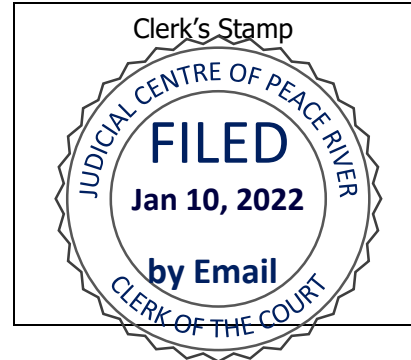


COURT FILE NO. 2109 – 00171  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE PEACE RIVER



APPLICANT THE BOARD OF TRUSTEES OF NORTHLAND SCHOOL DIVISION CD  
RESPONDENT THOMAS AUGER  
  
DOCUMENT IN THE MATTER OF A CONTROVERTED  
ELECTION PURSUANT TO THE  
*LOCAL AUTHORITIES ELECTION ACT,*  
RSA 2000, c. L-21

**APPLICATION FOR JUDICIAL REVIEW**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McLENNAN ROSS LLP #600 McLennan Ross Bldg. 12220 Stony Plain Road Edmonton, AB T5N 3Y4	Lawyer: Teresa Haykowsky Telephone: (780) 482-9247 Fax: (587) 410-6884 Email: teresa.haykowsky@mross.com File No.: 182026
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**NOTICE TO THE RESPONDENTS:**

This Application is made against you. You are a Respondent.  
You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

**Date:** February 10 – 11, 2022  
**Time:** 10:00 a.m.  
**Where:** Peace River, Alberta  
**Before Whom:** The Honourable Justice S. Little

Go to the end of this document to see what you can do and when you must do it.

**Basis for this claim:**

1. The Applicant, THE BOARD OF TRUSTEES OF NORTHLAND SCHOOL DIVISION ("Northland School Board"), is a school board which operates in accordance with the *Education Act*, RSA 2012

- c. E-0.3, (*Education Act*), and the *Northland School Division Act*, RSA 2017 c. N-5.1, as amended from time to time.
2. The Respondent, THOMAS AUGER, ("**Mr. Auger**"), is an individual who resides in Sandy Lake, Alberta.
  3. The 2021 school trustee election in the Province of Alberta was held on October 18, 2021, including in relation to the school trustee election for positions within the Northland School Board ("2021 School Trustee Election").
  4. Following the 2021 School Trustee Election, Mr. Auger was declared the winner of the 2021 Ward 6 School Trustee Election.
  5. The Applicant states that there are reasonable grounds to believe that the 2021 Ward 6 School Trustee Election under the Northland School Division ("Northland School Division") school board trustee election ward system was not valid for the reasons set out below.
  6. The Applicant states that three irregularities (set out in the paragraphs below) occurred during the 2021 School Trustee Ward 6 Election in Northland School Division which raise reasonable grounds to contest the validity of the results of the 2021 School Trustee Ward 6 Election in Northland School Division.
  7. The Applicant respectfully requests this Honourable Court to order that a new school trustee election for Ward 6 in the Northland School Division be conducted.

**Background:**

8. Located in northern Alberta, Northland School Division covers a large geographic distance of approximately 288,347 square kilometres on Treaty 6 and Treaty 8 Territories. The Northland School Board operates twenty-one schools (collectively, the "Local Schools") generally in remote and scattered areas wherein ninety-five percent of the approximate two thousand student population is of First Nations, Métis and Inuit descent.
9. The Local Schools are located in municipalities, First Nation reserves, and Métis Settlements.
10. The *Northland School Division Act*, SA c. N-10.1 ("*1983 Northland School Division Act*"), which was consolidated in the *Northland School Division Act*, RSA 2000, c. N-5 ("*2000 Northland School Division Act*") (collectively, the "*Prior Northland School Division Act*"), provided for the creation of Local School Board committees ("Local School Board Committees"), consisting of between three to five members, within each subdivision of the Northland School Division.
11. From 1983 to 2010 ("Prior Election Period"), Local School Board Committee members were elected to each Local School Board Committee, and that, the Northland School Division conducted the Local School Board Committee elections ("Local School Board Committee Elections") at each individual Local School subject to paragraph fourteen (14) below. Pursuant to the *Prior Northland School Division Act*, each Local School Board Committee chair also held a position as school trustee on the Northland School Board.
12. During the Prior Election Period, the Northland School Division conducted the Local School Board Committee Elections pursuant to the *Prior Northland School Division Acts*, the then *School Act*, RSA 2000 c. S-3 (now replaced by the *Education Act*) and the *Local Authorities Election Act*, RSA 2000 c. L-21 ("*LAEA*").

