SCHEDULE "A"

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**

AMENDED ORIGINATING APPLICATION

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	~~Thursday, September 14, 2023~~ On a date and time to be set by the Court
Time	10:00 am

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

PARTICULARS OF APPLICATION

The Applicant seeks the following remedy or order:

1. The applicant, UR Pride Centre for Sexuality and Gender Diversity ("**UR Pride**"), makes this Application for:

(a) a declaration that the Saskatchewan Ministry of Education's policy entitled "Use of Preferred First Name and Pronouns by Students", effective August 22, 2023 (the "**Policy**"), prior to being rescinded, limited ~~limits~~ the right not to be deprived of security of the person except in accordance with the principles of fundamental justice (as guaranteed in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***")), the right not to be subjected to any cruel and unusual treatment (as guaranteed in section 12 of the *Charter*), and the right to equality (as guaranteed in section 15(1) of the *Charter*), and that these limits were not ~~neither limit is~~ reasonable and demonstrably justifiable (as required under section 1 of the *Charter*);

~~(b) declarations under s. 52(1) of the *Constitution Act, 1982* that:~~

(i) ~~to the extent the Policy requires school personnel to request parental/guardian consent when a student under the age of 16 "requests~~

~~that their preferred name, gender identity, and/or gender expression be used", this "**Outing Requirement**" is of no force and effect; and~~

~~(ii) to the extent the Policy requires school personnel not to use the "preferred name, gender identity, and/or gender expression" of a student under the age of 16 absent consent from the student's parent(s) or guardian(s), this "**Misgendering Requirement**" is of no force and effect;~~

~~(c) interim and interlocutory orders, under section 24(1) of the *Charter* or otherwise, enjoining the Respondent School Divisions (defined below) from implementing and enforcing the Policy until this Application has been finally adjudicated;~~

(b) a declaration that section 197.4 of *The Education Act, 1995*, S.S. 1995, c. E 0.2, limits the right of gender diverse students under the age of 16 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 *Charter*), the right not to be subjected to any cruel and unusual treatment (as guaranteed in section 12 of the *Charter*), and the right to equality (as guaranteed in section 15(1) of the *Charter*), and that none of these limits is reasonable and demonstrably justifiable (as required under section 1 of the *Charter*);

(c) declarations under section 52(1) of the *Constitution Act, 1982* that:

(i) to the extent that section 197.4 of *The Education Act, 1995* requires school personnel to request parental/guardian consent when a student under the age of 16 "requests that [their] new gender-related

preferred name or gender identity be used at school", or otherwise requires that a student's parent/guardian be informed of the student's "new gender-related preferred name or gender identity" prior to this "new gender-related preferred name or gender identity" being "used at school", this "**Outing Requirement**" is of no force and effect because it limits the right of gender diverse students under the age of 16 not to be subjected to cruel and unusual treatment as guaranteed in section 12 of the *Charter* and this limit is not justified under section 1 of the *Charter*; and

(ii) to the extent that section 197.4 of *The Education Act, 1995* requires school personnel not to use the "new gender-related preferred name or gender identity" of a student under the age of 16 without consent from the student's parent(s) or guardian(s), this "**Misgendering Requirement**" is of no force and effect because it limits the right of gender diverse students under the age of 16 not to be subjected to cruel and unusual treatment as guaranteed in section 12 of the *Charter* and this limit is not justified under section 1 of the *Charter*;

(d) public interest standing to bring this Application;

(e) costs of this Application plus applicable taxes; and

(f) such further and other relief as this Court considers just.

The Applicant's grounds for making this Application are:

A. Overview

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

3. The Policy required ~~requires~~ each of the 27 Saskatchewan school districts to develop and publish administrative procedures for the implementation of the Policy. Appended to the Policy as Appendix A was ~~is~~ a "Sample Administrative Procedure". The sample procedure was ~~is~~ part of the Policy, which the Policy document described ~~describes~~ as "a guide" for school divisions to use in complying with the Policy.

4. The Policy required ~~requires~~ all 27 Saskatchewan school districts to obtain or request consent to use a student's "preferred"[1] first name and pronouns when that change was ~~is~~ made to align with their gender identity. Students aged 16 or over could ~~may~~ provide their own consent.

5. For students under the age of 16, however, the Policy created ~~creates~~ two specific requirements: the Outing Requirement and the Misgendering Requirement.

