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Back to School Notwithstanding the *Charter*

By: Shaun Fluker and JD students registered in the Public Interest Law Clinic

Legislation Commented On: *Back to School Act*, [SA 2025](#) (full citation unavailable at publication time)

On Monday October 27, 2025, the Minister of Finance Nate Horner tabled Bill 2, *Back to School Act*, in the second session of the current Legislature, and the UCP government subsequently pushed it through all three readings of the legislative process, effectively passing it on the same day it was introduced. The *Back to School Act* came into force on royal assent on October 28, 2025. The Act legislates the end of the Alberta Teachers Association (ATA) strike and imposes labour terms between the Province of Alberta and the ATA for 4 years. While this alone warrants significant scrutiny, section 3 of the Act goes further and pre-emptively invokes the *Charter*'s notwithstanding clause (section 33), immunizing the Act from being struck because it unlawfully infringes sections 2 and 7 to 15 of the *Charter*. This post explains why the *Back to School Act* remains justiciable, which is to say, a law still amenable to judicial scrutiny.

Back to School Act

The *Back to School Act* was introduced by the Minister of Finance into the Legislature for first reading in the late afternoon of October 27. Just prior to this first reading, the UCP government tabled a motion that would allow Bill 2 to be introduced and passed into legislation in one day by severely restricting time for legislative debate at second and third readings ([Hansard](#) at 18). This was an extraordinary motion with significant adverse implications for democratic accountability. Most notably, the content of Bill 2 was not publicly known until read at first reading. In other words, there was no prior opportunity for public scrutiny. This is why it is convention for a bill to be introduced into the Legislature on one day, and then proceed to second reading on a subsequent day. The gap between first and second reading normally gives the Opposition members of the Legislature time to review the bill and question the Government on its content. The UCP motion to allow Bill 2 to be introduced and passed in one day completely undermined representative and accountable democracy in Alberta on this highly contentious and politically charged issue. The motion passed with 44 votes for and 37 votes against ([Hansard](#) at 25-26).

Minister Horner gave the following statement on the first reading of Bill 2:

Mr. Horner: Mr. Speaker, I move first reading of Bill 2, the Back to School Act. This legislation will provide teachers with a fair agreement based on the last mutually accepted offer between TEBA and the ATA and ensure no further irreparable harm is

done to Alberta students through labour action. The ongoing strike has deeply disrupted learning and caused lasting harm to our kids' education and futures. After 18 months of bargaining and two rejected agreements recommended by ATA leadership, it's clear a negotiated settlement is no longer possible. This legislation ensures that no further harm is done to Alberta students and there is an immediate end to the strike. It also invokes the notwithstanding clause to help ensure stability for the school system moving forward.

Mr. Speaker, I move first reading of Bill 2, the Back to School Act.

([Hansard](#) at 26)

In our view, the Minister was disingenuous with his comment that the labour terms imposed by the Act (the terms are attached as a schedule to the Act) constitute an “agreement” and are based on a “mutually accepted offer” between the Province and the Alberta Teachers' Association (ATA), because 89.5% of teachers who cast a vote on that offer [voted against it](#).

The *Back to School Act* implements the following drastic measures in relation to labour rights of ATA members in Alberta:

- Section 6 imposes labour terms between the ATA and the Province in accordance with the Schedule to the Act;
- Section 7 ends the teachers' strike and orders teachers to resume performance of their duties;
- Section 8 prohibits teachers from striking;
- Section 10 makes it an offence to contravene sections 7 and 8, with fines up to \$500 per day for individuals and \$500,000 for the ATA.

Section 3 of the Act invokes the notwithstanding clause, thereby immunizing the Act from being struck on the basis that it violates one or more of sections 2 and 7 to 15 of the *Charter*. Section 15 states the Act is in force until August 31, 2028, unless repealed earlier by Proclamation. As a side point, it is unusual for an Act to provide for repeal by Proclamation, although section 6 of the *Interpretation Act*, [RSA 2000, c I-8](#) does provide for this. In our view, allowing for repeal by Proclamation suggests that perhaps the UCP government wanted to allow for the ability to walk back from this aggressive position with the ATA (otherwise a repeal of this Act would require an act made by the Legislature).

Notwithstanding Clause and Democratic Accountability

One significant consequence of the UCP motion to limit debate in the Legislature on Bill 2 is that the public is left to speculate on the rationale for this legislation, and for invoking the notwithstanding clause. This alone is highly problematic for democratic accountability. In the absence of that rationale, we can confidently surmise that the UCP government knows the Act violates the *Charter* and in particular section 2(d) of the *Charter*, which protects, among other things, the right to collective bargaining (see *Health Services and Support - Facilities Subsector Bargaining Assn. v British Columbia*, [2007 SCC 27 \(CanLII\)](#)).

The *Health Services and Support* decision built on the earlier *Dunmore v Ontario (Attorney General)*, [2001 SCC 94 \(CanLII\)](#) decision on section 2(d) (a very significant judgement, as Professor Jennifer Koshan noted in [ABlawg's Top Cases and Legal Developments from the 2000s, and a Vote for Dunmore](#)). Later, section 2(d) was interpreted by the Supreme Court to protect the ability to strike (*Saskatchewan Federation of Labour v Saskatchewan*, [2015 SCC 4 \(CanLII\)](#)). As the Court put it:

The right to strike is not merely derivative of collective bargaining, it is an indispensable component of that right. . . . Where good faith negotiations break down, the ability to engage in the collective withdrawal of services is a necessary component of the process through which workers can continue to participate meaningfully in the pursuit of their collective workplace goals. . . . The right to strike is protected by virtue of its unique role in the collective bargaining process.

