Alberta Energy Regulator*, [2017] 1 SCR 3 the Court considered a clause at [para. 9](#). In *Amax Potash Ltd. Etc. v. The Government of Saskatchewan*, [1977] 2 SCR 576 this Court considered the validity of s. 5.(7) of *The Proceedings against the Crown Act*, [R.S.S. 1965, c. 87](#). R. Sullivan, *Sullivan on the Construction of Statutes* (7<sup>th</sup> Ed., LexisNexis Canada), at §17.02 provides examples of other codes at Respondent's Book of Authorities, Tab 11, p. 256.

<sup>118</sup> *Thibodeau v. Air Canada*, 2014 SCC 67, [2014] 3 SCR 340.

<sup>119</sup> *Convention for the Unification of Certain Rules for International Carriage by Air*, 2242 U.N.T.S. 309 [*Montreal Convention*], art. 29.

law claim for invasion of privacy, the Ontario Court of Appeal in *Hopkins v. Kay* identified three factors that courts should consider in determining that issue. These are:

- (i) whether the “process for dispute resolution established by the legislation” is “consistent with exclusive jurisdiction”;
- (ii) the “nature of the dispute” and the “extent to which the court’s assumption of jurisdiction would be consistent or inconsistent with that scheme”; and
- (iii) “the capacity of the scheme to afford effective redress” on the basis that “where there is a right there is a remedy.”<sup>120</sup>

[76] With respect to the first consideration – i.e. the issue of process – the C-E Provisions in the Alberta *Election Act* are inconsistent with the concept of exclusive jurisdiction for three main reasons. First, the C-E Provisions only allow “the candidate whose election is challenged” to be named as a respondent in the petition.<sup>121</sup> Anglin’s claim is not against the person who won the election (Jason Nixon). Anglin’s claim is against a number of individuals he alleges to have worked together to take or destroy his signs and interfere in his campaign, one of whom was Resler but none of whom was the candidate in the election. Second, the C-E Provisions require a petition to be filed within 30 days of the election,<sup>122</sup> while Anglin’s claim included conduct by Resler that occurred well after 30 days post-election. Third, while the C-E Provisions ultimately require the determination of the issue to be made by a judge, the Chief Electoral Officer is an integral part of the process of implementing the judge’s decision.<sup>123</sup> This would have the effect of putting Resler, as respondent, in charge of implementing whatever decision the judge makes.

[77] With respect to the second consideration – i.e. the nature of the dispute – the C-E Provisions of the *Election Act* do not contemplate the nature of Anglin’s personal claim. Anglin’s claim is based on rights personal to him, including his right to claim compensation for the tort of misfeasance of public office and for the deprivation of his section 2(b) and section 3 *Charter*

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<sup>120</sup> *Hopkins v. Kay*, 2015 ONCA 112, leave to appeal to the S.C.C. refused. The Court relied upon earlier decision of *Pleau v. Canada (Attorney General)*, 1999 NSCA 159, leave to appeal to the S.C.C. refused [2000] S.C.C.A No. 83.

<sup>121</sup> *Election Act*, R.S.A. 2000, c. E-1, s. 186(2).

<sup>122</sup> *Election Act*, R.S.A. 2000, c. E-1, s. 185(2)(b).

<sup>123</sup> *Election Act*, R.S.A. 2000, c. E-1, s. 195(1).

rights. Anglin does not seek to challenge or overturn the election results. He seeks instead to determine the liability of various individuals for their actions during the election, and the liability of Resler for his actions during and after the election. The C-E Provisions only contemplate a determination of who should be recognized as winning the election, and that is not at issue in Anglin's action. If Anglin is limited to the public remedy under the C-E Provisions, then there is no personal accountability whatsoever for individuals who committed torts against Anglin.

[78] With respect to the third consideration – i.e. the capacity of the scheme to afford effective redress – the C-E Provisions of the *Election Act* are again unsuitable for Anglin's situation, as they leave him with no effective remedy for the wrongs committed. Anglin's claim is for damages because that is the normal remedy for a tort. The C-E Provisions contemplate only one remedy: a declaration that an "election be declared void and set aside."<sup>124</sup> The singularity of the remedy in the C-E Provisions raises three additional, important points:

- (i) If Resler is correct that the only remedy for a tort committed during the election is to challenge the election result pursuant to the C-E Provisions of the *Election Act*, then a candidate who is seriously injured, but wins the election, would have no remedy whatsoever against wrongdoers. It would also mean that the more effectively a candidate is injured, such that s/he has no chance of challenging the election, then s/he will also have no remedy.
- (ii) While Anglin was seeking to win re-election in the 2015 election, winning is not always the purpose or motivation for an individual's candidacy. Many candidates run with no reasonable expectation of winning, because *the campaign is itself an important forum* where a party can bring attention to various issues that may be ignored after the election. Hence, the C-E Provisions of the *Election Act* do nothing to help these individuals if they are subject to tortious conduct during an election.
- (iii) Anglin's claim for damages also flows from the infringement of his right to make political speech during the election and his right to run for elected office. These are constitutional rights, and the remedy under s. 24 of the *Charter* is a constitutional right.