6. The Outing Requirement required ~~requires~~ school personnel to seek parental/guardian consent when a student under the age of 16 "requests that their preferred name, gender identity, and/or gender expression be used". To comply with this requirement by seeking parental/guardian consent (as set out in section 5.1 of the sample procedure in Appendix A), school personnel presumably would have had to ~~must~~ notify the student's parent(s) or guardian(s) of the student's preferences concerning their "name, gender identity, and/or gender expression". If the student had ~~has~~ not already disclosed their preferences to their parent(s) or

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1 This Originating Application uses the qualifier "preferred" before "name" and "pronouns" because this is the language used in the Policy. However, "preferred" is misleading here: one's chosen name and pronouns are not a matter of preference bur rather are directly connected to one's intrinsic identity.

guardian(s) — *e.g.*, because the student did ~~does~~ not feel safe doing so — the Policy apparently required ~~requires~~ school personnel to "out" them, despite any risk to the student.

7. Absent parental/guardian consent for a student under the age of 16, the Policy imposed ~~imposes~~ the Misgendering Requirement.[2] Since the Policy only permitted ~~permits~~ school personnel to refer to students under the age of 16 by their "preferred name, gender identity, and/or gender expression" if the student's parent(s) or guardian(s) provided ~~(s)~~ their consent, the Policy conversely required ~~requires~~ school personnel to deadname and misgender students under the age of 16 in the absence of parental/guardian consent.

8. The Misgendering Requirement was ~~is~~ sweeping. If a student under the age of 16 came ~~comes~~ out as transgender, non-binary or gender diverse (together "**gender diverse**") to one trusted teacher, and asked ~~asks~~ that teacher to refer to them in accordance with their gender identity but only in private conversations, the teacher was ~~must~~ still required to refuse to do so. Even if the student required ~~requires~~ adult support in understanding their gender identity — so that they could ~~can~~ become ready to come out to their parents and others, among other things — the teacher had to ~~must~~ insist on misgendering and deadnaming the student in the absence of parental/guardian consent. As the Policy stated ~~states~~ in section 8.3 of the sample procedure~~s~~ in Appendix A, "[t]he student should be made aware that until authorization is in place, their preferred name and pronouns will not be changed".

9. For gender diverse students under the age of 16 who did ~~do~~ not feel safe coming out to their parent(s) or guardian(s), or who simply were ~~are~~ not yet ready to do so, the Policy presented ~~presents~~ an impossible choice: be outed at home or be misgendered at school, even in one-on-one counselling sessions with school personnel. Either outcome entailed ~~entails~~ devastating and irreparable harm to a vulnerable young person.

10. The Policy thus denied ~~denies~~ gender diverse students what should be a basic entitlement in a free and democratic society: a safe and welcoming educational environment

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[2] "Misgendering" is the practice of referring to an individual by pronouns or other gender markers that do not accord with their gender identity. "Deadnaming", by contrast, is the practice of referring to an individual by a name that does not accord with their gender identity. The Misgendering Requirement requires school personnel not only to misgender transgender and gender non-binary students under the age of 16 in the absence of parental/guardian consent, but also to deadname them.

in which to be themselves. Under the Policy, if gender diverse students under the age of 16 could not ~~cannot~~ safely come out at home, or if their parent(s) or guardian(s) refused to provide consent, they had ~~have~~ no recourse at all.

11. The Policy represented ~~represents~~ a dramatic and regressive change from existing practices in Saskatchewan school districts. Until August 22, 2023, there was no mandatory policy that required school personnel to seek parental/guardian consent before using a student's preferred name or pronouns in the learning environment. Teachers and school personnel were able to use — and did use in practice — their professional judgment to adopt the best course of action in the circumstances.

12. This meant providing students with a safe environment in which to explore or question their gender identity. A student could discuss their gender identity with a teacher, and even "come out" to a teacher, without the risk of being outed to others. Such a student could have open, honest, and respectful counselling conversations in which school personnel recognized and respected their gender identity, even as the student gained the confidence necessary to share this important part of themselves with their parents and others. Teachers and other school personnel thus could, and did, play an invaluable role in helping students feel safe. Students were able to "come out" on their own terms and timeline, including to the student's parents.

13. The Policy put~~s~~ an end to this, deliberately and by design. In doing so, it represented ~~represents~~ a significant and dangerous deviation from the existing practices across Saskatchewan school districts. Gender diverse students under the age of 16 would ~~will~~ suffer significant and irreparable harm as a consequence.

14. The Outing Requirement and the Misgendering Requirement each violated the *Charter* rights of gender diverse students under the age of 16. Specifically, these requirements of the Policy imposed limits on the rights under sections 7 and 15(1) of the *Charter* of gender diverse students under the age of 16, and these limits could not ~~cannot~~ be justified under section 1 of the *Charter*. To prevent irreparable harm, the Applicant asked the Court to ~~should~~ exercise its authority, including its remedial authority under section 24(1) of the *Charter*, immediately to enjoin the implementation of these requirements of the Policy.

