Court of King's Bench of Alberta

Citation: Alberta Teachers Association v Alberta (Attorney General), 2026 ABKB 190

Date:
Docket: 2503 22731
Registry: Edmonton

Between:

Alberta Teachers' Association

Applicant

- and -

His Majesty the King In Right of Alberta and His Majesty's Attorney General In and for the Province of Alberta

Respondents

Reasons for Decision
of the
Honourable Justice Douglas R. Mah

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A. My approach to this decision

[1] I am giving an oral decision today in the matter of the Injunction Application brought by the Alberta Teachers' Association (ATA) against the Province of Alberta to suspend the operation of the *Back to School Act*, SA 2025, c B-0.5 (*BSA*) until the ATA's constitutional challenge of the *BSA* can be heard in full by this Court.

[2] I expect my oral reasons to take about 60 minutes, so I ask everyone here to sit back, relax, and listen. After I give my oral reasons, I will hand out to counsel the written version of the reasons, which has already been filed. The oral version and the written version are almost

identical, except that the written version will have headings and full legal citations. The written version will stand as the official reasons of the Court.

[3] For transparency and accountability purposes, copies of the written decision will be made available to anyone else in the courtroom who wants one. Continuing with that theme, I have done my best to prepare these reasons in a way that is accessible to non-legally trained persons. The lawyers in the room may find my explanations rudimentary but some of the concepts I to deal with in this Decision are complex to non-lawyers. Some of the arguments made by the lawyers were nuanced. In resolving the injunction question, I am trying to make my reasons as clear as I can.

[4] I realize this decision is important to and affects many people. That it is why it took two days last week for me to hear full argument from both sides and why I took a whole week to think about this carefully. It is my obligation to be careful and thoughtful and give due consideration to both sides of the debate, and the public interest. One should not make profound, far-reaching decisions in haste.

[5] It is also my obligation to do my best to present my reasons as to why and how I reached this decision in an accessible and transparent manner. To me, those are the obligations of every decision-maker, regardless the branch the government, when the decision affects the lives, families, work, well-being, and identity of a particular group in our society, and when considering the larger public interest.

[6] At the outset I also need to comment on my role. In an Injunction Application, I restrict my decision-making authority only to decide whether the specific parts of the legal test for an injunction are met. I get to comment on the merits of the application only in a preliminary way. I do not get to decide the ultimate question. That is reserved for another day. Further, I do not concern myself with the soundness of the choice that the Legislature has made in enacting the *BSA* nor whether I agree with its rationale.

[7] I begin by setting out the structure of what follows:

- Set the factual context.
- Discuss what an injunction is & the legal test for granting/not granting an injunction.
- Deal with the arguments of both sides with respect to whether each of the three parts of the test are met. This part takes up the bulk of the decision.
- Finally, I tell you the outcome.

[8] In these reasons, I refer to the Applicant as the ATA and the Respondent as the Crown.

B. Nature of the Application

[9] The *BSA* was enacted by the Alberta Government to end a province-wide teacher's strike/lock-out that arose after collective bargaining between the ATA on behalf of Alberta teachers and the Teachers Employers Bargaining Association (TEBA) on behalf of the Alberta Government. The ATA seeks an Interlocutory Injunction that will stay of the operation of the *BSA* until such time as a full hearing on the merits can be heard. That hearing is currently scheduled for September 2026.

C. Factual Background

1. The Process

[10] All teachers in Alberta are statutorily required to be members of the ATA regardless of which of the 61 school boards employs them. The ATA acts as the exclusive bargaining agent for teachers for the purposes of collective bargaining. The collective bargaining process in Alberta happens in two stages: 1) central bargaining, which involves bargaining between the ATA and the TEBA; and 2) local bargaining, which involves bargaining between the individual school boards and the local ATA representatives. This bargaining framework is governed by the *Public Education Collective Bargaining Act*, SA 2015, c P-36.5 (*PECBA*). The *Labour Relations Code*, RSA 2000, c L-1 (*LRC*) also applies to the bargaining process to the extent that it is not inconsistent with the *PECBA*.

[11] Before central bargaining begins, the ATA and the TEBA determine which matters are to be negotiated at each stage of bargaining (list determination): *PECBA* s 9. Central matters are those common across the province and broadly applicable to all collective agreements, and that could reasonably result in a significant impact on expenditures for individual school boards. All other issues are local matters. The parties first negotiate on central matters to create a memorandum of agreement. Those terms are included in the collective agreements for all school boards. Negotiations between individual school boards occurs once there is an agreement on central terms. Both stages of bargaining must be completed before a collective agreement is finalized.

[12] If the parties are unable to reach an agreement during either central or local bargaining, either side may request the appointment of a third-party mediator. If the negotiations do not result in an agreement and the parties reach an impasse, either side may hold a vote on commencing a strike (ATA) or a lock-out (TEBA or local school boards). The process for strikes/lockouts are governed by the *LRC*.

2. The Circumstances

[13] The parties were subject to a four-year collective agreement that expired on August 31, 2024. The list determination process for the next collective agreement was completed in March 2024. The ATA and the TEBA began negotiations on central terms in May 2024. The ATA's initial proposal was drafted after extensive consultation with its members to determine their priorities. The key priorities identified through consultation included wages and benefits, and teaching and learning conditions, including classroom complexity. The ATA presented those priorities in their opening proposal to the TEBA. Initial rounds of central bargaining took place from June to October 2024. When the active collective agreement expired on August 31, 2024, the terms and conditions of teachers' employment were deemed to continue: *PECBA* s 13.

[14] The parties came to agreement on several terms. However, still in dispute were class size and composition, certain working conditions, and compensation and benefits. The ATA also sought to require school boards to collect data on classroom size and composition, aggression in schools, and assignable and instruction time for each teacher. The parties jointly applied for mediation to address the disputed terms. Mediation took place in January and March 2025.

[15] In March 2025, the Alberta Government released the 2025/2026 budget in which it committed to $1.1 billion to hire more than 4,000 teachers, education assistants, and support staff over a three-year period. The mediator issued recommendations for terms of settlement that

addressed wages, salary grids, northern compensation incentives, and other items related to benefits and classroom safety. The mediator also recommended working groups be established to consider classroom improvement, teacher policy, and education funding. The ATA's provincial executive counsel voted in favour of accepting the mediator's recommendations. In May 2025, the ATA put the recommendations to a vote. 62% of teachers rejected the recommendations. In June 2025, the ATA then held a strike vote. 94.5% of teachers voted in favour of strike action.

