

Kay v Association of Academic Staff University of Alberta and University of Alberta (Board of Governors), 2026 ALRB 84

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CITATION: *Kay v Association of Academic Staff University of Alberta and University of Alberta (Board of Governors)*, 2026 ALRB 84

June 30, 2026

Directed to: Ondel-Ansek Kay; McGown Cook Barristers & Solicitors – E. Wayne Benedict PLC; Association of Academic Staff University of Alberta – Leanne Rosinski; Field Law – Geoffrey M. Hope; University of Alberta (Board of Governors) – Anthony Purgas

RE: **An application brought by Ondel-Ansek Kay affecting the Association of Academic Staff University of Alberta and the University of Alberta (Board of Governors) – Board File No. GE-09496**

[1] The Association of Academic Staff of the University of Alberta (“AASUA”) and the Board of Governors of the University of Alberta (the “University”) apply to summarily dismiss an application brought by Dr. Ondel-Ansek Kay (the “Applicant”) under section 58.6 of the *Labour Relations Code* (the “Code”). As discussed further below, this section 58.6 application stems from a series of events commencing in late 2023 and continuing through spring and summer 2025 in which the Applicant ceased to be in a position with the University that is governed by a collective agreement between AASUA and the University. There is a dispute between the parties about the legal characterization of the University's actions. The Applicant also filed a duty of fair representation complaint pursuant to section 153 of the *Code* against AASUA, which is not part of this proceeding.

[2] As noted, this application is made under section 58.6 of the *Code*, which permits the Board to determine whether a category of employees or an individual employee is an academic staff member pursuant to the *Post-Secondary Learning Act*, SA 2003, c P-19.5 (the “PSLA”). Section 58.6(1) of the *Code* states:

Application respecting academic staff designations

58.6(1) A person or bargaining agent affected by a designation or change in designation made under section 5(2), 42(2) or 60(2) of the Post-Secondary Learning Act, or a failure to designate, may apply to the Labour Relations Board to decide whether a category of employees or individual employees are academic staff members.

[3] The designation of an individual as an academic staff member determines whether they are part of the academic staff association that bargains on behalf of academic staff at a public post-secondary institution: see s. 85(2) of the *PSLA*. Therefore, the designation of an individual

as an academic staff member significantly affects the ability of the individual to be represented by the academic staff association and participate in collective bargaining with the academic staff. Generally, a public post-secondary institution, such as the University, designates who is academic staff. Anyone the post-secondary institution does not designate as academic staff is consequently not an academic staff member and not part of the academic staff association. Section 58.6 of the *Code* gives the Board oversight regarding the designation of individuals and categories of individuals as academic staff members.

[4] The Applicant frames his application under section 58.6 as a “complaint”. To be clear, section 58.6 of the *Code* does not proscribe or prescribe any actions by a public post-secondary institution. As such, an application under section 58.6 is not a “complaint” under the *Code*; rather it is a request for the Board to exercise jurisdiction to oversee the designation of an individual or a category of individuals as academic staff members. Much of the application refers to allegations that the University has interfered with or violated the rights of the Applicant. However, when considering an application under section 58.6 of the *Code*, the Board simply determines whether an individual or a category of individuals are, or are not, academic staff members.

[5] AASUA and the University submit that the Applicant’s section 58.6 application should be summarily dismissed for several reasons, including that it is moot.

[6] At a previous case management meeting, the Board directed that the summary dismissal application would be heard by way of written submissions. The parties’ written submissions were brought before a panel of the Board (Nekolaichuk, Gervais-Arbane, Mulla) to decide whether to summarily dismiss the Applicant’s section 58.6 application. Having considered the parties’ submissions, the Board finds that the application is moot and summarily dismisses it pursuant to section 16(4)(e) of the *Code*.

Background

[7] As the Board finds that the matter is moot, we only provide a limited description of the circumstances leading to the application in order to give context for the decision. The description of the context is based on facts that are either not disputed or, where there is a dispute, the facts alleged by the Applicant. The description of the facts does not involve the Board making findings of fact after hearing the evidence.

