Court of Queen's Bench of Alberta

Citation: Anglin v Resler, 2022 ABQB 477

Date: 20220711
Docket: 1703 06642
Registry: Edmonton

Between:

Joseph V. Anglin

Plaintiff

- and -

Glen L. Resler, in his capacity as Chief Electoral Officer, Her Majesty the Queen in right of Alberta, Pieter Broere, John Doe, and Richard Roe

Defendants

Reasons for Judgment
of the
Honourable Justice M. J. Lema

A. Introduction

[1] An incumbent MLA defeated in the 2015 provincial election alleges the Chief Electoral Officer interfered in his campaign (causing his defeat) and otherwise maliciously prosecuted him, abusing the CEO's public office and abusing process generally. He seeks damages exceeding $2.2 million.

[2] The CEO applies to strike out the claims against him.

[3] I find for the CEO and strike all the claims.

B. Unfair-election positions

[4] Mr. Joseph Anglin ("Anglin"), an incumbent MLA defeated in the 2015 provincial election, contends that the Chief Electoral Officer ruined his campaign via (in part) unnecessary investigations into campaign-sign information, unwarranted conclusions of off-side signs, and the accordingly unjustified removal of some, many or possibly all his signs before the election.

[5] He sued the CEO (and others), alleging (among other things):

> During the 2015 election, [the CEO], or agents or employees acting on his behalf and on his authority:
>
> (i) required [him] to cover over the letters "M.L.A." on signs reading "Re-Elect Joe Anglin M.L.A." when there was no law that prevented these letters being used;
>
> (ii) required [him] to cover over sponsorship information on signs with the same information of a larger size, when there was no law requiring the sponsorship information to be of a larger size;
>
> (iii) commented to the media that [his] signs were illegal;
>
> (iv) worked with individuals who were supporting candidates that were opposed to [him];
>
> (v) authorized or allowed these individuals, or other individuals, to remove [his] signs contrary to the law;
>
> (vi) authorized or allowed these individuals, or other individuals, to damage [his] signs, contrary to the law; and
>
> (vii) singled out [his] signs, which were legal, when many other candidates had signs that did not comply with the *Election Act*.
>
> In undertaking these actions, [the CEO] worked together with [other people] in a common goal [namely] to create an unfair advantage for Anglin's opponents and to *deny him a fair election and his chance of re-election.*
>
> In undertaking these actions, and assisting [those others], [the CEO] exercised public powers for an improper or ulterior motive, knowing it was *likely to cause harm to Anglin and his chances of being re-elected*.
>
> … [The CEO] knew or should have known that his actions would probably *injure Anglin with respect to his chances of being re-elected*, or he was subjectively and recklessly indifferent with respect to the outcome of his actions.
>
> In fact, the actions of [the CEO and those others] had a negative impact on Anglin's re-election chances and he was not re-elected.

[6] He seeks damages for, among other things:

- "$400,000 for the loss of a chance of being re-elected due to the wrongful interference with the election";
- "$400,000 for loss of future employment"; and
- "punitive or exemplary damages in the amount of $1,000,000" for "*interfering with the fairness of [the] election*."

[7] In (partial) response, the CEO points to the controverted-elections provisions of the *Election Act*, seen (by him) as the only means of challenging an election perceived as unfair. With Anglin having not pursued such a challenge, and with one no longer possible (timing-wise), his collateral challenge via the present lawsuit must fail.

[8] Anglin's counsel calls this a "straw man" argument, saying that:

> [He] is not contesting the validity of the election itself, and accordingly his claim is not covered by the controverted elections provisions of the *Election Act*. Instead, his claim is for damages – and [the CEO's] actions during the 2015 election are only part of the claim that [the CEO] abused his public office, abused the process and maliciously prosecuted Anglin.

[9] His counsel elaborates:

> [The CEO] argues that "It is an abuse of process for an election candidate to attempt to circumvent the statutory process in place for challenging the fairness of an election by bringing a private action …" *However, Anglin is not contesting the election*.
>
> Instead of trying to invalidate the election through a collateral process, Anglin's claim relies upon the fact of the election result. The results of the election, in part, support Anglin's claim.
>
> The Supreme Court of Canada dealt with this distinction in *TeleZone Inc.* [***Canada (Attorney General) v TeleZone Inc***, 2010 SCC 62]. In this case TeleZone had applied for a communication service licence, and sued when it failed to be granted such a licence. In response to an argument that its claim constituted a collateral attack, the Supreme Court rejected the argument, concluding:
>
> > Secondly, TeleZone is not seeking to "avoid the consequences of [the ministerial] order issued against it." (*Garland*, 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. … [Emphasis added; para. 71]

It is important to emphasize that [the CEO's] action during the 2015 election is only a part of the alleged abuse. When seen as a whole, which includes not only the taking down of signs but also the investigation, prosecution and decision against Anglin on the sponsorship issue as the only remaining basis that supports that decision, it is clear that even if Anglin were obliged to bring a controverted election petition[,] it would not deal at all with the facts in this particular case. The actions that [the CEO] took during the election and his subsequent campaign against Anglin through three separate proceedings, are indivisible and his claim for damages simply cannot be dealt with [under] the controverted election provisions of the *Election Act*.

