Court of King's Bench of Alberta

Citation: Alberta Union of Provincial Employees v Alberta Health Services, 2025 ABKB 465

Date: 20250808
Docket: 2303 14099/2303 23477
Registry: Edmonton

Between:

Alberta Union of Provincial Employees

Applicant

- and -

Alberta Health Services, The Crown in Right of Alberta, and the Alberta Labour Relations Board

Respondents

Corrected judgment: A corrigendum was issued on August 8, 2025; the corrections have been made to the text and the corrigendum is appended to this judgment.

Memorandum of Decision
of the
Honourable Justice Kent J. Teskey

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[1] On October 26, 2020, an illegal strike was conducted by healthcare workers represented by the Alberta Union of Provincial Employees. In the aftermath, Alberta Health Services sought the suspension of dues under section 140 of the Labour Relations Code. Where a due suspension is ordered, an employer is not required to collect and remit union dues to a union. The Labour Relations Board ordered a 1-month suspension for the bargaining units involved in this strike, affecting approximately $1,650,000 to $2,500,000 in dues. The Union seeks judicial review of that decision.

The Strike

[2] On October 26, 2020, an illegal strike occurred involving approximately 2200 employees from the Alberta Union of Provincial Employees (AUPE) across over 70 healthcare facilities operated by Alberta Health Services (AHS)

[3] The employees involved were from two different bargaining units, the Auxiliary Nursing Care Unit (ANC) and the General Support Service Unit (GSS).

[4] The ANC consisted of approximately 16,000 employees. It included staff involved in various nursing care roles that supported the healthcare system. These roles typically encompassed licensed practical nurses (LPNs), healthcare aides, and other auxiliary nursing personnel who provided direct patient care and assisted registered nurses and other healthcare professionals in delivering medical services.

[5] The GSS consisted of approximately 25,000 employees and covered a wide range of job functions essential to the operation of healthcare facilities, though it did not include direct patient care. These roles encompassed positions in areas such as housekeeping, food services, maintenance, clerical support, and other general support functions that contributed to the smooth operation of healthcare facilities.

[6] This was a fraught time in the labour relationship between AHS and AUPE. While collective bargaining was underway, significant issues arose regarding job security and the contracting out of services. The COVID-19 pandemic further strained the situation, with rising case rates and hospitalizations exacerbating tensions. Then, on October 13, 2020, the Alberta Government announced job cuts as part of the AHS Review, leading to heightened unrest among AUPE members.

[7] AUPE members began striking on October 26, 2020, starting at the Foothills Medical Centre in Calgary and the Royal Alexandra Hospital in Edmonton, and spreading to other facilities.

[8] The strike saw varying levels of participation, with some sites experiencing significant disruptions. For instance, the Royal Alexandra Hospital's Medical Device Reprocessing Centre had over 80 employees participate, affecting the hospital's ability to sterilize surgical equipment and proceed with surgeries.

[9] AHS took several measures to mitigate the impact, including redeploying staff, having non-unionized employees perform bargaining unit work, and cancelling scheduled surgeries and procedures. The strike had a significant impact on the healthcare system, leading to the postponement of 294 surgeries and procedures, the cancellation of hemodialysis treatments, and delays in patient care. The Board issued a cease-and-desist order on the evening of October 26, 2020, directing employees to return to work.

Actions of AUPE Supporting the Strike

[10] The Board found that the Union engaged in several actions that encouraged the illegal strike.

[11] AUPE held a series of town hall meetings on October 7, 8, and 9, 2020, where union members were provided mixed messages about the path forward in this labour dispute. During these meetings, AUPE's President acknowledged the steps required for legal strike action but

also conveyed that illegal strike action was a real prospect, and assured members that the union would support them if they chose to engage in such action. The President stated, "There is so much anger and frustration that the lid could blow off at any time. And we've been-- we're -- we're prepared for that and ready to support members who take that stand.