[16] The parties reconvened with the mediator and exchanged further proposals. The ATA proposed compensation increases and a commitment to hire an additional 1,000 teachers per year over the next three years in addition to the hiring to which the Alberta Government committed in the 2025/2026 Budget. The TEBA responded with a proposal with various options for allocating funds between compensation increases and recruitment. In late June 2025, outside of the collective bargaining process, the Alberta Government announced the formation of an "Aggression and Complexity in Schools Action Team." Bargaining negotiations were outside the scope of this Action Team.

[17] The parties again convened with the mediator in August 2025. The TEBA committed to hire 1,000 new teachers in each of the last three years of the proposed agreement. However, that was inclusive of the hiring contemplated in the 2025/2026 Budget. The TEBA also offered no-cost voluntary COVID-19 vaccinations to all teachers. The parties were unable to reach an agreement. The ATA issued a strike notice and announced an intention to strike if central terms were not agreed upon by October 6, 2025.

[18] On September 23, 2025, after the strike notice was issued, the ATA proposed a tentative agreement that was accepted by the TEBA. It was similar to the mediator's recommendations and contained additional benefits to teachers and hiring of additional teachers. The ATA put the tentative agreement to the members and the ATA's central table bargaining committee recommended it to the teachers. However, on September 29, 2025, 89.5% of teachers voted to reject the tentative agreement.

[19] On October 3, 2025, the parties met to discuss the continuation of bargaining.

[20] The strike began on a province-wide basis on October 6, 2025. It lasted 16 instructional days or 21 calendar days.

[21] The ATA prepared a proposal that included a letter of understanding on classroom complexity and student-teacher ratios. The ATA's proposals were presented to the TEBA on October 14, 2025. They were rejected without a substantive counter proposal. Before the ATA presented their proposal to the TEBA, the TEBA began a lock-out on October 9, 2025. On October 16, 2025, the Alberta Government recommended the parties engage in enhanced mediation with respect to compensation and classroom complexity. However, it precluded the mediator from issuing recommendations that capped classroom sizes or imposed student-teacher ratios. The ATA rejected the proposal on October 17, 2025.

[22] On October 27, 2025, the Alberta Government introduced the *BSA*. It required the ATA and TEBA to discontinue their job action (s 7), and imposed terms of a collective bargaining agreement inclusive of central and local terms for the period between September 1, 2024 and August 31, 2028 (ss 6(1-3)). It foreclosed any further bargaining or job action for the term of the collective agreement (ss 8, 9). The collective agreement contains terms recommended by the ATA to its members on September 23, 2025. The *BSA* received Royal Assent on October 28,

2025 and teachers returned to work on October 29, 2025. No further bargaining at either central or local levels occurred.

[23] Since the passage of the *BSA*, teachers have received a 3% wage increase retroactive to September 1, 2024, and a further 3% wage increase as of September 1, 2025.

D. The *Back to School Act*

[24] The purpose of the *BSA* is to "end the strike by the employees that started on October 6, 2025 and lock-out by the TEBA that started on October 9, 2025 by establishing the central terms and local terms of new collective agreements": *BSA* s 2. The Crown submits the purpose in the *BSA* for resolving both central and local terms is to create certainty and labour stability by establishing complete collective agreements for all teachers in Alberta, thus preventing local strikes from arising in the individual school districts during the term of the collective agreement.

[25] The *BSA* makes striking an offence and prohibits the ATA from calling or counselling a strike. The fines are $500/day for teachers and $500,000/day in any other case, in addition to penalties in the *LRC* for unlawful strike or lock-out: *BSA* s 10.

[26] The *BSA* operates notwithstanding ss 2, and 7-15 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (*Charter*), the *Alberta Bill of Rights*, RSA 2000, c A-14, and the *Alberta Human Rights Act*, RSA 2000, c A-25.5: *BSA* s 3. The authority for *BSA* s 3 is in *Charter* s 33, commonly referred to as the "notwithstanding clause." The *BSA* also contains a privative clause barring any court proceeding from being brought against the Crown or the Labour Relations Board arising from the enactment of the *BSA* or granting any remedy pursuant to *Charter* s 24(1) or s 52(1) of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (*Constitution Act, 1982*): *BSA* s 14.

[27] The right to strike is an "indispensable" component of meaningful collective bargaining protected by *Charter* s 2(d) (freedom of association): ***Saskatchewan Federation of Labour v Saskatchewan***, 2015 SCC 4 at para 3. *BSA* ss 7, 8, and 10 removes the right to strike and outlaws strikes by the ATA or its members until the *BSA*'s automatic repeal on August 31, 2028 or earlier repeal date. The invocation of *Charter* s 33 insulates the non-strike provisions of the *BSA* from constitutional review.

E. The Nature of the Dispute about *Charter* s 33

[28] I accept the Crown's submission that *Charter* s 33 is an undeniable component of the constitutional bargain struck at the time of the development of the *Constitution Act, 1982* and the patriation of the Canadian Constitution. The idea of a "rights override" to preserve parliamentary sovereignty is an integral part of the *Charter*. The ATA does not contest this notion or the effect of *Charter* s 33. The ATA contests *when* and *how Charter* s 33 can be properly applied. The dispute is about whether there are or should be substantive requirements to invoking *Charter* s 33, including whether it may be pre-emptively invoked or only response to a *Charter* ruling.

[29] As the law stands now, *Charter* s 33 lays down requirements of form only: the override declaration must be an express declaration that an Act or a provision of an Act shall operate notwithstanding a provision included in *Charter* ss 2 and 7-15. A *Charter* s 33 declaration is sufficiently express if it refers to the number of the section, subsection, or paragraph of the

Charter that contains the provision or provisions to be overridden. Substantive review of the legislative policy in exercising the override authority in a particular case is not warranted: ***Ford v Quebec (Attorney General)***, 1988 CanLII 19 (SCC), [1988] 2 SCR 712 [***Ford***] at pp 740-741.

[30] The ATA argues it is time to revisit ***Ford*** in light of the need for a continued rights dialogue between the Legislature and Judiciary. In ***Ontario (Attorney General) v G***, 2020 SCC 38 at para 137, the Supreme Court of Canada (SCC) described how this dialogue might occur:

> When a court determines that a law violates the *Charter* in a manner that cannot be justified in a free and democratic society under [*Charter*] s 1, the court must grant the appropriate remedy. This includes, in some rare cases, delaying the effects of a declaration of invalidity based on a compelling public interest. Court-ordered suspension leaves Parliament and the legislatures free to respond to a declaration of invalidity, including by using [*Charter*] s 33.

[31] In ***Toronto (City) v Ontario (Attorney General)***, 2021 SCC 34 at para 60, the SCC elaborated:

> Where, therefore, a court invalidates legislation using s 2(b) of the *Charter*, the legislature may give continued effect to *its* understanding of what the Constitution requires by invoking [*Charter*] s 33 and by meeting its stated conditions.