In *TeleZone* the Supreme Court made this comment which is applicable in this proceeding:

> 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.
>
> If a claimant seeks to set aside the order of a federal decision maker, it will have to proceed by judicial review, as the Grenier court held. However, <u>if the claimant is content to let the order stand and instead seeks a compensation for alleged losses (as here), there is no principled reason why it should be forced to detour to the Federal Court for the extra step of a judicial review application (itself sometimes a costly undertaking) when that is not the relief it seeks. Access to justice requires that the claimant be permitted to pursue its chosen remedy directly and, to the greatest extent possible, without procedural detours. (emphasis added) [footnote omitted]</u>

C. Controverted-elections process exclusive remedy for alleged unfair election

[10] Anglin is wrong. His lawsuit is in large part an attempt to bypass the (applicable) controverted-elections process.

Anglin alleges unfair election

[11] Anglin's core allegations are that the CEO's campaign-sign-related decisions and actions, allegedly including CEO-directed-or-authorized-or-encouraged removal of some or all of his campaign signs before the election, resulted in an unfair election i.e. gave an unwarranted edge to the other candidates and, in fact, led to his defeat.

[12] He says that "but for" that interference, he would have won the election. Per para 10 of his statement of claim: "… the actions of [the CEO] [and others] had a negative impact on Anglin's re-election chances and he was not re-elected."

[13] His claim for damages for that alleged loss would require this Court to investigate alleged unfairness in the election process.

No jurisdiction to hear unfair-election case outside of controverted-election process

[14] That inquiry is expressly or implicitly limited to the controverted-elections process.

[15] Here I adopt and endorse the CEO's submissions on this point:

> The *Election Act* provides a very specific statutory mechanism for challenging the validity of elections – an application to the Court of Queen's Bench under Part 7 – "… to void an election by reason of the undue return or undue election of a candidate as the member of the Legislative Assembly for an electoral division."
>
> The concept of "undue return or undue election" is extremely broad. J. Patrick Boyer in his text [*Election Law in Canada* at p 1057] says:
>
> > As to what constitutes an "undue" election or return, the generality of this expression allows for the inclusion of any type of wrongdoing or lack of legal capacity which can be said to have resulted in an election that was not valid.
>
> The statutory process has a tight time limitation, requiring the petition to be filed within 30 days of the formal publication of the election results in the Alberta Gazette. Standing to bring the petition is limited to electors and a defeated candidate in the affected electoral division.
>
> Outside the parameters of the *Election Act*, the Court does not have the jurisdiction to question or impugn the results of an election. The Saskatchewan Court of Appeal has said:
>
> > The legislatures of the provinces have exclusive inherent jurisdiction to deal with election issues. The jurisdiction of the courts <u>is limited to that conferred upon them by legislative enactments</u>. [para 24] [emphasis added by CEO]
> >
> > [And in dealing with elections, the Court]
> >
> > … is not exercising the court's ordinary civil or criminal jurisdiction. Parliament or the legislature, as the case may be, is the guardian of its own prerogatives and privileges and the courts have nothing to do with questions affecting membership except insofar as they have been specifically <u>designated by law to act in such matters</u>. [para 26] [emphasis added by CEO] [*Lorje v Karwacki*, 1999 CanLII 12345 (SKCA)]
>
> In pursuing this claim, [Anglin] seeks to have this Court relieve him from the obligations of challenging the fairness of the 2015 Election through the process set out in Part 7 of the *Election Act* and assess the value of a lost political opportunity. Neither of these are forms of relief that this Court may order.
>
> The claim is an abuse of process for two reasons:

a. if [Anglin] wished to challenge the fairness of the 2015 Election, his recourse was to file a petition to void the election pursuant to Part 7 of the *Election Act*. ... [various deadlines outlined]

The purpose of these short deadlines is to ensure that challenges to election results are resolved in a timely fashion and the integrity of the Assembly preserved. Where a petition … is successful, the election result will be voided. Nowhere do the controverted election provisions … provide that a petitioner has any right to relief other than the voiding of the election. The legislation requires that this type of challenge be dealt with quickly and finally. Litigation about the validity of elections outside the parameters of the *Election Act* can undermine the legitimacy of the Assembly.

b. It is an abuse of process for [Anglin] to seek to do indirectly that which he is proscribed from doing directly – challenging an election process outside the statutorily mandated process. This is in substance a collateral attack on the final election result. If [Anglin's] action is permitted to continue, this Court will be inquiring into facts surrounding the propriety of the 2015 Election many years later [now seven] after any proper challenge to the 2015 Election would have been decided.

… It is an abuse of process for an election candidate to attempt to circumvent the statutory process in place for challenging the fairness of an election by bringing a private action against the [CEO].

Legislatures have conferred limited election-review jurisdiction on the courts

[16] This expanded excerpt from ***Lorje v Karwacki*** (cited above) further illuminates the Court's limited election-issues jurisdiction:

The legislatures of the provinces have exclusive <u>inherent</u> jurisdiction to deal with election issues. The jurisdiction of the courts is limited to that conferred upon them by legislative enactments: see for example, *In Re Pinto Creek Elections*, 1912 CanLII 182 (SK QB), [1912] 3 W.W.R. 33. In that case, Lamont J., in dismissing a motion for *mandamus* directed to the District Court Judge at Moose Jaw reiterated the governing principle at p. 35:

> The same question came before the courts of the North West Territories in the case of *In re Dubuc*, 3 W.L.R. 248. There an application was made to compel the clerk of the Executive Council for the province of Alberta to give notice in the official gazette of the election of the applicant Dubuc as a member of the first legislative assembly of Alberta for the electoral district of Peace River. Mr. Justice Scott, before whom the matter came, following the cases above cited, held that the court had no jurisdiction to grant the application. At p. 251 he said:
>
> > The jurisdiction of this court is limited to the jurisdiction exercised by the superior courts of civil and criminal jurisdiction in England, and, as none of those courts have, in the absence of a statutory

> enactment conferring it, jurisdiction over matters pertaining to elections to the House of Commons there, **I do not see that this court can, in the absence of any such enactment, exercise any such jurisdiction over matters pertaining to elections in the legislature of this province.**

> These authorities make it very clear that the Supreme Court of this province has no jurisdiction to compel the judge of a district court to hold a recount under "The Saskatchewan Elections Act" unless that jurisdiction has been expressly given to the court by the legislature.

