2026 NBKB 028

COURT FILE NO: FC-87-2025

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1386

- and -

69700 NB CORP. (MILLENNIUM ESTATES), EAST COAST INTERIORS INC., AMPED CONSTRUCTION INC.

JUDICIAL REVIEW

Date of Hearing: February 18, 2026

Date of Ruling: February 24, 2026

Before: Justice E. Thomas Christie

Representation of Parties at Hearing::

Brenda Comeau, Counsel for the Applicant

Kelly T. VanBuskirk, K.C. and Daniel Wilband, for the Defendant 697800 NB Corp. (Millennium Estates)

Jamie C. Eddy, K.C. for the Defendant East Coast Interiors INC

Christopher D. Isnor, for the Defendant Amped Construction INC.

Christie, J.

[1] In the decision under review, the New Brunswick Labour and Employment Board addressed three separate Applications, filed against certain of the Respondents, by way of a consolidated hearing. The underlying facts in the Applications arose from the same circumstances, thus the efficiency in hearing the matters together. By decision, dated June 11, 2025, the Board dismissed all three of the Applications filed by the Applicant, United Brotherhood of Carpenters and Joiners of America, Local 1386.

[2] In Board file IR-034-24 (being an Application declaring successor rights) the Respondents were noted as 697800 NB Corp. (Millenium Estates) and East Coast Interiors Inc. In Board file IR-035-24 (being an Application seeking a declaration of common employer status) the named Respondents were, again, noted as 697800 NB Corp. (Millenium Estates) and East Coast Interiors Inc., and added were the Saint John Construction Association Inc., and the Moncton Northeast Construction Association Inc. Finally, in Board file IR-036-24, the Applicant sought a declaration of common employer status involving Respondents, 697800 NB Corp. (Millenium Estates), Amped Construction Inc. and the Saint John Construction Association Inc., and the Moncton Northeast Construction Association Inc. It appears that neither the Saint John Construction Association Inc., nor the Moncton Northeast Construction Association Inc., were active participants in the hearing below.

[3] At para. 2 of the Board's reasons, the Chair summarized the three issues raised in the consolidated Applications as follows:

> 2. The Applications raise three issues: (1) whether there has been a sale of business within the meaning of section 60 of the *Industrial Relations Act*, RSNB. 1973, c. I-4 (herein "the Act") between East Coast and Millennium; (2) whether Millennium and East Coast should be declared a common employer within the meaning of section 51.01 of the Act; and (3) whether Millennium and Amped should be declared a common employer within the meaning of section 51.01 of the Act.

[4] As noted, the Board dismissed each of the Applications.

[5] The Applicant seeks judicial review based on the following grounds, which I summarize as follows:

> (i) The Board erred in fact and law and made an unreasonable decision in finding there was no sale of a business from East Coast Interiors to 697800 NB Corp. (Millennium Estates);
>
> (ii) The Board erred in fact and law and made an unreasonable decision in refusing to declare East Coast Interiors and 697800 NB Corp. (Millennium Estates) to be a common employer per s. 51.01 of the *Act*;
>
> (iii) The Board erred in fact and law and made an unreasonable decision in refusing to declare Amped Construction Inc. and 697800 NB Corp. (Millennium Estates) to be a common employer per s. 51.01 of the *Act*.

[6] All parties agree that the applicable standard of review is reasonableness. I share that view. With the ruling of the Supreme Court of Canada in *Minister of Citizenship and Immigration v. Vavilov*, 2019 SCC 65, comes confirmation that there is a presumption of reasonableness that cloak decisions of the type here under review. As the Applicant's note in their pre-hearing brief, there are two exceptions to this presumption. First, is when there is a legislated standard of correctness review. Second, is when there is a rule of law requirement that would call for a correctness standard to apply. As the Applicant writes in its brief, at para. 14, "*As the presumption is not rebutted, the standard of review remains that of reasonableness*."