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<sup>124</sup> *Election Act, R.S.A. 2000, c. E-1, s. 186(1)(d)*.

Resler’s argument, that Anglin’s only remedy is through the C-E Provisions, would deny Anglin of his right to a remedy under s. 24.

[79] With regard to this last point, the courts have been consistent that, where two interpretations of a statute are equally plausible, the interpretation that accords with *Charter* values will be preferred and adopted.<sup>125</sup>

[80] Therefore, even if it can be argued that the C-E Provisions impliedly exclude private action, when that action is based at least in part on *Charter* grounds, the court must interpret the C-E Provisions in a manner that allows Anglin to claim for damages against Resler. As this Court stated in *Telezone*:

This appeal is fundamentally about access to justice. People who claim to be injured by government action should have whatever redress the legal system permits through procedures that minimize unnecessary cost and complexity. The Court’s approach should be practical and pragmatic with that objective in mind.<sup>126</sup>

[81] This conclusion—that the C-E Provisions do not exclude private actions for torts or for breaches of *Charter* rights—is consistent with the well-established legal presumption that Legislatures do not intend to abolish, limit, or otherwise interfere with the rights of subjects.<sup>127</sup> In particular, the courts are clear that, if a Legislature intends a statute or statutory scheme to constitute an “exhaustive code”<sup>128</sup> to address legal wrongs in a specific context (e.g. an election), then that intention must be either expressed or implied in the statute.<sup>129</sup>

[82] The C-E Provisions would shift Resler’s personal liability for his actions to a process that provides no remedy whatsoever. If his remedy is limited to the C-E Provisions, there will be

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<sup>125</sup> *Application under s. 83.28 of the Criminal Code (Re)*, [2004] 2 SCR 248 at para. 35 per Iacobucci and Arbour JJ. (McLachlin C.J. and Major concurring), relying on *Slaight Communications Inc. v. Davidson*, [1989] 1 SCR 1038, at 1078; *R. v. Nova Scotia Pharmaceutical Society*, [1992] 2 SCR 606 at 660; *R. v. Lucas*, [1998] 1 SCR 439 at para. 66; and *R. v. Sharpe*, [2001] 1 SCR 45 at para. 33.

<sup>126</sup> *Canada (Attorney General) v. TeleZone Inc.*, [2010] 3 SCR 585 at para. 18.

<sup>127</sup> R. Sullivan, *Sullivan on the Construction of Statutes* (7<sup>th</sup> Ed., LexisNexis Canada), §15.04, Respondent’s Book of Authorities, Tab 11, p. 243.

<sup>128</sup> R. Sullivan, *Sullivan on the Construction of Statutes* (7<sup>th</sup> Ed., LexisNexis Canada), § 17.20, Respondent’s Book of Authorities, Tab 11, p. 251.

<sup>129</sup> *Hopkins v. Kay*, 2015 ONCA 112 at para. 30, leave to appeal to the S.C.C. refused.

no remedy for Resler stating in newspapers that Anglin’s signs were illegal and would be taken down, and no remedy for the actual removal and/or destruction of all of Anglin’s election signs. There will be no remedy whatsoever for the infringement of Anglin’s section 2(b) *Charter* rights or for Resler’s malicious actions in the administrative proceedings.

[83] Resler argues that the “Court of Appeal failed to consider if allowing Mr. Anglin’s litigation to proceed is an abuse of process.”<sup>130</sup> This argument is tied into, and depends upon, the C-E Provisions in two ways.

[84] First, Resler argues that Anglin’s claim is a challenge to the fairness of the election. Again, this is a “straw man” mischaracterization of Anglin’s claim, as recognized by the Court of Appeal.<sup>131</sup> Anglin’s claim is instead based on the breach of his rights, both before and after the election, with a mountain of facts to support the claim. So long as those breaches exist, and so long as Anglin is not restricted to the process contained in the C-E Provisions of the *Election Act*, then surely his claim for damages cannot be considered an abuse of process.

[85] Second, Resler argues that Anglin’s claim is a “collateral attack” on the election and therefore an abuse of process. Both the majority and minority decisions of the Court of Appeal agreed that Resler mischaracterizes the nature of the Anglin’s claim.<sup>132</sup> Rather than challenging the outcome of the election; Anglin’s “claim is in fact based on the assumption that the outcome of that election is unimpeachable.”<sup>133</sup>

[86] In fact, Anglin’s complaint about Resler’s actions during the election, and the administrative proceedings he brought after the election, are an integral part of his claim for misfeasance in a public office. Denying Anglin the right to include those proceedings in his claim would deny him his right to the action itself—despite ample evidence of malice associated with those proceedings.

