

In the Court of Appeal of Alberta

Citation: Mount Royal Faculty Association v Mount Royal University, 2026 ABCA 322

Date: 20261013

Docket: 2601-0165AC

Registry: Calgary

Between:

**Mount Royal Faculty Association and
Alberta Labour Relations Board**

Respondents

- and -

Mount Royal University (Board of Governors)

Applicant

**Reasons for Decision of
The Honourable Justice Jo'Anne Strekaf**

Application for Permission to Appeal

**Reasons for Decision of
The Honourable Justice Jo'Anne Strekaf**

[1] An associate professor at Mount Royal University (MRU) was involved in a series of disputes with several colleagues, including on social media, which resulted in multiple cross allegations that the behavior was contrary to MRU's Harassment Policy. Four investigations were conducted by various independent counsel, which upheld some of the claims by and against the associate professor and dismissed others. The associate professor was disciplined by MRU in May 2021 with a two-week suspension without pay and was terminated for just cause on December 20, 2021.

[2] The Mount Royal Faculty Association (the Faculty Association) filed 10 grievances on behalf of the associate professor. The grievances were heard by a single arbitrator at an arbitration hearing that took place over 30 hearing days with 25 witnesses. The arbitrator set aside the suspension and reduced it to a written warning. He found the dismissal was not justified and, after concluding the associate professor's continued employment at MRU was not viable under the test in *Alberta Union of Provincial Employees v Lethbridge Community College*, 2004 SCC 28, ordered pay in lieu of reinstatement.

[3] Pursuant to s 145(2) of the *Labour Relations Code*, RSA 2000, c L-1, the Faculty Association applied to the Alberta Labour Relations Board (the Board) for review of the arbitrator's decision to order pay in lieu of reinstatement. The Board found that:

1. There was a breach of procedural fairness as the arbitrator denied the Faculty Association the right to be heard on a point that became central to the arbitrator's decision; and
2. The arbitrator's reasons for not reinstating the associate professor were not justified, transparent and intelligible.

Mount Royal Faculty Association v Mount Royal University (Board of Governors), 2026 ALRB 61 (Board Decision).

[4] The Board remitted the matter back to the arbitrator to reconsider the remedy in light of the reasons set out in its decision: Board Decision at para 79.

[5] Section 145.1 of the *Labour Relations Code* provides for an appeal to this Court from a decision of the Board on a question of jurisdiction or law after permission to appeal has been obtained.

[6] MRU seeks permission to appeal on the following questions:

1. Did the Board misapply the test in *Lethbridge College* in finding that the arbitrator failed to articulate transparent or intelligible reasons for “exceptional or extraordinary circumstances”?
2. Did the Board err by requiring the arbitrator to “grapple with” academic freedom in his reasons regarding payment in lieu of reinstatement?

[7] The issue on an application pursuant to s 145.1 is whether the proposed appeal merits review by a panel of the Court of Appeal. The factors considered include whether:

- (a) the issue is of significance to the practice,
- (b) the issue is of significance to the action,
- (c) the appeal is *prima facie* meritorious, and
- (d) the appeal would unduly hinder the underlying action.

United Food and Commercial Workers Canada Union, Local No 401 v Sofina Foods Inc, 2019 ABCA 418 at para 26, citing *Equs Rea Ltd v Alberta (Utilities Commission)*, 2019 ABCA 277 at para 12.

[8] With respect to the first proposed ground of appeal, MRU submits that the Board erred in its application of the test in *Lethbridge College* by erroneously concluding that refusal of reinstatement could be granted only where the circumstances were “exceptional” or “extraordinary” and where the employment relationship had been “totally destroyed”, rather than where an arbitrator’s findings reflect concerns that the employment relationship is “no longer viable”.

[9] When the Board’s decision is read as a whole, I am not satisfied that MRU’s claim that the Board erred in the manner alleged raises an issue that is *prima facie* meritorious. The Supreme Court in *Lethbridge College* did not suggest that an award of damages in lieu of reinstatement does not require “extraordinary” or “exceptional” circumstances but clarified that such circumstances do not require a finding of “culpable conduct”. The requisite “exceptional circumstances” arise when there is a finding “that the employment relationship is no longer viable”. Whether the employment relationship has been “totally destroyed” is not a prerequisite, but simply an example of the type of extraordinary circumstances that may demonstrate that the employment relationship would no longer be viable: *Lethbridge College* at paras 52-56.

[10] The Board did not conclude that the associate professor should be reinstated or that the arbitrator had misapplied *Lethbridge College*. The matter was returned to the arbitrator to reconsider the remedy as the Board found there had been a breach of procedural fairness and the arbitrator’s reasons were not sufficiently justified, transparent and intelligible. MRU did not seek

permission to appeal the finding that there had been a breach of procedural fairness. It is to be expected that the arbitrator will reconsider the matter in accordance with the principles of procedural fairness and the remedy in accordance with the Supreme Court of Canada's directions in *Lethbridge College*.

[11] With respect to MRU's second proposed ground of appeal, the Board's finding that there was a gap in how the arbitrator addressed considerations in relation to academic freedom is a matter that goes to the sufficiency of the arbitrator's reasons, which the Board found lacking. In my view, this is not an issue that is of sufficient significance to the practice or sufficiently meritorious to justify an appeal.

[12] Finally, I have considered that the circumstances that gave rise to this employment dispute date back almost five years. As noted, the matter has been remitted back to the arbitrator because of a breach of procedural fairness, an issue that has not been appealed, and will be reconsidered by him. The further delay resulting from an appeal to this Court would unduly hinder resolution of the underlying claim.

[13] The application is dismissed.

Application heard on September 9, 2026

Reasons filed at Calgary, Alberta
this 13th day of October, 2026

Strekaf J.A.

Appearances:

L.M. Chahley
for the Respondent Mount Royal Faculty Association

K. McGreer
for the Respondent Alberta Labour Relations Board

M.D. Ford, KC
K. Edgerton-McGhan
for the Applicant