[7] With the degree of experience in these matters that present counsel bring to this case, it seems almost unnecessary to review, in great detail, what *reasonableness* means in the *Vavilov* context. All parties have quoted the relevant portions of the Supreme Court's reasons. Of

particular note, is the principle that a judicial review of the tribunal's decision (and supporting reasons) is not to become an opportunity to reargue the evidence and the law. I note the writing of Chief Justice Richard in *Dr. Cameron v. Regional Health Authority 'A'*, 2020 NBCA 56, where he summarized the *Vavilov* principles as follows:

> [23] *Vavilov* included the following guidance on what reasonableness review entails:
>
> > Reasonableness review aims to give effect to the legislature's intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law […].
> >
> > It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to *review*, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem. […] [T]he reviewing court must consider only whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable. [paras. 82-83]
>
> [24] The Supreme Court explained that, to be reasonable, an administrative decision must both be justifiable and actually justified by the decision maker (para. 86).

[8] The tribunal's ruling and reasons need to demonstrate internal rationality, be transparent and be justifiable in terms of the law and facts (see *City of Moncton v. Canadian Union of Public Employees, Local 51*, 2023 NBCA 68).

[9] I begin however, by noting the necessity for the reviewing court to be deferential in its consideration of a tribunal's rulings. Presently, we are dealing with a Board tasked with applying the labour relations principles articulated in the *Industrial Relations Act*. Little is more central to the Board's work than determining questions on the scope or applicability of bargaining rights and that is a task that the legislative regime directs to be resolved by the Labour and Employment Board.

[10] Generally, in the present cases, Local 1386 is of the view that the evidence presented was sufficiently strong that the only *reasonable* outcome open to the Board, was to grant each of the requested orders and declarations. The Respondents argue that the Board acted reasonably in concluding that each of the Applicant's cases were insufficient, from an evidentiary point of view.

[11] Furthermore, Local 1386 argues that the Board did not apply a consistent test. This was illustrated by the Board's use of the phrase, 'strong *prima facie*' case, in parts of its reasons, while also having used the phrase, '*prima facie* case', to describe the applicable test. This, the Applicant argues, amounted to reviewable error. I will say that I am not convinced that the restatement of the applicable test, in the manner in which Local 1386 suggests, provides sufficient ground to review. To the degree that Local 1386 is accurate in asserting that the Board erred in its statement of the test, it is my view that whether a standard is set as simply *prima facie*, or whether it is referred to as being a *strong prima facie* case, is nothing more than a variation on the same theme. Afterall, what is the substantive difference in the meaning?

[12] Moreover, it would be better, in my view, given the accepted expertise of the Board, for it to be the one, in some future ruling, to clarify the test – if it needs clarification at all. It should set its own rules (within its jurisdictional limits). Also, if it is wrong in its statement of the test, *Vavilov* allows for tribunals to be 'wrong' (again, within jurisdictional limits). This does not, on its own, give rise to an unreasonable decision.

[13] In this case, Local 1386 argues that, on each of the Applications, it had sufficient evidence before the Board that the Board had no alternative but to grant the requested relief. In other words, there was no other possible or reasonable outcome. The Respondents argue that the very deficiency identified by the Board was the lack of evidence necessary to meet each step of the applicable tests.

[14] As it pertains to the Application for successor rights, the Board determined that what prevented it from finding, as Local 1386 requested, was sufficient evidence of a transfer of real assets or that an employee of the former East Coast had moved into a position of upper management in the successor company. At paras. 68-69 the Board wrote:

> 68. As can be seen from the caselaw cited above, the Board in this case must look to determine if a functional economic vehicle was transferred from East Coast to Millennium. UBC submits that in this matter, as in many transfers in the construction industry, the real assets transferred were the people. Specifically, they submit that Greene and his drywall crew who went to work for Millennium are the real assets received by Millennium. However, the Board does not find that, **without more evidence**, the simple hiring of the small drywall crew from East Coast into the larger workforce of Millennium is sufficient to establish a transfer of the East Coast business. The keyman cases cited by UBC all point to the keyman going into a position of upper management and/or ownership of the successor, **which is not the evidence here**. At best it can be said that Greene is a working foreman for Millennium. **There was also no evidence** of the transfer of any other assets. Millennium was able to continue the drywall work at the Millidge Ave. Job Site, but that in itself is not proof of the purchase of the East Coast contract. This is corroborated by Fifield's statement in A-3 (set out above).