[12] Following the Alberta Government's announcement of potential job cuts on October 13, 2020, AUPE issued a press release stating that "strike action is on the table if negotiations break down." Additionally, AUPE's President held a media conference and issued a bargaining update, urging members to prepare for action and assured them of the union's support. The update included the message: "Have the conversation about what you are prepared to do next. Take this time to prepare for the fight of your lives. If AUPE members decide to take action, know that your union will support you every step of the way."

[13] On the morning of October 26, 2020, AUPE's Executive Secretary-Treasurer sent an email to the Provincial Executive, informing them of the strike and requesting that they pass the information on to their Local Executive. AUPE also issued public communications on its website and social media accounts supporting the strike and encouraging continued participation.

[14] AUPE's President attended the Royal Alexandra Hospital and made comments encouraging employees to stay strong and continue the strike, saying, "If you stick together and stay strong, nothing can overcome the power of workers standing together". The Board found that President Smith's comments, "the more people we have on the picket lines and push," were an effort to foster broader and more disruptive job action.

[15] AUPE posted supportive messages and images on social media encouraging solidarity and participation in the strike. For example, a Twitter post included the caption: "Health-care workers take to the streets" and stated, "Across this province, working people are rising up against Jason Kenney's job-killing policies and are joining the fight in solidarity."

[16] The Board ultimately concluded, "…there was nothing before the Board to suggest the Union took steps to discourage illegal strike activity prior to the strike commencing. Nor is there evidence to suggest that, once the strike was underway, the Union encouraged its members to return to their regularly scheduled shifts, or even encouraged some to stay behind to provide a measure of essential services. In fact, the only evidence before the Board suggested the Union fully supported the illegal strike activity and, in fact, encouraged continued and broader strike action." Board Decision, at para 42.

Impact of the Strike

[17] While brief, the Board found that the illegal strike had a profound impact on Alberta's healthcare system. It accepted that the strike resulted in the loss of over 14,000 hours of scheduled work.

[18] AHS took several measures to mitigate the strike's impact, including redeploying staff, having non-unionized employees perform bargaining unit work, and cancelling scheduled surgeries and procedures. Despite these efforts, the strike led to the postponement of 294 surgeries and procedures in the Edmonton Zone alone. Hemodialysis treatments for some outpatients at a facility in Slave Lake were cancelled, and patient care in affected long-term and acute care facilities was delayed.

[19] The strike placed significant strain on the remaining healthcare staff, who were described as being "in tears" and experiencing "chaos" due to the increased workload and the pressure to maintain patient care standards. Managers and employees who remained at work faced considerable challenges, including delays in administering pain medications, feeding patients, providing insulin to diabetics, and assisting with personal hygiene. Some post-operative patients did not have their dressings changed on time, and others had to wait longer for assistance with toileting, with some being left soiled in bed.

[20] The Board found that involvement in the strike varied, with some missing entire shifts and others missing only a portion of their shift. Roughly 2200 employees participated in the strike action, representing about 3.5 percent of the ANC Unit and 6.9 percent of the GSS Unit. (Para 41)

Section 114 of the Labour Relations Code

[21] Section 114 read,

> 114(1) If a strike that is prohibited by Division 15.1, 16 or 18 of this Part commences, the Board may direct the employer to suspend the deduction and remittance of union dues, assessments or other fees payable to the bargaining agent by the employees in the bargaining unit that is on strike.
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> (2) The suspension under subsection (1) shall continue for a period of one to 6 months, as directed by the Board, from the date on which the employer commences the suspension.
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> (3) When the Board directs the employer to commence the suspension, it shall serve the bargaining agent with a copy of the directive.
>
> (4) The bargaining agent that is served with a copy of the directive under subsection (3) may apply to the Board within 72 hours after service of the directive, but not afterwards, for a determination as to whether a strike has occurred.
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> (5) If the bargaining agent does not make an application under subsection (4), the employer shall suspend the deduction and remittance of union dues, assessments or other fees in accordance with the directive of the Board.
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> (6) If the bargaining agent makes an application under subsection (4), the employer shall not suspend the deduction and remittance of union dues, assessments or other fees unless and until the Board makes a determination under subsection (7)(b) that a strike has occurred.
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> (7) If the bargaining agent makes an application under subsection (4), the Board may,
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> > (a) if it determines that no strike has occurred, cancel the directive under subsection (1), or
> >
> > (b) if it determines that a strike has occurred, confirm the directive under subsection (1) and order that the suspension shall take place for the period specified in the directive, and the employer shall

