

COURT FILE NUMBER KBG-RG-01978-2023

COURT OF KING'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE OF REGINA

APPLICANT: **UR PRIDE CENTRE FOR SEXUALITY AND GENDER DIVERSITY**

RESPONDENTS: **GOVERNMENT OF SASKATCHEWAN AS REPRESENTED BY THE MINISTER OF EDUCATION, CONSEIL DES ÉCOLES FRANSASKOISES, CHINOOK SCHOOL DIVISION, CHRIST THE TEACHER CATHOLIC SCHOOL, CREIGHTON SCHOOL DIVISION NO. 111, GOOD SPIRIT SCHOOL DIVISION, GREATER SASKATOON CATHOLIC SCHOOLS, HOLY FAMILY ROMAN CATHOLICS SEPARATE SCHOOL DIVISION #140, HOLY TRINITY CATHOLIC SCHOOLS, HORIZON SCHOOL DIVISION, ILE-A-LA CROSSE SCHOOL DIVISION NO. 112, LIGHT OF CHRIST CATHOLIC SCHOOLS, LIVING SKY SCHOOL DIVISION NO. 202, LLOYDMINSTER CATHOLIC SCHOOL DIVISION, LLOYDMINSTER PUBLIC SCHOOL DIVISION, NORTH EAST SCHOOL DIVISION, NORTHERN LIGHTS SCHOOL DIVISION NO. 113, NORTHWEST SCHOOL DIVISION #203, PRAIRIE SOUTH SCHOOL DIVISION, PRAIRIE SPIRIT SCHOOL DIVISION, PRAIRIE VALLEY SCHOOL DIVISION, PRINCE ALBERT CATHOLIC SCHOOL DIVISION, REGINA CATHOLIC SCHOOLS, REGINA PUBLIC SCHOOLS, SASKATCHEWAN RIVERS SCHOOL DIVISION, SASKATOON PUBLIC SCHOOL, SOUTH EAST CORNERSTONE PUBLIC SCHOOL DIVISION #209, AND SUN WEST SCHOOL DIVISION**

---

**NOTICE OF APPLICATION  
(APPLICATION TO AMEND)**

---

## **NOTICE TO THE 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:

Where Court of King's Bench for Saskatchewan  
2425 Victoria Avenue  
Regina, SK S4P 4W6  
Date January 10, 2023  
Time 10:00 am

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

### **Remedy claimed or sought:**

1. This Application is for:
  - (a) an Order permitting the Applicant, UR Pride Centre for Sexuality and Gender Diversity, to amend its Originating Application in the manner attached as **Schedule "A"**;
  - (b) costs of this motion against any party that opposes it; and
  - (c) such further and other relief as counsel may request and this Honourable Court may deem just.

### **Grounds for making this Application:**

2. The Applicant seeks leave to amend its Originating Application and to file the Amended Originating Application attached as **Schedule "A"**.

#### **A. The Policy and the Originating Application**

3. On August 22, 2023, the Government of Saskatchewan introduced what it described as "new parental inclusion and consent policies for Saskatchewan schools". These "policies" were

set out in a document entitled “Use of Preferred First Name and Pronouns by Students” (the “**Policy**”). The Policy became effective on August 22, 2023 — the day it was published.

4. The Policy required:

- (a) that school personnel seek parental/guardian consent when a student under the age of 16 “request[ed] that their preferred name, gender identity, and/or gender expression be used” (the “**Outing Requirement**”); and
- (b) that, absent parental/guardian consent, school personnel not use the “preferred name, gender identity, and/or gender expression” of a student under the age of 16 (the “**Misgendering Requirement**”).

5. On August 31, 2023, the Applicant brought the Originating Application seeking:

- (a) a declaration that the Policy limited the rights of gender diverse students not to be deprived of security of the person except in accordance with the principles of fundamental justice (as guaranteed in section 7 of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”)) and the right to equality (as guaranteed in section 15(1) of the *Charter*), and that these limits were not reasonable and demonstrably justifiable in a free and democratic society (as required under section 1 of the *Charter*);
- (b) declarations under section 52(1) of the *Constitution Act, 1982* that the Outing Requirement and Misgendering Requirement were of no force and effect, being inconsistent with the *Charter*; and
- (c) interim and interlocutory orders enjoining the implementation of the Policy until the Originating Application had been finally adjudicated.

## **B. The Injunction**

6. On September 28, 2023, this Honourable Court granted the Applicant public interest standing to bring the Originating Application, and also granted an interlocutory injunction

(the “**Injunction**”): *UR Pride Centre for Sexuality and Gender Diversity v. Saskatchewan (Education)*, 2023 SKKB 204.

7. The Injunction enjoined the Government from implementing or enforcing the Policy until the Court had determined whether it violated the section 7 and section 15(1) *Charter* rights of gender diverse students under the age of 16. The Originating Application was scheduled to be argued on its merits in November 2023.