This principle was recognized by Bence C.J.Q.B. in *Byers v Bjarnson* (1968), 1968 CanLII 489 (SK QB), 63 W.W.R. 253. Also see: May: *Parliamentary Practice* (17th ed.) 1964 at 175-184 and the joint opinion of Bayda C.J.S. and Cameron J.A. in *Storey v Zazelenchuk* (1985), 1984 CanLII 2426 (SK CA), 36 Sask. R. 103 (C.A.) at 123.

I am of the opinion that a judge presiding over a recount is not exercising the court's ordinary civil or criminal jurisdiction. **Parliament or the legislature, as the case may be, is the guardian of its own prerogatives and privileges and the courts have nothing to do with questions affecting membership except insofar as they have been specifically designated by law to act in such matters**. This principle was succinctly summed up by Turgeon J.A. in *Lamb v McLeod* (1932), 1931 CanLII 196 (SK CA), 1 W.W.R. 206 at 208:

> . . . In acting in cases of election petitions, the Court is not exercising its ordinary civil or criminal jurisdiction. **The Assembly is the guardian of its own prerogatives and privileges, and the Courts have nothing to do with questions affecting its membership except in so far as they have been specially designated by law to act in such matters. . . Therefore, the Courts will always approach questions concerning their jurisdiction over election contests with great caution, as being unwilling to interfere without undoubted authority**. . .

Although *Lamb v McLeod* was delivered in the context of a petition under *The Controverted Elections Act*, the principle articulated is apposite when dealing with election recounts before a Queen's Bench judge.

The same principle was adopted in *Davis v Barlow* (1910), 1910 CanLII 303 (MB QB), 15 W.L.R. 49 at 51 where Mathers C.J.K.B. stated:

> A very serious question here arises as to the jurisdiction of the Court otherwise and under the *Controverted Elections Act* to interfere in any way with the return of a member either to Parliament or the Legislative Assembly. Until comparatively recent times, all controversies respecting the return of members were decided by the House to which the member had been

> returned, and the House of Commons always jealously guarded its jurisdiction in this respect from interference from outside. By the *Controverted Elections Act* power was delegated to Courts thereby constituted to deal with disputed elections in the manner therein specified. General jurisdiction over the return of members was not by these Acts conferred upon the Courts. **No case has been cited to me, and I have found none, in which the Court has assumed directly to interfere with the return of a member of the legislature otherwise than under the *Controverted Elections Act.* In my opinion, the jurisdiction to do so is confined to the Courts established by those Acts**. . .

Also see: Manitoba Law Reform Commission, *Controverted Elections, (1980),* particularly at p. 6 and *Moore v Kennard* (1882-83), 10 Q.B.D. 290.

In *Storey v Zazelenchuk* (1983), 1982 CanLII 2431 (SK QB), 21 Sask. R. 158 at 161-2, Estey J. summarized **the approach that must be followed by the courts in election issues in this way**:

> The position of the court in matters pertaining to an election was referred to by Culliton, C.J.S., at p. 399, when he quotes from Turgeon, J.A., (later C.J.S.), in *Lamb v McLeod,* 1931 CanLII 196 (SK CA), [1932] 1 W.W.R. 206, at p. 208 [para 6]:
>
> > **In acting in cases of election petitions, the court is not exercising its ordinary civil or criminal jurisdiction. The assembly is the guardian of its own prerogatives and privileges, and the courts have nothing to do with questions affecting its membership except in so far as they have been specially designated by law to act in such matters**: *Re Prince Albert Provincial Election; Strachan v Lamont* (1906), 3 W.L.R. 571, affirmed 4 W.L.R. 411 (N.W.T. A.C.). **Therefore, the courts will always approach questions concerning their jurisdiction over election contests with great caution, as being unwilling to interfere without undoubted authority.**
>
> **The position of courts in this province in election matters is that the approach must be one of care and caution and the exercising only of that authority which is clearly set out in the statute**. . .[paras 21-30] [emphasis added]

[17] See also ***Friesen v Hammell***, 1997 CanLII 2903 (BCSC) (Williams CJSC):

> I would adopt the language of Mr. Maingot [in *Parliamentary Privilege in Canada* (Toronto: Butterworths, 1982 at 161-162], above, that **the Courts should not deal with questions affecting membership "except insofar as they have been specially delegated by law to act in such matters".**

> **The *Election Act* specially designates this Court to deal with those questions where election offences are alleged** and accordingly I conclude that the Court does not lack jurisdiction on the basis of Parliamentary privilege. [paras 24 and 25] [emphasis added]

Applying those principles here

[18] Applying the guidance of those cases, which underpin the CEO's analysis adopted above, I find that Anglin's 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*.

