# In the Court of Appeal of Alberta

**Citation: Wallace v Alberta (Labour Relations Board), 2026 ABCA 373**

**Date:** 20261123
**Docket:** 2501-0171AC
**Registry:** Calgary

**Between:**

**Roy Wallace**

Appellant

- and -

**Alberta Labour Relations Board**

Respondent

- and -

**Alberta Union of Provincial Employees**

Respondent

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**The Court:**

**The Honourable Justice Anne Kirker**
**The Honourable Justice William T. de Wit**
**The Honourable Justice Kevin Feth**

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**Memorandum of Judgment**

Appeal from the Order by
The Honourable Justice Robert J. Hall
Dated the 22nd day of May, 2025
Filed on the 12th day of June, 2025
(Docket: 2501-06372)

**Memorandum of Judgment**

**The Court:**

## Introduction

[1] The chambers justice set aside the appellant's originating application for judicial review of a decision of the Alberta Labour Relations Board (the Board) because the application was filed and served outside the 30 day period mandated by section 19(2) of *Labour Relations Code* RSA 2000, c L-1, leaving the court without jurisdiction to hear the application.

[2] On appeal, the appellant argues that his judicial review application was brought within the 6 months contemplated by rule 3.15 of the *Alberta Rules of Court* and he was entitled to have it heard by the court. He also argues that the decision of the chambers justice was tainted by procedural flaws.

[3] For the reasons that follow, the appeal is dismissed.

## Background

[4] The appellant, a licensed practical nurse, was disciplined and eventually terminated for cause by his employer, a nursing home. Following an arbitration hearing, during which the appellant was represented by the Alberta Union of Provincial Employees (AUPE), the arbitrator upheld the termination. AUPE did not seek a review of the arbitration decision to the Board. However, the appellant filed a complaint with the Board claiming the AUPE did not comply with its duty of fair representation. On November 8, 2024, the Board issued a decision summarily dismissing the appellant's complaint.

[5] On April 23, 2025, the appellant filed an application for judicial review of the Board's decision and the matter was set down for an appearance in morning chambers on May 5, 2025. The matter was adjourned by consent to May 22, 2025, to be dealt with in morning chambers.

[6] On May 7, 2025, AUPE filed an application to have the appellant's originating application for judicial review set aside or dismissed pursuant to rule 3.68 on the ground that the originating application was filed after the 30 day deadline under section 19(2) of the *Labour Relations Code* and the court therefore did not have jurisdiction to hear it. The application was set for May 22, 2025.

[7] On May 22, 2025, the parties appeared before the chambers justice. Following submissions, the chambers justice set aside the appellant's originating application for judicial review. He concluded that the court lacked jurisdiction to hear the judicial review application

because it was filed outside the time limit set by section 19(2) of the *Labour Relations Code*. He rejected the appellant's argument that rule 3.15(2) allows the judicial review application to be filed within 6 months of the Board's decision, stating that rule 3.15(2) "cannot and does not overrule the specific legislative requirements in the *Alberta Labour Relations Code* ... directing that the application must be made within 30 days".

**Issue on appeal and standard of review**

[8] The appellant raises several grounds of appeal, but the primary issue is straightforward: whether the chambers justice erred in concluding the court had no jurisdiction to hear the appellant's judicial review application because it was filed outside the time requirements set out in the *Labour Relations Code*. The appellant also raises concerns about procedural fairness.

[9] Whether a limitation period has expired requires the application of facts to a legal standard. Absent an error about the legal standard, the standard of review is reasonableness: *Nammo v Canada (Justice and Attorney General*), 2015 ABCA 389 at para 8. For issues of procedural fairness the question is whether the standard of fairness required in the circumstances has been met, which is sometimes characterized as correctness review: *FJN v JK*, 2019 ABCA 305 at para 46; *JM v EM*, 2022 ABCA 49 at para 29.