13. To facilitate the Local School Board Committee Elections, poll stations were assigned and available to eligible voters (i.e., the parents of children who attend Northland School Division and other eligible voters who do not have children but who were eligible to vote in the Local School Board Committee Elections, which are collectively referred to as the "Prior Voters.") at each Local School community.
14. During the Prior Election Period:
  - a) Local School Board Committee Elections were held at both Mistassiniy Junior Senior High School ("Mistassiniy School") and at St. Theresa Elementary School ("St. Theresa School") (both located in the region of Wabasca-Desmarais, Alberta);
  - b) Regardless of whether a Voter lived in Wabasca or Desmarais, Prior Voters in the local communities of Wabasca and Desmarais could, and did, vote in the Local School Board Committee Elections on election day at either, or both, Mistassiniy School in Desmarais or St. Theresa School in Wabasca to elect a Local School Board Committee member from either Wabasca, Desmarais or both and could cast a vote for a Local School Board Committee candidate representing either, or, both the Local School Board Committees of Desmarais or Wabasca. (This Local School Board Committee voting structure is defined as the "Wabasca and Desmarais Local School Board Committee Voting Process").
15. The Wabasca and Desmarais Local School Board Committee Voting Process was conducted during the Prior Election Period, which is an approximate twenty seven year period (i.e., from 1983 up to and including 2010). The Wabasca and Desmarais Local School Board Committee Voting Process was not based on a ward system but conducted as outlined in paragraph 14.
16. Although the Local School Board Committee Elections commenced at or around 1983, prior to 1983, the Province of Alberta appointed trustees to the Northland School Board.
17. In January 2010, the then Minister of Education, David Hancock dissolved the Northland School Board ("Board Dissolution") and appointed an official trustee to oversee the Northland School Division.
18. At or around January 21, 2010, Minister of Education, David Hancock, appointed an Official Trustee, Dr. Colin Kelly, to serve as the Northland School Board. Dr. Kelly served as the Official Trustee up to at or around July 2016.
19. Following Mr. Kelly's retirement, the then Minister of Education, David Eggen, appointed Lois Byers as the Official Trustee for Northland School Division effective July 1, 2016. Ms. Byers served as the Official Trustee held this position until at or around October 2017.
20. The 2010 School Trustee Election in the Province of Alberta was held on October 18, 2010. On that date, while Prior Voters cast votes for Local School Board Committee candidates who were elected or otherwise acclaimed, the Local School Board Committee chairs did not form part of the Northland School Board as the Board was comprised of the Official Trusteeship.
21. From at or around January 2007 up to and including October 16, 2017 ("2017 School Trustee Election in Alberta") ("Non Voting Period"), while Prior Voters continued to, and did, vote for Local School Board Committee members within the School Division, the elected Local School Board Committee chairs did not form part of the Northland School Board (as had been the case during the Prior Election Period) as the same Northland School Division was under the direction of the Official Trusteeship.