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

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

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

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

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

[24] This conclusion is reinforced by the potential availability (i.e. at the time) of controverted-election relief for perceived shortcomings in the administration of the election, as alleged by Anglin here and as discussed below.

Wide breadth of "undue return or undue election"

[25] The controverted-election process was available to Anglin here.

[26] His counsel asserted in argument that it was limited to phenomena such as ballot stuffing i.e. did not extend to the overall administration of the election e.g. rulings on and removal of campaign signs.

[27] However, the *Election Act* does not build any fences around the open-ended concepts of "undue return" or "undue election" as they are used in Part 7 ("Controverted elections" – ss 185 to 201).

[28] Neither the phrase "undue return or undue election" nor either of its elements is defined in or otherwise circumscribed by the *Election Act*.

[29] The wide breadth of those elements and the phrase overall is confirmed by the catalogue of matters implicitly acknowledged as potential "undue return" or "undue election" phenomena in s. 202 of the *Election Act* ("Certain irregularities excused"):

> No election is void by reason of an irregularity, failure, non-compliance or mistake, including
>
> (a) an irregularity on the part of an election officer or in any of the proceedings preliminary to the vote,
>
> (b) a failure to hold a vote at any place appointed for holding a vote,
>
> (c) a non-compliance with the provisions of this Act relating to the taking of the vote or the counting of the votes or with regard to limitations of time, or
>
> (d) any mistake in the use of the prescribed forms,
>
> if it is shown to the satisfaction of the Court that the irregularity, failure, non-compliance or mistake did not materially affect the result of the election.

[30] Besides the "undue return or undue election" bases for an election being void (per s. 185 *EA* and related provisions in Part 7), the other *EA* bases are limited to an elected candidate disclaiming his or her election win (s. 139), "corrupt practices by a candidate" (s. 178), and "corrupt practices by a candidate's official agent" (s. 179).

[31] Those additional bases are obviously not synonymous with or at least obviously not exhaustive of the phenomena identified in s. 202.

[32] Accordingly, at least some of those phenomena fall within the scope of what would otherwise (i.e. without the saving provision) be examples of "undue returns" or "undue elections."

[33] In any case, the closing words of paragraph 202(a) – "any irregularity … in any of the proceedings preliminary to the vote" – are clearly broad enough to include any irregularity (i.e. deviation from the norm) in the election campaign e.g. including a candidate's signs being ruled out of bounds when they should not have been or, in any case, being removed when they should not have been (assuming such conduct here).

Cases confirm potential reach of controverted-election remedy to election officials' conduct

[34] Many cases confirm the potential reach of an "undue return" or "undue election" challenge (or equivalent) to conduct-of-election matters, including the conduct of election officials. See, for example:

> ***Flookes v Shrake***, 1989 CanLII 3220 (ABQB) (Medhurst J.): "The [found-to-be-immaterial] irregularities complained about in this election for the most part were the result of breaches or failures to comply with the Act on the part of the election officials" (para 81);

Inman v Kennedy, 1997 CanLII 23589 (NBCA) (para 55) (examination of various voting-day decisions by election officials on voter eligibility);

Re Jackman and Stollery et al, 1980 CanLII 1674 (ON SC) (Cory J. as he then was), holding that the federal Chief Electoral Officer's actions and decisions could be the subject of an election-challenge decision (from "The second question for consideration …" to the end). [I note that, unlike in that case, the Alberta *Election Act* does not define "election officer" as including the Chief Electoral Officer (see the respective definitions in paras 1(1)(h.1) and (i)); however, the *Act* does not restrict pre-election "proceedings" (per para 202(a)) to those of "election officials" or otherwise carve out proceedings involving the CEO]; and

Patterson v District of Kent, 2008 BCSC 352 (Myers J.) (too-close-to-polling-station campaign signs found to be an immaterial irregularity) (para 38).

Comparable approaches in other countries

[35] Comparable approaches (treating election-official conduct as potential grounds for election challenges) are seen in the U.S.A., as described by Professor Steven F Huefner (Ohio State University) in *Remedying Election Wrongs*, (2007) 44 Harv J. on Legis. 263 at pp 273-275, and in New Zealand, per Professor Andrew Geddis (University of Otaga), in *Resolving Disputed Elections in Canada and New Zealand*, David Aspen Centre for Constitutional Rights, Toronto, 24 October 2012 (pp 23 and 24, including "… the [New Zealand] courts *are* permitted to examine whether the overall conduct of the election was in compliance with the law and, at least in *some* situations, invalidate the result if it fails to meet with those requirements").

Anglin did not present contrary election-review cases

[36] Anglin did not offer any case suggesting a narrower reading of "undue return" or "undue election" or, in any case, ruling or even suggesting that they, or at least one of them, would not cover conduct-of-election activities by election officials.

***TeleZone* distinguishable**

[37] As for Anglin's reliance on *TeleZone* (cited above):

1. in that case, the remedy sought (damages for wrongful denial of a communication licence) was not inconsistent with the underlying administrative decision (to award licences to four other applicants). TeleZone was not attacking, and did not need to attack, that decision as part of its action i.e. to argue that it too should have received a license. Its focus was the narrow aspect of its own exclusion; and
2. the Supreme Court expressly found that the provincial superior court had jurisdiction to explore and rule on TeleZone's damages claim.

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

[39] That would create the spectre of two winning candidates: one ostensibly elected, the other effectively anointed by the Court, via a "wrongful loss" damages award, as the actual winner, albeit not seated in the Legislature.

