

Your Application has been scheduled by the clerk.

**Date:** Nov 20, 2025 @ 10:00

**Location:** Civil Justice Chambers

**In person:** 1A Sir Winston Churchill Square,  
Edmonton, AB T5J 0R2

Clerk's stamp:

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE:

EDMONTON

APPLICANT:

THE ALBERTA TEACHERS' ASSOCIATION

RESPONDENTS:

HIS MAJESTY THE KING IN RIGHT OF ALBERTA and HIS MAJESTY'S  
ATTORNEY GENERAL IN AND FOR THE PROVINCE OF ALBERTA

DOCUMENT:

**ORIGINATING APPLICATION**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PERSON FILING THIS  
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#### NOTICE TO RESPONDENTS

This application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date:	November 20, 2025
Time:	10:00 am
Where:	Edmonton - Law Courts, 1A Sir Winston Churchill Square, Edmonton, AB T5J 0R2
Before whom:	Presiding Justice in Chambers

Go to the end of this document to see what you can do and when you must do it.

#### ORIGINATING APPLICATION

**The Applicant seeks the following relief:**

1. An order abridging the time for service for notice including pursuant to section 24(1) of the *Judicature Act*, RSA 2000, c J-2, if required;

***Interim Relief***

2. An order adjourning the hearing of this Application to a Special Chambers Application as soon as practicable and on an expedited basis;
3. An order for an interim and interlocutory injunction staying the effect of all or some of the provisions of the *Back to School Act*, SA 2025, c B-0.5 (the “Act”) until this Application has been finally adjudicated, the result of which would be to reinstate the status quo prior to the enactment of the Act.

***Ultimate Relief***

4. A declaration that section 14 of the Act is of no force or effect as it is inconsistent with section 96 of the Constitution Act, 1867;
5. A declaration, including pursuant to section 24(1) or section 52(1) of the *Canadian Charter of Rights and Freedoms* (the “Charter”) that the notwithstanding clause in section 3 of the Act has not been properly invoked and that section 3 of the Act is of no force and effect;
6. A declaration that the Act limits the rights of the Alberta Teachers’ Association (“ATA”) and the members it represents (“Teachers”) as follows:
  - (a) freedom of expression as guaranteed by section 2(b) of the *Charter*; and
  - (b) freedom of association as guaranteed by section 2(d) of the *Charter*.
7. A declaration that none of the limits described in paragraph 6 above is reasonable and demonstrably justified in a free and democratic society as required under section 1 of the *Charter*;
8. A declaration under section 52(1) of the Constitution Act, 1982 that the Act is of no force or effect;
9. A declaration that the Act limits the rights of female Teachers to gender equality as guaranteed by section 28 of the *Charter* and is of no force or effect pursuant to section 52(1) of the Constitution Act, 1982;
10. A declaration pursuant to section 24(1) of the *Charter* that the legislated collective agreement established pursuant to section 6 of the Act (the “Legislated Collective Agreement”) be set aside;
11. An order pursuant to section 24(1) of the *Charter* that the ATA and the Teachers’ Employer Bargaining Association (“TEBA”) resume bargaining;

12. An order directing the trial of an issue respecting damages incurred by the ATA and Teachers pursuant to section 24(1) of the *Charter*;
13. A declaration that the Act limits the rights of Teachers in Alberta to equality before the law and the protection of the law, to freedom of speech and expression and to freedom of assembly and association (as guaranteed in sections 1(1) (b), (d), and (e) of the *Alberta Bill of Rights*, RSA 2000, c A-14;
14. Costs of this Application and applicable taxes; and
15. Such further and other relief as this Honourable Court deems just and may be pursuable under section 24(1) of the *Charter* or otherwise.

**The Applicant's grounds for making this Application are:**

**I. Overview**

16. On October 28, 2025, the Act received third reading in the Alberta Legislature and Royal Assent, coming into force shortly after 2 am on that day, following less than one day of consideration and debate.
17. The Act terminated the strike by Alberta Teachers (and the lockout by TEBA) and ordered Teachers back to work "without delay". The Act prohibited any Teacher from striking from the date of the Act and made it an offense to do so punishable by a fine of up to \$500 per day for the Teacher. The Act prohibited the ATA and its officers and employees from calling or counselling a strike also on penalty of fines, including a \$500,000 fine for the ATA.
18. The Act imposed on Teachers and the 61 school boards that employ them a Legislated Collective Agreement, thereby completely abrogating the process of local bargaining.
19. The Act contains in section 14 a broad privative clause designed to shield the Crown from judicial scrutiny by deeming no legal basis for a proceeding against the Crown in relation to the Act or the Legislated Collective Agreement. This purports to deprive the Court of jurisdiction to consider the Act and to rule on its constitutionality.
20. The government invoked the notwithstanding clause of section 33 of the *Charter* seeking to shield itself from the consequences of limiting rights under the *Charter*.
21. The Act breaches the section 2(d) rights of the ATA and Teachers by substantively interfering with the right to bargain collectively, including the right to a process of good faith consultation and negotiation, and their right to strike, by abrogating Teachers' present and future right to strike, unilaterally imposing on Teachers the terms of a collective agreement that had been previously rejected by 89.5% of Teachers who voted, and abrogating local bargaining, without

providing for any adequate alternative measure for the exercise of those rights. All of which was during a critical round of negotiations for Alberta Teachers.