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<sup>130</sup> Appellant’s factum, para. 58.

<sup>131</sup> [Anglin v Resler, 2024 ABCA 113 at paras. 48-52](#) per Slatter and Wooley JJ.A. and per Wakeling J.A. at [paras. 183-188](#) (without footnotes).

<sup>132</sup> [Anglin v Resler, 2024 ABCA 113](#) at para. 48 per Slatter and Wooley JJ.A., and per Wakeling J.A. at para. 186.

<sup>133</sup> [Anglin v Resler, 2024 ABCA 113](#) at para. 48 per Slatter and Wooley JJ.A.

**(ii) Does Parliamentary Privilege eliminate Anglin’s Rights?**

- [87] Resler argues that “Parliamentary privilege must protect the Chief Electoral Officer from ‘loss-of-chance claims.’”<sup>134</sup>
- [88] Historically, parliamentary privilege was recognized as those powers that were necessary for members of parliament to discharge the functions of the House.<sup>135</sup>
- [89] Alberta has recognized this privilege in the *Legislative Assembly Act* as follows:
- 9(1)** In addition to the privileges, immunities and powers respectively conferred on them by this Act, the Assembly and its Members, and the committees of the Assembly and their members, have the same privileges, immunities and powers as those held respectively by the House of Commons of the Parliament of the United Kingdom, the members of that House, the committees of that House and the members of committees of that House at the time of the passing of the Constitution Act, 1867.<sup>136</sup> (emphasis added)
- [90] Section 9(1) thus limits “privilege” to “the Assembly and its Members, and the committees of the Assembly and their members.” The *Act* further makes it clear that the “Legislative Assembly” “consist[s] of the persons elected pursuant to the *Election Act* as members of the Assembly to represent respectively the electoral divisions described in the Schedule to the *Electoral Divisions Act*.”<sup>137</sup>
- [91] In *New Brunswick Broadcasting*, this Court dealt with the issue of parliamentary privileges in the context of an application by a media company to film proceedings of the Nova Scotia House of Assembly. In this context, Chief Justice Lamer probed the question of who holds the privilege. He concluded, “it is the Houses of Parliament and the provincial legislative

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<sup>134</sup> Appellant’s Factum, para. 49.

<sup>135</sup> *Erskine May’s treatise on the law, privileges, proceedings and usage of Parliament (25th edition, 2019), online edition, 12.1*. This definition was cited by *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 SCR 319, 341, 379-80 per McLachlin J. (L’Heureux-Dubé, Gonthier, and Iacobucci JJ concurring), LaForest J. agreeing in separate reasons. Also see Joseph Maingot, *Parliamentary Privilege in Canada* (Toronto: Butterworths, 1982), p. 12, Respondent’s Book of Authorities Tab 7, p. 127.

<sup>136</sup> *Legislative Assembly Act*, RSA 2000, c L-9, s. 9(1).

<sup>137</sup> *Legislative Assembly Act*, RSA 2000, c L-9, s. 2.

assemblies, and their members, that hold and exercise parliamentary privileges.”<sup>138</sup>

[92] Resler is clearly not a member of the Legislative Assembly and accordingly he is not entitled to any privilege. Even if he were a member, privilege only attaches to members while they are in the House.<sup>139</sup> None of Resler’s impugned acts took place in the House.

[93] Because the Legislative Assembly was dissolved in order to conduct the 2015 general election, there was no Legislative Assembly when many of Resler’s impugned acts occurred. In fact, Resler’s rationale for requiring Anglin to cover “MLA” on his signs was specifically because the Legislative Assembly had dissolved and there were no MLAs in existence.<sup>140</sup> Consequently, even if Resler had a privilege (he did not), he cannot have been exercising that parliamentary privilege at the relevant time and in the absence of a constated Legislative Assembly.

[94] It should be noted that the Alberta Legislative Assembly has slightly enlarged the concept of privilege, in the sense that it is considered to be a breach of privilege or contempt to assault or interfere “with an officer or employee of the Legislative Assembly Office in the execution of the person’s duties”.<sup>141</sup> This enlarged scope of privilege is not, however, a generalized grant of privilege to any such officer or employee; it is only a limited grant protecting them from being assaulted or interfered with, and this limited grant is not at issue in this appeal.

[95] When Resler argues that “his conduct of an election is subject to parliamentary privilege,”

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<sup>138</sup> *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 SCR 319, 341 per Lamer C.J. Also see Joseph Maingot, *Parliamentary Privilege in Canada* (Toronto: Butterworths, 1982), p. 12, Respondent’s Book of Authorities Tab 7, p. 127.