**C. *The Education Act, 1995 and the Notwithstanding Clause***

8. After this Court granted the Injunction, the Government of Saskatchewan did not take any steps to remedy the constitutional defects in the Policy. To the contrary, on September 28, 2023, the same day the Injunction was granted, Premier Scott Moe issued a statement attacking the Court’s ruling as “judicial overreach” and pledging that the Government of Saskatchewan would “take action to ensure the rights of Saskatchewan parents are protected and that the policy is implemented”.

9. On the same day, the Premier requested that the Speaker recall the Legislative Assembly so that the Government could introduce a bill to “protect parental rights in education”, including as set out in the Policy. The Premier further stated that the Government intended to invoke section 33 of the *Charter* (the “**Notwithstanding Clause**”) to do so.

10. On October 12, 2023, the Minister of Education, the Hon. Jeremy Cockrill, introduced Bill 137, *The Education (Parents’ Bill of Rights) Amendment Act, 2023*, in the Legislative Assembly.

11. Bill 137 proposed, among other things, to add a new section to *The Education Act, 1995* — section 197.4 — enacting the very provisions of the Policy that the Applicant had challenged in the Originating Application and that this Court had enjoined: the requirement for parental/guardian consent when a “pupil” under the age of 16 “requests that [their] new gender-related preferred name or gender identity be used at school” and the prohibition on “teachers and other employees of the school” using “the new gender-related preferred name or gender identity unless consent is first obtained from the pupil’s parent or guardian”.

12. Bill 137 pre-emptively invoked the Notwithstanding Clause to declare that section 197.4 would operate notwithstanding sections 7 and 15 of the *Charter* — the very *Charter* rights at issue in the Originating Application, and which the Policy was alleged to have violated — as well as section 2 of the *Charter*.

13. On October 20, 2023, Bill 137 received Royal Assent and came into force.

14. The Government of Saskatchewan rescinded the Policy on October 23, 2023.

15. In separate correspondence of the same date, the Minister of Education asserted his expectation that all Saskatchewan schools would comply with the Bill 137 amendments to *The Education Act, 1995*.

16. Section 197.4 of *The Education Act, 1995* betrays the same constitutional infirmities as the Policy: it imposes an unconstitutional Outing Requirement and an unconstitutional Misgendering Requirement and thereby deprives gender diverse students under the age of 16 of what should be a basic entitlement in a free and democratic society — a safe and welcoming educational environment in which to be themselves.

**D. The Originating Application should be amended to address section 197.4 of *The Education Act, 1995*, which has replaced the Policy**

17. Owing to the actions taken by the Government in response to the Injunction, the material facts underlying the Originating Application have changed. Further, certain remedies claimed in respect of the Policy are inapplicable to section 197.4 of *The Education Act, 1995*.

18. The real issues in dispute between the parties — namely, the constitutionality of the Outing Requirement and the Misgendering Requirement — have not changed. The proposed amendments to the Originating Application are required so that the Applicant may seek the same relief in respect of the Outing Requirement and the Misgendering Requirement in *The Education Act, 1995* that it did when these requirements were prescribed by the Policy, which has now been rescinded.

19. The Applicant challenged the constitutionality of the Outing Requirement and Misgendering Requirement in the Policy and, among other things, sought declarations under

section 52(1) of *The Constitution Act, 1982* that they were of no force and effect as well as declarations that they violated the section 7 and 15 *Charter* rights of gender diverse students under the age of 16.

20. The Policy has since been rescinded and is of no force and effect, such that declarations under section 52(1) of the *Constitution Act, 1982* regarding the Outing Requirement and the Misgendering Requirement in the Policy are no longer required: the Court does not need to declare the Policy to be of no force and effect because the Government has already made it so. Accordingly, the amendments to the Originating Application remove the Applicant's request for declarations under section 52(1) with respect to the Policy.

21. Declarations that the Outing Requirement and the Misgendering Requirement in the Policy violated section 7 and 15 of *Charter* remain available remedies, despite the Policy having been rescinded. The Amended Originating Application therefore seeks these remedies in respect of the Policy.

22. The Outing Requirement and the Misgendering Requirement have been legislatively entrenched in section 197.4 of *The Education Act, 1995*. Subsection 197.4(3) pre-emptively invokes the Notwithstanding Clause to declare that section 197.4 operates notwithstanding sections 2, 7, and 15 of the *Charter*. Subsection 197.4(3) does not refer to section 12 of the *Charter*, which guarantees the right not to be subjected to any cruel and unusual treatment.

23. The Amended Originating Application seeks, among other things, an Order under section 52(1) of the *Constitution Act, 1982* declaring section 197.4 of *The Education Act, 1995* to be of no force and effect as it limits the section 12 *Charter* right of gender diverse students under the age of 16 not to be subjected to cruel and unusual treatment, and this limit is not reasonable and cannot be demonstrably justified in a free and democratic society under section 1 of the *Charter*.