[32] The SCC will be hearing arguments on this exact issue in ***English Montreal School Board et al v Attorney General of Quebec et al***, 2024 QCCA 254, leave to appeal granted 2025 CanLII 2818 (SCC) [***English Montreal***], otherwise known as the "religious symbols" case.

F. Reaction to the *BSA*

[33] The ATA notes the *BSA* was introduced, debated, enacted, and came into force in less than 12 hours, with debate at every stage limited to one hour. The truncated timeline, manner of enactment, content of the *BSA*, and use of the notwithstanding clause were alarming to the ATA. ATA's chief negotiator, Sean Brown, recounts how the teachers' strike drew broad public support and that, after enactment of the *BSA*, students in 45 schools across the province organized and participated in protests in support of teachers: Sean Brown Affidavit, December 5, 2025 at paras 101, 116.

[34] Public sentiment, or even furor, no matter how popular the cause, does not dictate Court action. It is not for the Courts to pass upon the policy or wisdom of legislative will. The Courts do not question the wisdom of enactments that are within the constitutional competence of the Legislatures. The Court's duty is to ensure the Legislatures do not transgress the limits of their constitutional mandate and engage in the illegal exercise of power: ***Amax Potash Ltd Etc v The Government of Saskatchewan***, 1976 CanLII 15 (SCC) at p 590; see also ***Re BC Motor Vehicle Act***, 1985 CanLII 81 (SCC) at para 14, ***Canada (Attorney General) v Power***, 2024 SCC 26 [***Power***] at para 94. The Courts may not review legislation to test its intrinsic merit: ***Power*** at para 292, Rowe J dissenting, citing BL Strayer, *The Canadian Constitution, and the Courts: The Function and Scope of Judicial Review* (3rd ed 1988) at pp 219-20. Legislative bodies are entitled to enact any law within their constitutional confines. It is not the proper role of the Courts to stray into judging the wisdom or policy of those laws: ***Power*** at paras 109, 129.

G. The Law of Injunctions

[35] What is an Interlocutory Injunction? An Interlocutory Injunction (as opposed to a Permanent Injunction) is a Court Order made on a temporary until a matter can be fully heard on its merits. There are two types of injunctions: prohibitive and mandatory. A prohibitive injunction either requires a party to refrain from doing something or have the parties maintain a *status quo*. A mandatory injunction compels a party to take a certain action. In this case, the injunction sought is prohibitive in nature in that the ATA seeks to restore the pre-*BSA status quo*.

[36] To obtain an Interlocutory Injunction, an applicant must demonstrate on a balance of probabilities 1) there is a serious issue to be tried, or in some cases a *prima facie* case based on a preliminary assessment of the merits; 2) the applicant will suffer irreparable harm if the injunction is not granted; and 3) the balance of convenience favours granting the injunction, pending a decision on the merits: ***RJR-MacDonald Inc v Canada* (Attorney General)**, 1994 CanLII 117 (SCC), [1994] SCR 311 [***RJR-MacDonald***] at 314-15. All three branches of the test must be met before an injunction may be granted.

H. Serious Issue or *Prima Facie* Case

[37] The first branch of the test for an injunction is the strength of an applicant's case, which is assessed on the standard of either "strong *prima facie* case" or "serious issue to be tried." A "strong *prima facie* case" means there is a strong likelihood, based on the facts and evidence, that the applicant will ultimately be successful at trial or when the matter is fully heard: ***R v Canadian Broadcasting Corp***, 2018 SCC 5 [*CBC*] at para 17. A "serious issue to be tried" is a lower standard requiring only that the applicant show the case raises a real issue and not one that is frivolous or vexatious: ***RJR-MacDonald*** at pp 337. Under this threshold, the Court is not deciding who is right, just whether the issues in question are sufficiently serious to warrant imposing an injunction before a hearing on the merits.

[38] The ATA submits there are several serious issues to be tried with respect to the constitutionality of the *BSA*. The ATA argues the following:

- *BSA* s 14 eliminates judicial oversight of the Labour Relations Board, including by way of judicial review with respect to its implementation and enforcement of the *BSA*. The effect of *BSA* s 14 therefore infringes on the core jurisdiction of the superior courts guaranteed by s 96 of the *Constitution Act, 1867*, 30 & 31 Vict, c 3 (*Constitution Act, 1867*);
- The *BSA* violates Alberta teachers' rights to freedom of association guaranteed by *Charter* s 2(d) and expressive rights guaranteed by *Charter* s 2(b) regardless of the invocation of *Charter* s 33 in *BSA* s 3;
- The Alberta Government's invocation of *Charter* s 33 in *BSA* s 3 is invalid;
- The *BSA* infringes on the equality provision in *Charter* s 28, which is not subject to *BSA* s 3. The breach is not justified under *Charter* s 1.

[39] The Crown submits the ATA must raise a strong *prima facie* case in these circumstances. The Crown argues the questions before the Court are pure questions of law and require no factual determination. Specifically, the Court may determine, based on the law alone whether 1) the

invocation of *Charter* s 33 in *BSA* s 3 is valid; 2) *Charter* s 28 is a stand-alone independent right and can limit the applicability of *Charter* s 33; and 3) *BSA* s 14 prohibits review by the Court. As such, the ATA must demonstrate a strong and clear chance of success at trial.

[40] The Crown relies on language used by the SCC in ***Manitoba (AG) v Metropolitan Stores Ltd***, 1987 CanLII 79 (SCC), [1987] 1 SCR 110 [***Metropolitan Stores***] at p 133, reiterated in ***RJR-MacDonald*** at p 348. In rare or exceptional cases, the constitutional issue may be resolved by merely reading the legislative text itself without requiring any facts to provide interpretive context. For example, if Parliament or a legislature enacted a law that purports to impose a state religion, the very words of the enactment demonstrate an unsustainable *Charter* breach, allowing the law to be struck down without more. Surrounding facts or context are not necessary to determine the question: ***Metropolitan Stores*** at p 133.

[41] Overall, this matter is not such a rare or exceptional case. While the invocation of *Charter* s 33 is exceptional, its use and the other impugned features of the *BSA* (except for one) arise and must be considered within the context of the factual circumstances. For example, the circumstances of the enactment of the *BSA* which, the ATA submits, flowed from a particular labour dispute and failed negotiations, are relevant to the constitutional legality of the invocation of *Charter* s 33 in this case. The Court at the merits hearing may be called upon to find if these facts are established and, if so, their significance in the analysis. There are also legislative facts that will likely be tendered that will inform the Court of the legislative purpose and policy reasons for the enactment of the *BSA*, which are also relevant in constitutional analysis.