<sup>139</sup> *Canada (House of Commons) v. Vaid*, [2005] 1 SCR 667 at para. 46. *Re Ouellet (Nos. 1 and 2)*, [1976] CA 788, 72 DLR (3d) 95 at 99-100 per Tremblay C.J.Q. Also see *Pankiw v. Canada (Human Rights Commission)* (F.C.), 2006 FC 1544 (CanLII), [2007] 4 F.C.R. 578.

<sup>140</sup> 2019 Affidavit, *supra* note 4, paras 24-26, and Exhibit 12, Resler’s Cease and Desist Letter of April 23, 2015, Respondent’s Record, Volume II, Tab 5, p. 5 and p. 88. At p. 89 of the Record, Resler writes, at the beginning of his investigation: “I intend to find that you have breached section 160 of the *Election Act* by making a false statement about your character or conduct in your use of “MLA” on your advertisements.”

<sup>141</sup> *Legislative Assembly Act, RSA 2000, c L-9, s. 10(2)(d)*.

he is effectively arguing that he has the privilege (even though not a member of the Legislative Assembly, and even when the Assembly is dissolved) to interfere with Anglin's *Charter* rights during an election, and even if his interference affects which candidate is ultimately elected. Resler's argument further contemplates that his claimed privilege immunizes him from liability for any damages he caused to Anglin, even if Resler acted in bad faith. This is not a privilege that has ever been recognized, nor should it be.

**(iii) Is the Chief Electoral Officer Immune to Anglin's Action?**

[96] In recent years, various provincial Legislatures have enacted laws to make provincial officials immune from claims for damages resulting from *Charter* breaches. For example, the following provision exists in Saskatchewan legislation:

**197.4(5)** No action or proceeding based on any claim for loss or damage resulting from the enactment or implementation of this section or of a regulation or policy related to this section lies or shall be commenced against:

- (a) the Crown in right of Saskatchewan;
- (b) a member or former member of the Executive Council;
- (c) a board of education, the conseil scolaire, the SDLC or a registered independent school; or
- (d) any employee of the Crown in right of Saskatchewan or of a board of education, the conseil scolaire, the SDLC or a registered independent school.

**(6)** Every claim for loss or damage resulting from the enactment or implementation of this section or of a regulation or policy related to this section is extinguished".<sup>142</sup>

[97] The protection provided for the Chief Electoral Officer in the Alberta *Election Act* is much narrower:

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<sup>142</sup> *The Education Act*, S.S. 1995, c. E-0.2, s. 197.4(5) and (6). There are many other such provisions. For example, in Saskatchewan see: *The School Choice Protection Act*, S.S. 2018, c 39, s. 5(1); *The Mineral Taxation Act*, S.S. 1983-84, c M-17.1, s. 19.1; *The Corporation Capital Tax Amendment Act, 2022*, S.S. 2022, c 5, s. 6; and *The Miscellaneous Statutes (Accretion) Amendment Act, 2023*, S.S. 2023, c 5, s. 3-3(8). In Ontario, see *Connecting Care Act, 2019*, SO 2019, c 5, Sch 1, s. 46 and *Building Highways Faster Act, 2024*, s. 17, Schedule 2 to *An Act to enact two Acts and amend various Acts with respect to Highways, broadband-related expropriation and other transportation-related matters*, s. 17, S.O. 2024, c. 25.

In *Ontario Place Protectors v. HMK in Right of Ontario*, 2024 ONSC 4194 the validity of the law was upheld in part because the legislation still allowed judicial review to take place.

**5.1(1)** No proceedings lie against the Chief Electoral Officer or a returning officer, or against a person acting for or under the direction of the Chief Electoral Officer or a returning officer, for anything done, or omitted to be done, in good faith in the exercise or performance or the intended exercise or performance of a power, duty or function under this Act ...<sup>143</sup> (emphasis added)

[98] By specifically limiting the Chief Electoral Officer’s immunity to acts done in good faith, the Alberta *Election Act* clearly leaves Resler open to acts committed in bad faith.

[99] Bad faith was alleged in the statement of claim, which pleaded, for example, that Resler “exercised public powers for an improper or ulterior motive, knowing that it was likely to cause harm to Anglin” and that “Resler knew or should have known that he had no power to undertake these actions or he had a subjective and reckless indifference with respect to whether he had the power to undertake these actions”.<sup>144</sup> Actions by Resler that can constitute bad faith include without limitation violating the *Election Act* by declaring to the press that Anglin’s signs were illegal,<sup>145</sup> singling out Anglin’s signs when other candidates’ non-compliant signs were ignored,<sup>146</sup> excluding exculpatory evidence in the List of Electors case,<sup>147</sup> and making findings in the Sponsorship proceeding without any evidence.<sup>148</sup>

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<sup>143</sup> [Election Act, RSA 2000, c E-1, s. 5.1\(1\)](#).