> 69. In effect, Greene chose to abandon his contracting business to avoid unionization of his employees. UBC has not established a *prima facie* case that he sold the business to Millennium. The legislative test provides that in order to protect the bargaining rights of UBC members in relation to section 60 of the Act, UBC must establish that East Coast was sold or its assets transferred in some manner as a functional economic vehicle. **The evidence of** the hiring of Greene and his drywall crew by Millennium unfortunately **falls short of that requirement.**
>
> [emphasis, both underlining and bold, added]

[15] This was a case where the evidence presented was, in the Board's view, insufficient. I cannot find that conclusion to be unreasonable. This court is not an avenue to re-try the case. The Board, as noted earlier, is entitled to deference, and is properly considered to be a tribunal with expertise in its areas of jurisdiction.

[16] As it concerns the common employer application, the Board, at para. 72, sets out the test to be applied. No one takes issue with the Board's statement of the test to be applied (except that the Board, at some points, refers to 'strong', as it pertains to the *prima facie* case, a point I have addressed above). That test is set out in *Lafford Formwork Ltd. (Re),* [2025] N.B.L.E.B.D. No. 1. The Board reviewed relevant authorities that informed its application of the test.

[17] The Board accepted that there was sufficient evidence to find there to be more than one entity as required by s. 51.01 of the *Act* (East Coast and Millennium). The Board accepted that the parties could be considered to have been engaged or associated in related activities:

> 79. Therefore, the character of these small construction companies is similar in that they all hire skilled tradesman to do similar work, particularly in relation to general carpentry, and they all use the same means of production. These three companies are not in different industries or lines of business.

[18] The Board describes a key element as, "… *being whether the activity is carried on for the benefit of related principals.*" (para. 80). While the Board accepts that Millennium hired the former principal of East Coast, the Board was not satisfied that this hire was for anything more than a foreperson's level within Millenium's management structure. This employee, Mr. Green, was not related to anyone in Millennium, "*... and there is no evidence that he is part of either the ownership, directorship, or senior management team of Millennium.*" (para. 80 – emphasis added). And, at para. 81, the Board wrote: "*There is no evidence that Millennium had any role in East Coast decisions.*" (emphasis added).

[19] Concerning the Application involving Amped Construction, the Board again was satisfied that there were at least two entities involved with associated activities as per s. 51.01 of the *Act*. But again, the matter turned to the adequacy of the evidence before the Board, noting in para. 85, "… *the evidence does not support a finding that Millennium and Amped designed their business plans to move business away from Amped as a unionized employer to Millennium as a non-union employer.*" (emphasis added).

[20] It is clear that Local 1386 is of the view that more than sufficient evidence was provided to the Board to support each of the Applications before it. On occasions where a critical finding was necessary, the Board expressed the view that the evidence was not sufficient, or, more precisely, that there was no evidence. Counsel for Local 1386, in answering a question of mine during argument, and as I have noted above, invited me to accept the proposition that, based on the evidence presented, there could be no outcome other than to grant each of the Applications. In other words, it was not even a matter of whether there was a range of possible outcomes – there was only one. I disagree.

[21] In the present matter, the Board was not satisfied that the evidence presented established each of the factors the Board needed to consider. It is not the role of this court to re-hear the case, or do a 'paper review' of the case before the Board, and determine if I would have found

differently. I am to examine the reasons of the Board, in light of the law and evidence presented, and determine if the Board's decision can withstand the reasonableness scrutiny in *Vavilov*.

[22] In this case, in my view, the Board's rulings are unassailable. I find the Board's reasons to be transparent, intelligible and justifies the conclusions reached. The decision under review is not unreasonable, and the Application is dismissed. The Applicant shall pay costs, to each of the Respondents, in the amount of $2,500.00 plus HST.

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Justice E. Thomas Christie
Court of King's Bench of
New Brunswick, Trial
Division