> then suspend the deduction and remittance of union dues, assessments and other fees in accordance with the directive.
>
> (8) Notwithstanding any collective agreement or this Act, an employee does not become ineligible for employment with an employer only because the employee fails to pay union dues, assessments or other fees, the deduction and remittance of which have been suspended under this section.
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> (9) At the end of the suspension period the employer shall resume the deduction and remittance of union dues, assessments and other fees in accordance with the collective agreement, but the employer shall not deduct and remit union dues, assessments and other fees with respect to the suspension period.
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> (10) No provision may be made in a collective agreement in substitution for the suspension of the deduction and remittance of union dues, assessments and other fees under this section.

[22] This section allows for the suspension of dues in cases where an illegal strike is commenced by workers who provide essential services. When originally enacted in 1983, it was intended to deter illegal strikes and maintain the continuity of essential services.

[23] In addressing the application of Section 114 to the facts of this case, the Board was required to engage in a nuanced interpretation of the section that is the subject of this judicial review. The Board was also asked to consider whether the section infringed section 2(d) of the *Charter* and the consitutional protection of freedom of association.

Judicial Review

[24] Judicial Review is a robust form of oversight, but it is one grounded in restraint. As noted in ***Vavilov***, "Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability." (para 13)

[25] My task is to ensure that the decision as a whole is transparent, intelligible and justified; it is not to review the reasons based on the decision that I might have made.

Analysis

[26] I will frame my reasons with reference to the following discrete questions.

Did the Board Unreasonably Find That it had Jurisdiction to Sanction this Strike Under Section 114

[27] At the original hearing, AUPE conceded that the strike action fell within the parameters of section 114 and argued that the Board should decline its discretion to order a dues suspension. While the Board provided brief reasons in support of its findings that this strike action fell within the ambit of the section, it proceeded on the basis that this was not a contentious issue.

[28] After the Board's decision was released, AUPE concurrently sought judicial review in this Court and requested reconsideration of the initial decision before the Board. It argued that while it had initially conceded jurisdiction under section 114, it now took the position that the impugned strike could not be subject to a dues suspension. In a brief endorsement, the Board declined to reconsider its initial decision.

[29] AUPE argues that I ought to consider its jurisdictional argument, notwithstanding that it was not raised before the Board. For the following reasons, it would be improper to consider these arguments for the first time on judicial review.

[30] I accept the direction of the Supreme Court of Canada in **Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association,** 2011 SCC 61 as being helpful to resolve this issue, noting at paras 22-25,

