



Court File No. **VLC-S-S-265564**

Vancouver Registry No.

IN THE SUPREME COURT OF BRITISH COLUMBIA

in the Matter of

JAMES McMURTRY

Petitioner

-and-

**BRITISH COLUMBIA TEACHERS' FEDERATION,
BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 34 (ABBOTSFORD),
and BRITISH COLUMBIA LABOUR RELATIONS BOARD**

Respondents

PETITION TO THE COURT

ON NOTICE TO: British Columbia Teachers' Federation



AND TO: Board of Education of School District No. 34



AND TO: British Columbia Labour Relations Board



The address of the registry is:

800 Smithe Street, Vancouver, British Columbia, V6Z 2E1

The petitioner(s) estimate(s) that the hearing of the petition will take **1 day**.

This matter is an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below by the person named as petitioner in the style of proceedings above.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

- (a) if you were served with the petition anywhere in Canada, within 21 days after service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the Petitioner is: James Manson Charter Advocates Canada [REDACTED] [REDACTED] [REDACTED] [REDACTED] Fax number address for service (if any) of the Petitioner(s): N/A E-mail address for service (if any) of the Petitioner(s): [REDACTED]
(2)	The name and office address of the Petitioner's lawyer is: James Manson Charter Advocates Canada [REDACTED] [REDACTED] [REDACTED]

CLAIM OF THE PETITIONER

PART 1: ORDERS SOUGHT

1. The applicant, James McMurtry, requests that this Court grant an order:
 - (a) declaring, pursuant to s. 52(1) of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, that the *Labour Relations Code*, RSBC 1996, c. 244 (the “**Code**”), including ss. 12, 136(1) and 139, infringes sections 2(b) and 24(1) of the *Canadian Charter of Rights and Freedoms*, being Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the “**Charter**”), and that such infringements cannot be saved by s. 1;
 - (b) declaring that, in addition to the existing obligations contained in s. 12 of the *Code*, a further obligation shall be “read into” s. 12 requiring a trade union or employer not to act in a manner that has the effect, directly or indirectly, of preventing a government employee from seeking a remedy pursuant to *Charter* s. 24(1) for their government employer’s violation of their *Charter* rights or freedoms;
 - (c) declaring that in addition to (b), above, ss. 136(1) and 139 of the *Code* shall be interpreted so as to provide that the Labour Relations Board (the “**Board**”) is empowered to provide an appropriate remedy in circumstances where a trade union or employer acts in a manner that has the effect, directly or indirectly, of preventing a government employee from seeking a remedy pursuant to *Charter* s. 24(1) for their government employer’s violation of their *Charter* rights and freedoms;
 - (d) quashing the decision of the Board dated May 1, 2026 (the “**Initial Decision**”) and the reconsideration of the Board dated May 26, 2026 (the

"**Reconsideration**") (collectively, the "**Decision**") and remitting the matter back to the Board for further consideration;

(e) directing that no costs be awarded for or against Mr. McMurtry, regardless of the outcome of this proceeding; and

(f) providing such further relief as this Court considers appropriate.

PART 2: FACTUAL BASIS

The Parties

1. The applicant, James McMurtry, is an individual resident in the [REDACTED]. He has been a schoolteacher for nearly 40 years.

2. The respondent, the Board of Education of School District No. 34 (the "**Employer**") is a board of education continued under s. 30 of the *Schools Act*, RSBC 1996, c 412. The Employer is a government entity whose conduct is subject to the *Charter*.

3. The respondent, British Columbia Teachers' Federation (the "**Union**") is the certified bargaining agent for teachers in British Columbia pursuant to the *Public Education Labour Relations Act*, RSBC 1996, c. 382 and the *Labour Relations Code*, RSBC 1996, c. 244 (the "**Code**"), including Mr. McMurtry.

4. Mr. McMurtry was employed by the Employer as an on-call public school teacher from 2021 until his termination in June 2023, as described below.

5. During his tenure with the Employer, Mr. McMurtry's employment relationship with the Employer was governed by two agreements: (1) an agreement entitled "*Provincial Collective Agreement – July 1, 2022 to June 30, 2025 – Common Provincial Articles*" between the B.C. Public School Employers' Association and British Columbia Teachers' Federation; and (2) an agreement entitled "*A Working Document – Provincial Collective Agreement*" between the British

Columbia Public School Employers' Association/The Board of Education of School District No. 34 and British Columbia Teachers' Federation/The Abbotsford Teachers' Union.