~~15. Since the Outing Requirement and the Misgendering Requirement constitute law that is not consistent with the provisions of the Constitution, and since the Policy cannot stand without these unlawful requirements, the entire Policy should be declared of no force and effect under section 52(1) of the *Constitution Act, 1982*. The Applicant seeks an order striking down the Policy in its entirety.~~

15. On September 28, 2023, this Honourable Court granted an interlocutory injunction: *UR Pride Centre for Sexuality and Gender Diversity v. Saskatchewan (Education)*, 2023 SKKB 204. The Court's order enjoined the Government of Saskatchewan from implementing and enforcing the Policy until the Court determined whether it violated the *Charter* rights of gender diverse students under 16 based on a full hearing of this Application, then scheduled for November 2023.

15.1. The Government of Saskatchewan did not take any steps to remedy the defects in the Policy or to consult with experts. To the contrary, Premier Scott Moe issued a statement attacking the Court's ruling as "judicial overreach". The Premier announced that the Government would immediately seek to entrench the Policy's arbitrary, overbroad, and grossly disproportionate limitation of the *Charter* rights of gender diverse students under 16 — and the harm it would cause to these young people — in legislation.

15.2. The same day the injunction was granted, 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. He further stated that the Government intended to invoke section 33 of the *Charter* (the "**Notwithstanding Clause**") to do this.

15.3. 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 legislature. 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 this 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".

15.4. The amendments in Bill 137 similarly preserve the brutality of the Misgendering Requirement in situations where it is "reasonably expected that obtaining parental consent … is likely to result in physical, mental or emotional harm to the pupil." As with the Policy, Bill 137 requires that the student be "direct[ed] … to the appropriate professionals, who are employed or retained by the school, to support and assist the pupil in developing a plan to address the pupil's request with the pupil's parent or guardian". To the extent that those professionals are employees of the school, they may only do so while harmfully misgendering and deadnaming the student.

15.5. Aware of the devastating effect the new section 197.4 of *The Education Act, 1995* would have on gender diverse students under 16, the Government of Saskatchewan tried to ensure it would be shielded from judicial scrutiny and escape legal accountability and liability. Among the amendments included in Bill 137 were:

(a) the pre-emptive invocation of the Notwithstanding Clause to declare that section 197.4 operates notwithstanding sections 2, 7, and 15 of the *Charter* (but not section 12);

(b) the pre-emptive invocation of section 52 of *The Saskatchewan Human Rights Code, 2018* to declare that section 197.4 operates notwithstanding *The Saskatchewan Human Rights Code, 2018*, particularly sections 4, 5 and 13;

(c) the bar on any action or proceeding for any loss or damage resulting from the enactment or implementation of section 197.4 or of a regulation or policy related thereto against the Crown in right of Saskatchewan, or any employee thereof; a member or former member of the Executive Council; or board of education, the conseil scolaire, the Saskatchewan Distance Learning Centre (the "**SDLC**") or a registered independent school, or any employee thereof; and

(d) the extinguishment of every claim for loss or damage resulting from the enactment or implementation of section 197.4 or of a regulation or policy related thereto.

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

15.7. The Government of Saskatchewan rescinded the Policy by letter from the Minister of Education to Board Chairs on October 23, 2023. In separate correspondence of the same date, the Minister of Education asserted his expectation that all Saskatchewan schools would comply with *The Parents' Bill of Rights* amendments to *The Education Act, 1995*.

15.8. Section 197.4 of *The Education Act, 1995* shares the same constitutional infirmities as the Policy:

(a) Like the Policy before it, section 197.4 imposes an unconstitutional Outing Requirement. Students under the age of 16 who request to have their "new gender-related preferred name or gender identity" used at school will not have that request honoured, or their gender identity affirmed or respected, without parental/guardian consent. A student will therefore need to be out to their parents — regardless of whether they feel safe coming out — before teachers and school employees are permitted to respect and affirm the student's gender identity.

(b) Section 197.4 also imposes an unconstitutional Misgendering Requirement, as the Policy did. Like the Policy before it, section 197.4 makes no provision for gender diverse students under the age of 16 who are unable to obtain, or who do not feel safe or ready to seek, parental/guardian consent.

15.9. As such, section 197.4 presents gender diverse students under the age of 16 with the same impossible choice as the Policy did: come out at home or be misgendered at school. For those who come out at home but are denied parental/guardian consent, there is no choice at all, or recourse.