24. "Treatment" within the meaning of section 12 may include state conduct in contexts other than that of a penal or quasi-penal nature, and may include an active state process in which the state exercises control over the individual. In *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4, the Supreme Court of Canada expressly left

open the question of whether conduct by school personnel may constitute “treatment” under section 12 of the *Charter*.

25. The Outing Requirement and the Misgendering Requirement in section 197.4 of *The Education Act, 1995* require school personnel to impose treatment that is cruel and unusual on gender diverse students under the age of 16. The Outing Requirement and Misgendering Requirement mandate state conduct that is degrading and dehumanizing, and intrinsically incompatible with human dignity. Section 197.4 of *The Education Act, 1995* therefore violates the section 12 *Charter* right of gender diverse students under the age of 16.

26. The Policy similarly required state-imposed cruel and unusual treatment that violated the section 12 *Charter* right of gender diverse students under the age of 16. The Amended Originating Application seeks declarations to this effect.

27. The Court has jurisdiction to determine whether section 12 has been infringed by the Outing Requirement and the Misgendering Requirement and to grant remedies for the same, including a declaration that section 197.4 of *The Education Act, 1995* is of no force and effect (and thus cannot operate) pursuant to section 52(1) of the *Constitution Act, 1982*.

28. The Amended Originating Application also seeks declarations that section 197.4 of *The Education Act, 1995* violates the section 7 and 15(1) *Charter* rights of gender diverse students under the age of 16. Neither section 33 of the *Charter* nor subsection 197.4(3) of *The Education Act, 1995* ousts the Court’s jurisdiction to grant this relief.

29. The amendments to the Originating Application will allow the Applicant to seek substantially the same relief in respect of the Outing Requirement and Misgendering Requirement in section 197.4 of *The Education Act, 1995* as sought in relation to these requirements in the Policy. To the extent the relief sought in the Amended Originating Application differs from the relief sought in the Originating Application, these differences have been made necessary by the Government’s response to the Injunction and by the amendments to *The Education Act, 1995* described above.

**E. No prejudice**

30. The Applicant could, as of right, could commence a new proceeding against the Respondents by issuing a new Originating Application with the form and content of the Amended Originating Application attached in **Schedule “A”**. However, the quickest and least expensive means of resolving the real issues in dispute between the parties — namely, the constitutionality of the Outing Requirement and the Misgendering Requirement — is to address them in this proceeding. To require the Applicant to commence a new proceeding would not promote the just and efficient resolution of this dispute, nor would it be respectful of the principle of judicial economy.

31. No prejudice to the Respondents would result from granting the Applicant leave to amend the Originating Application.

32. In particular, no prejudice to the Government of Saskatchewan would result from granting the Applicant leave to amend. The amendments to the Originating Application are required as a result of the steps taken by the Government in response to the Injunction granted by this Honourable Court. There can be no prejudice to the Government in allowing the Applicant to amend its Originating Application to address the Government’s response.

33. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**Applicable Rule, Acts, and Regulations**

34. The Applicant pleads and relies upon:

- (a) *The King’s Bench Rules*, Sask. Gaz. October 13, 2023, rr. 1-3, 3-72, 6-3, 6-5, 6-15;
- (b) *The King’s Bench Act*, S.S. 2023, c. 28;
- (c) *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11;
- (d) *The Constitutional Questions Act, 2012*, S.S. 2012, c. C-29.01;



- (e) *The Education Act, 1995*, S.S. 1995, c. E-0.2;
- (f) *The Education (Parents' Bill of Rights) Amendment Act*, S.S. 2023; and
- (g) Such further and other rules, acts, and regulations as counsel may advise and this Honourable Court may permit.

DATED at Toronto, Ontario, this 1<sup>st</sup> day of December, 2023.

**McCARTHY TÉTRAULT LLP**

Per:



Adam Goldenberg  
Counsel for the Applicants

**NOTICE**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**CONTACT INFORMATION AND ADDRESS FOR SERVICE**

**ROBERTSON  
STROMBERG**

**ROBERTSON STROMBERG LLP**

Barristers & Solicitors  
Suite 600, 105 – 21<sup>st</sup> Street East  
Saskatoon, SK S7K 0B3

Lawyer in Charge of file: Sean M. Sinclair  
Direct Line: (306) 933-1367  
Facsimile: (306) 652-2445  
E-Mail: s.sinclair@rslaw.com

**Acting as agents for:**

**mccarthy  
tetrault**

**McCARTHY TETRAULT LLP**

Barristers & Solicitors  
Suite 5300  
TD Bank Tower  
Box 48, 66 Wellington Street West  
Toronto ON M5K 1E6

Lawyer in Charge of file: Adam Goldenberg  
Direct Line: (416) 601-8357  
Facsimile: (416) 868-0673  
E-Mail: agoldenberg@mccarthy.ca