22. Prior to and during the Official Trusteeship, school trustee elections in the Province of Alberta were held on October 18, 2010, October 21, 2013 and October 16, 2017.
23. Prior Voters did not vote in a school trustee election for the Northland School Board for an approximate ten year period (i.e., from 2007 up to and including mid-October 2017).
24. In 2017, the Province of Alberta implemented the *Northland School Division Act*, RSA 2017 c. N-5.1 ("*New Northland School Division Act*"), and reinstated school board trusteeship ("Northland School Board Reinstatement") within the Northland School Division. The first election to take place further to the Northland School Board Reinstatement was on October 16, 2017.
25. At the time of the Northland School Board Reinstatement, two critical changes had been made:
  - a) pursuant to section 3 of the *New Northland School Division Act*, eleven (11) wards were created within Northland School Division where the same operated Local Schools ("New School Trustee Election Ward System") as reflected in Ministerial Order 040-2017; and
  - b) that, pursuant to section 4(3) of the *New Northland School Division Act*, one school trustee was to be elected in each ward.
26. As a result of the New School Trustee Election Ward System, which had been recommended in the 2010 Northland School Inquiry Team Report, Local School Board Committees were discontinued. The New School Trustee Election Ward System created a material change to the school trustee election process.
27. Northland School Division went from previously having twenty-three (23) school trustees (under the Local School Board Committee structure) to eleven (11) school trustees under the New School Trustee Election Ward System.
28. Under the New School Trustee Election Ward System, more than one local community could be included in a ward. (The Ward 6 school trustee's Schools include Mistassiniy School and Pelican Mountain School located respectively in Desmarais and Sandy Lake.)
29. As a result of the New School Trustee Election Ward System, Ward 6 and Ward 7 of the Northland School Division were located adjacent to one another, sharing the newly created (in 2017) dividing boundary.
30. The first school trustee election under the *New Northland School Division Act* and the New School Trustee Election Ward System was held on the October 16, 2017 ("2017 School Trustee Election").
31. The 2017 school trustee election ("2017 Ward System Trustee Election Structure") was the first local school trustee election for positions within Northland School Board under the New School Trustee Election Ward System. Eligible voters under the New School Trustee Election Ward System (collectively, the "Voters") voted to elect school trustees to the Northland School Board under this new process.
32. In relation to Ward 6, which is in the local community of Wabasca-Desmarais, during the 2017 School Trustee Election for the Northland School Board, the school trustee was elected by acclamation and thus Ward Voters were not required to attend the polling station in Ward 6 for voting purposes.

33. The Voters in Desmarais had not voted for a Northland School Board trustee for a fourteen year(14) period (i.e., from 2007 up to and including 2021).
34. Under the New School Trustee Election Ward System, Voters are eligible to vote at a polling station located within their ward (whereas previously in relation to Wabasca-Desmarais Local Communities, Prior Voters would vote at either or both of the Local Schools and for either or both of the Local School Board Committee candidates).
35. The Northland School Division passed Board Motion 25172-20 which passed Board By-law 03-2020 at the December 14, 2020, Special Board Meeting of the Northland School Board, wherein the ward boundary between Wards 6 and 7 was further adjusted to change the boundary ("Boundary") between Wards 6 and 7 to take effect for the 2021 School Trustee Election.
36. The Boundary now followed Highway 813 and other roads (in the place of following less clear boundary lines throughout rural areas, such as for example, boundaries within fields). In addition, as per By-law 03-2020, the number of Northland School Board trustees was reduced from eleven (11) to ten (10) and adjusted several Wards including the Boundary. Following said ward change, a new map of Ward 6 and Ward 7 was created ("2021 School Trustee Election Ward Map") at or around August 2020.
37. The Applicant states that the school trustee voting history was confusing to Ward 6 and Ward 7 Voters who reside in the Wabasca-Desmarais area for the 2021 School Trustee Election.
38. Further, the Applicant states that it was within this confusing historical context that some Ward 6 and Ward 7 Voters who reside in the Wabasca-Desmarais area approached the 2021 School Trustee Election.