15.10. Just as the Policy did, section 197.4 denies gender diverse students what should be a basic entitlement in a free and democratic society: a safe and welcoming educational environment in which to be themselves. It punishes students under the age of 16 for being gender diverse. This is not consistent with the provisions of the *Charter* and cannot be reasonably and demonstrably justified. Indeed, the Government of Saskatchewan's pre-emptive invocation of the Notwithstanding Clause to declare that section 197.4 operates "notwithstanding sections 2, 7, and 15" of the *Charter* effectively concedes as much, and confirms that section 197.4 has not been enacted in the public interest.

15.11. The Applicant seeks a declaration that the Policy, prior to being rescinded, limited the section 7, 12, and 15(1) *Charter* rights of gender diverse students under the age of 16 and thus, had it not been rescinded, would have been of no force and effect.

15.12. The Applicant also seeks a declaration that section 197.4 of *The Education Act, 1995* violates sections 7, 12, and 15(1) of the *Charter*. The invocation of the Notwithstanding Clause in subsection 197.4(3) of *The Education Act, 1995* does not oust the power of the Court to judicially review legislation for compliance with the *Charter*, but simply provides that the law operates notwithstanding non-compliance. A declaration remains an available, appropriate, and necessary remedy in these circumstances.

15.13. In any event, and as noted above, the Notwithstanding Clause has not been invoked in section 197.4 of *The Education Act, 1995* to override section 12 of the *Charter*. This Court unquestionably has jurisdiction to determine whether section 12 has been infringed — in other words, whether section 197.4 of *The Education Act, 1995* and its Outing and Misgendering Requirements violate the right of gender diverse students under the age of 16 not to be subject to any cruel and unusual treatment — and to grant remedies for same, including a declaration that the provision is of no force and effect (and thus cannot operate) pursuant to section 52(1) of the *Constitution Act, 1982*.

15.14. The Applicant therefore seeks, in addition to the other relief described in this Application, 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.

B. The Applicant

16. UR Pride is a non-profit 2SLGBTQI+[3] service provider housed at the University of Regina. UR Pride provides services and programming for the entire community of Regina.

17. Initially founded in 1996 as a student club, UR Pride was incorporated as a non-profit agency in 2005. UR Pride's mandate is:

(a) to provide and promote health, wellness, and social support for sexually and gender diverse people on campus and throughout the City of Regina;

(b) to promote an intergenerational community of sexually and gender diverse people on campus and throughout the City of Regina;

(c) to advocate for the safety and equitable inclusion of sexually and gender diverse people on campus and throughout the City of Regina; and

(d) to provide avenues for sexually and gender diverse students to expand their skills and explore new leadership opportunities.

18. UR Pride works extensively with gender diverse youth. UR Pride supports 2SLGBTQI+ youth in Saskatchewan by providing vital services such as social support groups, leadership and advocacy skill-building camps, and province-wide support for Gay Straight Alliance initiatives. In addition to supporting gender diverse youth through various programming, UR Pride has a long history of policy work. UR Pride is directly responsible for bringing in gender-neutral washrooms across the University of Regina. UR Pride has also

[3] This acronym refers to Two-Spirit, Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and other ("+") identities.

worked on an initiative for the Saskatchewan Health Authority that would help transgender people access health care in Saskatchewan.

C. The Respondents

19. The Minister of Education is the Crown officer responsible for all matters relating to elementary and secondary education in the Province of Saskatchewan. Pursuant to the *Education Act, 1995,* the Minister of Education may give a written directive to Saskatchewan's 27 school divisions to take any action that the Minister considers necessary in relation to the operations of the school divisions.

20. The respondent school divisions (collectively, the "**Respondent School Divisions**") comprise the 27 school divisions within Saskatchewan. They are: Conseil des écoles fransaskoises; Chinook School Division; Christ the Teacher Catholic Schools; 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 School; Saskatchewan Rivers School Division; Saskatoon Public Schools; South East Cornerstone Public School Division #209; and Sun West School Division.

D. Standing

21. UR Pride should be granted public interest standing to bring this Application. UR Pride meets the criteria for public interest standing:

(a) *The case raises a serious justiciable issue*: As described below, the Application raises a serious justiciable issue about whether the Government of Saskatchewan has implemented an unconstitutional policy and legislation that

violates sections 7, 12, and 15(1) of the *Charter*. This is an important and substantial issue that should be decided on the merits.