> The ATA sought judicial review of the adjudicator's decision. Without raising the point before the Commissioner or the adjudicator or even in the originating notice for judicial review, the ATA raised the timelines issue for the first time in argument. The ATA was indeed entitled to seek judicial review. However, it did not have a right to require the court to consider this issue. Just as a court has discretion to refuse to undertake judicial review where, for example, there is an adequate alternative remedy, it also has a discretion not to consider an issue raised for the first time on judicial review where it would be inappropriate to do so: see, e.g., *Canadian Pacific Ltd. v. Matsqui Indian Band*, 1995 CanLII 145 (SCC), [1995] 1 S.C.R. 3, *per* Lamer C.J., at para. 30: "[T]he relief which a court may grant by way of judicial review is, in essence, discretionary. This [long-standing general] principle flows from the fact that the prerogative writs are extraordinary [and discretionary] remedies."
>
> [23] Generally, this discretion will not be exercised in favour of an applicant on judicial review where the issue could have been but was not raised before the tribunal (*Toussaint v. Canada Labour Relations Board* (1993), 160 N.R. 396 (F.C.A.), at para. 5, citing *Poirier v. Canada (Minister of Veterans Affairs)*, 1989 CanLII 5208 (FCA), [1989] 3 F.C. 233 (C.A.), at p. 247; *Shubenacadie Indian Band v. Canada (Human Rights Commission)*, 1997 CanLII 6370 (FC), [1998] 2 F.C. 198 (T.D.), at paras. 40-43; *Legal Oil & Gas Ltd. v. Surface Rights Board*, 2001 ABCA 160, 303 A.R. 8, at para. 12; *United Nurses of Alberta, Local 160 v. Chinook Regional Health Authority*, 2002 ABCA 246, 317 A.R. 385, at para. 4).
>
> [24] There are a number of rationales justifying the general rule. One fundamental concern is that the legislature has entrusted the determination of the issue to the administrative tribunal (*Legal Oil & Gas Ltd.*, at paras. 12-13). As this Court explained in *Dunsmuir*, "[c]ourts . . . must be sensitive . . . to the necessity of avoiding undue interference with the discharge of administrative functions in respect of the matters delegated to administrative bodies by Parliament and legislatures" (para. 27). Accordingly, courts should respect the legislative choice of the tribunal as the first instance decision maker by giving the tribunal the opportunity to deal with the issue first and to make its views known.
>
> [25] This is particularly true where the issue raised for the first time on judicial review relates to the tribunal's specialized functions or expertise. When it does,

> the Court should be especially careful not to overlook the loss of the benefit of the tribunal's views inherent in allowing the issue to be raised. (See *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650, at para. 89, *per* Abella J.)

[31] The facts of that case are instructive, as the Supreme Court of Canada allowed a new issue to be raised because the Commissioner had expressed his view on the new issue in other cases. This allowed the Court to benefit from his expertise, and no prejudice was alleged against any party.

[32] I am concerned that I do not have the benefit of the full view of this specialized tribunal on this issue, which has never been raised before. Nor am I critical that they declined to hear this issue on reconsideration. They were not required to adjudicate a novel issue on reconsideration that was available to AUPE at the original hearing and that they did not raise, having instead conceded it.

[33] The Labour Relations Board is given broad authority to adjudicate labour disputes without a broad right of appeal. For that reason, this tribunal may be entitled to greater leeway in interpreting its Code. As noted in ***Vavilov***,

> Reasonableness review does not give administrative decision makers free rein in interpreting their enabling statutes, and therefore does not give them licence to enlarge their powers beyond what the legislature intended. Instead, it confirms that the governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority. Even where the reasonableness standard is applied in reviewing a decision maker's interpretation of its authority, precise or narrow statutory language will necessarily limit the number of *reasonable* interpretations open to the decision maker — perhaps limiting it to one. Conversely, where the legislature has afforded a decision maker broad powers in general terms — and has provided no right of appeal to a court — the legislature's intention that the decision maker have greater leeway in interpreting its enabling statute should be given effect. (Para 68)

[34] In declining to hear this argument, I am showing the appropriate level of respect to a specialized tribunal. There was no reason this could not have been raised before the Board, and it is inappropriate that the first consideration of this fundamental issue comes from this Court without substantial prior consideration by the Board.

[35] To this end, I have also considered the argument of AUPE that there is only one reasonably available interpretation of section 114, and it is the interpretation that they now argue before this Court on judicial review. As such, they say that I should engage the jurisdictional question that they conceded at the initial hearing. As I have held, I do not believe that I should resolve the jurisdictional question in the first instance. Still, beyond that, I am not convinced that there is necessarily only one interpretation of the section. I accept the submissions of the Minister of Justice of Alberta as being a reasonably available interpretation of the Section. They submitted,

> AUPE argues the only strikes captured by s. 114 are strikes contrary to s. 95.8 of the Code (when an essential services agreement is in effect) or ss. 95.45 or 95.21 (when compulsory arbitration is required). By this logic, an illegal strike when an

> essential services agreement is in effect would be subject to dues suspension but an illegal strike before an essential services agreement is entered would not be subject to dues suspension. That outcome makes no sense. Both are unacceptable illegal activities, and if anything, striking before the parties reach an essential services agreement is more serious because there is no acceptance by the negotiating parties of how to address essential services work. Striking before determining "what is essential" in the hospital industry undermines the requirement to classify work as essential or not, thereby indicating which hospital workers can lawfully participate in strike action. The strike action that took place undermined the whole approach to defining hospital workers' right to strike.