[42] Aside from one, the issues raised by the ATA are not pure questions of law. The Court at the merits hearing will be called upon to consider both adjudicative and legislative facts, not just read the legislation and make a decision. As such, the ATA need only show a serious issue to be tried. That the ATA seeks a prohibitory injunction rather than a mandatory one also speaks to the appropriateness of the "serious issue" standard. Had the ATA sought to compel the Alberta Government to do something, rather than prohibit them from implementing or relying on the *BSA* any further, a "*prima facie* case" standard would have been required: ***CBC*** at para 16; ***Students' Association of the University of Calgary v University of Calgary***, 2016 ABQB 550 at para 27; ***UAlberta Pro-Life v University of Alberta***, 2015 ABQB 719 at para 41.

[43] With respect to the ATA's arguments regarding *Charter* ss 33 and 28, and the alleged breaches of *Charter* ss 2(d) and (b) in light of *Charter* s 33, I must apply the lower threshold of "serious issue to be tried" in assessing the strength of the ATA's case. With respect to the ATA's arguments regarding the privative clause in *BSA* s 14, that issue is a pure question of law and therefore, the higher threshold of "*prima facie* case" must be applied.

[44] I will now apply these standards to the individual arguments raised by the ATA regarding the merits.

1) *BSA* s 14

[45] The ATA argues the *BSA* seeks to achieve its purpose by putting it and all actions taken to implement and enforce it beyond any judicial oversight by way of *BSA* s 14. The ATA submits this action is only available because the Crown has stipulated, they will not rely on *BSA* s 14 to prevent the ATA from seeking, or the Court from granting, an injunction. The ATA argues *BSA* s 14(1) effectively extinguishes any cause of action against the Crown or the Labour Relations Board without such stipulation. The ATA submits the *BSA* removes this Court's core jurisdiction

guaranteed by *Constitution Act, 1867* s 96 and effectively makes the Labour Relations Board a Superior Court. This inconsistency with *Constitution Act, 1867* s 96 impugns the constitutionality of the entire act such that it should be struck down in its entirety.

[46] The Crown concedes these questions are not frivolous or vexatious. However, the Crown argues the proper interpretation of *BSA* s 14 is a pure question of law. The ATA has not shown a strong *prima facie* case that the *BSA* should be struck down in its entirety based on these concerns. Specifically, the ATA has misinterpreted the meaning and reach of *BSA* s 14 and the role of the Labour Relations Board in enforcing the *BSA*. *BSA* s 14 merely limits certain causes of action and restricts remedies available against the Crown, which is within the purview of the Legislative Branch. The Labour Relations Board is not an agent of the Crown, but an independent quasi-judicial body. *BSA* s 14 does not extinguish judicial review of decisions by the Labour Relations Board. Rather, it immunizes members of the Labour Relations Board against actions against them for exercising their authority under the *BSA*. Any prosecution under the *BSA* follows the *LRC* and the *Provincial Offences Procedure Act*, RSA 2000, c P-34 (*POPA*), which are prosecuted in the Alberta Court of Justice. Even if *BSA* s 14 is unconstitutional, there is little merit to any assertion that it would result in impugning the constitutionality of the entire *BSA*.

[47] I agree with the Crown that the higher threshold of strong *prima facie* case applies to this issue. This question involves a pure question of law, which can be resolved by merely reading the legislative provisions.

[48] I am not convinced *BSA* s 14 has the effects which the ATA attributes to it. First, it is true *BSA* s 14 is both an immunity and a privative clause. It immunizes the Crown and other named parties from certain causes of actions and certain remedies. However, it does not preclude constitutional review by the Court. It is not simply because this matter is before the Court or because of the Crown's stipulation. It is because the Superior Court's core jurisdiction includes the inherent jurisdiction and power to review the legality and constitutional validity of laws: ***Reference re Code of Civil Procedure (Que.), art. 35***, 2021 SCC 27 at para 68.

[49] Further, the ATA's argument that *BSA* elevates the Labour Relations Board to the status of a *Constitution Act, 1987* s 96 Court depends on the Labour Relations Board being classified as a "Crown agent" through *BSA* s 14. Thus, they would no longer be susceptible to judicial review when exercising their decision-making authority under the *BSA*. This conclusion depends on the degree of control exerted by the Crown over the Labour Relations Board, which the ATA submits is considerable as a result of the many indica of control found in the *Alberta Public Agencies Governance Act*, SA 2009, c A-31.5 (*APAGA*).

[50] I agree that the Alberta Government is responsible for legislation that governs statutory agencies, boards, and commissions in Alberta. The *APAGA* creates mechanisms for the Labour Relations Board to be accountable to both the public and the Alberta Government for its performance. However, the Labour Relations Board is and must be independent in its adjudicative function, particularly since the Crown in one form or another can be and is party before the Labour Relations Board in labour disputes.

[51] I do not accept the *APAGA* is the bridge for the Labour Relations Board to become a Crown agent. There is not a strong argument that the Labour Relations Board, in exercising its authority under the *BSA*, is immune from the usual judicial review of their decisions. I agree with the Crown that allegations of contraventions of the *BSA* would be subject to the procedures in

POPA, in which case all *Charter* legal protections including the presumption of innocence would be available.

2) *Charter* ss 2(d) and (b)

[52] The ATA argues the Alberta Government's invocation of *Charter* s 33 in *BSA* s 3 is unconstitutional. As such, the Court is not precluded from finding the *BSA* invalid because of breaches to *Charter* ss 2(d) and (b). The ATA submits the *BSA* breaches *Charter* s 2(d) by abrogating the process of collective bargaining and the right to strike. The matters at issue were of fundamental importance to the central collective bargaining process and the *BSA* eliminated the process of local bargaining entirely. The *BSA* constitutes a substantial interference by imposing terms of an entire collective agreement without access to an alternate dispute resolution mechanism. Further, the terms imposed by the *BSA* were not the product of good faith bargaining. With respect to *Charter* s 2(b), the ATA submits the *BSA* deprived teachers of their expressive rights as they related to their working conditions by ordering them back to work and imposing fines relating to strikes. The magnitude of the penalties and removal of *Charter* protected legal rights of persons charged with offences under the *BSA* exacerbate the effect on the fundamental freedom of speech. Such breaches are not justified in a free and democratic society.