22. The government's substantial interference with Teachers' rights is not justified by section 1 of the *Charter*. The government's actions were the opposite of minimally impairing or proportionate to the purported objective of the Act.
23. The Act further breaches the section 2(b) rights of the ATA and Teachers by abrogating the right to strike and to expressive activity associated with striking. This breach is not justified by section 1 of the *Charter*.
24. Section 14 of the Act cannot deprive the Court of jurisdiction to hear this claim against the government. It improperly attempts to strip the Court of its inherent jurisdiction under section 96 of the Constitution Act, 1867.
25. The invocation of section 33 of the *Charter* was invalid. As such, the Court can still grant a declaration of invalidity pursuant to section 52(1) of the Constitution Act, 1982.
26. Further, the Act breaches the section 28 rights of female Teachers. The notwithstanding clause cannot be invoked in a manner that impairs section 28 rights. The invocation of the notwithstanding clause in the Act is therefore of no force or effect, and the Act can still be declared invalid pursuant to section 52(1) of the Constitution Act, 1982 if an unjustified breach of sections 2(d) and 2(b) is found.
27. Even if the notwithstanding clause is given force and effect, this does not bar the Court from hearing the claim and opining on the constitutionality of the Act.

## **II. The Parties**

### **A. The Applicant**

28. The ATA is a statutory body established by the *Teaching Profession Act*, R.S.A. 2000, c. T-2, as amended. It is the exclusive bargaining agent for Teachers in Alberta, being individuals who as a condition of their employment must possess a valid teaching certificate issued under the *Education Act*, SA 2012, c E-0.3 and who are employees of the school boards represented by TEBA.

### **B. The Respondents**

29. His Majesty the King in Right of Alberta and His Majesty's Attorney General in and for the Province of Alberta are named as the Respondents pursuant to section 24(5) of the *Judicature Act*, R.S.A. 2000, c J-2.

### III. Background

#### A. Statutory framework

30. The collective bargaining framework for Teachers and their employers in Alberta is set out in the *Public Education Collective Bargaining Act*, SA 2015, c P-36.5 (“PECBA”). PECBA divides collective bargaining into two tiers – central bargaining and local bargaining.
31. PECBA creates TEBA and designates it as an employers’ organization for the purpose of the *Labour Relations Code*, RSA 2000, c L-1 (the “Code”). TEBA has the exclusive authority to bargain collectively with the ATA with respect to central bargaining on behalf of each the 61 public, separate, and Francophone school boards in Alberta (“School Board” or “Employer”).
32. PECBA designates the ATA as the exclusive bargaining agent for each bargaining unit, consisting of employees of an Employer, to bargain centrally with TEBA and to bargain locally with each Employer.
33. The sequential collective bargaining process consists of:
  - (a) Establishing which matters are central and which matters are local for the purpose of collective bargaining. Criteria for determining which matters are central and which matters are local is set out in section 9 of PECBA;
  - (b) If no agreement is reached identifying central matters and local matters, then the issue is referred to arbitration for a determination;
  - (c) Upon settling the identification of central and local matters, central bargaining commences. The purpose of central bargaining is to establish terms and conditions to be included in all 61 collective agreements between the ATA and individual School Boards across the province;
  - (d) The central terms are subject to province-wide ratification for Teachers;
  - (e) Local bargaining commences after the ratification of the central terms. The purpose of local bargaining is to establish terms and conditions to be included in the collective agreement between the ATA and the individual School Boards;
  - (f) If local bargaining results in a memorandum of agreement, then it is subject to ratification; and
  - (g) All collective agreements under PECBA must include central and local terms. When central and local terms have been ratified, the terms and conditions to be included in a collective agreement are deemed to have been settled. The parties to a collective

agreement are the ATA and School Boards; each School Board has a unique collective agreement with the ATA.