#### **2021 School Trustee Election at Wards 6 and 7**

39. To facilitate the 2021 Ward 6 School Trustee Election, two polling stations were assigned and set up in Ward 6, the locations being, (1) at Mistassiniy School, which is located in the community of Desmarais, Alberta; and (2) at Pelican Mountain School, which is located in Sandy Lake, near Wabasca-Desmarais, Alberta.
40. No polling station had been assigned in Ward 7 (at St. Theresa School) as the Ward 7 school trustee had been acclaimed for the 2021 School Trustee Election.
41. The Ward 6 nominated Northland School trustee candidates for the position of Ward 6 School Trustee at Mistassiniy School were:
  - a) The Respondent, Thomas Auger; and
  - b) Silas Yellowknee.
42. The tallied votes for the 2021 Ward 6 School Trustee Election were as follows:

	<b>Mistassiniy School Poll</b>	<b>Pelican Mountain School Poll</b>	<b>Total</b>
Thomas Auger	4	23	27
Silas Yellowknee	15	7	22

43. Pelican Mountain School, which is part of Ward 6, did and does not consist of more than one local community (as opposed to the Wabasca-Desmarais region).
44. On October 20, 2021, the results were certified and Mr. Auger was declared the winner of the 2021 Ward 6 School Trustee Election ("2021 Ward 6 Election Results").
45. The Presiding Deputy Returning Officer for the 2021 Ward 6 School Trustee Election, Ms. Stephanie Sutherland, M. Ed., and Director of Student Services for Northland School Division ("Ward 6 Presiding Deputy Returning Officer") noted that eleven (11) individuals ("Individuals") had attended the Ward 6 Polling Station located at Mistassiniy School to vote, and that, upon their entry at the school, were shown the Ward Map ("Professional Ward 6 and 7 Ward Map") and, that each of these eleven individuals were apprised that as they did not reside in Ward 6, and, that they were not entitled to vote at the Mistassiniy School polling station.
46. The Applicant states that there are reasonable grounds to believe that the 2021 School Trustee Election under the New School Trustee Election Ward System was not valid for the reasons set out above in the foregoing paragraphs.
47. With respect to the above-referenced 2021 Ward 6 Election Results, the Applicant states that three irregularities occurred during the 2021 Ward 6 School Trustee Election.

**Irregularity #1 – Ward 6 & 7 School Trustee Election Confusion**

48. In advance of the 2021 School Trustee Election, and pursuant to sections 14(1)(h) and 26 of the *LAEA*, Northland School Division has statutory duties to give notice relative to the 2021 School Trustee Election.
49. The Applicant states it met the requisite duty under the *LAEA* in the following ways:
  - i. Pursuant to section 35(2) of the *LAEA*, Northland School Division published a notice in the local newspaper The Fever Newspaper on October 7, 2021 and October 14, 2021, circulating in the Wabasca-Desmarais area, in order to comply with its statutorily imposed duty to give notice of the 2021 School Trustee Election;
  - ii. Northland School Division posted at or around October 13, 2021, up to and including October 18, 2021, notice on its website to provide Voters information about the 2021 School Trustee Election;
  - iii. Northland School Division posted, from at or around October 12, 2021, up to and including October 18, 2021, a notice to its Facebook page to provide Voters information about the 2021 School Trustee Election in relation to Ward 6 and 7;