[36] To be clear, I am not endorsing the Minister's interpretation over the one urged by AUPE. Instead, I am highlighting that the resolution of this issue is unclear and that an appropriate level of respect for the Board requires that they be entitled to resolve this question in the first instance. In the words of ***Vavilov*** at para 142, it is not "inevitable" that the interpretation that AUPE urges would be accepted. For that reason, it is the Board, not the Court, that should have the opportunity to consider this issue in the first instance. As Justice Rowe commented in dissent, in ***Pepa v Canada (Citizenship and Immigration),*** 2025 SCC 21 at para 147,

> As part of reasonableness review, a court must avoid undertaking its own analysis as to the correct interpretation of a provision; our function is judicial review, not *de novo* analysis. *Vavilov* warns that reviewing courts "should generally pause before definitively pronouncing upon the interpretation of a provision entrusted to an administrative decision maker" (para. 124).

Did the Board Unreasonably Interpret Section 114 as Applying to the Whole of the Bargaining Unit?

[37] AUPE argues that in interpreting section 114, the Board was required to consider a series of discrete issues. In doing so, AUPE asserts that the Board applied inconsistent approaches to interpreting the section. The key interpretive issues included,

1) Whether the strike was captured by section 114
2) Whether the strike applied to the bargaining unit as a whole, or rather, the infringing members
3) Whether Section 114 must be engaged while the illegal strike is ongoing,
4) Whether the Board must initiate the dues suspension process

[38] While AUPE concedes that the Board is entitled to latitude in its interpretation of its statute, it suggests that it engaged a differing interpretation approach based "on what result the Board thought was appropriate to reach given the issue it needed to resolve" (Submissions of AUPE). While AUPE fairly concedes that each interpretative decision could be reasonable in isolation, they are inconsistent in aggregate and therefore unreasonable.

[39] In performing my analysis, I am guided by the helpful comments of Professor Paul Daly in his article "*Unreasonable Interpretations of Law*", (2014), 66 S.C.L.R. (2d) 233, which was cited with approval in Vavilov. He cautions that it is improper to ground arguments merely by reference to the principles of statutory interpretation. He suggests that this approach is legalistic

and wrong. He suggests that reviewing justices ought to ground their analysis in ‘indicias’ of unreasonableness that afflict a decision. He writes,

> These indicia are drawn from the need to ensure “basic consistency in the fundamental legal order”. Illogicality, inconsistency with statutory purpose or underlying values, differential treatment and unexplained changes in policy are all examples of such indicia that imperil the rule of law and good administration. Quite properly, the onus is on the applicant to demonstrate reviewable error; it is not for the administrative decision-maker to demonstrate that it has acted in a manner that is beyond reproach.

[40] This is consistent with ***Vavilov***, which instructs me that reviewing the interpretative decision of a specialized tribunal is a task that must be exercised with appropriate restraint and deference. As Professor Daly commented,

> Generalist judges reviewing administrative decisions are not well-placed to second-guess administrative decision-makers’ considered views of how best to achieve regulatory purposes. Above the fray and at one remove from the administrative process, however, they are well-placed to conduct a “somewhat probing examination” of impugned administrative decisions and identify flaws or fallacies that undermine the integrity of the legal systems. Decisions that are disproportionate (in the sense that they impose an unfair burden on an individual), irrational (in the sense that the chosen means do not serve the desired end) or that treat similarly situated individuals differently, can be identified and quashed by reviewing courts. Judges do not need to stray from their bailiwick to properly conduct the task of judicial review of administrative action.

[41] To this end, I choose to assess the reasonableness of the Board’s interpretation by asking whether there are indicia of disproportionality, irrationality or inequality found within the decision. For the reasons that follow, I find that there are no such concerns, and the board’s interpretation is reasonable.