34. Central matters include those which could result in a reasonably significant impact on expenditures for one or more Employers, and include wages. Local terms include important matters which impact teaching conditions on a daily basis, including professional development, the hiring of substitute Teachers, lieu days for school administrators, additional parental leave (without pay), whether positions are included or excluded from the collective agreement, transfers, extracurricular activities, school calendar, and many more.
35. PECBA defines the roles of the ATA, TEBA, and the individual School Boards in the process of collective bargaining.
36. The TEBA Board of Directors includes 8 government-appointed members that hold office at the pleasure of the Minister of Education and 7 elected school board trustees, and is responsible for setting the bargaining mandate. TEBA's central bargaining committee is comprised of representatives of those two groups.
37. The Provincial Bargaining and Compensation Office (the "PBCO") is an office of the Treasury Board and Finance Ministry of Alberta (the "Ministry of Finance") and is the body through which the Government of Alberta coordinates and controls public sector bargaining (which includes K-12 Education). It supports the government's fiscal, economic and policy priorities as an employer and a funder, with respect to public-sector bargaining. The PBCO's core functions and services include providing bargaining directives to employer partners, including TEBA.
38. TEBA's bargaining committee, appointed by TEBA's board of directors, included representatives from the PBCO.

#### **B. Central Bargaining Negotiations for the Renewal of the 2020-2024 Collective Agreement**

39. The ATA and TEBA began negotiations on central terms in May of 2024 ("2024 Bargaining"). The Collective Agreement in force at the time had a four-year term, starting on September 1, 2020, and expiring on August 31, 2024.
40. Both parties exchanged proposals on May 16, 2024. In its proposal, the ATA raised a number of issues, including salary grid, benefits, leave terms and conditions of practice. The matters relating to conditions of practice included the issue of instructional and assignable time, support for inclusion in the classroom, and importantly, classroom complexity which directly affects teacher workload.
41. The ATA's proposal identified that the challenges in today's classrooms are related to their complexity, which results from two different, but, in many cases, interconnected factors: both classroom composition and class size ("Classroom Complexity").

42. In terms of composition, the relevant complexity factors were identified in the proposal as including the number of students with exceptionalities, students whose first language is not the language of instruction, vulnerable and at-risk students, the number of support staff and other professionals working in the building, the significant number and range of grade levels, and the socio-economic status of the school community.
43. The proposal explained that class composition has the potential to make a relatively small number of students feel like a class many times its size. Where appropriate, defining a student-teacher ratio would improve teaching and learning by providing time for differentiated instruction and attention to individual students' needs.
44. As a result of the above, the ATA proposed a detailed and evidence-based formula for calculating student-teacher ratios for each school, a proposal that the number of students in a class should not exceed what can safely be accommodated, proposals relating to the process of inclusion of students with exceptionalities in classrooms, and proposals as to the hiring of additional full time Teachers designated for school leadership which are to be provided based on complexity factors described above.
45. These Classroom Complexity issues have been at play for Teachers for more than two decades. In 2002, collective agreements were open for negotiation in most school jurisdictions under a bargaining regime that is different from the one today. One of the key issues that Teachers were seeking improvements on was classroom conditions. By February 2002 more than 20,000 teachers from 22 school jurisdictions in the province were on strike. Teachers were eventually legislated back to work through Bill 12, the *Education Services Settlement Act*, SA 2002 c E-0.5 ("ESSA"). While the ESSA established an arbitration tribunal to resolve outstanding bargaining items, it precluded collective agreements from containing any provisions that established or in any manner dealt with class sizes or student-teacher ratios.
46. In the face of discontent by teachers regarding the passage of ESSA, the provincial government established the Alberta Commission on Learning (the "ACOL"). Although the class size recommendation acknowledged a need to be flexible, the ACOL expected school jurisdictions to meet guidelines for average class sizes. While in the first years after the recommendations were released class sizes did decrease, the requirement for average class sizes, along with the requirement to include all school-based employees who had a teaching certificate, regardless of their lack of direct instructional roles, and the lack of funding, meant the improvements were limited and short-lived.
47. Since 2008, class sizes have steadily increased. The pressure on the public education system has been particularly acute in the last few years as a result of population growth, including a drastic increase fostered and promoted by the government's "Alberta is Calling" campaign launched in 2022 to attract skilled workers to the province from other parts of the country (with the third phase of this campaign starting in 2024). Alberta experienced an increase of approximately

91,000 students from 2021. This exacerbated the overwhelming state of teaching and learning conditions.

