

Court of King's Bench of Alberta

**Citation: Alberta Teachers' Association v Buffalo Trail Public Schools Regional Division
No. 28, 2026 ABKB 347**

Date: 20260506
Docket: 1603 22465
Registry: Edmonton

Between:

The Alberta Teachers' Association

Applicant

- and -

Buffalo Trail Public Schools Regional Division No. 28

Respondent

**Reasons for Judgment
of the
Honourable Justice G.R. Fraser**

[1] This matter is a judicial review of the November 21, 2016, decision of the Labour Arbitration Board (Board). The 2-1 decision held that the Board did not have jurisdiction over a grievance brought by the Alberta Teachers Association (ATA) against the Buffalo Trail Public Schools Regional Division No. 28 (Buffalo Trail). The ATA submits that the Board was either incorrect or unreasonable in its decision, and the decision should be quashed.

[2] The Grievance alleged that the Division had breached the provisions of an agreement, titled the "Modified Framework Agreement" (MFA), which was legislated into force by the Government of Alberta (GOA) on May 27, 2013, through the *Assurance for Students Act*, SA 2013, c A-44.8 (ASA). The Grievance also alleged that the Division had breached the provisions

of Ministerial Order #033/2013 (Ministerial Order) enacted by the GOA under the *School Act*, RSA 2000, c S-3.

[3] The ATA made its formal grievance on June 3, 2015. It alleged to separate grievances. First, it alleged that the Division had breached s 2 of the Ministerial Order, by failing to use best efforts to reduce unnecessary tasks (the “Best Efforts Dispute”). The second allegation alleged that the Division had breached Part C S-5 of the MFA, by failing to ensure that teachers’ non-instructional time is dedicated from currently allotted non-instructional days, and by failing to allow teachers time to address the goals of their Professional Growth Plans (the “Professional Development Dispute”).

[4] Buffalo Trail responded on June 18, 2015. It took the position that the Ministerial Order and the MFA should be dealt with by an alternative process, not as a grievance.

[5] The matter proceeded to a hearing before the Board in March 2016. The Board’s decision, ***Buffalo Trail Public Schools Regional Division No. 28 v The Alberta Teachers’ Association***, 2016 CanLII 85245, contains a detailed recounting of facts. In its 2-1 decision, the Board found that the allotment of professional development time into non-instructional days is not a “difference” under s 16.1 of the Collective Agreement. Therefore, it was not subject to arbitration.

[6] Instead, it found that this issue should be dealt with pursuant to the Framework Agreement, Part C.5 (*Professional Development*), into between the GOA, the Alberta School Boards Association and the ATA.

[7] The dissent found that the Legislature did intend that the Framework Agreement be incorporated as part of the collective agreement. Therefore, arbitration was appropriate.

[8] The ATA sought judicial review of the Board’s decision. In October 2020, Justice Macklin found the review to be moot. In his decision, ***Alberta Teachers’ Association v Buffalo Trail Public Schools Regional Division No 28***, 2020 ABQB 582, Justice Macklin analyzed the application with reference to mootness and found that the review should not proceed. He found that there was still a live issue in dispute, but that the issue was without merit.

[9] The ATA appealed the finding of mootness. The Court of Appeal in its decision, ***The Alberta Teachers’ Association v Buffalo Trail Public Schools Regional Division No 28***, 2022 ABCA 13, remitted the matter back to Court of King’s Bench for a rehearing. It found that the issue to be decided was whether the arbitrators had improperly declined jurisdiction to decide the grievance.

[10] The rehearing of the judicial review came before me November 5, 2025, more than 10 years after the filing of the grievance. Since then, the legislation involved has been repealed and replaced. The ATA signed a Memorandum of Agreement covering the years 2016 to 2018. It was replaced by a mediated settlement that covered 2018 through 2020. That was replaced by an agreement that covered 2023/2024. It expired, eventually resulting in a strike. The Government legislated the teachers back to work in October 2025 with the *Back to School Act*, B – 0.5, 2025. The *Act* imposed a contract on the teachers that is in effect until August 31, 2028. This *Act* also invoked s 33 of the *Charter*, commonly known as the notwithstanding clause.

[11] The ATA conceded at the Court of Appeal that the only grounds of relief remaining were damages in an amount to be determined and such further and other remedies as an arbitrator may deem fit, including all remedies required to make any teacher affected whole. As noted in Justice

Macklin's decision, it does not appear that the grievance alleged any facts in support of the ATA's claim of damages nor is there a reference to any other form of remedy. This may defeat any claim for damages or other remedies. However, the Court of Appeal found that the Board's jurisdiction needed to be determined before any analysis regarding the strength of the claim. The proper route would be to assume that the grievance, as pled, was valid. Then, it would be required to determine whether the Board had properly declined jurisdiction.