- iv. St. Theresa School posted, at or around from October 12, 2021, up to and including October 18, 2021, a notice to its Facebook page to provide Voters information about the 2021 School Trustee Election in relation to St. Theresa's School;
  - v. Mistassiniy School posted, at or around from October 15, 2021, up to and including October 18, 2021, a notice to its Facebook page to provide Voters information about the 2021 School Trustee Election in relation to Mistassiniy School;
  - vi. Career Pathways School posted, at or around from October 15, 2021, up to and including October 18, 2021, a notice to its Facebook page to provide Voters information about the 2021 School Trustee Election in relation to Career Pathways School;
  - vii. In order to ensure Voters were aware of the 2021 School Trustee Election, Northland School Division sent correspondence home with the students who attend Mistassiniy School;
  - viii. In order to ensure Voters were aware of the 2021 School Trustee Election, Northland School Division sent correspondence home with the students who attend St. Theresa School; and
  - ix. In addition to sending correspondence home with the Mistassiniy School and St. Theresa School students, Northland School Division put up posters in Mistassiniy School and St. Theresa School advertising the 2021 School Trustee Election.
50. In accordance with section 37(1) and section 53(1) of the *LAEA*, the Northland School Division Returning Officer, Douglas Aird, ensured that polling stations were set up at Mistassiniy School and Pelican Mountain School and that proper identification protocol was followed during the 2021 School Trustee Election.
  51. The Applicant states that the New School Trustee Election Ward System created confusion for Voters in that they were no longer able to vote for candidates from either Wabasca and/or Desmarais nor at polling stations located at either or both Mistassiniy School and St. Theresa School.
  52. In June 2021, Northland School Division retained a professional cartographer to create the new Professional Ward 6 and 7 Map so it would be available to Voters at Mistassiniy School on October 18, 2021, and because of an apprehension that there might be confusion regarding the 2021 Ward 6 School Trustee Election due to the New School Trustee Election Ward System.
  53. During the 2021 School Trustee Election, eleven (11) Individuals attended Mistassiniy School to vote and, after discussions with the Presiding Deputy Returning Officer and reviewing the Professional Ward 6 and 7 Ward Map, it was determined these Individuals lived in Ward 7. Because of this, while they wished to vote in the 2021 School Trustee Election, they were unable to do so.
  54. The Applicant states that the change from the Wabasca and Desmarais Local School Board Committee Voting Process to the New School Trustee Election Ward System, and the fourteen (14) year time frame in which Voters in Ward 6 had not voted for a school board trustee, created confusion to Voters in Wards 6 and 7.
  55. On the day of the 2021 School Trustee Election, of the thirty (30) people who came to vote at the Mistassiniy School, eleven (11) Individuals reviewed the Professional Ward 6 and 7 Ward Map and determined they were ineligible to vote because they lived outside of Ward 6. This meant only nineteen (19) people voted at the Mistassiniy polling station even though eleven (11)

additional Individuals had attended Mistassiniy School on October 18, 2021, to cast their school board trustee vote for the 2021 School Trustee Election, but were unable to vote.

56. The Applicant states that there existed significant confusion about the 2021 Ward 6 School Trustee Election. Eleven (11) out of thirty (30) Voters constitutes approximately thirty-six percent (36%) of the Voters who wished to cast a vote on October 18, 2021. A percentage of that nature signified there was an issue in relation to the 2021 Ward 6 School Trustee Election.

**Irregularity #2 - Main Door locked at Mistassiniy School:**

57. During the 2021 Ward 6 School Trustee Election at Mistassiniy School, the locking mechanism of the main door at Mistassiniy School ("Main Door") was intermittently self-locked throughout the day and into the evening.
58. Martina Merrier, the Head Custodian at Mistassiniy School, noticed that the lock mechanism in the Main Door had 'self locked' at or around 3:20 PM on the day of the 2021 School Trustee Election; the result of which was the Main Door was not open at all times to allow voters to enter Mistassiniy School to cast their vote in the 2021 School Trustee Election
59. At or around 11:00 AM – 12:00 PM on the day of the 2021 School Trustee Election, a Voter, Leonard Mineault, attended Mistassiniy School. Mr. Mineault was unable to enter Mistassiniy School to vote because the lock mechanism within the Main Door had self-locked. However, a student let Mr. Mineault inside Mistassiniy School. After viewing the Professional Ward 6 and 7 Ward Map at the polling station, Mr. Mineault determined he did not live in Ward 6 and was not able to vote in the 2021 School Trustee Election.
60. The Applicant states that Mr. Mineault is an example of a Voter who, due to confusion about the New School Trustee Election Ward System, was unable to vote in the 2021 School Trustee Election. Further, the Main Door to Mistassiniy School "self-locking" on election day resulted in an impediment to Voters' meaningful exercise of their democratic rights.