48. Compounding the situation, the government stopped collecting data on classroom size in 2019, thereby eliminating the availability of accessible class size data across the province.
49. To address the void and be better able to measure Teachers' working conditions, in its proposal for 2024 Bargaining, the ATA sought to require Employers to submit classroom size and composition data, data on aggression in schools, and assignable and instructional time of each teacher.
50. Another issue at play is Teachers' salary. The ATA's proposal explained that the typical Alberta Teacher has taught in the province since 2005, and that since then, Teachers' annual salaries have grown at a rate that was neither in line with inflation nor the increases that other professionals in Alberta had received in the same timeframe. Teachers' salaries have only increased by about 5.75% in the last decade.
51. Given the pressures relating to Classroom Complexity Teachers are facing, in addition to lagging wage increases, the 2024 Bargaining round was of particular importance to Teachers.
52. The parties bargained through the fall of 2024 and eventually made a joint application for mediation, leading to the appointment of a mediator (the "Mediator") under section 65 of the *Code* on November 14, 2024.
53. The parties met with the Mediator on various dates in January and March 2025. The Mediator eventually issued recommendations for terms of settlement at the end of March 2025 (the "Mediator's Recommendations").
54. The Mediator's Recommendations identified that the ATA put forward the following challenges faced by Teachers in the province: increased class sizes, complexity of students' needs, overwhelming workload and need for salary increase to retain and attract teachers.
55. Specifically, the Mediator's Recommendations show that the ATA advocated for class-size limits, recognizing the impact that large and complex classrooms have on both Teachers and students. The ATA relied on the British Columbia example of limiting class sizes as a model which allowed for tangible improvements in teaching and learning conditions.
56. The Mediator's Recommendations also summarized the ATA's position that Teachers' compensation was a critical issue in the bargaining process, as salary increases were essential to enable Teachers to not only recover lost ground (due to not having received increases that have kept up with inflation over the past number of years), but to also maintain their spending power in the face of rising living costs. Specifically, the ATA argued that the emerging public sector general wage increase of 3% per year would need to be bolstered to allow Teachers to see increases not seen in recent rounds of central bargaining.

57. The ATA held a province-wide ratification vote on the Mediator's Recommendations in early May 2025. 62% of Teachers (approximately 22,320) rejected the Mediator's Recommendations.
58. The ATA conducted a strike vote in early June 2025 and 94.5% of Teachers (approximately 36,862) voted in favour of strike action.
59. The parties reconvened with the Mediator in the middle of June 2025. During that meeting, the ATA tabled a proposal for a letter of understanding that would see school boards hire 1000 new teachers per year over the following three years. In addition, to address teacher compensation, the ATA proposed retroactive pay beginning in the first of the proposed 4-year new agreement (retroactive pay to September 1, 2024). The ATA also proposed an earlier implementation of a unified salary grid, beginning in September 2025. The salary grid unification aimed to address starting salaries, which are among the lowest in comparator provinces. Moreover, given that a significant number of Teachers (approximately 16,000) are currently at the top of the salary grid, the ATA proposed adding a one-time 1.5% increase for Teachers at the top of the unified salary grid.
60. Toward the end of June 2025, the parties attended mediation and TEBA put forward a discussion document that touched on a few items including Salary and Conditions of Practice, and that contained "potential reallocation scenarios", canvassing various options in terms of allocation of funds between wages and recruitment to improve teaching conditions. This marked the start of TEBA's assertions, and later the government's public declarations, that Teachers had to make a choice between compensation increases or improvements to teaching conditions.
61. The parties attended Mediation again in late August 2025. At that time, TEBA proposed a settlement which included a letter of understanding outlining a commitment to hire 1000 teachers per year in each of the last three years of the proposed agreement. The ATA told TEBA that a commitment to increase hiring without movement on salary is not acceptable for Teachers.
62. On August 29, 2025, the ATA announced that an impasse had been reached in negotiations between the parties. Following the breakdown in negotiations the government began to publicly describe an overall funding "bucket" to which Teachers were limited for compensation increases and improvements to teaching conditions.
63. On September 10, 2025, the ATA issued notice that it would begin a strike on October 6 if an agreement was not reached by that date.
64. On that same day, the ATA tabled a proposal to TEBA. The ATA tabled a further proposal on September 19, 2025.