[53] The Crown submits there is no serious issue to be tried with respect to whether the *BSA* infringes such rights because *BSA* s 3 requires the *BSA* to operate regardless of any breaches to such rights. The Crown declined to make any submissions with respect to *Charter* s 2. In the face of a valid invocation of *Charter* s 33, the Crown submits the enacting government is under no obligation to defend against the merits of a challenge brought to the legislation under such rights.

[54] The serious issue to be tried lies in whether the Court has jurisdiction to consider a *Charter* challenge once *Charter* s 33 has been invoked. This is one of the very issues before the SCC in ***English Montreal***, for which arguments are being heard starting on 23 March 2026.

[55] There is no binding authority on the point of whether a Superior Court may determine that a provision breaches *Charter* rights regardless of a valid invocation of *Charter* s 33 that limits remedies for such breaches. In ***Saskatchewan (Minister of Education) v UR Pride Centre for Sexuality and Gender Diversity***, 2025 SKCA 74 at para 147, the Court concluded *Charter* s 33 does not repeal *Charter* provisions or change their content. Thus, the Court concluded the invocation of *Charter* s 33 does not oust its jurisdiction to determine whether *Charter* rights have been abrogated. However, this case has also been appealed to the SCC and is included with ***English Montreal***.

[56] I conclude there is a serious issue to be tried regarding whether the Court retains *Charter* jurisdiction in the face of *Charter* s 33 invocation and, if so, whether the Court should issue declarations that *Charter* rights are infringed. It is difficult for me to say the ATA does not show a serious issue to be tried when Canada's highest Court has decided that it will consider this issue in a four-day hearing that starts in 10 days' time.

3) *BSA* s 3 and the use of *Charter* s 33 Power

[57] The ATA argues *BSA* s 3 invoked *Charter* s 33 in a broad and pre-emptive manner. Such invocation is constitutionally invalid because: 1) *Charter* s 33 cannot operate retroactively or retrospectively, and the *BSA* impermissibly attempts to do so; and 2) *Charter* s 33 cannot be used as a blanket shield to insulate legislation from judicial review. The ATA's broader challenge to

the use of *Charter* s 33 in *BSA* s 3 involves examining the scope of ***Ford***. Specifically, whether *Charter* s 33 lays down requirements of manner and form only with no grounds for substantive review of the legislative policy in exercising the override authority in a particular case. The ATA notes this issue is currently before the SCC in ***English Montreal***.

[58] The Crown submits there is no serious issue to be tried with respect to the validity of the *Charter* s 33 invocation. The Crown argues the Alberta Government validly enacted *BSA* s 3. *Charter* s 33 is part of the Constitution and preserves parliamentary sovereignty. Since *Charter* s 33 prevents the Court from striking down the *BSA* based on alleged infringements of *Charter* ss 2 and 7-15, the use of *Charter* s 33 in *BSA* s 3 prevents the Court from suspending the effects of the legislation at an interlocutory stage based on such alleged infringements. The Crown submits at the interlocutory stage, the Court must base its decision on the law as it stands, not how it may develop in the future: ***Harper v Canada (Attorney General)***, 2000 SCC 57 at para 7. As such, the law as it stands must be applied, which holds no substantive requirements are necessary for the invocation of *Charter* s 33: ***Ford*** at 740-41; ***English Montreal*** at paras 250-254. Further, the *BSA* operates prospectively only. *BSA* s 3 is clear that it shall operate from the date it came into force. That the *BSA* backdates the legislated collective agreement does not mean the *BSA* was in effect before it was enacted. To interpret it any other way would lead to absurd consequences, including making the ATA's strike and the TEBA's lock-out retroactively illegal.

[59] I am less concerned about the retroactivity allegation; the *BSA* may be interpreted to take effect prospectively. The backdated imposition of the new collective agreement only resulted in ATA members receiving pay increases owed to them as at October 27, 2025.

[60] Of greater interest is whether there are constitutional limits on the use of *Charter* s 33 other than formal requirements and, if so, what they are. For example, must the Legislature demonstrate a rational connection between the policy objectives of the legislation and the rights that are taken away? Is the Legislature required to take the least intrusive means to achieve the objective rather than jump immediately to rights removal? Should the Legislature be entitled to act pre-emptively in eliminating *Charter* rights rather than reactively to a Court decision? With another 37 years of societal and *Charter* experience, should ***Ford*** be revisited?

[61] These questions, and others, are within the ambit of consideration before the SCC in ***English Montreal***. That the question of the nature and scope of *Charter* s 33 is squarely before the SCC further convinces me these are serious issues to be tried.

4) Charter s 28

[62] The ATA argues *Charter* s 28 is a standalone right with supremacy over *Charter* s 33 and thus not subject to the limits of *BSA* s 3. The ATA submits a breach of *Charter* s 28 can give rise to a remedy even where an underlying right does not. With respect to the violation of *Charter* s 2, the *BSA* disproportionately impacts women as 75% of teachers are women. The issue of the scope of *Charter* s 28 is also before the SCC in ***English Montreal***.

[63] The Crown concedes issues respecting the interaction of *Charter* ss 28 and 33 raise questions that are not frivolous or vexatious. However, the Crown submits this issue is a pure question of law, requiring the ATA to demonstrate a *prima facie* case that the *BSA* could be struck down based on a violation of *Charter* s 28 in these circumstances and they have not done so. The Crown argues *Charter* s 28 is a general provision and not an independent source of rights; it qualifies the content and scope of the rights and freedoms set out in *Charter* ss 2-23.

The purpose of *Charter* s 28 is to ensure male and female persons benefit equally from the *Charter* and does not limit the scope of *Charter* s 33. As such, the ATA's claims with respect to *Charter* s 33 have a low chance of success.

[64] The ATA's case for the unequal treatment by gender under the *BSA* will require proof beyond a bare statistic. Adjudicative facts will be required to determine the scope and effect of *BSA* s 3 on women. Thus, the ATA need only show the issue of whether *Charter* s 28 establishes a standalone right is a serious issue to be tried. I conclude it is. Its proper interpretation is also encompassed within the list of issues to be considered by the SCC in ***English Montreal***.

[65] ***Hak c Procureure générale du Québec***, 2019 QCCA 2145 is being heard by the SCC with ***English Montreal***. In that case, all three members of the Court of Appeal found the issue of whether *Charter* s 28 exists as an independent right free from the grasp of *Charter* s 33 is a serious issue worthy of consideration. The legislation that bans religious symbols in certain workplaces is said to preponderantly affect women who by religious convention wear head coverings.

5) Conclusions on the Issues

[66] I conclude the ATA met the first branch of the test for an injunction. The ATA has demonstrated there are serious issues to be tried with respect to:

- Whether the invocation of *Charter* s 33 ousts the Court's *Charter* jurisdiction and, if not, whether declarations regarding alleged breaches in this case should issue;
- Whether *Charter* s 33 has been validly invoked in this case;
- Whether *Charter* s 28 provides a standalone guarantee of gender equality that *Charter* s 33 cannot diminish.