[12] In his decision, Justice Macklin wrote at paragraph 31: "Judicial resources are scarce at this time and there do not appear to be such special circumstances in this case to make it worthwhile dedicating those scarce judicial resources to resolving issues that are moot." I find that I can take judicial notice that judicial resources today are as scarce, if not scarcer than they were in 2020. Although the Court of Appeal found that the issues were not moot, I am unsure if the judicial resources, along with the financial cost to the parties, is the best use of scarce resources.

Standard of Review

[13] The governing authority on the standard of review is ***Canada (Minister of Citizenship and Immigration) v Vavilov***, [2019] SCCJ No 65. In most cases the standard of review is one of reasonableness. However, when the issue is related to jurisdictional issues between two or more administrative bodies, the standard is correctness. As the Court said at paragraph 64:

The rule of law cannot tolerate conflicting orders and proceedings where they result in a true operational conflict between two administrative bodies, pulling a party in two different and incompatible directions: see *British Columbia Telephone Co.*, at para. 80, per McLachlin J. (as she then was), concurring. Members of the public must know where to turn in order to resolve a dispute.

[14] It went on to say at paragraph 67:

A proper application of the reasonableness standard will enable courts to fulfill their constitutional duty to ensure that administrative bodies have acted within the scope of their lawful authority without having to conduct a preliminary assessment regarding whether a particular interpretation raises a "truly" or "narrowly" jurisdictional issue and without having to apply the correctness standard.

[15] In this case, there are not two competing bodies. There is only the Board. It did not decline jurisdiction by finding there was another tribunal with jurisdiction. The Board interpreted the collective agreement between the ATA and Buffalo Trail. It examined the MFA and the Ministerial Order in relation to the collective agreement. In doing so, it made findings regarding the intent of the parties, including the legislative intent regarding the collective agreement. The Board's decision did not leave the ATA with no forum for its grievance. It found that the ATA should engage the Exceptions Committee under Part C-5 of the agreement to resolve the issue.

[16] I do not find this to be one of the true jurisdictional issues that attracts a correctness standard of review. I find the standard of review to be reasonableness.

[17] The Collective Agreement does not contain specific clauses that include the rights and obligations that are subject of the ATA's grievance. Therefore, the Board's decision focused on whether the MFA was incorporated into the collective agreement. This required an analysis of

the legislature's intention. The ATA's position was that section 4(1) of the ASA linked the two documents. The section states:

The parties shall enter into a collective agreement in accordance with the terms and conditions of, and within the time set out in, the Modified Framework Agreement.

[18] The Board found that this section did not definitively incorporate the MFA into the Collective Agreement. It only meant that the collective agreement could not contain terms contrary the condition set out in the MFA. The Board reasoned that if the Legislature had intended the terms and conditions of the MFA to be incorporated into the collective agreement, it would have made specific reference to the terms being included.

[19] In *Regina Police Assn Inc v Regina (City) Board of Police Commissioners*, 2000 SCC 14, the Court found at para 23 that the intention of the legislature governs when determining whether an administrative body has jurisdiction to hear a dispute.

[20] The Board examined the legislative intent behind the MFA and the order. It found that the Legislature was alive to the provisions of the *Labour Relations Code*. The MFA references the Code in its dispute resolution section. It provides for the Exceptions Committee to provide binding decisions regarding excess instructional hours. The same section empowers the Committee to deal with issues arising from non-instructional days.

[21] The Board found that the Legislature never intended collective agreement arbitration to be used as a method to resolve workload issues involving the allocation of teachers' professional development time from allotted non-instructional days. This option is available to the Legislature, provided the result does not remove the base rights under employment-related Statutes.

[22] I find this interpretation to be reasonable. The Legislature did not intend for this type of grievance to be directly subject to arbitration. There is a process in the MFA to deal with these issues. This process should be followed.

[23] For the above reasons, the application for judicial review is dismissed.

[24] If the parties cannot agree on costs, they may make written submissions to me within 30 days of this Judgment.

Heard on the 5th day of November, 2025.

Dated at the City of Edmonton, Alberta this 6th day of May, 2026.

G.R. Fraser
J.C.K.B.A.

Appearances:

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for the Applicant

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for the Respondent