[40] And, as explained above, the Court has no jurisdiction over claims rooted in perceived election unfairness beyond that conferred in the controverted-elections provisions of the *Election Act*.

[41] Accordingly, the *TeleZone* principles do not apply here.

No injunction sought

[42] To the extent an injunction may have been available to push back the election in the electoral district in question (as was granted, in a municipal election, in ***Dunne v Patten***, 2022 NLSC 96) e.g. until the propriety of the CEO's sign-related decisions had been determined and, as applicable, his signs reinstated, Anglin did not pursue one.

Conclusion on unfair-election allegations

[43] As explained, Anglin's allegations of election unfairness could only anchor, or potentially anchor, a controverted-election challenge.

[44] This Court has no jurisdiction to entertain an unfair-election lawsuit i.e. outside of that process.

[45] Accordingly, the following paragraphs are struck from Anglin's statement of claim:

- Paragraph 6 (description of various campaign-sign-related activities);
- Paragraph 7 ("In undertaking these [campaign-sign-related decisions and actions], Resler worked together with [others] [toward] a common goal. [Their] intention was to *create an unfair advantage for Anglin's opponents and to deny him a fair election and his chance of re-election*);
- Paragraph 8 ("In undertaking these actions, and in assisting [those others], Resler exercised public powers for an improper or ulterior motive, *knowing that it was likely to cause harm to Anglin and his chances of being re-elected*");
- Paragraph 9 ("… Resler knew or should have known that his actions would probably injure Anglin with respect to his chances of being re-elected, or he was subjectively and recklessly indifferent with respect [to] the outcome of his actions");
- Paragraph 10 ("In fact, the actions of Resler [and others] had a negative impact on Anglin's re-election chances and he was not re-elected");
- Paragraph 15 ("As a result of the actions of Resler [and others] during the 2015 election campaign, Anglin suffered the following damages: … (iii) $400,000 for the *loss of a chance of being re-elected due to the wrongful*

interference with the election; and (iv) $400,000 for *loss of future employment*"); and

- Paragraph 17 ("The actions of Resler of interfering with the fairness of an election, when he is specifically tasked with the responsibility of ensuring fair elections, should be condemned by this court with the award of punitive or exemplary damages" and paragraph 20 ("Punitive or exemplary damages in the amount of $1,000,000").

D. Alleged post-election CEO misconduct

[46] Anglin also alleges malicious prosecution, abuse of public office and abuse of process by the CEO in the form of various investigations and what he calls "prosecutions" (actually, administrative-penalty proceedings) conducted in the aftermath of the election.

[47] Here are his statement-of-claim allegations:

> Subsequent to the 2015 election, Resler, without reasonable and probable cause or for a purpose other than that of carrying the law into effect, instigated **a series of investigations and prosecutions into Anglin regarding alleged breaches of the *Election Act***. These included an investigation and prosecution:
>
> i. into Anglin's **use of the letters "M.L.A."** during the election;
>
> ii. into Anglin's **sponsorship information** during the election; [and]
>
> iii. into [Anglin's] **use or misuse of a List of Electors**.
>
> The investigation and prosecution into the use of the letters "M.L.A." was shown to be without merit.
>
> Resler investigated and prosecuted Anglin to the point of conviction for a breach of section 134 of the *Election Act* with regard to the sponsorship information:
>
> i. for **failing to have his sponsorship information in a particular size**, where there was no law imposing this requirement;
>
> ii. for **failing to put sponsorship information on some signs**, where there was no evidence to support this finding; and,
>
> iii. for **failing to put a telephone number contact in the sponsorship information**, where there was no evidence to support this finding and where the finding was made without any opportunity for Anglin to defend himself.
>
> Resler investigated and prosecuted Anglin to the point of conviction for a breach of section 19.1 of the *Election Act* for **failing to "take all reasonable steps to protect the list and the information contained in it from loss and unauthorized use";**

i. where the List of Electors was neither lost nor sustained unauthorized use;

ii. where the decision that Anglin had not undertaken all reasonable steps was contrary to evidence; and,

iii. where Resler's interpretation of the word "reasonable" imposed an impossibly high and illegal requirement on Anglin.

Resler knew or should have known that there were **no factual or legal bases to undertake these investigations and prosecutions** or he had a subjective and reckless indifference with respect to whether the factual or legal bases existed. Resler knew or should have known that **his actions would probably injure Anglin**, or he was subjectively and recklessly indifferent with respect to the outcome of his actions. [emphasis added]

[48] Anglin focuses on what he sees as four discrete investigations or at least allegations by the CEO:

- at least some of his campaign signs lacked all necessary sponsorship information;
- his campaign signs featured the letters "M.L.A.";
- at least some of his signs featured sponsorship information in too-small text; and
- the "List of Electors" aspect.

[49] I address each in turn

Allegation of complete lack of sponsorship information on some signs

[50] The details of this allegations are unclear. What is clear is that the CEO did not pursue any administrative penalty proceeding or prosecution against Anglin in respect of any such allegation i.e. through to conclusion.

[51] Anglin himself (per his application brief) implicitly acknowledges the inconsequential nature of this aspect:

> When [the CEO] released his decision in the Sponsorship proceeding, Anglin learned that there was in fact a fourth proceeding, post 2015 election, against him because [the CEO] had come to the conclusion that Anglin also had signs without <u>any</u> sponsorship information. Although Anglin had previously not been given any notice of this investigation, at the appeal of the Sponsorship proceeding [the CEO] conceded that there was in fact no evidence of signs without sponsorship information.