[67] The ATA has not provided a strong *prima facie* case with respect to the effects of the privative/immunity clause in *BSA* s 14. This does not mean the ATA is barred from arguing this particular issue at the merits hearing. It simply means I will not consider this particular issue when determining whether to grant the injunction. Given the ATA has met the threshold for the other issues raised, the injunction will not be denied as a result of this shortcoming.

I. Irreparable Harm

[68] The ATA argues three forms of irreparable harm would ensue if an injunction is not granted.

[69] First, irreparable harm would result to the ATA and teachers from loss of the right to freely bargain within the collective bargaining regime. This would result in damage to the relationships between the ATA and the TEBA and Alberta Government, damage to the relationships between the ATA and teachers, and damage to teachers through lower trust and morale. The ATA relies on the affidavits of Professor Robert Hebdon with respect to the theoretical consequences of legislative intervention unilaterally imposing terms and conditions without a neutral dispute resolution process. The ATA relies on the affidavit of Sean Brown with respect to how the harms described by Professor Hebdon materialized in the relationships between the ATA and its members and the ATA and the government. Both Mr Brown and Prof Hebdon were questioned on their affidavits.

[70] Prof Hebdon is a Professor Emeritus of Industrial Relations at McGill University and a nationally recognized expert in the field of public sector labour relations, collective bargaining, strikes and dispute resolution. His credentials were not challenged by the Crown. He explained *BSA*-type legislation strips a union of its core function, makes the collective bargaining process seem futile in the minds of union members, engenders conflict, lower morale, decreased productivity in the workplace, and undermines trust at all levels. Back-to-work laws have precedent in Canada, but the norm is to substitute a fair and neutral system of compulsory interest arbitration to enable the collective bargaining process to continue. The Alberta Government could have done that in this case, but they did not.

[71] Mr Brown is the ATA's chief negotiator with extensive experience as a teacher, school administrator, local and provincial ATA leader, and central bargaining representative. He noted teachers experienced loss of trust in the collective bargaining regime, increased frustration and morale damage, concerns that meaningful collective bargaining is no longer possible, and negative effects on teacher mental health and workplace productivity. Mr Brown felt the Alberta Government's post-*BSA* commitments to collect class size data were belated and non-binding.

[72] Second, the ATA submitted in oral argument that the denial of an injunction means the ATA cannot engage in or take the benefit of any other type of resolution mechanism in the intervening months until the merits hearing. Such mechanisms presently exist in the *PECBA/LRC* regime irrespective of the *BSA*. These options are:

- Allowing the parties to continue collective bargaining;
- Mediation or enhanced mediation without restrictions as to issues;
- Appointment of a Disputes Inquiry Board under *LRC* s 105;
- Establishing procedures for an emergency arbitration under *LRC* s 112; or
- Enactment of *Charter* compliant back-to-work legislation.

[73] The latter three options contemplate unilateral action on the part of the Alberta Government.

[74] Third, the ATA submitted in oral argument that delay until the merits decision could result in the expiry of ATA's right to strike under the current mandate pursuant to *LRC* ss 77(1) and (2).

[75] The Crown argues the ATA has not provided sufficient evidence of irreparable harm. There is no evidence directly from teachers. Mr Brown's evidence of comments made by teachers is therefore hearsay. The harm the ATA suggests is hypothetical and speculative and is not addressed by an interim injunction. There is no irreparable harm in holding off on bargaining between now and the date of the hearing on the merits, which is about six months away. Further, damage to the collective bargaining relationship through the passage of legislation is not irreparable harm: ***Alberta Union of Provincial Employees v Alberta***, 2019 ABCA 320 at paras 22-23. The ATA does not require an injunction to protect its interests pending a decision on the merits. Such a decision could remedy the alleged harm and will likely occur before the next round of collective bargaining begins. Irreparable harm is not established because some ATA members may have hoped for a better outcome and will not remedy any concerns about teacher well-being and productivity. Finally, the Crown submits the loss of resolution options is speculative. The right to strike pursuant to *LRC* ss 77(1) and (2) has already been engaged.

[76] I accept negative impacts have actually occurred on labour relations, the educational workplace in Alberta, and the mental and emotional well-being of teachers, as attested to by Prof Hebdon and Mr Brown. I have no reason to reject Prof Hebdon's expert opinion as to the systemic and individual effect of the *BSA*. I do not discount Mr Brown's reports of the effects on teachers of these events even if it is largely hearsay. Rule 13.18 of the *Alberta Rules of Court*, Alta Reg 124/2010 permits hearsay on interlocutory matters.

[77] I can well imagine the incredulity, if not despair and disrespect, that teachers felt upon the enactment of the *BSA*. The exercise of their right to strike, a democratic right guaranteed under Canada's Constitution and their only bargaining chip, was eliminated and a previously rejected collective agreement was rammed down their throats. But this atmosphere of labour relations cynicism is brought on by the enactment of the *BSA*, not by the lack of an injunction. The harm is already manifest. If I interpret Prof Hebdon's evidence correctly, that harm is already irretrievable in that the granting of an injunction does not restore trust in the system or repair relations between the ATA and the Alberta Government.

[78] I appreciate the logic behind saying the longer something goes on, the worse it gets. That is why during oral arguments I defined with counsel the timeframe for the harm. That timeframe begins today with my decision on the injunction application and continues until the date on which the Court renders its final decision on the merits. The merits hearing takes place in September 2026. It is not known for certain when the Court will render a decision on the merits, but it will likely reserve to consider such a decision. Further, there may be appeals. However, I am sure both levels of Court will be aware that the clock is ticking because we are dealing with students enrolled in schools across Alberta.

[79] There is also the matter of the SCC decision in ***English Montreal***, which is likely some months away. The oral hearings have not yet started, are scheduled for several days, and involve several applicants, respondents, and intervenors. The SCC's decision may, but not necessarily will, provide many answers on the merits of this case.

[80] I conclude the period during which harm is sought to be avoided is at a minimum about six months and could be more. If the ATA is ultimately successful in having the Court strike down the *BSA*, it will achieve the same result it seeks from me in the injunction application, which is restoration of the *status quo* before enactment of the *BSA*, only on a permanent basis. At that time, the ATA will experience all the ameliorative effects of a return to the *status quo*. The difference is only the passage of additional time of six months or more.