65. On September 23, 2025, the ATA and TEBA reached a tentative agreement subject to ratification by the ATA membership (“Last Tentative Agreement”). It reflected TEBA’s standing offer, which was very similar to the Mediator’s Recommendations.
66. The Last Tentative Agreement included a section entitled “Government commitment” which purported to add a government commitment to cover Covid-19 vaccines for Teachers, as provided to health care workers, and to hire 1500 net new education assistants. These commitments were not intended to form part of the collective agreement.
67. This is characteristic of TEBA’s approach in 2024 Bargaining that suggested limited resources in an attempt to limit the available options to address classroom conditions, while offering discretionary government commitments standing outside of collective bargaining.
68. The Last Tentative Agreement was put to a vote by Teachers. On September 29, 2025, the ATA announced that 89.5% of Teachers (approximately 38,113) voted to reject it.
69. On September 30, 2025, the government announced that it would offer monetary support to parents in the event of a teacher strike. The government also offered free learning toolkits to help parents support their child’s learning during the strike.
70. In the days leading up to, and during, the strike, the government ran advertising campaigns, which promoted the government’s position with respect to salary and hiring of additional teachers as a “good deal”, compared the offers made to Teachers to those made to other public sector bargaining in the province, and stated that the province was in a deficit. These ads were televised during high-traffic times, and promoted across various media platforms.
71. The Teachers began the strike on October 6, 2025. TEBA gave notice of a lockout effective on October 9, 2025. The lockout paralleled the duration of the strike.
72. Teachers engaged in rallies and other coordinated activities to deliver their message to the government and the public. As a result, Teachers’ working and classroom conditions became a widespread topic in media and the public sphere. Several large rallies in support of public education were held across the province in October 2025. Teachers’ efforts were focused on raising public awareness in the hope that parents and ordinary citizens would compel the government to commit funding necessary to meet Teachers’ legitimate expectations for improved classroom conditions and compensation.
73. Mediated talks between the ATA and TEBA occurred on October 14, 2025. The ATA presented TEBA with a proposal which reflected the priorities identified since the beginning of 2024 Bargaining, including manageable student-teacher ratios, with language to address growing classroom complexity, and countering the government’s proposal on salary.
74. On October 16, 2025, the government proposed “enhanced mediation” as a process to end the strike instead of continuing to bargain toward a settlement. The ATA rejected the proposed

process on October 17, 2025 because it would have prevented the mediator from providing for hard caps on classroom sizes or student-teacher ratios, which was entirely unacceptable to Teachers. The ATA reiterated its commitment to resume negotiations at the earliest opportunity.

75. Following the ATA's rejection of the government's process, Premier Danielle Smith announced on October 17, 2025, that Albertans should "fully expect" legislation forcing Teachers back to work. There was no mention of any contemplated legislative action limiting Teachers' rights to local bargaining.
76. Teachers were forced to end the strike and return to work on October 29, 2025 following the passage of Bill 2 on October 28, 2025.
77. While requests made by Teachers at the bargaining table to gather this information were rebuffed, in the days following the Act's passage, the government announced that it would resume the collection of class size and begin tracking information relating to Classroom Complexity. The Minister of Education said he is assembling a task force to use the information to allocate additional funding to schools.

### **C. Enactment of the Act**

78. The Second Session of the 31<sup>st</sup> Legislature commenced on Friday, October 23, 2025.
79. On October 27, 2025, the Assembly convened at 1:30 pm. At around 3:40 pm, the Government House Leader moved that Bill 2 may be advanced two or more stages in one day, and that a maximum of one hour is allotted to the consideration of this motion.
80. The motion to advance Bill 2 two or more stages in one day was made pursuant to Standing Order 77(2), which has existed since 1916 and was used for the first time on this occasion.
81. At around 5:45 pm, the Minister of Finance introduced Bill 2, *the Back to School Act*.
82. The Minister of Finance made the following motions, which passed following a number of division counts:
  - (a) That consideration of Bill 2 in second reading be limited to one hour;
  - (b) That debate of Bill 2 at Committee of the Whole be limited to one hour;
  - (c) That consideration of Bill 2 in third reading be limited to one hour.
83. At around 1:15 am, the Leader of the Opposition pointed to the absence of the Premier in the Chamber.
84. Bill 2 passed third reading at approximately 1:45 am on October 28, 2025.

85. The Assembly adjourned and the Act came into force upon receipt of Royal Assent at around 2 am on October 28, 2025.
86. The Act states that it is repealed on August 31, 2028, or an earlier date by Proclamation.

#### **D. Contents and Impact of Bill 2**

##### **1. Prohibition on striking and related offenses**

87. The stated purpose of the Act is to end the strike by the Teachers started on October 6, 2025 and lockout by TEBA that started on October 9, 2025, by establishing the central terms and local terms of new collective agreements.
88. In speaking to Bill 2 in the Legislative Assembly on October 27, 2025, the Minister of Finance stated that Teachers would be expected to report back to work on Wednesday, October 29, 2025.
89. The Act makes striking an offense and prohibits the ATA and its officers and employees from calling or counselling a strike, those actions being punishable by a fine of \$500 per day for teachers or \$500,000 per day in any other case, in addition to penalties provided for in the *Code* in relation to an unlawful strike or lockout.

