SCC leaves the door open to tort claims against election officials

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In *Resler v. Anglin*, 2026 SCC 23, the Supreme Court of Canada held that an unsuccessful provincial election candidate may continue his civil action in misfeasance in public office against Alberta's Chief Electoral Officer (CEO) for alleged bad faith conduct during an election campaign. The Court confirmed that such claims were not barred by the doctrine of collateral attack, abuse of process, parliamentary privilege, or a statutory immunity clause, given that he did not seek to invalidate the election result itself and was alleging bad faith misconduct on the CEO's part.

The decision highlights the boundary between public law and private law remedies, which generally permits torts claims against public officials where they are alleged to have acted in bad faith. While these claims will be permitted to proceed to the merits where they are properly pleaded, establishing misfeasance in public office is a high bar, not a "free-for-all", and successful claims on the merits are rare.

Key Takeaways

- **Judicial review is not the exclusive remedy for official acts**: misfeasance in public office is a long-standing tort available where a public official's intentional wrongful conduct causes harm. It is distinct from the public law remedies available on judicial review.
- **Tort claims are not necessarily precluded by a statutory scheme**: courts must carefully interpret a statutory scheme to determine whether the legislature intended to oust private law remedies, either expressly or by implication.
- **Good-faith immunity clauses leave room for bad-faith liability**: a statutory immunity clause that is expressly limited to acts done in good faith does not shield intentional or bad faith conduct.
- **The availability of loss of chance damages remains unresolved**: The majority declined to address the unsettled question of damages for loss of chance, leaving the issue for another day.

Background

Joseph Anglin unsuccessfully ran for re-election as a Member of the Legislative Assembly of Alberta (MLA) in 2015. During the election campaign, Alberta's CEO removed at least 25 of Mr. Anglin's election signs for non-compliance with the *Election Act*. Following the election, the CEO fined Mr. Anglin under the Election Act after an investigation found that he had failed to protect the list of electors provided to him.

Although Mr. Anglin accepted the result of the election, he sought judicial review of the CEO's decisions. The court upheld the sign-removal decision as reasonable and returned the matter of the electors list to the CEO on procedural fairness grounds, and the penalty was ultimately rescinded.

Mr. Anglin then commenced a civil action against the CEO. He alleged that the CEO had specifically targeted him in relation to the election signs and that he had exercised his powers for an improper or ulterior motive which had a negative impact on Mr. Anglin's re-election chances. He sought damages for loss of chance of being elected, loss of future employment as an MLA, harm to his reputation, emotional well-being and future employment opportunities, and punitive damages.

The CEO brought a motion to strike the claim. The motion judge granted the motion, finding that the claim was effectively an attempt to bypass the controverted election process under the Election Act. The Alberta Court of Appeal allowed the appeal in part and reinstated the claim (other than the malicious prosecution allegations), finding that Mr. Anglin was not trying to undo the election result.

Supreme Court of Canada decision

The Court dismissed the CEO's appeal. All the justices agreed that the claim for misfeasance in public office could proceed and was not displaced by the controverted election provisions of the *Election Act*, which provide a statutory mechanism to challenge the validity of an election. However, the decision generated a concurrence and partial dissent on whether the claim for loss of chance damages should be allowed to proceed, with the majority of justices finding that it should not be struck at this stage.

The claim was not barred

Justice Moreau, writing for the majority, found that there were no barriers preventing the claim in tort from proceeding because it sought a private law remedy that was separate from the remedies available in public law and was not precluded by the statutory scheme. She rejected each of the four barriers raised by the CEO:

- **Collateral attack** – this doctrine was not engaged because the claim did not seek to indirectly invalidate the election result or circumvent the controverted elections procedure. Rather, it sought damages for alleged misconduct.
- **Abuse of process** – the claim was similarly not an abuse of process because it did not seek to challenge the election or relitigate issues already decided on judicial review.
- **Parliamentary privilege** – the claim was not barred by the doctrine of parliamentary privilege because it did not relate to the integrity of the election or the legislature's authority to determine its own membership.

- **Statutory immunity under the *Election Act*** – while the *Election Act* shields the CEO from civil actions for duties performed under that Act, it was limited to actions "in good faith" and left the door open to civil liability for bad faith conduct.

Justice Moreau further found that the pleaded claim disclosed a reasonable cause of action for misfeasance in public office. This tort sits at the intersection of private and public law: administrative action becomes tortious when public power is used for a purpose outside its lawful scope, such as the intentional or bad-faith misuse of public power that causes harm. In those circumstances, the public official creates a relationship that lacks a basis in public law and instead makes those powers private as between the official and the person against whom they are used, leading to civil liability. However, Justice Moreau was cautious to note that the tort of misfeasance in public office is "not a free-for-all" for civil claims against public officials—a plaintiff must establish both bad faith and material damage to succeed. However, at the motion to strike stage, the claim had properly been pleaded and was permitted to proceed.

Loss of chance damages

The Court divided on the question of whether to strike the claim for damages based on the loss of chance to be re-elected and earn income as an MLA.

Justice Moreau, writing for the majority, declined to strike the head of damages at this stage. She noted that the availability of loss of chance damages in tort law is unsettled, that the issue had not been fully explored in the decisions below, and that there was a pending summary judgment application and the possibility that the pleadings would be amended.

Justice Karakatsanis, writing on behalf of herself, Chief Justice Wagner, and Justice Martin, dissented in part on this point and would have struck the lost-chance damages claim as unavailable for the loss of an election. She held that it was impossible to prove causation in an election context because voter behaviour is unpredictable and shaped by many factors. Further, such damages should be unavailable as a matter of public policy because they would require the court to decide whether election results were compromised by misconduct. This was the question addressed by the controverted election regime and could undermine public confidence in election results and key democratic institutions.

Justice Rowe, writing for himself and Justice Côté, wrote a concurring opinion on this point to caution against deciding novel or complex issues that were neither litigated on appeal nor addressed by the courts below, and to express disagreement with the use of "free-standing public policy grounds" to strike a claim. He also noted that the public policy grounds raised by Justice Karakatsanis on the issue of damages replicated the same concerns that the Court found did not bar the claim from proceeding in the first place.

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