[8] The Applicant began employment with the University in September 2014. During his employment he held a Full Teaching Professor position, which the Applicant states was granted to him following a rigorous academic selection process. The Board understands that the Applicant primarily performed his duties at the University’s Campus St. Jean *Centre Collegial de l’Alberta* (“CCA”). The Applicant submits that as a Full Teaching Professor he was required to develop courses, evaluate students, and provide institutional service. Between September 2014 and January 2025, the Applicant was part of AASUA as an “academic staff member” and the terms of his employment were governed by a collective agreement between the University and AASUA.

[9] The Applicant worked pursuant to a series of fixed-term appointments. The last appointment during which he worked was from July 1, 2022 until June 30, 2025. According to the terms of the collective agreement, including in particular Articles 1.09 and 1.30, he was on a “temporary appointment” rather than a “continuing appointment”.

[10] On December 21, 2023, the University advised AASUA that it had identified certain employees at CCA, including the Applicant, that had been incorrectly treated as part of the AASUA bargaining unit. The University referred to Article 1.39(d) of the collective agreement, which states that persons who carry out teaching responsibilities only in non-credit courses “shall not be included as a Staff Member and a member of the Association”. The University notified AASUA that, to the extent it had previously treated those employees as members of AASUA, it was terminating the practice.

[11] The University wrote to 14 employees, including the Applicant, on February 27, 2024, to inform them of the transition out of the academic staff bargaining unit. The University advised the Applicant that as of January 1, 2025, he would no longer be a member of the bargaining unit governed by the collective agreement since he did not teach for-credit courses. The February 27 letter further advises the Applicant that following the expiry of his current contract on June 30, 2025, any further employment with the University would be pursuant to its regular contract terms with non-credit instructors.

[12] AASUA disagreed with the University’s views and actions and eventually filed on June 5, 2024, policy and group grievances on behalf of the affected employees, including the Applicant. The Applicant similarly strongly disagrees with the University’s position that the courses he taught were not for-credit.

[13] The Applicant signed an out-of-scope contract that applied from January 1, 2025 until June 30, 2025. The Applicant maintains that it was signed under duress and that the new contract resulted in a salary reduction of 24%.

[14] The policy and group grievances were scheduled for arbitration on February 5, 6, and 7, 2025. That hearing was adjourned on January 22, 2025. AASUA later notified the 14 affected individuals, including the Applicant, that it intended to withdraw the grievances and gave them an opportunity to internally appeal AASUA’s decision. The grievances were withdrawn in May 2025.¹

[15] Although his contract continued until June 30, the Applicant last worked for the University on April 30, 2025. The University initially offered the Applicant one-semester contracts for Fall 2025 and Winter 2026. The University states that these contracts were to teach one class each in those semesters. Regardless, on August 12, 2025, the University withdrew those appointments before they began. The Applicant has not worked for the University since his contract expired on June 30, 2025 and he has had no employment relationship with it since that time.

[16] The Applicant filed this section 58.6 application on August 28, 2025.

Decision

[17] As noted above, AASUA and the University argue that this application should be summarily dismissed for several reasons. It is not necessary for the Board to review each of those arguments. For the reasons that follow, the Board finds that the application is moot.

¹ The Board has not detailed the facts pertaining to AASUA’s representation of the Applicant or its handling of the grievances, as those facts are part of the Applicant’s duty of fair representation complaint.

[18] To begin, section 58.6(2) of the *Code* makes clear that, in an application filed pursuant to section 58.6(1), quoted above, the Board has discretion whether to decide if a category of employees or an individual employee are academic staff members. Section 58.6(2) specifically states that the Board “may decide”, which indicates a discretionary authority. The Board interpreted section 58.6(2) as giving it discretion not to decide a section 58.6 application in *Northern Lakes College Faculty Assoc. v Board of Governors of Northern Lakes College et al.*, [2019] Alta. L.R.B.R. 46 at para 66 (“*Northern Lakes*”). In that case, the Board exercised its discretion to decline to decide the section 58.6 application because the parties had not engaged in sufficient steps on their own to try to resolve the matter.

[19] The Board summarized its approach to questions of mootness in *Alberta Teachers’ Association v Livingstone Range School Division No. 68*, [2014] Alta. L.R.B.R. LD-033 (“*Livingstone*”):

[6] The law at issue is not in dispute. In *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, the Supreme Court of Canada described the doctrine of mootness as follows at page 353:

Mootness

The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice. The relevant factors relating to the exercise of the court's discretion are discussed hereinafter.

