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Eligibility for Nomination under the Local Authorities Election Act (Alberta)

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Case Commented On: *Mueller v Oko*, 2015 ABCA 194

This short decision from the Court of Appeal considers the challenge by Mueller to the eligibility of Oko to be nominated as school board trustee in September 2013 for the Evergreen School Division under the *Local Authorities Election Act*, RSA 2000 c L-21. Mueller alleges that Oko was ineligible to be nominated because he was employed with the Pembina School Division at the time of his nomination and failed to take a leave of absence as required by section 22 of the Act. Justice Hillier dismissed Mueller's application for judicial review in January 2014 and this post concerns the appeal of Justice Hillier's decision.

The *Local Authorities Election Act* governs election procedures for municipalities and school districts in Alberta. Section 22 governs eligibility for nomination to elected office. Among other grounds of ineligibility, section 22 states that a person is not eligible to be nominated for elected office in a municipality if that person is employed by the municipality or is indebted to it (e.g. property taxes owed for a previous taxation year). Similarly section 22 states that a person is not eligible to be nominated for election as a school board trustee if that person is employed by *any* school district in Alberta. A distinction of note here with respect to school districts is that the section 22 employment ineligibility applies to all districts in the province, not just the one in which the candidate seeks to be nominated. The broader scope of ineligibility for school districts (as compared to municipalities) was enacted by legislative amendment in 2004. In its 2007 decision in *Baier v Alberta*, 2007 SCC 31, the Supreme Court of Canada ruled that this broader restriction for school districts does not violate sections 2(b) or 15(1) of the *Charter*.

In this case, Mueller claims that Oko was ineligible to be nominated for election to the Board of Trustees for the Evergreen School Division because at the time of his nomination he was employed by the Pembina School Division. The facts of the case indicate that Oko had a contract to provide marking services for the Alberta Distance Learning Centre administered through the Pembina School Division at the time of his nomination. The legal issue before the Court is the meaning of "employed" as found in section 22 of the Act and whether by virtue of the marking contract Oko was employed by the Pembina School District and thus ineligible to be nominated for the Evergreen trustee position because he failed to obtain a leave of absence from his position with Pembina.

The Court's reasons provide a straightforward run through on the principles of statutory interpretation in Canada (at paras 13 to 19). The Act does not provide a definition of "employed" and the Court of Appeal observes that a word in a statute takes its ordinary meaning unless altered by the legislature. Likewise, the legislature is presumed not to alter the common law meaning of a word unless it does so expressly. In the absence of any legislated definition here the Court finds that the common law defines employment as a master-servant relationship. The Court also notes the context in section 22 supports this meaning with the use of phrases such as "leave of absence" and "return to work". The Court also observes that the *School Act,* RSA 2000 c S-3, allows trustees to maintain certain contractual relations with their Board so long as they comply with conflict of interest rules, and thus these provisions would be redundant if nominees were precluded from holding contractual provisions such the one held by Oko. The legislature does not draft gratuitously. The Court agrees with the earlier finding by Justice Hillier that Oko was an independent contractor with Pembina. The Court rules that this contractual relationship is not within the meaning of "employed" as found in the Act (at paras 20 – 24).

The case is dealt with by statutory interpretation, however the Court also notes that Mueller raised certain legal arguments for the first time on appeal (at para 21). Generally speaking, appellate courts are reluctant to hear a new argument on appeal. This reluctance is in part because of concerns over whether there was a sufficient factual or evidentiary record in the lower proceedings to support the new argument.