##### **2. The imposed terms**

90. The Legislated Collective Agreement provides for the following salary adjustments:
- Retroactive to September 1, 2024 – 3% increase to local salary grids;
  - Effective September 1, 2025 – 3% increase to local salary grids;
  - Effective September 1, 2026 – 3% increase to all salary grids;
  - Effective September 1, 2026 – Repeal and replace salary grids in all collective agreements with the salary grid in the collective agreement between the Association and The Grande Prairie School Division (including steps 0-9 and TQS-4, TQS-5, TQS-6, but not including TQS-7), with a number of exceptions; and
  - Effective September 1, 2027 – 3% increase to all salary grids.
91. The Legislated Collective Agreement also contains a Letter of Understanding – Recruitment of Teachers to Support Classroom Complexity Issues (the “Teacher Recruitment LOU”) which provides for a commitment by the government that:
- (a) 1000 net new certified teachers will be hired across the province for the 2025-2026 school year, with the positions continuing through the agreement term;

- (b) An additional 1000 net new certified teachers will be hired across the province for the 2026-27 school year, with the positions continuing through the agreement term;
- (c) An additional 1000 net new certified teachers will be hired across the province for the 2027-28 school year, with the positions continuing through the agreement term; and
- (d) The hiring is intended to increase the total number of teachers in the province and is in addition to any hiring required to address attrition rates.

### **3. Invoking the Notwithstanding clause**

92. Section 3 states that the Act shall operate notwithstanding:

- (a) sections 2 and 7 to 15 of the *Charter*;
- (b) the *Alberta Bill of Rights*; and
- (c) the *Alberta Human Rights Act*.

### **4. No legal recourse**

93. Section 14 of the Act purports to preclude any court, including the Alberta superior courts, from assessing the constitutionality of the Act or granting any remedy pursuant to subsections 24(1) or 52(1) of the Constitution Act, 1982 in connection with any alleged infringements under sections 2 or 7 to 15 of the Canadian Charter of Rights and Freedoms arising from the Act.

### **E. Breach of section 96**

94. Assessing the constitutionality of federal and provincial legislation lies within the core jurisdiction of the superior courts protected and guaranteed by section 96 of the Constitution Act, 1867 and cannot be removed by unilateral provincial legislation such as the Act.

95. Section 14 of the Act is therefore inconsistent with the Constitution of Canada and is to the extent of that inconsistency of no force and effect, pursuant to section 52(1) of the Constitution Act, 1982.

### **F. The invocation of the notwithstanding clause is invalid**

96. The Act invokes section 33 of the *Charter*, the “Notwithstanding Clause”. It permits parliament and legislatures to expressly declare that, for period of up to five years, legislation “shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter”. The effect of such a declaration is that the legislation “shall have such operation as it would have but for the provision of this Charter referred to in the declaration.”

97. In so doing, the government does not identify and override any particular provision of the *Charter*, the application of which might affect the validity and operation of the Act. Rather, it takes a shotgun approach to invoke all the sections of the *Charter* potentially subject to the Notwithstanding Clause, without distinction. In doing so it purports to override all of the following fundamental freedoms and legal and equality rights of persons guaranteed by the *Charter*:
- (a) Freedom of conscience and religion (section 2(a));
  - (b) Freedom of expression (section 2(b)) and of peaceful assembly (section 2(c));
  - (c) Freedom of association (section 2(d));
  - (d) Right to life, liberty, and security of the person (section 7);
  - (e) Protection against unreasonable search and seizure (section 8);
  - (f) Protection from arbitrary detention or imprisonment (section 9);
  - (g) Right to legal counsel and habeas corpus (section 10);
  - (h) Legal protections such as the right to be presumed innocent until proven guilty (section 11);
  - (i) Protection against cruel and unusual punishment (section 12);
  - (j) Protection against self-incrimination (section 13);
  - (k) Right to an interpreter in court (section 14);
  - (l) Right to equality and protection from discrimination by the government (section 15).
98. The government's invocation of the Notwithstanding Clause in section 3 of the Act is invalid for reasons that include the following:
- (a) Its shotgun approach is inconsistent with the express requirements of section 33, which, as a provision limiting rights and freedoms must be construed strictly;
  - (b) Its shotgun approach renders it ambiguous. It includes the suspension of legal rights unrelated to the collective bargaining process. It is uncertain whether the suspension of those legal rights is an inadvertent side effect of the shotgun approach, or whether Alberta intends that persons prosecuted under the Act have no legal rights such as, *inter alia*, the right to counsel and the presumption of innocence;