[52] Whatever the CEO's initial or tentative concerns here, no penalty, prosecution or other adverse-to-Anglin steps were taken here.

[53] This was a non-event, adding nothing to Anglin's post-election-focused arguments.

M.L.A.-on-signs aspect

[54] Anglin says that "[t]he proceeding involving the use of the letters MLA was eventually resolved in Anglin's favour. Accordingly, one of the main reasons for [the CEO] taking down Anglin's side no longer existed."

[55] The CEO says (per his brief) that "[he] took no action after his investigation into [Anglin's] representations to the public that he was an MLA after the dissolution of the Legislature" (Affidavit of Glen Resler filed April 28, 2017 in action no. 1603 14130, para 14, Court and Public Documents, Tab D).

[56] Accordingly, this is another non-event, in the sense of no administrative penalty levied and no prosecution pursued.

Investigation re text-size-guideline violations

[57] The CEO investigated and determined that some of Anglin's campaign signs breached certain text-size guidelines issued by his office.

[58] As a result of that finding, some (at least 25) of the offending signs were removed, apparently by CEO staff persons.

[59] Anglin initially argued that more like 70 to 100 of his signs were removed; later, he asserted that *all* his campaign signs (approximately 2,000) were removed.

[60] More fundamentally, Anglin argued that the signs did not breach the Guidelines or, in any case, that the Guidelines did not have the force of law and could not be the basis for the removal of any signs.

[61] Here is how Anglin summarized this aspect (per his application brief, filed May 24, 2018 i.e. before certain other proceedings, discussed below):

> With regard to the allegation regard[ing] the size of the sponsorship information, Resler bases his claim not on the *Election Act* but on a Guideline that he himself has written. He has admitted in his decision that this Guideline is not part of the Act, and he only has authority to punish for a contravention of the "provisions of the Act." Moreover, it is clear that this Guideline is not law – and that is the issue that is currently before the Alberta Court of Appeal.

[62] Anglin had brought judicial-review proceedings in respect of the CEO's "breach-of-Guidelines-and-sign-removal" decisions, which were heard by Clackson J.

[63] In ***Anglin v Alberta (Chief Electoral Officer)***, 2017 ABQB 595, Clackson J. ruled in the CEO's favour:

> In my view, the Chief Electoral Officer was merely fact finding in fulfilling his mandate. By virtue of s 134(2)(a), an advertisement must include the sponsor's name, contact information and some form of statement that the sponsor authorizes the advertisement. Logically, that information must be visible and intelligible.

> For instance a microscopic distributed hieroglyph would plainly be inadequate. To determine what is adequate, the potential advertiser and sponsor may rely upon the advice of the Chief Electoral Officer. That advice is contained in the guidelines. Those same guidelines make it plain that to meet the objectives of visibility and intelligibility, specific steps must be followed. If those steps are not followed, then, depending on the circumstances, the Chief Electoral Officer may act in a number of ways to bring about compliance. **Having created and published guidelines, it is reasonable for the Chief Electoral Officer to act when an advertisement does not meet the guidelines. The choice to act and the action taken are guided by the guidelines**. Both decisions are discretionary and dependent on the circumstances. There is nothing in any of that that is unreasonable. **There was nothing done by the Chief Electoral Officer in this case which could be said to have been unreasonable**. [para 26] [emphasis added]

[64] Anglin appealed unsuccessfully to the Alberta Court of Appeal, which held (in 2018 ABCA 296):

> **Mr. Anglin does not dispute that his election signs breached the Guidelines, as found by the Chief Electoral Officer. Rather, he says that the Guidelines established by the [CEO] do not constitute law and cannot form part of the *Act*, and as such a breach of the Guidelines is not a contravention of the *Act***. There is, therefore, [per him] no basis on which to impose an administrative penalty for breach of the *Act*.
>
> …
>
> The thrust of [Anglin's] argument is that the *Act* contemplates statutory Guidelines that are merely guidelines and are, in effect, unenforceable under the *Act*. **General principles of statutory interpretation do not support that argument**.
>
> …
>
> The language of the *Act* is clear. **The *Act* expressly requires that candidates must act "in accordance with the guidelines" with respect to advertisements. The *Act* compels compliance with the provisions of s 134(2) in accordance with the Guidelines; the Guidelines form part of the requirements set out in the section**. The legislature has the authority to establish this regulatory scheme, which includes Guidelines that must be considered and complied with. It also has the power to delegate and the guidelines, like other forms of subordinate or delegated legislation are all forms of law. …
>
> The Guidelines are statutorily required and the [CEO] is specifically authorized and required to make them. The delegation of the authority to establish Guidelines by the Legislature to the [CEO] is incidental to legislative sovereignty. **The requirement that advertisements contain certain information in a legible form is within that delegation of authority. The *Act* also provides for a mechanism of enforcement; s 153.1(1) of the *Act* grants the [CEO] power to impose a reprimand or an administrative penalty**.

> A reading of the provision and the *Act* as a whole makes clear that **the Legislature intended for a registered candidate to comply with the advertising requirements set forth by the Guidelines. A contextual reading having regard to the purpose of the *Act*, its Regulations and the Guidelines supports that interpretation**. The appeal is dismissed. [paras 3, 7, 9, 10 and 11] [emphasis added]

[65] Anglin applied unsuccessfully for leave to appeal that decision to the Supreme Court of Canada: 2019 CanLII 37484.