The Impugned Comments

6. On or about May 10, 2021, Mr. McMurtry wrote to the Abbotsford News concerning an incident that had taken place between the Employer and one of its trustees (incorrectly identified as "Mr. Peterson"). In his letter supporting the trustee's right to express his views, Mr. McMurtry made the following comments:

"I support Mr. Peterson's right to free expression. As a teacher in the Abbotsford School District, I worry when one of our trustees is subjected to a Soviet-style show trial. ... Show trials tend to be retributive rather than corrective and they are also conducted for propagandistic purposes."

"A fellow trustee has issued a coerced public apology on his behalf."

"The good people of Abbotsford, now more than ever, need to stand up to what Rowan Atkinson (Mr. Bean) calls, 'the modern equivalent of the medieval mob out in the street looking for someone to burn.' The assault is on Mr. Peterson. This is not about the contents of his post, but his right to express himself."

"The mob against Mr. Peterson is not rational or fair."

"P.S. Wokeness is redolent of Soviet-style state religion. Dissent is racism (anticommunism". Peterson is guilty of 'COVID racism'."

7. On or about May 31, 2021, while acting as a substitute teacher for a [REDACTED] class at [REDACTED], Mr. McMurtry made certain comments to students concerning the alleged finding of unmarked graves at the former Kamloops Residential School. That day, the school principal made a school-wide public announcement to the effect that unmarked graves had been found at the Kamloops Residential School. The announcement gave condolences and asked staff to talk with students if they wished to discuss the matter.

8. In response to the announcement, Mr. McMurtry believed that he had been tasked with facilitating an in-class discussion on the matter. He thus engaged the class in such a discussion.

During the discussion, Mr. McMurtry sought to clarify “who ran” the residential schools in British Columbia between 1883 and 1996. He also invited the students to consider whether the term “mass murder” ought to be used given that no investigation had yet been completed. He also spoke about other historical causes of death among students in residential schools, including disease, fire, accidents and, in some cases, neglect. Mr. McMurtry agreed with the students that forced cultural assimilation took place at residential schools, and that that was a crime. Mr. McMurtry then attempted to end the discussion on a positive note, calling students’ attention to the fact that in 1865, the child mortality rate was one third; today it is 1.4%. He then invited them to not be complacent but work towards a better world.

9. That day, because of the classroom discussion with students he had led, Mr. McMurtry was walked out of the classroom by school administration. The following day, on June 1, 2021, he was suspended pending investigation.

10. At all times, Mr. McMurtry’s impugned comments were protected by s. 2(b) of the *Charter*.

The Termination

11. On February 23, 2023, following a meeting held *in camera* on February 21, 2023, the Employer terminated Mr. McMurtry's employment, for cause. Among others, the bases for his termination were the contents of his letter to the Abbotsford News dated May 10, 2021, and his comments made to the students on May 31, 2021, both described above.

12. Mr. McMurtry pleads that by terminating him for cause, the Employer violated his freedom of expression, as guaranteed by s. 2(b) the *Charter*. Mr. McMurtry thus had, and continues to have, a *Charter* claim against the Employer.

13. Pursuant to s. 24(1) of the *Charter*, Mr. McMurtry also had, and continues to have, a right to “*apply to a court of competent jurisdiction to obtain such remedy as the court considers*

appropriate and just in the circumstances” with respect to his *Charter* claim against the Employer.

14. In terminating Mr. McMurtry, the Employer also relied on allegations that he had committed other acts of misconduct, including making other inappropriate comments, failing to follow COVID-19 safety protocols, making a disrespectful comment to the school principal, and disclosing to others that he was under investigation. Mr. McMurtry disputes those allegations.

The Grievance

15. The Union filed a grievance against Mr. McMurtry's termination in June 2023. A mediation was subsequently held on September 15, 2025, which did not lead to a resolution.

16. On October 2, 2025, the Union's counsel sent an e-mail to Mr. McMurtry, stating that *"...further efforts to negotiate a mediated resolve to your grievance would be futile..."*.

17. On November 18, 2025, the Union's counsel again wrote to Mr. McMurtry, advising that the Union had decided not to proceed to arbitration with his grievance, despite the existence of Mr. McMurtry's *Charter* claim against the Employer and his s. 24(1) *Charter* right to seek a remedy.

The DFR Application

18. Mr. McMurtry applied under s. 12 of the *Code* to the Board, arguing that the Union breached its duty of fair representation because its decision not to proceed to arbitration was arbitrary, discriminatory, and made in bad faith (the "**DFR Application**").

19. On May 1, 2026, the Board rendered a discretionary decision (the "**Initial Decision**"), denying Mr. McMurtry's DFR Application and finding that the Union's decision not to proceed to arbitration was not arbitrary, discriminatory, or made in bad faith.