- (c) Section 33, as invoked in the Act, is given retrospective effect by purporting to protect the Act's retroactive imposition of the Legislated Collective Agreement and the Act's deemed dismissal of actions commenced prior to its enactment. Such use of section 33 is not permitted;
  - (d) The invocation of section 33 adversely and unequally affects women, who make up approximately 75% of Alberta Teachers, and thus breaches the guarantee of equality set forth in section 28. Nothing in the *Charter*, including section 33, can override this guarantee;
  - (e) The invocation of section 33 is inextricably coupled with section 14 of the Act in an impermissible scheme to oust the core jurisdiction of the superior court to assess the constitutionality of legislation, in violation of section 96 of the Constitution Act, 1867.
99. Further, the applicant submits a proper interpretation of section 33 is that it:
- (a) cannot be invoked preemptively, and may only be invoked in response to a declaration from the courts that the legislation in relation to which an invocation of section 33 is envisaged is unconstitutional;
  - (b) can only be invoked in a manner consistent with the Canadian constitutional architecture;
  - (c) cannot be invoked in a manner inconsistent with section 96 of the Constitution Act, 1867;
  - (d) can only be invoked following a consultative and justificatory process.
100. As a result, the invocation of the notwithstanding clause is of no force or effect, and a declaration that the Act is of no force or effect pursuant to section 52(1) of the Constitution Act, 1982 is available to the Court.
101. In the alternative, the courts can still grant any just and appropriate *Charter* remedy that does not render legislation inoperable.
102. In the further alternative, section 33 does not oust the jurisdiction of a court to declare that the Act violates a right or freedom guaranteed by sections 2 or 7 to 15 of the *Charter*.

**G. Section 28 of the *Charter***

103. Section 28 of the *Charter* reads as follows:

Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

104. Section 28 applies notwithstanding any other provision of the *Charter*, including section 33. The purpose of section 28 is to act as a substantive limit, ensuring that gender-based discrimination is not sheltered through the application of other limiting clauses, such as sections 1, 25, or 33.
105. Approximately 75% of Teachers who are members of the Association are female.
106. The Act disproportionately impacts female Teachers' associational and expressive rights protected under sections 2(b) and (d) of the *Charter*.
107. The Act is invalid to the extent it conflicts with section 28 of the *Charter* and should be so declared.

## **H. *Charter* violations**

### **1. Section 2(d) of the *Charter***

108. The freedom of association protected under section 2(d) of the *Charter* is the right of employees to associate in pursuit of workplace goals and to a meaningful process within which to achieve these goals.
109. Collective bargaining has been recognized as necessary in order to meaningfully exercise the right to free association.
110. Substantial interference with past, present, or future attempts at collective bargaining can render employees' collective representation effectively feckless, and thus negate the employees' right to meaningful freedom of association.
111. Section 2(d) protects a process of good faith negotiation and consultation.
112. The right to strike is an indispensable component of the section 2(d) right to collectively bargain. Without the right to strike, collective bargaining is meaningless.
113. The government, through its conduct, including its enactment of the Act, infringed on the *Charter*-protected rights on collective bargaining.
114. The Act infringed on the Applicant's freedom of association guaranteed by section 2(d) of the *Charter* for reasons that include:
  - (a) The Act unilaterally imposed central and local terms of collective agreements on Teachers;
  - (b) Those terms were inconsistent with the *Charter*-protected rights of collective bargaining;

- (c) The Act fully abrogated Teachers' right to strike at a critical juncture in the collective bargaining process without providing for any alternative, let alone fair or adequate, dispute resolution process;
  - (d) The Act pre-emptively abrogated the Teachers' rights to collectively bargain on local matters, and the right to strike associated with local bargaining; and
  - (e) The Act does all of the above without any valid justification for the interference.
115. The government's substantial interference with section 2(d) is exacerbated by the government acting as employer and as legislator.

## **2. Section 2(b) of the *Charter***

116. Section 2(b) protects freedom of expression, which is at the foundation of any democratic society.
117. The withdrawal of labour by workers, and collective action and organizing associated with the strike are expressive activities which convey meaning to the striking workers, the employer and the public.
118. These activities communicate significant content about the existence and nature of the labour dispute between the parties and the workers' desire to change their terms and conditions of employment. They are also an expression of solidarity amongst workers and promote the values of section 2(b).
119. The Teachers' strike was a critical means for Teachers to publicly protest their working conditions, express their position on teaching and learning conditions, the inadequacy of the government's funding of public education, and demonstrate their solidarity with each other.
120. The Teachers' strike was characterized by rallies and demonstrations relating to notably but not limited to: Classroom Complexity, class sizes, Teacher compensation, and funding of public education, and the right to a fair collective bargaining process.
121. The Act seeks to enforce its provisions by imposing substantial offences and fines, including up to \$500,000 per day on the ATA. The magnitude of the offenses and penalties coupled with the apparent effect of removing all *Charter*-protected legal rights of persons charged with those offenses exacerbates the effect on the fundamental freedom of expression.

## **3. The breaches are not justified under section 1 of the *Charter***

122. Section 1 of the *Charter* requires that any infringement of *Charter* rights be demonstrably justified in a free and democratic society.