[66] In other words, the CEO was right about Anglin's election signs (non-compliant with the guidelines).

List of electors

[67] On this aspect, the CEO investigated and concluded that Anglin had not take all reasonable steps to protect an electors list, fining him $500.

[68] Anglin sought judicial review of that decision.

[69] In ***Anglin v Alberta (Chief Electoral Officer)***, 2020 ABQB 131, Ross J. found no palpable and overriding error of fact by the CEO (para 37) in his decision-making, that the CEO had properly interpreted s. 19.1 of the *Election Act* (violation of provision not hinging on whether a list is actually lost or misused), and no actual or reasonable apprehension of bias on the part of the CEO against Anglin.

[70] Ross J. did find insufficient disclosure (of certain investigative findings) by the CEO, amounting to procedural unfairness, and directed the CEO to reconsider the electors-list issue.

[71] In ***Anglin v Alberta (Chief Electoral Officer)***, 2021 ABQB 353, Ross J. reconsidered her remedy decision and decided to simply rescind the $500 penalty. She declined to reconsider her determinations "that the CEO did not make a palpable and overriding error in his factual findings and did not err in his interpretation or application of s. 19.1 of the *Act*" (para 14).

[72] In her costs decision ***(Anglin v Alberta (Chief Electoral Officer))***, 2021 ABQB 623, Ross J. directed the parties to bear their own costs. She emphasized the following:

> Anglin's complaints regarding the CEO's conduct during his investigation were similar to complaints addressed at length in the appeal, and rejected in the Administrative Decision [i.e. Ross J.'s first decision]. I did **not find that the CEO had reacted inappropriately to Anglin's repeated demands for disclosure throughout the proceeding.** I found that "the CEO responded to numerous disclosure requests by counsel for Anglin and provided numerous documents throughout the course of the investigation.": Administrative Decision, at para 80. I also **rejected Anglin's argument that the breach of the duty of fairness arose from bias on the part of the CEO**:
>
> > While I have found that the duty of disclosure was not met in this case, there is **nothing in this error that indicates bias on the**

> **part of the CEO**. There was no precedent determining what disclosure should be provided; **the CEO's approach of providing information in a Notice of Intended Findings was in my view a good faith effort to comply with his obligations**. – Administrative Decision, at para 80.
>
> … [the] **procedural unfairness [did] not amount to capriciousness or malfeasance on the part of the CEO** …. [paras 16 and 17] [emphasis added]

[73] Anglin did not appeal any of Ross J.'s decisions.

Anglin mischaracterizes these events

[74] Anglin says that these proceedings collectively amount to malicious prosecution, abuse of public office, and abuse of process.

[75] He says:

> There are … minor differences in some of [these] torts but the facts and pleadings cover all of the differences. The first two parts of the test for malicious prosecution require that Anglin prove that Resler initiated proceedings against him and that they were resolved in his [i.e. Anglin's] favour. **The evidence is that Resler initiated four proceedings against Anglin, two of these proceedings have already been resolved in Anglin's favour [presumably meaning the "no sponsorship information at all" and "misuse of 'MLA'" inquiries]. In the remaining two proceedings [at that time, the not-yet-completed investigations of not-guideline-compliant signs (size of sponsorship information) and the electors' list], one is scheduled to be heard by the Alberta Court of Appeal [i.e. the former] and the other is scheduled to be heard by the Court of Queen's Bench [i.e. the latter].** A successful result by Anglin in either of these cases will provide additional support for Anglin in satisfying these two requirements. … [emphasis added]

[76] However, as explained above the "no sponsorship information at all" allegation did not lead to any administrative penalty or prosecution. And same for the "MLA" aspect. On both fronts, the CEO's initial inquiries led him to abandon his investigations.

[77] With neither leading to an administrative penalty or prosecution, neither adds any fuel to Anglin's malicious prosecution or other tort claims.

[78] To the extent it makes any difference, with the CEO having not pursued the "MLA" aspect to completion, all incumbent candidates in the 2015 election were advised by the Legislative Assembly Office that "MLA" could not be used on their election signs or other advertising. Anglin argued (apparently successfully) that his use of those initials on his signs signalled the office he wished to achieve, not his incumbent status. I simply note that one at least reasonable reading of the LA office's direction was that "MLA" could not be used in any sense i.e. at all.

[79] As reviewed above, Anglin was unsuccessful on the size-of-sponsorship-information front. By definition, those proceedings cannot constitute malicious prosecution, abuse of public office, or abuse of process.

[80] That leaves the electors-list aspect, where Ross J. found only one shortcoming in the CEO's investigative process i.e. inadequate disclosure.

[81] However, as also reviewed above, she found that the under-disclosure occurred in an overall context of good-faith discharge of the CEO's duties, with no capriciousness or malfeasance occurring, to the extent that, while successful in having the $500 penalty rescinded, Anglin was required to bear his own costs of that proceeding.

[82] Again, nothing on this front adds any fuel to Anglin's asserted malicious prosecution or other tort claims.

No "prosecutions" or "convictions" here

[83] Anglin added nothing by continually referring to "prosecutions" and "convictions." On the two investigations that were pursued to completion, the outcomes were both administrative penalties (of $250 and $500, respectively). No prosecutions were pursued at any stage; no convictions were obtained or even possible given the actual proceedings taken.