(*Saskatchewan Federation of Labour* at paras 3, 75, 77)

In essence, by using the notwithstanding clause and imposing terms on the labour relationship, the UCP government has fully eviscerated the bargaining process. It is highly questionable whether these terms are properly described as a “collective agreement”.

The UCP government’s pre-emptive use of the notwithstanding clause follows in the footsteps of how the Saskatchewan government invoked the clause in 2023 to immunize amendments to its *Education Act, 1995*, [SS 1995, c E-0.2](#) that require teachers to obtain the consent of a parent or guardian before using a preferred name, gender identity or gender expression of a student under the age of 16. The UCP government enacted even more restrictive provisions into Alberta legislation targeting gender diverse youth in late 2024 but has not – to date – invoked the notwithstanding clause in that legislation. Professor Jennifer Koshan thoroughly documented the history, context, and harmful effects of this legislation in [Alberta’s Bills Targeting Gender Diverse Youth: Comparisons, Constitutional Issues, and Challenges](#).

In *Saskatchewan (Minister of Education) v UR Pride Centre for Sexuality and Gender Diversity*, [2025 SKCA 74 \(CanLII\)](#), the Saskatchewan Court of Appeal ruled that invoking the notwithstanding clause in legislation does not oust the jurisdiction of a superior court to issue a declaration on whether that legislation violates *Charter* protected rights and freedoms (SKCA at para 147). Democratic accountability was an important underlying concern for the Saskatchewan Court of Appeal (as it also was for the Chambers justice in those proceedings - see *UR Pride Centre for Sexuality and Gender Diversity v Government of Saskatchewan*, [2024 SKKB 23 \(CanLII\)](#) at paras 155 – 165). The Saskatchewan Court of Appeal undertakes a textual, purposive and contextual interpretation of section 33 in the *Charter* to conclude that while section 33 gives a legislature the last word (for 5 years) on the violation of a *Charter* protected right or freedom, section 33 does not give a legislature the only word on that violation (SKCA at para 109). Both Saskatchewan courts emphasized the importance of a judicial declaration for democratic accountability on a decision by a legislature to deliberately violate *Charter* rights and freedoms. For further discussion on the harm to democracy by the pre-emptive use of the notwithstanding clause, see [here](#).

The Saskatchewan Court of Appeal decision in the UR Pride proceedings confirms that justiciable questions do arise from the *Back to School Act* despite the invocation of the notwithstanding clause. In this regard, it's worth spending a moment to consider what the concept of justiciability is about. Justiciability is concerned with the institutional capacity and legitimacy of the courts to decide a matter. It is trite law that legal questions in relation to the constitutionality of legislation are justiciable (*Canada (Attorney General) v Power*, [2024 SCC 26 \(CanLII\)](#) at paras 223-224). Questions that the courts are less inclined to view as justiciable include those of a spiritual nature (see *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, [2018 SCC 26 \(CanLII\)](#) at paras 32-39)), purely political questions that do not engage legal rights (see *Operation Dismantle v The Queen*, [1985 CanLII 74 \(SCC\)](#), [\[1985\] 1 SCR 441](#) at 459) or the exercise of Crown prerogative. The exercise of executive discretion is often an area where the courts struggle to be coherent on justiciability because these matters often straddle the line between legal and political determinations (see [here](#)). In recent years we have seen some judicial decisions that expand the reach of justiciability into areas that were once thought of as non-justiciable.

For example, in *R v Miller*, [2019 UKSC 41](#) the United Kingdom Supreme Court ruled that the advice given by the British Prime Minister to the Queen, that Parliament should be prorogued for a number of weeks prior to the so-called 'Brexit' decision, was justiciable because of the significant adverse effect prorogation would have on democratic accountability for such a monumental decision by Parliament (*Miller* at paras 28 – 52).

The UCP motion to constrain legislative debate on an Act that invokes the notwithstanding clause, removes the right to strike, and imposes labour terms on the ATA serves to elevate the justiciability of the *Back to School Act* based on democratic concerns. We expect legal questions will arise not only in relation to the *Charter* but also in relation to the imposition of labour terms and the *Labour Relations Code*, [RSA 2000, c L-1](#).

It has been said that democracy dies in the dark. It is essential that there be open debate (both within and outside the elected Legislature) on matters of the public interest. The importance of a judicial declaration on a *Charter* violation is heightened when a legislature fails to provide any demonstrable justification for that violation. This is one reason why the UCP motion to limit debate on Bill 2 and pass the *Back to School Act* in one day is corrosive to democratic accountability in Alberta. We also note with significant interest that this need to protect democratic accountability is being recognized by other governments. For example, the Government of Manitoba has recently introduced a bill that would require any provincial legislation invoking the section 33 notwithstanding clause to be referred to the Manitoba Court of Appeal for a judicial opinion on whether the legislation violates the *Charter* (see [here](#)). No matter what the outcome is in relation to the *Back to School Act*, we strongly encourage the Alberta government to follow Manitoba's lead and legislate the requirement for a judicial reference before invoking the notwithstanding clause.

This post may be cited as: Shaun Fluker and JD students registered in the Public Interest Law Clinic, “Back to School Notwithstanding the *Charter*” (30 October 2025), online: ABlawg, http://ablawg.ca/wp-content/uploads/2025/10/Blog_SF&PublicInterestStudents_Bill2.pdf

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