123. The infringement of Teachers' right to freedom of association guaranteed by section 2(d) of the *Charter* is not a reasonable limit demonstrably justified in a free and democratic society under section 1 of the *Charter*.
124. The infringement of Teachers' right to freedom of expression guaranteed by section 2(b) of the *Charter* is not a reasonable limit demonstrably justified in a free and democratic society under section 1 of the *Charter*.

**I. Interim Relief**

125. The Applicant seeks interim relief in the form of an interlocutory injunction staying the effect of the provisions of the Act pending a determination on the merits. The Act terminates collective bargaining, compels Teachers to return to work and imposes a legislated collective agreement. This is a serious breach of Teachers' *Charter* rights with immediate and irreparable effects upon both collective bargaining, the education system and the future rights of all unionized employees.
126. The Applicant meets the test for the grant of such an injunction for the following reasons:
- (a) There are serious issues to be tried, including:
- i. Does section 14 of the Act deprive the Court of the jurisdiction to hear this Application?
  - ii. Is the invocation of the notwithstanding clause to be given force and effect?
  - iii. If the notwithstanding clause is to be given force and effect, does that bar consideration by the Court of whether the Act complies with the *Charter*?
  - iv. If consideration is not barred by the notwithstanding clause, does the Act limit fundamental rights and freedoms under the *Charter*?
  - v. If the Act limits fundamental rights and freedoms, are the limits demonstrably justified in a free and democratic society?
  - vi. Does the Act breach the equality guarantee in section 28 of the *Charter*?
- (b) If a stay of the Act is not granted, irreparable harm to the ATA and Teachers will ensue. Irreparable harm would arise from damage to future collective bargaining and the parties' ongoing relationship if the government's attempt to unilaterally impose central and local terms was found to be unconstitutional, and if the attempt to oust judicial review of the same was found to be invalid.

- (b) The balance of convenience favours the granting of a stay. It is in the public interest to prevent legislatures from abrogating the right to strike and the right to collectively bargain and from unilaterally imposing contractual terms through legislation that on its face is clearly unconstitutional, and to attempt to insulate such legislation from any judicial scrutiny.

127. The effect of this interim relief would be to return the parties to the *status quo ante*, including the opportunity to resume collective bargaining.

**J. The *Alberta Bill of Rights* and the *Alberta Human Rights Act***

128. The Act's invocation of the notwithstanding provisions of the *Alberta Bill of Rights* and the *Alberta Human Rights Act* does not preclude the granting of the relief sought herein.

129. The Act limits the rights of Teachers in Alberta to equality before the law and the protection of the law, to freedom of speech and expression, and to freedom of assembly and association, as guaranteed in sections 1(1)(b), (d), and (e) of the *Alberta Bill of Rights*.

**Affidavit or other evidence anticipated to be filed in support of this Application:**

130. The Affidavit of Sean Brown, Coordinator, Teacher Employment Services, ATA.

131. Expert evidence in the fields of:

- (a) Labour History;
- (b) Industrial and Labour Relations;
- (c) Economics;
- (d) Education;
- (e) Legal History.

132. Such further and other evidence as counsel may advise and this Honourable Court may permit.

**Applicable Acts and Regulations:**

133. The Applicant will rely upon:

- (a) *Albert Rules of Court*, Alta Reg 124/2010;
- (b) *Alberta Bill of Rights*, RSA 2000, c A-14;
- (c) *Alberta Human Rights Act*, RSA 2000, c A-25.5;

- (d) *Back to School Act*, SA 2025, c B-0.5;
- (e) *Constitution Act, 1867*, (UK) 30 & 31 Vict, c 3, s 91, reprinted in RSC 1985, App II, No 5;
- (f) *Constitution Act, 1982*, Schedule B to Canada Act 1982 (U.K.), 1982, c 11;
- (g) *Education Act*, SA 2012, c E-0.3;
- (h) *Judicature Act*, R.S.A. 2000, c J-2;
- (i) *Labour Relations Code*, RSA 2000, c L-1;
- (j) *Public Education Collective Bargaining Act*, c P-36.5;
- (k) *Public Education Collective Bargaining Regulation*, Alta Reg 18/2016;
- (l) *Public Sector Employers Act*, SA 2019, c P-40.7;
- (m) *Teaching Profession Act*, R.S.A. 2000, c T-2; and
- (n) Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

**WARNING:**

You are named as a Respondent because you have made or are expected to make an adverse claim in respect of the personal property identified in this Originating Application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the Applicants and as against all persons claiming under the Applicants. You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the Applicants are entitled to make without any further notice of them to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and time shown above. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the Applicants a reasonable time before the application is to be heard or considered.

cc: Minister of Justice and Solicitor General of Alberta  
Attorney General of Canada