[42] In essence, AUPE argues that to interpret section 114 to apply to the whole bargaining unit is disproportionate because it imposes a broad penalty on the entire bargaining unit even where only a small group effected the impugned conduct. I disagree. The conclusion of the Board is entirely reasonable and reflects a proportionate interpretation of the Section. They held,

> We recognize that our interpretation of the section means that the same kind of misconduct can have different consequences depending on the size of a bargaining unit. However, the size of these particular units speaks to the risks at stake. We would add there was nothing about AUPE's conduct in this case (e.g., the actions of its President on the morning of the strike, its published communications on the day of the strike) to indicate that the Union intended anything other than job action that spanned the breadth of both bargaining units. Ultimately, AUPE reaps the fruits of these large, province-wide units in terms of the dues it collects. By supporting and encouraging illegal strike action, as it did here, it is not unreasonable that it also be expected to shoulder the consequences of its actions.

> … the Board has discretion to adjust the length of the suspension to address concerns about proportionality. Further, in the right case, the Board might find that no suspension is appropriate at all given concerns relating to proportionality. This is not such a case. (Para 122 – 123)

[43] The Board also explicitly recognized that the goal of the Section was to sanction the union for its conduct and reasonably so.

[44] I also find the Board's interpretation of the process for engaging section 114 to be reasonable and absent any indicia of concern. AUPE argued that the Section should be interpreted to require that a suspension must be issued while the illegal strike is ongoing and that the Board is the entity that must initiate the process.

[45] This interpretation of the Section was rejected by the Board in PHAA#1 and affirmed by the Court of Appeal. AUPE effectively argues that I am entitled to now find this interpretation of the Section unreasonable because of the "overall unreasonable approach to statutory interpretation" engaged in by the Board. I do not accept this as an appropriate argument to undermine the Board's reasoning. I accept the caution of Professor Daly and find that to accept this argument would be to diminish the deference owed to the Board significantly and to give no credit to the fact that the interpretation of the Board is otherwise proportionate and rational.

Did the Board Impose a Dues Suspension that was Unreasonable in Light of the Conduct Found?

[46] At the hearing, AHS requested a six-month dues suspension, the maximum available, while AUPE sought that no suspension be ordered. The Board concluded that a one-month suspension was the appropriate penalty.

[47] The imposition and length of a dues suspension are acts of significant discretion. The Board was required to balance the conduct of the union against the need to exercise restraint. AUPE argues that this discretion was unreasonably exercised. To this point, it essentially argues that when compared to the two other times that the Board considered a dues suspension, its conduct was less culpable and its penalty was more severe.

[48] Much of AUPE's argument is aimed at how the size of its bargaining unit creates a disproportionate penalty. Because of the sheer size of its bargaining unit, the monetary penalty for dues suspension is necessarily higher. This issue was directly before the Board. They reasonably concluded that the size of these units reflects the risks to the healthcare system occasioned by an illegal strike. They also reasonably considered the need to ensure that a proportionate penalty is imposed.

[49] To the question of the length of a suspension, again, the decision is grounded in the principle of restraint and proportionality. It is an outcome firmly within a range of acceptable outcomes and grounded in the appropriate legal principles. It is a reasonable decision.

Does Section 114 Offend Section 2(d) of the Charter of Rights and Freedoms?

[50] AUPE argued before the Board that section 114 offended by interfering with the negotiated obligation of AHS to collect union dues and to provide them to AUPE. It was argued

that this represented a substantial interference with the Union and its members' right to freedom of association under section 2(d) of the *Charter*.

[51] Section 114 had previously been considered by the Board in ***Provincial Health Authorities of Alberta v. AUPE*** [2001] Alta L.R.B.R. 187 ("PHAA#1"), where the Board found that the section did not offend section 2(d) and even if it did, it would be justified under section 1. That finding was overturned on judicial review, where Macklin J. found that the provision breached section 2(d), but agreed with the Board that it would be justified under section 1 in any event (2004 ABQB 591, "PHAA QB"). On appeal to the Alberta Court of Appeal, the Court ultimately concluded that the Section did not infringe section 2(d) and it would have been justified by section 1, 2006 ABCA 356 ("PHAA CA").