**Analysis**

[10] The decision of the chambers justice was based on the language of section 19 of the *Labour Relations Code*. Subsection 19(1) provides that "no decision, order, directive, declaration, ruling or proceeding of the Board shall be questioned or reviewed in any court by application for judicial review or otherwise...". Subsection 19(1) is subject to subsection (2), which provides in part:

> A decision ... of the Board ... may be questioned or reviewed by way of an application for judicial review seeking an order in the nature of certiorari or mandamus if the application is filed with the Court and served on the Board no later than 30 days after the date of the decision...

[11] There is no doubt that the appellant's application for judicial review, which was filed over five months after the Board's decision, was filed outside the 30 day time limit mandated by that provision.

[12] The appellant's primary argument focuses on the *Alberta Rules of Court* dealing with originating applications for judicial review. He says that his application was made under rule 3.15 of the *Alberta Rules of Court* and not under section 19 of the *Labour Relations Code* and was therefore subject to the six month limitation period set out in rule 3.15(2). He suggests that section 19 of the *Labour Relations Code* does not apply if he intended to bring the application pursuant to the *Rules of Court*.

[13] The appellant's argument disregards that regulations such as the *Rules of Court* are subordinate legislation. As stated by this Court in *Kehewin Cree Nation v Mulvey*, 2013 ABCA 294 at paras 10-13, a judge cannot amend or extend the time limits set out in a statute unless a statute grants that power. In addition, the power to extend time limits that are set out in the *Rules of Court* does not empower a judge to extend time limits set by statute. Legislation can prescribe procedures for judicial review and validly set out specific timelines for judicial review: *Democracy Watch v Canada (Attorney General)*, 2026 SCC 28 at para 75.

[14] Section 19(2) of the *Labour Relations Code* has been specifically considered by a justice of this Court, who opined that a Court of King's Bench judge would have no jurisdiction to entertain an application for judicial review if the timeline set out in section 19 was not met: *Rai v Alberta (Labor Relations Board)*, 2019 ABCA 497 at paras 12-14, 21. We agree. The chambers justice made no error in concluding that he was unable to consider the appellant's judicial review application given the failure to comply with the statutory time limit, and that he was unable to extend the time limit for judicial review set out by the *Labour Relations Code* in the absence of a statutory provision granting that power.

[15] The appellant also argues that there was a breach of procedural fairness in the manner in which his application was addressed by the chambers justice. He cites rule 6.3(3), which requires an applicant to file its notice of application and any affidavit or other evidence in support at least five days before the application is heard. The respondent AUPE filed its application on May 7, 2025, for hearing on May 22, 2025. The appellant takes issue with the respondent AUPE providing case law the day before the hearing and says that AUPE did not file an affidavit in support of its application. There is no merit in these complaints. The *Rules* require service of the application and evidence in support, not case authorities. AUPE's application to dismiss the judicial review application relied on the appellant's own affidavit, which attached the Board's decision. The appellant had adequate notice of the application to set aside the originating application, and the appellant's judicial review application and supporting affidavit were before the chambers justice. We see no unfairness in this process.

[16] The appellant also argues that the application to set aside the originating application should not have been heard on its own when the parties agreed to adjourn the merits of the judicial review to a special chambers date. Any agreement to adjourn the merits did not preclude an application under rule 3.68 and, as noted, the appellant was given adequate notice of the rule 3.68 application. He could not reasonably be confused about the nature of any adjournment agreement.

[17] Finally, we have reviewed the appellant's application to admit fresh evidence on the appeal. This evidence consists primarily of correspondence among counsel and is said to relate to the agreement to adjourn the merits of the judicial review application. The fresh evidence is not relevant to the primary issue on appeal, which is whether the chambers justice erred in concluding the originating application had to be set aside as being out of time, and does not demonstrate an agreement to adjourn the setting aside application to a later date. We decline to admit it.

**Conclusion**

[18] The appeal is dismissed.

Appeal heard on November 10, 2026

Memorandum filed at Calgary, Alberta
this 23rd day of November, 2026

Kirker J.A.

de Wit J.A.

Feth J.A.

**Appearances:**

C. Osuji (no appearance)
C.A. Ezeogu
for the Appellant

T. Nessim
for the Respondent Alberta Labour Relations Board

A.R. Cembrowski
for the Respondent Alberta Union of Provincial Employees