20. In the course of making the Initial Decision, the Board failed to consider the *Charter* protections that were engaged in the circumstances (including Mr. McMurtry's s. 2(b) freedom of expression and his s. 24(1) right to seek a remedy) and balance them against the statutory

objectives of the *Code*.

The Reconsideration Application

21. Mr. McMurtry then applied under s. 141 of the *Code* for reconsideration of the Initial Decision.

22. On May 26, 2026, the Board rendered a further discretionary decision (the “**Reconsideration Decision**”), dismissing Mr. McMurtry's application for reconsideration.

23. In the course of making the Reconsideration Decision, the Board also failed to consider the *Charter* protections that were engaged in the circumstances (including Mr. McMurtry’s s. 2(b) freedom of expression and his s. 24(1) right to seek a remedy) and balance them against the statutory objectives of the *Code*.

PART 3: LEGAL BASIS

Standard of Review

24. Ordinarily, judicial review proceedings of Board decisions are governed by the standards of review prescribed by the *Administrative Tribunals Act*, SBC 2004, c. 45 (the “*ATA*”). Section 115.1(m) of the *Code* provides that sections 58(1) and 58(2) of the *ATA* apply to the Board. Thus, pursuant to 58(2), the usual standards of review applicable to the Board’s Reconsideration Decision are:

- (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
 - (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
 - (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and

- (c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.

25. However, the jurisprudence confirms that where constitutional questions are raised, such whether a *Charter* right arises, the scope of its protection, and the appropriate framework of the analysis, the applicable standard of review is correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraphs 53-56; *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22 [York Region] at paragraphs 63-71; *Szezepaniak v. Interior Health Authority*, 2025 BCSC 1516 at paragraphs 50-52.

26. This proceeding raises constitutional questions concerning Mr. McMurtry's freedom of expression as guaranteed by s. 2(b) of the *Charter*, and his right to seek a remedy in a court of competent jurisdiction, pursuant to s. 24(1) of the *Charter*. Moreover, in this case, the Board failed to make "a finding of fact or law" *at all* with respect to the constitutional issues raised in this case. Therefore, s. 58(2)(a) has no application.

27. Accordingly, in this case, the standard of correctness applies throughout, whether pursuant to s. 58(2)(c) of the *ATA*, or in light of the principles set out in *Vavilov*, *York Region* and *Szezepaniak*, above.

Constitutional Provisions and Jurisprudence

28. Section 2(b) of the *Charter* provides:

2 Everyone has the following fundamental freedoms:

[...]

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

29. Section 2(b) of the *Charter* protects teachers' expression in the classroom: *British Columbia Public School Employers' Association v. British Columbia Teachers' Federation*, 2005

BCCA 393 at paragraphs 36-38 (BCCA).

30. Section 24(1) of the *Charter* provides:

24(1) Anyone whose rights or freedoms, as guaranteed by this *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

31. Section 52(1) of the *Constitution Act, 1982* provides:

52(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

“Reading In” as a Constitutional Remedy

32. Courts in Canada are empowered to employ several different constitutional remedies when confronted with a *Charter* inconsistency. These include striking down the impugned legislation, severance of the offending sections, striking down or severance with a temporary suspension of the declaration of invalidity, reading down, and reading provisions into the legislation: *Vriend v. Alberta*, [1998] 1 SCR 493 at paragraphs 144-145 (SCC); *Schachter v. Canada*, [1992] 2 SCR 679 at paragraphs 25 and 32-43 (SCC).

Code Provisions

33. Section 12 of the *Code* provides (in relevant part) that [a trade union] must not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employees in an appropriate bargaining unit.

34. Section 136(1) of the *Code* gives the Board discretion to make any order “*permitted to be made*”.

35. Section 139 of the *Code* gives the Board exclusive jurisdiction to decide a question arising under the Code, including, without limitation:

- a) whether a person is bound by a collective agreement (s. 139(d));

- b) whether a collective agreement is in full force and effect (s. 139(g)); and
- c) whether a trade union [...] is fulfilling a duty of fair representation (s. 139(r)).

36. In *R. v. Tse*, 2012 SCC 16, the Supreme Court of Canada confirmed that legislation is presumed to comply with constitutional norms, including the rights and freedoms enshrined in the *Charter*.

37. Accordingly, the *Code*, including ss. 12, 136(1) and 139, must be (and must be *able* to be) interpreted by the Board so as to comply with, and give full effect to, ss. 2(b) and 24(1) of the *Charter*.

Failure to Consider the *Charter*

38. Administrative decision-makers must act consistently with the values underlying the grant of discretion, including *Charter* values. Such decision-makers are *always* required to consider fundamental values: *Doré c Québec (Tribunal des professions)*, 2012 SCC 12 (SCC) [*Doré*]; *Commission scolaire francophone des Territoires du Nord-Ouest v. Territoires du Nord-Ouest (Éducation, Culture et Formation)*, 2023 SCC 31 at paragraph 61 (SCC).