No evidence of who removed any compliant signs

[84] Anglin tries to tie the CEO into the removal of some of his signs that complied with all *EA* and guideline requirements i.e. beyond the removal of non-compliant signs.

[85] However, he introduced no evidence of who actually removed any such (compliant) signs.

Some allegations "bald only"

[86] As for Anglin's allegations of the CEO working with others to deny Anglin a fair election and chance of re-election, exercising his powers for an improper or ulterior motive, and investigating and "prosecuting" Anglin without reasonable and probable cause or for a purpose other than carrying the law into effect, I adopt and accept the CEO's "bald allegations only" arguments at paras 61 to 71 of his brief.

[87] In any case, to the extent such alleged actions come within the sweep of Anglin's unfair-election complaint, they fall away per the controverted-election-process ruling above.

CEO entitled to immunity in any case

[88] I also adopt and accept the CEO's alternative (immunity) arguments at paras 72 to 83 of its brief, with no or insufficient facts pled to show bad faith on the CEO's part i.e. that the CEO somehow lost the shield of both common-law and statutory immunity here.

[89] In any case, even assuming (for sake of discussion) any bad-faith efforts by the CEO going to the fairness of the election, as discussed above those necessarily had to be raised (if at all) via the controverted-elections process.

Net result of these post-election-focused findings

[90] As discussed above and below, the foundation for statement-of-claim paragraphs 11, 12, 13, 14, 15, 16, and second 16 has fallen away.

[91] The combined result (with the earlier findings relating to the controverted-elections process) is that no remedies are available to Anglin, with paragraphs 18 to the second paragraph 21 eclipsed as well.

E. Conclusion

[92] Anglin's statement of claim amounts to an abuse of process since:

1. 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*; and
2. in part it seeks relief that is, in effect, duplicative of the size-of-sponsorship-information and electors'-list proceedings already concluded in judicial-review realm, with Anglin effectively seeking to re-litigate those issues or, alternatively, recharacterize the findings and conclusions of Clackson J. and the Alberta Court of Appeal on the former front and of Ross J. on the latter.

[93] As well, the statement of claim discloses no reasonable cause of action as against the CEO, gauged against the backdrop of the various proceedings taken by the CEO against Anglin, the abandonment of two of them (i.e. short of any administrative penalty being imposed or prosecution pursued), the successful outcome for the CEO in the size-of-sponsorship-information proceeding, and the good-faith characterization of the one identified shortcoming (under-disclosure) in the electors'-list proceeding.

[94] In any case, with no or insufficient allegations (i.e. with detailed particulars) of bad faith on the CEO's part, the claims have no reasonable prospect of success in light of the CEO's immunity under both common law and statute i.e. to the extent such allegations do not otherwise fall away as necessarily pursuable via the controverted-elections process only.

F. Costs

[95] The CEO is entitled to costs of its successful application to strike Anglin's statement of claim.

[96] If the parties are unable to agree on the scale or other elements of the costs award by July 29, I will settle the costs award after receiving their submissions via letter (two-page maximum), due by August 19.

G. Post-script

[97] In an upstream ruling, Gill J. directed (in part) that no further affidavits could be filed on this application. He maintained that ruling following a bid by Mr. Anglin for reconsideration of that ruling.

[98] In 2022 ABCA 213, Schutz JA declined to stay that ruling.

[99] At the start of the application here, Anglin's counsel asked for permission to refer to an affidavit prepared by a former Chief Electoral Officer, described (in more recent correspondence from his counsel) as follows:

> The report [appended to the affidavit] deals with [the CEO's] actions during the 2015 election. It provides an opinion as to the inappropriateness of [the CEO's] actions during that period of time, and concludes, among other things, that "the [campaign] signs did not need to be removed or destroyed." He also concludes that [the CEO's] actions "would have reduced [Mr. Anglin's] exposure throughout the constituency in the election and lessened his opportunity to capture favourable attention of the public and influence the vote of the electorate." It supports the essence of Mr. Anglin's claim, which is that Mr. Resler's actions during the 2015 election were an abuse of public office and an abuse of power. It provides proof positive that Mr. Anglin's claim is not frivolous or vexatious or without merit.

[100] I ruled that this affidavit and report had already been excluded, per the above rulings, and that I had no discretion to rule otherwise.

[101] Accordingly, the affidavit and report did not form part of the materials before me at the application.

[102] On July 5, 2022, while this decision was still under reserve, Mr. Anglin's counsel sent me a letter (copied to the CEO's counsel) attaching the affidavit and report. As he explained it, the above debates about the admissibility of these materials had been unnecessary, with the materials having actually been filed before Gill J. provided his reconsideration ruling ("no further materials to be filed"), with this fact having only recently been discovered.

[103] Accordingly, Mr. Anglin's counsel submitted that I should and, in fact, must consider the affidavit and report as part of my ruling here.

[104] Given my controverted-election-process ruling above, I find that this report, aimed exclusively at supporting Mr. Anglin's unfair-election argument, is irrelevant.

[105] While the report may have been useful in a controverted-election challenge, it adds nothing here, with the Court having no jurisdiction to explore an unfair-election claim outside of that process.

Heard on the 15th day of June, 2022.
Dated at Edmonton, Alberta this 11th day of July, 2022.

M. J. Lema
J.C.Q.B.A.

Appearances:

Donald F. Bur
Barrister and Solicitor
for Joseph V. Anglin (Plaintiff)

Kathleen Elhatton-Lake
Shores Jardine LLP
for the Chief Electoral Officer (Defendant)