**Irregularity #3 – Depressed School Trustee Voter Turnout in the Wabasca and Desmarais Area of the Northland School Division**

61. The October 28, 2021, municipal election to elect the councillors for the Municipal District of Opportunity ("Municipal Election") took place at the same time as the 2021 School Trustee Election. One of the Municipal Election polling stations in the Municipal District of Opportunity ("MD of Opportunity Polling Station") was situated in a community hall across the street from Mistassiniy School (i.e. within a few hundred metres).
62. In the MD of Opportunity municipal election, while there was a municipal voter turnout on October 18, 2021, of approximately between five and six hundred (500-600) people at the MD of Opportunity Polling Station, on the same date, only thirty (30) Voters attended the polling station at Mistassiniy School, which has a student population of approximately two hundred and eighty-five (285) students (as at September 30, 2021).
63. Based on the foregoing, the Applicant states that the discrepancy between number of potential Voters and the actual turnout reflects a depressed turnout for the 2021 School Trustee Election.

**Conclusion:**

64. The Applicant respectfully submits that the outcome of the 2021 School Trustee Election in Ward 6 in Northland School Division is invalid for the following reasons:



- (a) The significant confusion surrounding the New School Trustee Election Ward System (as this relates to Ward 6) which resulted in Voters not having been able to cast their vote in Ward 6;
  - (b) Due to the 'self-locking' mechanical issue with the Main Door, Voters may not have been able cast their vote in Ward 6;
  - (c) A combination of the factors as set out in this Application resulted in an overall depressed turn out of Voters in the 2021 Ward 6 School Trustee Election at Northland School Division.
65. The Applicant submits that a new Ward 6 school trustee election in Northland School Division be conducted as there are reasonable grounds to believe that the Voters:
- a) were unable to cast their vote in Ward 6 at the 2021 School Trustee Election;
  - b) did not have an equal opportunity (as compared to other Voters in Ward 6) to participate in the Ward 6 school trustee electoral process;
  - c) were disenfranchised in their Ward 6 school trustee right to vote at Northland School Division.
66. The Applicant further states that:
- a) to ensure that voters for school trustee positions in Northland School Division have trust in the election outcomes;
  - b) school trustee voting ensures fair elections, and which are not confusing; and
  - c) school trustee voter participation at Northland School Division is safeguarded;
- a new school trustee election in Ward 6 in Northland School Division is in the public interest.
67. Finally, the Applicant respectfully submits that because of the foregoing irregularities, a new Ward 6 school trustee election in Northland School Division should be conducted to ensure the integrity of the school trustee election process in Ward 6, and to ensure that the 2021 School Trustee Election in Ward 6 constituted a meaningful exercise of the Voters' democratic rights.

**Relief Sought:**

68. The Applicant respectfully requests the following relief:
- (a) An Order declaring that the 2021 Ward 6 School Trustee Election was invalid;
  - (b) An Order directing that a new Ward 6 school trustee election (by-election) in the Northland School Division be conducted; and
  - (c) Such further and other Relief as this Honourable Court may deem just and appropriate.

**Affidavit or other evidence to be used in support of this Application:**

69. The Applicant relies on the Affidavit of Douglas Stewart Aird, filed November 29, 2021, pursuant to Rule 13.25 of the Alberta *Rules of Court*; and

70. Such further and other materials as Counsel for the Applicant may advise and this Honourable Court may permit.

**Applicable Acts and Regulations:**

71. Rules 6.1, 6.3, 13.25 of the Alberta *Rules of Court*, Alta Reg 124/2010;
72. *Local Authorities Election Act*, RSA 2000, c. L-21;
73. *Northland School Division Act*, RSA c. N-10.1;
74. *Northland School Division Act*, RSA 2000, c. N-5;
75. *Northland School Division Act*, RSA 2017, c. N-5.1;
76. *School Act*, RSA 2000 c. S-3; and
77. *Education Act*, RSA 2012 c. E-0.3.

**WARNING**

You are named as a Respondent because you have made or are expected to make an adverse claim in respect of this Originating Application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the Applicant and against all persons claiming under the Applicant. You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the Applicant are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an Affidavit or other evidence with the Court and serving a copy of that Affidavit or other evidence on the Applicant a reasonable time before the application is to be heard or considered.