[81] The ATA undertakes not to go back on strike for a period of three weeks if the injunction is granted, in order to give the parties time to arrive at an interim arrangement if not an outright resolution of their labour dispute. The offer is commendable, made in good faith, and shows the ATA well appreciates the public interest in this dispute. But practically speaking, I fail to see how holding off on further strike action for three weeks can work.

[82] First, the bridging provisions of *PECBA* and *LRC* evaporated when the strike occurred. As there is no existing collective agreement, there is no way to compel the teachers back to work, no way to pay them, and no working conditions under which employment can continue, including rate of pay. In order to keep schools open, the parties would need to either come to an interim or final agreement, or one of the five options for moving forward, suggested by the ATA, would need to materialize. The granting of an injunction is not sufficient to avert the apprehended harm. Something else also has to happen. Of the five options, three depend on

unilateral action by either the employer or the Alberta Government. I cannot predict whether any of them will happen. I received no sense, from the evidence or counsel submissions, of the likelihood of any of these five options actually being engaged.

[83] By granting the injunction, I may be providing an environment during which continued collective bargaining or some other step to keep schools open can take place. However, I cannot ensure that such events will take place, either within the three-week suspension of strike or even before the merits hearing. Whether a temporary or a final resolution will take place is completely speculative. Therefore, the loss of something that is speculative is also speculative. What an injunction does create is uncertainty for a lot of people, primarily students and teachers, as to what happens next. What is not uncertain is that teachers would be back on strike.

[84] Moreover, if I were to grant an injunction for this reason, I would be doing indirectly what I cannot do directly: that is, telling the Alberta Government that I disapprove of what they did (enacting the *BSA*) and directing them to do something else (one of the five options).

[85] I do not accept the ATA's argument that their right to strike as defined in *LRC* s 77(1) will expire unless an injunction is granted. *LRC* s 77(1) is operative if the condition set out in the opening words of that section is met:

> If no strike or lock-out occurs within 120 days after the day on which the strike vote or lock-out vote was conducted, the strike or lock-out vote is deemed to be void and no person shall strike or lock out or cause a strike or lock-out unless a new strike vote or lock-out vote has been conducted in accordance with this Division.

[86] The ATA argues pursuant to *LRC* s 77(2), a strike or lock-out vote may be taken within two years from the end of the cooling-off period related to mediation and referred to in *LRC* s 65(7). The evidence shows a strike did occur on the 119th day after the strike vote was taken, so the two year time period in *LRC* s 77(2) ceased to be relevant.

[87] I conclude the harm occasioned to the ATA and their members is the result of the enactment of the *BSA* itself and the harm has already manifest. The granting of an injunction would not stop or remediate that harm. If the ATA is ultimately successful in negativing the *BSA* as a result of the merits hearing, it will achieve what it seeks in this injunction application. That is the restoration of the pre-*BSA status quo*. The period of loss may be six months or more than that, but the loss is not irreparable in the legal sense.

J. Balance of Convenience

[88] The third part of the test for Interlocutory Injunction involves determining the balance of convenience, or which of the two parties will suffer the greater harm in granting or refusing the injunction, pending a decision on the merits.

[89] Immediately before the enactment of the *BSA*, the *status quo* was that the previous collective agreement had expired and the teachers were on strike. Should the injunction be granted, that is the *status quo* that would be restored.

[90] The ATA acknowledges constitutional cases include a consideration of the public interest in the balance of convenience and there is a presumption that enjoining validly enacted legislation will affect the public interest. However, such a presumption may be rebutted. The

ATA submits government misconduct in the swift passage of the *BSA* from introduction to Royal Assent with little debate is anti-democratic and contrary to the public interest in a free, open, and democratic society. The contents of *BSA* itself are also undemocratic in the use of *Charter* s 33 and the privative clause in *BSA* s 14. It limits the function of the Judicial Branch in ensuring constitutional conformity of the *BSA*. The injuries caused by the *BSA* stretches to the public service collective bargaining system itself. The ATA notes the Crown has not provided evidence of harm to students and parents occasioned by the strike and harm to the TEBA and the Alberta Government is negligible. Those parties would simply be forced back into the bargaining process.

[91] The Crown argues the public interest is an essential factor for consideration. The Crown concedes there is no presumption that a law is constitutional in this context. However, Courts are required to presume legislation is enacted in the public interest. That presumption is to be given significant weight. It may only be rebutted where an applicant demonstrates, with evidence, that suspending the law will itself confer its own public benefit that clearly outweighs the presumed public interest in upholding the legislation. Given *Charter* s 33 shields the *BSA* from judicial scrutiny under *Charter* ss 2 and 7-15, it is not legally possible at this stage to suspend the application of the *BSA* based on challenges to such provisions. The Crown argues the public interest weighs heavily in the balance in this case as it would return the ATA to an active strike and the TEBA to an active lock-out. Even with the suspension of strike action as proposed by the ATA, if the *BSA* were suspended, there would be no existing employment conditions under which teachers would be working. The bridging provisions in the *PECBA* and *LRC* were suspended as soon as the strike/lock-out occurred. If teachers continued to work, they would be doing so with no active employment terms in place, and no clarity on how teachers would be paid for their work. Finally, suspending the *BSA* would almost certainly create chaos and uncertainty for the parties, parents, and students who could be immediately placed out of school.

[92] In all constitutional cases the public interest occupies special importance and is given significant weight in assessing where the balance of convenience lies: ***Metropolitan Stores*** at p 149; ***RJR-MacDonald*** at p 343. "Public interest" includes both the concerns of society generally and the particular interests of identifiable groups. Either party may tip the scales of convenience in their favour by demonstrating a compelling public interest in granting or refusing the relief sought: ***RJR-MacDonald*** at p 344.

[93] Actions taken by a governmental authority charged with promoting the public interest, including the government itself in enacting legislation, are deemed to be in the public interest: ***360Ads Inc v Okotoks (Town)***, 2018 ABCA 319 at para 13; see also ***RJR-MacDonald*** at p 349; ***Harper v Canada (Attorney General)***, 2000 SCC 57 at para 9.

[94] Is the presumption rebutted? The ATA suggests any presumption operating in favour of the Crown is rebutted by: 1) the excessive and overreaching nature of the *BSA* (eliminating *Charter* rights, defeating the collective bargaining process, and foisting an unwanted collective agreement on teachers); 2) how the *BSA* was enacted with indecent haste; and 3) how the real purpose of *BSA* is not what is stated but rather to avoid spending money on teachers and the education system.

[95] I can certainly understand why these points-of-views might be held by the ATA and other members of the public. However, it is not enough to criticize the Alberta Government's process, the content of the *BSA*, and the Alberta Government's motive for enacting the *BSA*. It is

insufficient for an applicant to say the government does not represent the public interest by what it does or how it does it. Rather, the applicant must convince the Court that public interest benefits will flow from the injunction if granted: ***RJR-MacDonald*** at p 344.