<sup>144</sup> Amended Statement of Claim, paras. 8, 9, 11 and 15, Appellant’s Record, Vol. II, pp. 17-18.

<sup>145</sup> 2019 Affidavit, *supra* note 4, paras 38 and 39, Respondent’s Record, Volume II, Tab 5, p. 7.

<sup>146</sup> 2019 Affidavit, *supra* note 4, paras 63 and 64, Respondent’s Record, Volume II, Tab 5, pp. 10-11.

[Meekis v. Ontario, 2021 ONCA 534 at para. 79](#): “It is well-settled that exercising discretion based on discriminatory considerations constitutes an improper purpose: [Baker v. Canada \(Minister of Citizenship and Immigration\)](#), [1999] 2 SCR 817 at para. 53. There can be no doubt that a failure to act, if based on discriminatory considerations, is equally improper. Indeed, in his oft-cited judgment in [Roncarelli v. Duplessis](#), [1959] SCR 121, Rand J. affirmed that using one’s public power to discriminate against a particular class of persons is “knowingly foreign” to the proper exercise of discretionary statutory decision-making.”

<sup>147</sup> 2019 Affidavit, *supra* note 4, at para. 103 Respondent’s Record, Volume II, Tab 5, p. 18 and Affidavit of Cody Johnston, affirmed February 9, 2018, Exhibit 49, Respondent’s Record, Volume II, Tab 5, p. 168 and [Anglin v Alberta \(Chief Electoral Officer\), 2020 ABQB 131 at para. 13](#).

<sup>148</sup> 2019 Affidavit, *supra* note 4, at paras. 86-87, Respondent’s Record, Volume II, Tab 5, p. 14.

[100] In the Court of Appeal decision below, both the majority<sup>149</sup> and minority<sup>150</sup> rightly concluded that section 5.1 provides no immunity to Resler if Anglin’s claims of misfeasance of public officer are ultimately proven.

[101] Section 5.1 appears to be a codification of the early English election cases that established the tort of misfeasance in public office. Those cases evolved by initially recognizing that a remedy must exist if a right has been infringed.<sup>151</sup> The jurisprudence then progressed to requiring malice as an element of the tort.<sup>152</sup> If Resler can ultimately show that he acted in good faith, then Anglin will have failed to establish the tort and Resler will also have the express protection of section 5.1. Anglin does not assert that Resler has no statutory immunity at all. Anglin simply asserts the obvious fact that Resler’s immunity is not absolute, and it is qualified by a good faith precondition.

### C. Remedies Follow Rights

[102] Nothing in Resler’s arguments operates to deprive Anglin of his rights, and in particular his right to political expression. It must follow that Anglin is entitled to a remedy for the breach of those rights.

When a person can demonstrate that one of his *Charter* rights has been infringed, access to a court of competent jurisdiction to seek a remedy is essential for the vindication of a constitutional wrong. To create a right without a remedy is antithetical to one of the purposes of the *Charter* which surely is to allow courts to fashion remedies when constitutional infringements occur.<sup>153</sup>

[103] Damages is the common remedy for the breach of a right.<sup>154</sup> In this case, part of Anglin’s damages will be based on his loss of chance to become the MLA for his riding.

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<sup>149</sup> *Anglin v Resler*, 2024 ABCA 113 at para. 65 per Slatter and Wooley JJ.A.

<sup>150</sup> *Anglin v Resler*, 2024 ABCA 113, at para. 234 per Wakeling J.A.

<sup>151</sup> *Ashby v White*, (1703) 92 ER 126 (H.L.).

<sup>152</sup> *Cullen v. Morris* (1819), 171 E.R. 741, 2 Stark 577 (Engl. Nisi Prius), 589 (E.R.).”

<sup>153</sup> *Nelles v. Ontario*, [1989] 2 SCR 170, [1989] S.C.J. No. 86 (Q.L.), at 196 per Lamer J. (Dickson C.J. and Wilson J. concurring). Also see *Nova Scotia Liberal Party v. Chief Electoral Officer*, 2024 NSSC 172 where a declaration was granted even though there was nothing left to quash.

<sup>154</sup> *Vancouver (City) v. Ward*, [2010] 2 SCR 28 at para. 31. Also see Kent Roach, “Enforcement of the *Charter*—Subsections 24(1) and 52(1)”, (2013), 62 *S.C.L.R.* (2d) 473, 511-12, Respondents Book of Authorities, Tab 8, p. 165.

[104] This court has aptly stated that a “right, no matter how expansive in theory, is only as meaningful as the remedy provided for its breach”.<sup>155</sup> The decision of the Court of Appeal of Alberta created two impediments to Anglin receiving an appropriate remedy for the breaches of his rights.