The approach in recent cases involves a two-step analysis. First it is necessary to determine whether the required tangible and concrete dispute has disappeared and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case. The cases do not always make it clear whether the term “moot” applies to cases that do not present a concrete controversy or whether the term applies only to such of those cases as the court declines to hear. In the interest of clarity, I consider that a case is moot if it fails to meet the “live controversy” test. A court may nonetheless elect to address a moot issue if the circumstances warrant.

[7] In *Wiebe v. Alberta Labour Relations Board et al.*, 2001 ABCA 192, [2001] Alta. L.R.B.R. 356, the Court of Appeal listed a number of dangers in hearing matters that are moot...

[8] As part of its analysis into whether a matter is moot, this Board also takes into account whether there is a labour relations purpose to allowing the matter to proceed: see *TIC Canada v. Construction and General Workers' Union, Local No. 92*, [2008] Alta. L.R.B.R. LD-035.

[20] AASUA and the University argue that a section 58.6 application only provides for a declaratory remedy that an employee or a category of employees are academic staff members. They submit the Board does not need to consider the various allegations in the section 58.6 application about how the Applicant's employment terms changed or how his employment ended. In their view, there is no live controversy and no labour relations purpose to hear this matter because, regardless of whether the Board determines if the Applicant is an academic staff member, he is no longer employed and the decision will have no practical effect on any legal rights.

[21] The Applicant argues that the application should not be considered moot simply because his employment ended, particularly because the impugned decision of the University has lasting legal effects and raises an issue of institutional importance. The Applicant submits that his de-designation, as he refers to it, as academic staff had concrete effects during the term of his contract such as the loss of status and change in employment conditions. According to him, his de-designation informed and led to the subsequent decision not to renew his employment. As well, the section 58.6 application raises a recurring institutional issue regarding the status of instructors at CCA, which transcends the Applicant's individual case and warrants clarification from the Board.

[22] The Board finds that there is no ongoing live controversy affecting the Applicant. There is no dispute that he is no longer employed at the University and he was not employed at the University at the time that he filed the application on August 28, 2026. As noted in *Northern Lakes* at paragraph 64, a designation application under section 58.6 is similar to a determination application under sections 12(3)(b) and (o) of the *Code*. An application pursuant to section 58.6 is not a review of a public post-secondary institution's decision: see *Northern Lakes* at para 62. Generally, applications under section 12(3)(b) and (o), as well as section 58.6, are prospective or forward looking. Both sections use present-tense language, such as whether someone "is" an employee or whether a category of employees "are" academic staff. This can be contrasted with section 12(3)(f), which permits the Board to determine whether a collective agreement "has been entered into". There are limited circumstances when the Board may assess whether a person is an employee at the time of an application, such as when assessing employee support for a certification or revocation application. Any decision in this matter would be about whether the Applicant is an academic staff member. Since he is no longer employed by the University and has not been employed at the University at any time during this application, there is no live controversy about whether he is an academic staff member. Further, there is no labour relations purpose to hear the matter, since it will not have any practical effect on the tri-partite relationship between the Applicant, the University, and AASUA.

[23] The Board understands there may still be a disagreement between AASUA and the University about what constitutes a “for-credit” course. It would be up to AASUA, if there is a concrete, factual dispute, to bring a section 58.6 application if it wants the Board to intervene. Alternatively, an employee of the University affected by a designation decision who continues to be employed by the University could potentially file an application. The application in this case seeks remedies pertaining to the Applicant. A hearing in which there is a legal disagreement between parties but no longer any practical effect to the dispute is the definition of mootness.

[24] Parallels can be drawn here with the decision in *Livingstone*. In that case, the Board declined to hear a bad faith bargaining complaint after the parties reached a collective agreement. The parties still disagreed about whether the conduct of the employer during bargaining constituted a breach of section 60 of the *Code* but that dispute no longer had any practical effect because bargaining had ended. There was no remedy beyond a declaration that the Board would give, and that declaration would have no practical effect because the events at issue had concluded. Here, any decision that the Applicant is an academic staff member would have no practical purpose since he is no longer employed.

[25] The fact that the University’s decision to treat the Applicant as an excluded instructor beginning on January 1, 2025 affected things such as the Applicant’s salary does not mean there is a live controversy in this application. As noted, section 58.6 permits the Board to determine whether someone is an academic staff member. It is not a section upon which a complaint pursuant to the *Code* can be founded. The only matter before the Board that is at all related to the events in January 2025 is the Applicant’s duty of fair representation complaint, which addresses AASUA’s representation of him at and around that time.