[96] In this case, the presumption in favour of the Crown is supported by two factors: 1) the stated purpose in section *BSA* s 2 of ending the strike by imposing a new collective agreement was actually achieved; and 2) by certain logical inferences available on the evidence.

[97] The evidence discloses 51,000 teachers and over 700,000 students across 2,000 schools and 61 school districts province-wide were affected by the strike/lock-out. While evidence of a direct, harmful consequence to actual people is relevant, courts may also conclude there is objectively discernable harm. In the absence of actual or empirical evidence of the harm, the court can find harm by applying reason and logic: ***AB v Bragg***, 2012 SCC 46 [***Bragg***] at para 14.

[98] In ***Bragg***, the application of reason and logic involved recognition of the inherent vulnerability of children, particularly in the context of sexualized cyberbullying. In this case, the context is quite different, but I do not think it is too much of a leap of logic to conclude it is better for students and their families, if not all of society, for students to be in school versus not being in school. As of today, there are three and a half months left in this school year, and school is on hiatus during July and August. There is some evidence of ameliorative steps required to be taken by government in order to ease the financial and practical burden of students not being in school. Having regard to the time of year, the risk of the balance of the school year being scuttled is apparent if an injunction is granted with no plan on how to prevent that from happening.

[99] Freedom of association as embodied in the right to strike is a fundamental right as much as freedom of expression. While freedom of expression is undoubtedly a fundamental value, there are other fundamental values also deserving of protection and consideration by the courts. When these values come into conflict, as they often do, it is necessary for the courts to make choices based not upon an abstract, platonic analysis, but upon a concrete weighing of the relative significance of each of the relevant values in our community in the specific context: ***RJR-MacDonald*** at para 72.

[100] The competing value here is the societal value of having a functioning education system and promoting the education and self-actualization of young Albertans. In this injunction application, I am asked to make that choice between competing societal values.

[101] The ATA might well say that this conflict of values is the artificial creation of the Alberta Government itself, made up by its refusal to negotiate one of the ATA's major issues of class complexity and then enacting the *BSA* as a consequence of that refusal. But my job is not to cast blame for the circumstances. It is to deal with the circumstances. Assigning blame is the job of the electorate.

[102] I am not saying the Alberta Government governed effectively by enacting the *BSA* and ending the strike by imposing a new collective agreement. Any views I might have in that regard are entirely irrelevant. I must deal with the circumstances presented to me, not what caused them. I must determine whether the public -- now, today -- is better served by granting or not granting the injunction, given those circumstances.

[103] Since I accept the ATA membership suffers some harm if the injunction is not granted, it might be said that I am choosing the metaphoric lesser of two evils.

[104] I commented during the hearing that I am sentient, conscious, and generally aware of the world around me. I am not confined to an ivory tower, nor do I live under a rock. I am entitled to find harm based on using reason and logic. I may adopt, as a precept, that it is better for students to be in school than not in school. Better for them, better for their families, better for the functioning of our society as a whole.

[105] The adoption of such a precept is not a stretch. The SCC said as much in ***Metropolitan Toronto School Board v Minister of Education***, 1985 CanLII 2065 (SCC) at 293-94:

> On evidence before this Court as between the applicants on one hand, and the Roman Catholic Separate School Boards, teachers, students, and parents on the other, the balance of convenience overwhelmingly is in the latter's favour. The disruption of the educational system and its interim funding is, in the opinion of this Court, a matter to be avoided at all costs.

[106] Whether by presumption, or by logical inference, or a combination of both, I conclude at this point, given the circumstances presented, the better public interest is served and therefore the balance of convenience lies in this case in denying the injunction.

K. Summary and Conclusion

[107] An interlocutory or temporary injunction application is determined by the Court by applying the three-part ***RJR-MacDonald*** legal test. That test requires an applicant to prove on a balance of probabilities that: (1) there is a serious issue to be tried, (2) the applicant will suffer irreparable harm in the intervening period (until the case is heard in full) if the injunction is not granted, and (3) the balance of convenience favours the applicant. Here is a summary of my findings:

- The ATA has established a serious issue to be tried as to whether *Charter* s 33 was validly invoked in the enactment of the *BSA*. Various aspects of this issue, as articulated by the ATA and described in these Reasons, are within the ambit of consideration in ***English Montreal*** to be heard by the SCC starting on March 23, 2026. Since those issues are before that Court, they are of national importance and must be serious.
- The ATA has suffered harm as described by Mr Brown and Prof Hebdon, but that harm does not reach the threshold of irreparable harm. It falls short not because the ATA and its membership are not profoundly affected. They are. The harm fails to reach the threshold because it flows from the enactment of the *BSA* itself, not from absence of an injunction. The harm is already manifest. The remedial effect of an injunction on that harm is speculative.
- The balance of convenience favours the Crown because of the public interest. The ATA has not shown granting the injunction will benefit the public interest more than not granting the injunction. Governmental action is presumed to be in the public interest. The likely consequence of putting teachers back on strike and closing schools for a period of at least six months is the likely consequences of granting the injunction. I infer, as matter of logic and reason, that such consequences will adversely affect students, their families, and the public at large, which is not in the public interest.

[108] It is often said the three stages of the ***RJR-MacDonald*** test are not watertight compartments. To some degree, strength at one stage can compensate for weakness in another, especially when considering the second and third stages, which are integrally linked. Since this is a constitutional case, I am required consider the three parts of the test with emphasis on the public interest. I must apply the law as it stands now, not as it might be in the future.

[109] I find the ATA has not discharged the onus and I deny the injunction application.

[110] I know this decision is deeply disappointing to the ATA and its members. I am also aware many members of the public support the teachers and feel the notwithstanding clause in the *BSA* was invoked in high-handed way. This is not the end of the road for the ATA and the teachers. The ATA will have the opportunity to bring case in full at the merits hearing in September 2026. By then the SCC may provide clarity about when and how *Charter* s 33 is validly invoked.

[111] These reasons should not be construed in any way as my endorsement of the *BSA*. Contrary to what some might think, the personal views of a judge as a private citizen play no role in the judicial outcome of cases. Decisions must follow the law and the evidence and respect the Rule of Law. Personal and political sentiment do not matter. That is the job.

[112] I thank both sets of counsel again for their comprehensive and well-presented arguments in this case.

Heard on the 4th and 5th days of March, 2026.
Dated at the City of Edmonton, Alberta this 13th day of March, 2026.

Douglas R. Mah
J.C.K.B.A.

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