[105] First, Resler’s administrative prosecutions followed, and supported, the actions he undertook during the election. Those prosecutions constituted additional instances of misfeasance of public office. The majority of the Court of Appeal not only upheld the decision of Justice Lema in striking out certain paragraphs in Anglin’s statement of claim relating to the prosecutions, but also stated, without argument on this point, that “[a]ttempting to reformulate these prosecutions as an aspect of misfeasance in public office would be an abuse of process.”<sup>156</sup>

[106] The administrative prosecutions are much more than their conclusions. They are an integral part of the tort of misfeasance in a public office because they speak to a course of conduct by Resler, following the taking down or destruction of Anglin’s signs, that was used to either justify his actions or to undermine Anglin. These actions involved the commencement of proceedings with no jurisdiction,<sup>157</sup> the making of findings with no evidence,<sup>158</sup> relying on evidence that had been tampered with,<sup>159</sup> and excluding exculpatory evidence from the Record.<sup>160</sup>

[107] While Resler’s “findings” in the administrative proceedings have been tested within the

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<sup>155</sup> [R. v. 974649 Ontario Inc., \[2001\] 3 SCR 575 at para 20.](#)

<sup>156</sup> [Anglin v Resler, 2024 ABCA 113 at para 59](#) per Slatter and Woolley J.A.

<sup>157</sup> Amended Statement of Claim, paras. 11(i) and 12, Appellant’s Record, Vol. 2, p. 17; 2019 Affidavit, *supra* note 4, paras. 31-34, and 67-71, Respondent’s Record, Volume II, Tab 5, p. 6-7 and 11-12.

<sup>158</sup> 2019 Affidavit, *supra* note 4 at paras. 78-89, Respondent’s Record, Volume II, Tab 5, p. 13, plus Transcript of Proceeding, Exhibit 46, Respondent’s Record Volume II, Tab 5, p. 336.

<sup>159</sup> 2019 Affidavit, *supra* note 4 at paras. 86-87, Respondent’s Record, Volume II, Tab 5, p. 14 and Exhibit 44, Affidavit of Joseph Anglin sworn May 9, 2017, Respondent’s Record, Volume II, Tab 5, p. 306-330.

<sup>160</sup> 2019 Affidavit, *supra* note 4 at para. 103, Respondent’s Record, Volume II, Tab 5, p. 18 and Affidavit of Cody Johnston, affirmed February 9, 2018, Exhibit 49, Respondent’s Record, Volume II, Tab 5, p. 468. [Anglin v Alberta \(Chief Electoral Officer\), 2020 ABQB 131 at para. 11-23.](#)

confines of administrative law, his motives in bringing these proceedings and the methods he used to arrive at his decisions have not been tested. In fact, given that Resler’s discriminatory treatment of Anglin (i.e. insofar as Resler removed Anglin’s signs and charged Anglin when other candidates with non-compliant signs<sup>161</sup> did not have their signs removed and were not subject to administrative prosecution),<sup>162</sup> the whole of the administrative proceedings, including any findings, should be relevant to Anglin’s claim for misfeasance of public office. Although Anglin has not brought a cross-appeal before this court, it is noteworthy that both the majority and minority decisions at the Court of Appeal, below, contemplated that Anglin would be amending his pleadings in respect of his claim for malicious prosecution. Anglin therefore invites this Court, in its reasons, to provide guidance on the nexus between the prior administrative proceedings and the tort of malicious prosecution,<sup>163</sup> and on the delay in this proceeding (addressed below). Any guidance this Court may provide will inform the manner in which Anglin proceeds.

[108] Second, and in addition, there is the issue of delay. This Court has consistently stated that *Charter* remedies “must be easily available and constitutional rights should not be ‘smothered in procedural delays and difficulties’”.<sup>164</sup> “Anything less would undermine the role of s. 24(1) as a cornerstone upon which the rights and freedoms guaranteed by

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<sup>161</sup> 2019 Affidavit, *supra* note 4 at para. 64, Respondent’s Record, Volume II, Tab 5, p. 11 and Exhibits 29 to 33, Respondent’s Record, Volume II, Tab 5, pp. 171-183.

<sup>162</sup> 2019 Affidavit, *supra* note 4 at para. 64(iv), Respondent’s Record, Volume II, Tab 5, p. 11 and [Election Act, R.S.A. 2000, c. E-1, s. 4.3\(4\)](#).

<sup>163</sup> In [Three Rivers District Council v. Governor and Company of the Bank of England \(No. 3\)](#), [2001] UKHL 16, [2003] 2 A.C. 1 (H.L.), Lord Hutton (at para. 111), Lord Hope of Craighead (at paras. 109 and 110), and Lord Steyn (at para. 8) allowed the appeal and gave leave to the claimants to amend their pleadings.