[26] The Applicant’s reply submissions on January 20, 2026 to the summary dismissal application recognize that he is seeking a determination of his status. Those submissions state: “Contrary to the [sic] AASUA’s position, Dr. Kay’s application is not limited to retroactive reinstatement. It primarily seeks a declaration regarding his status.” (Emphasis in original)

[27] The Board notes that the application filed on August 28, 2025 refers to section 130 of the *Code* and suggests the University breached the “statutory freeze” when it changed the terms of his employment during bargaining. Despite this reference, the Applicant has never in his submissions suggested this application is anything but an application under section 58.6.

[28] Moreover, there are numerous problems with the Applicant’s argument. First, section 130 of the *Code* does not impose a “statutory freeze”. Rather, section 147(3) of the *Code* prohibits certain changes to terms and conditions of employment during bargaining, subject to various exceptions. Second, it is not disputed that the University informed AASUA prior to the start of bargaining that it intended to move some of the employees at CCA, including the Applicant, out of the academic staff bargaining unit. As such, the change would be permitted pursuant to the exceptions in section 147(3). Third, the Applicant would be well outside the 90-day timeline for filing a complaint in August for a change that occurred in January and any such claim would be dismissed pursuant to section 16(2) of the *Code*: see *Toppin v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 488*, [2006] Alta. L.R.B.R. 31.

[29] In the Applicant's reply to the summary dismissal application, he refers to additional sections of the *Code*. That similarly does not make this application anything other than an application pursuant to section 58.6. Further, any new complaint in January 2026 pertaining to anything related to the Applicant's employment are equally untimely.

[30] For these reasons, the Board does not find that there is a live controversy between the Applicant, the University, and AASUA. This matter is therefore moot.

[31] As noted in *Livingstone*, if a matter is moot the Board still has discretion to hear it. The next question is whether there is any reason that persuades the Board to exercise its discretion to nonetheless hear a moot matter.

[32] The Board has already reviewed that there is no practical or labour relations purpose to hear this application. It would be rare for the Board to hear a moot matter unless there was some particular labour relations purpose for doing so. There are no other factors here that persuade the Board to hear this application.

Conclusion and Additional Comments

[33] The Board summarily dismisses the application pursuant to section 16(4)(e) of the *Code* because it is moot.

[34] The Board also wishes to take this opportunity to comment upon an issue in the Applicant's submissions on January 8, 2026 replying to the University's summary dismissal arguments. The Applicant lists what he refers to as "Key Jurisprudential Principles". The list includes two principles for which the Applicant cites decisions of the Board. Specifically, the Applicant's submissions state:

1. **Substance Over Form:** The legal character of an employer's action is determined by its real and practical effects on an employee's rights, not by the terminology the employer employs (*Mennes v. The Alberta Teachers' Association*, 2025 ALRB 32)
2. **The Autonomous Jurisdiction of Section 58.6:** The remedy under section 58.6 is distinct and cannot be neutralized by the existence of a union grievance or a duty of fair representation complaint (*Adjei v. International Union of Operating Engineers, Local 955*, 2025 ALRB 43).

...

[35] Both cases referred to by the Applicant exist. Unfortunately, neither case contains any comments that even remotely address the principles referred to by the Applicant. The first case, *Mennes*, involved a question about whether the Alberta Teachers' Association was acting in its capacity as a trade union or as a professional regulatory body. There is no reference to employer action or the characterization of it in that case. The second case, *Adjei*, involves a duty of fair representation complaint in which the union had an approved appeal process pursuant to section 153(6) of the *Code*. It was not in the context of any academic setting and section 58.6 is not mentioned in the decision.

[36] The Board flags this problem to remind these parties and all parties before the Board in general that they are responsible and accountable for the submissions and materials that they provide the Board. Section 12(2)(i) of the *Code* allows the Board to award costs against parties who file trivial, frivolous, vexatious, or abusive applications or replies. The Board may consider awarding costs against parties whose submissions contain false authorities, are plainly without merit, or otherwise display a lack of appropriate diligence in preparing materials submitted to the Board. The Board will not award such costs here but wants the Board's concerns noted for this case and all future cases.

Gordon Nekolaichuk, Vice Chair