[52] It is conceded that there has been a substantial evolution in the common law interpretation of the right to freedom of association since PHAA#1. In ***Mounted Police Association of Ontario v. Canada (Attorney General)***, 2015 SCC 1 ("Mounted Police"). The Supreme Court affirmed that section (2d), "…protects associational activity for the purpose of securing the individual against state-enforced isolation and empowering individuals to achieve collectively what they could not achieve individually. It follows that the associational rights protected by section 2(*d*) are not merely a bundle of individual rights, but collective rights that inhere in associations." (para 62)

[53] In upholding the right to freedom of association, the Court must be sensitive to the power imbalances inherent in labour relations, but ultimately the question is whether it "…strips employees of adequate protections in their interactions with management to substantially interfere with their ability to meaningfully engage in collective negotiations" (para 80)

[54] In Health Services and Support — ***Facilities Subsector Bargaining Assn. v. British Columbia***, 2007 SCC 27 at para 95, the Supreme Court of Canada held,

> To constitute substantial interference with freedom of association, the intent or effect must seriously undercut or undermine the activity of workers joining together to pursue the common goals of negotiating workplace conditions and terms of employment with their employer that we call collective bargaining. Laws or actions that can be characterized as "union breaking" clearly meet this requirement. But less dramatic interference with the collective process may also suffice. … Acts of bad faith, or unilateral nullification of negotiated terms, without any process of meaningful discussion and consultation may also significantly undermine the process of collective bargaining. The inquiry in every case is contextual and fact-specific. The question in every case is whether the process of voluntary, good faith collective bargaining between employees and the employer has been, or is likely to be, significantly and adversely impacted.

[55] The Board found that section 114 imposed a "temporary interruption" on the collection of Union dues where there is evidence of an illegal strike and where the Board determines that it is appropriate to suspend the collection of dues. The Board conceded that the temporary suspension of dues could be a "significant burden" to a union, but did not believe that such a suspension would prevent union members from coming together to pursue common goals.

[56] I agree.

[57] While I agree with AUPE that interference with the collection of dues could, in the abstract, constitute substantial interference, section 114 is limited both temporally and in scope such that it does not offend the Charter.

[58] The suspension of dues is only available where there is a finding of illegal conduct by the union. Moreover, the suspension of the dues can only be temporary. In my view, the use of the word "commences" in section 114 to describe the triggering of the strike is essential. This term prevents the Board from imposing repeated or ongoing suspensions for the same labour action.

[59] It is acutely important that section 114 is aimed solely at illegal conduct. Moreover, it is unlawful conduct by a small segment of workers whose role involves public safety. To find that this regime created a substantial inference, the standard would have to be drastically lowered such that section 2(d) would create a zone of immunity for a union's illegal conduct.

[60] Substantial interference requires that two inquiries be satisfied. The first inquiry is into the importance of the matter affected to the process of collective bargaining, and more specifically, to the capacity of the union members to come together and pursue collective goals in concert. The second inquiry is into how the measure impacts the collective right to good faith negotiation and consultation." Health Services at 93

[61] The section does not primarily alter the collective agreement's requirement to collect dues; it merely suspends it. And it does so at the discretion of the Board, based on the evidence. All of these factors firmly anchor section 114 within constitutional policy choices available to the Legislature.

[62] The Board's determination of the Constitutional issue was correct. Like the Board, I see no need to engage Section 1 analysis in the alternative.

Conclusion

[63] The Application for judicial review is dismissed.

[64] If the parties cannot agree on costs, the parties may raise these issues with me in writing.

Heard on the 30th day of April, 2025.
Dated at Edmonton, Alberta this 8th day of August, 2025.

Kent J. Teskey
J.C.K.B.A.

Appearances:

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Corrigendum of the Memorandum of Decision
of
The Honourable Justice Kent J. Teskey

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