<sup>164</sup> [Mills v. The Queen](#), [1986] 1 SCR 863 at para 31 per Lamer J. (Dickson C.J. concurring) (dissenting). Also see [R. v. 974649 Ontario Inc.](#), [2001] 3 SCR 575, 2001 SCC 81 at para. 20 (for the Court); [Doucet-Boudreau v. Nova Scotia \(Minister of Education\)](#), [2003] 3 SCR 3 at para. 55 per Iacobucci and Arbour JJ. (McLachlin C.J., Gonthier, and Bastarache JJ. concurring); [Canada \(Attorney General\) v. PHS Community Services Society](#), [2011] 3 SCR 134 at para. 145 per McLachlin C.J. (for the court); [Ontario \(Attorney General\) v. G.](#), [2020] 3 SCR 629 at para. 141 per Karakatsanis J. (Wagner C.J. and Abella, Moldaver, Martin and Kasirer JJ concurring). In [Dagenais v. Canadian Broadcasting Corp.](#) [1994] 3 SCR 835 at 945 McLachlin J. provided an equivalent requirement.

the *Charter* are founded, and a critical means by which they are realized and preserved.”<sup>165</sup> Even in non-*Charter* cases, this Court and others have recognized the need for “timely and affordable access to the civil justice system”.<sup>166</sup>

[109] In this case, Resler was served with the Statement of Claim on February 9, 2018.<sup>167</sup> Because of Resler’s application to strike brought on March 1, 2018, and the application of Rule 3.42 of the *Alberta Rules*,<sup>168</sup> Resler has not filed a statement of defence to this day.

[110] Anglin served a copy of his affidavit of records on Resler on April 19, 2018.<sup>169</sup> Although rule 5.5(3) of the *Alberta Rules* provides that the “defendant must serve an affidavit of records on each of the other parties within 2 months after the date the defendant is served with the plaintiff’s affidavit of records”, Resler has never provided an affidavit of records.<sup>170</sup>

[111] Unnecessary delay is “an enemy of a free and fair society.”<sup>171</sup> This case has been smothered in procedural delays and difficulties, with the result being that seven years have passed since Resler was served with Anglin’s statement of claim, and Anglin still does not have a statement of defence or document disclosure. Professor Roach commented:

One of the main impediments to obtaining effective and meaningful Charter remedies is the costs and delay of litigation. The Court in *Doucet-Boudreau* adverted to these difficulties when it stated that a remedy that is ‘smothered in procedural delays and difficulties’, is not a meaningful vindication of the right and therefore not appropriate and just.<sup>172</sup>

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<sup>165</sup> *R. v. 974649 Ontario Inc.*, [2001] 3 SCR 575, 2001 SCC 81 at para. 20 (for the Court).

<sup>166</sup> *Three Rivers District Council v. Governor and Company of the Bank of England (No. 3)*, [2001] UKHL 16, [2003] 2 A.C. 1 (H.L.), Lord Hope of Craighead at para. 110.

*Hryniak v. Mauldin*, [2014] 1 SCR 87 at para 2: “Increasingly, there is recognition that a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system.”

<sup>167</sup> Application for Direction, para. 6, Respondent’s Record, Volume I, Tab 2, p. 8.

<sup>168</sup> *Alberta Rules of Court*, Alta Reg 124/2010, Rule 3.42.

<sup>169</sup> 2022 Affidavit, *supra* note 28 at paras. 19-21, Respondent’s Record, Volume II, Tab 8, pp. 526-7.

<sup>170</sup> 2022 Affidavit, *supra* note 28 at para. 19, Respondent’s Record, Volume II, Tab 8, p. 526.

<sup>171</sup> *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 SCR 307, 2000 SCC 44 at para. 140

<sup>172</sup> Kent Roach, “Enforcement of the Charter—Subsections 24(1) and 52(1)”, (2013), 62 *S.C.L.R.* (2d) 473, 486.

[112] Despite being before the Supreme Court of Canada, this action is still at the starting line. This is a denial of Anglin’s right to a “full and effective remedy” for the breach of his rights and in particular the breach of his *Charter* rights.

**PART IV SUBMISSIONS CONCERNING COSTS**

[113] Anglin respectfully submits that he be awarded costs of this proceeding on a solicitor and own client basis, in this Court and in the courts below.

**PART V ORDER REQUESTED**

[113] Anglin respectfully requests that the following orders:

- (i) an Order dismissing the appeal,
  - (a) finding that the controverted-elections provision of the Alberta *Election Act* do not require Anglin to use that statutory process when his claim is against an individual for torts committed by him during the middle of an election; and,
  - (b) finding that Anglin’s claim is not an abuse of process, and that Resler does not have any parliamentary privilege to protect him in relation to this claim; and
- (ii) such further and other procedural orders that this Honourable Court deem just, in order to eliminate procedural delays and difficulties and to allow for a fair and just amendment, in this proceeding.