39. Where a *Charter* right arises, an administrative decision-maker should perform an analysis that is consistent with the relevant *Charter* provision. Administrative tribunals are empowered – and, for the effective administration of justice, called upon – to conduct an analysis consistent with the *Charter* where a claimant’s constitutional rights apply. Failure to do so constitutes a fatal error: *York Region* at paragraphs 69, 91, 94.

Statement of Argument

40. In light of the principles described above, Mr. McMurtry will advance the following arguments in this proceeding.

The *Code* Infringes the *Charter*; a “Reading In” Remedy is Required

41. The *Code* (whether through the combined operation of ss. 12, 136(1) and/or 139, or otherwise) infringes Mr. McMurtry’s rights and freedoms guaranteed by ss. 2(b) and 24(1) of the *Charter* to the extent that it requires the Board to interpret the *Code*, including ss. 12, 136(1) and 139, in a manner that permits his *Charter* rights and freedoms to be infringed by the Employer while allowing the Union to unilaterally thwart his ability to seek a remedy. Such infringements cannot be saved by s.1.

42. Where union members have *Charter* claims against their government employers, they have a constitutional right under s. 24(1) of the *Charter* to apply to a court of competent jurisdiction to seek a remedy. To the extent that a trade union refuses to permit union members to seek such a remedy, the Board must be empowered to provide redress. If the Board is unable to do so in light of the narrow language of s. 12, then the *Code* is underinclusive and therefore unconstitutional. In order to give full effect to union members’ *Charter* rights and freedoms in the context of mandated collective trade union representation of government employees, a constitutional remedy must be “read into” section 12 of the *Code* so as to provide that, in addition to its obligations not to “*act in a manner that is arbitrary, discriminatory or in bad faith*”, a trade union must also not act in a manner that has the effect of prevent government employees from seeking a remedy pursuant to *Charter* s. 24(1) for their government employer’s violation of their *Charter* rights and freedoms.

43. In addition, ss. 136(1) and 139 of the *Code* must be interpreted so as to provide that the Board is empowered to provide an appropriate remedy in such circumstances.

44. This issue is reviewable on the standard of correctness as described above.

The Board Failed to Comply with *Doré* and *York Region*

45. In this case, ss. 2(b) and 24(1) of the *Charter* are engaged in the Board’s review of Mr. McMurtry’s circumstances. Yet, in the course of making the Initial Decision and the

Reconsideration Decision, the Board failed to employ the *Doré* analysis described above. It failed to perform an analysis that was consistent with ss. 2(b) and 24(1) of the *Charter* and failed to appreciate that *Charter* rights arose from the facts before it, as mandated by *York Region*. This constitutes a fatal error.

46. This issue is reviewable on the standard of correctness as described above.

The Board Violated Mr. McMurtry's Section 24(1) *Charter* Right

47. By failing to permit Mr. McMurtry's grievance to proceed to arbitration, the Board's Initial Decision and Reconsideration Decision violated Mr. McMurtry's s. 24(1) *Charter* right to seek a remedy for the Employer's violation of his s. 2(b) freedom of expression. In doing so, the Board erred.

48. This issue is reviewable on the standard of correctness as described above.

Remedy Sought

49. Accordingly, Mr. McMurtry asks for the declarations set forth above at paragraph 1, and asks that this matter be remitted back to the Board for further consideration in light of (a) the constitutional remedies of "reading in" that this Court ought to direct in light of the principles and issues raised in this matter.; (b) the Board's failure to perform the analyses required by *Doré* and *York Region*; and (c) the Board's violation of Mr. McMurtry's s. 24(1) *Charter* right.

Costs

50. In all of the circumstances of this case, and in light of the public interest and constitutional nature of this matter, Mr. McMurtry is a public interest litigant. Accordingly, no costs should be ordered against Mr. McMurtry, regardless of the outcome of this proceeding.

PART 4: MATERIAL TO BE RELIED ON

a) Affidavit #1 of James McMurtry, dated TBD.

Dated the 24th day of July, 2026.



CHARTER ADVOCATES CANADA

[REDACTED]

James Manson (LSO No: 54963K)

[REDACTED]

Hatim Kheir (LSO No: 79576J)

[REDACTED]

**Counsel for the Petitioner,
James McMurtry**

To be completed by the court only:

Order made

■ in the terms requested in paragraphs

of Part 1 of this notice of application

■ with the following variations and additional terms:

Date:

[date]

Signature of

■

Judge

■

Associate Judge