**PART VI SUBMISSION ON SEALING OR CONFIDENTIALITY ORDER**

[114] There are no sealing or confidentiality issues.



Donald F. Bur  
Counsel for the Respondent



C. Vincent Kurata  
Counsel for the Respondent

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At 534 Professor Roach comments that “Delay in granting remedies should, like other limits on remedies, be justified.”

## PART VII LIST OF AUTHORITIES

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<u><i>Anglin v Alberta (Chief Electoral Officer)</i>, 2020 ABQB 131</u>	63, 99, 106
<u><i>Anglin v Alberta (Chief Electoral Officer)</i>, 2021 ABQB 353</u>	43, 63
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<u><i>Ashby v White</i>, (1703) 92 ER 126 (H.L.)</u>	56, 61, 101
<u><i>Bahadar v Real Estate Council of Alberta</i>, 2021 ABQB 395</u>	60
<u><i>Baker v. Canada (Minister of Citizenship and Immigration)</i>, [1999] 2 SCR 817</u>	98
<u><i>Blencoe v. British Columbia (Human Rights Commission)</i>, [2000] 2 SCR 307</u>	111
<u><i>Byers v Bjarnson</i> (1968), 63 WWR (ns) 253 (Sask. QB)</u>	39
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<u><i>Dagenais v. Canadian Broadcasting Corp.</i>, [1994] 3 SCR 835</u>	108
<u><i>Davis v Barlow</i> (1910), 15 W.L.R. 49 (Man. QB)</u>	39
<u><i>Doucet-Boudreau v. Nova Scotia (Minister of Education)</i>, [2003] 3 SCR 3</u>	57, 108
<u><i>Dupuis v Syndicat canadien des communications, de l'énergie et du papier, section locale 130</i>, [2008] QCCA 837</u>	5
<u><i>Ernst v. Alberta Energy Regulator</i>, [2017] 1 SCR 3</u>	72
<u><i>Eastwalsh Homes Ltd. v. Anatal Developments Ltd.</i> (1993), 12 OR (3d) 675 (CA)</u>	5
<u><i>Friesen v Hammell</i> (1997), 47 BCLR (3d) 308 (BCSC)</u>	39
<u><i>Garrett v. Attorney-General</i>, [1997] 2 N.Z.L.R. 332 (CA)</u>	60
<u><i>Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component</i>, 2009 SCC 31</u>	66
<u><i>Harper v. Canada (Attorney General)</i>, [2004] 1 SCR 827</u>	65, 66
<u><i>Harvey v. New Brunswick (Attorney General)</i>, [1996] 2 SCR 876</u>	65
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<u><i>Hryniak v. Mauldin</i>, [2014] 1 SCR 87</u>	108
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<u><i>Meekis v. Ontario</i>, 2021 ONCA 534</u>	99
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<u><i>Mills v. The Queen</i>, [1986] 1 SCR 863</u>	108

<u><i>New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)</i>, [1993] 1 SCR 319</u>	88, 91
<u><i>Nelles v. Ontario</i>, [1989] S.C.J. No. 86, [1989] 2 SCR 170</u>	102
<u><i>Newsun Resources Ltd. v. Araya</i>, [2020] 1 SCR 166</u>	57
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<u><i>R. v. Guignard</i>, [2002] 1 SCR 472</u>	65, 66
<u><i>R. v. Keegstra</i>, [1990] 3 SCR 697</u>	65
<u><i>R. v. Lucas</i>, [1998] 1 SCR 439</u>	79
<u><i>R. v. Nova Scotia Pharmaceutical Society</i>, [1992] 2 SCR 606</u>	79
<u><i>R. v. Sharpe</i>, [2001] 1 SCR 45</u>	79
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<b>Referred to:</b>	
<a href="#">The Education Act</a> , S.S. 1995, c. E-0.2, s. 197.4(5) and (6)	96
<a href="#">The School Choice Protection Act</a> , S.S. 2018, c 39, s. 5(1)	96
<a href="#">The Mineral Taxation Act</a> , S.S. 1983-84, c M-17.1, s. 19.1	96

<u><i>The Corporation Capital Tax Amendment Act, 2022, S.S. 2022, c 5, s. 6</i></u>	96
<u><i>The Miscellaneous Statutes (Accretion) Amendment Act, 2023, S.S. 2023, c 5, s. 3-3(8)</i></u>	96
<u><i>Connecting Care Act, 2019, SO 2019, c 5, Sch 1, s. 46 and Building Highways Faster Act, 2024, s. 17</i></u>	96