(b) *UR Pride has a genuine interest in the matter*: As a leading 2SLGBTQI+ service provider in Saskatchewan, UR Pride provides services and programming for the entire community of Regina. UR Pride supports 2SLGBTQI+ youth in Saskatchewan by providing vital services such as social support groups, leadership and advocacy skill-building camps, and province-wide support for Gay Straight Alliance initiatives. In addition to supporting transgender and gender non-conforming youth through various programming, UR Pride has a long history of policy work relating to gender diverse individuals. This includes its work bringing in gender-neutral washrooms across the University of Regina and its work on an initiative for the Saskatchewan Health Authority that would help transgender people access health care in Saskatchewan. UR Pride is uniquely positioned to represent the interest of gender diverse students in this Application.

(c) *The proposed suit is a reasonable and effective means of bringing the case to court*: UR Pride has the resources, expertise, and capacity to bring this Application. It does so with the support of Egale Canada, the leading national 2SLGBTQI+ advocacy organization. UR Pride has engaged *pro bono* litigation counsel at a large national law firm with experience in *Charter* litigation and litigation concerning the rights of 2SLGTQI+ people specifically. The case is also of public importance, as it will affect the rights of gender diverse students under the age of 16 in the Province of Saskatchewan. There are no realistic alternative means of bringing the within Application, as it would be impracticable — if not impossible — for a gender diverse student under the age of 16 who does not wish to be outed to their parent(s) or guardian(s) or alternatively to be deadnamed at school to bring this Application. Finally, there is no potential impact of this Application on the *Charter* rights of others, apart from the gender diverse students under the age of 16~~ whom the Policy affects~~.

E. The Policy

22. On August 22, 2023, Saskatchewan's Minister of Education announced a "new policy" for Saskatchewan schools on the use of preferred names and pronouns to align with gender identity. The Policy was enacted pursuant to the Minister's authority under section 4.02 of the *Education Act*, *1995*. In an undated letter from the Minister to the Respondent School Divisions posted on the Saskatchewan government website on August 22, 2023, the Minister stated that the "new policy" is "effective today" and that it "will require parental consent when students under 16 years old wish to change their pronouns and/or preferred first name".

23. The Policy stated ~~states~~ that it was ~~is~~ "intended to support students who wish to change their pronouns and/or preferred first name to align with their gender identity". All of the Respondent School Divisions were ~~are~~ required to develop and publish administrative procedures for the implementation of the Policy.

24. For students under the age of 16, the Policy required ~~requires~~ school personnel to request parental/guardian consent "[w]hen a student requests that their preferred name, gender identity, and/or gender expression be used". This was ~~is~~ the Outing Requirement, defined and discussed above. The Policy further required ~~requires~~ that such consent be obtained before the student's preferred name and pronouns may be used in the school environment. This was ~~is~~ the Misgendering Requirement, defined and discussed above.

25. For students 16 and older, parental consent was ~~is~~ not required. Once the requisite consent had ~~has~~ been obtained, the student's preferred first name and pronouns were ~~are~~ to be used consistently in ways that the student had ~~has~~ requested.

26. The Outing Requirement was ~~is~~ illustrated by the "Sample Administrative Procedure" contained in Appendix A to the Policy. Section 5 of the sample procedure stated ~~states~~ that, "[w]hen a student requests that their preferred name, gender identity, and/or gender expression be used … if the student is under the age of 16, school personnel **will request parental/guardian consent**" (emphasis added). In other words, disclosure of the student's request (and thus their gender identity) to parent(s) or guardian(s) became ~~becomes~~ mandatory as soon as the student requested ~~requests~~ the use of their preferred name or pronoun(s); school

personnel were required to ~~must~~ out the student in order to "request parental/guardian consent" as they are required to do.

27. The brutality of the Misgendering Requirement, meanwhile, was ~~is~~ illustrated by the Policy's reference to situations where it was ~~is~~ "reasonably expected that gaining parental consent could result in physical, mental, or emotional harm to the student". In such circumstances, the Policy required ~~requires~~ the student to be "directed to the appropriate school professional(s) for support. These school professionals were ~~are~~ then directed to work with the student "to develop a plan to speak with their parents when they are ready to do so" — all while insistently, and harmfully, misgendering and deadnaming the student.

28. The Misgendering Requirement afforded ~~affords~~ no exception to the requirement of parental/guardian consent. If a student was ~~is~~ not "ready" to "speak with their parents" — including in circumstances when "gaining parental consent could result in physical, mental or emotional harm to the student" — the Policy required ~~requires~~ that school personnel ignore the student's request that their preferred first name and pronoun(s) be used, even in private counselling conversations the goal of which was ~~is~~ to facilitate the student's coming out at home. The Policy instead required ~~requires~~ that these students be misgendered and deadnamed by school personnel in the school environment until they turned 16 and could ~~can~~ provide consent themselves.

29. The Policy was ~~is~~ vague at best with respect to the overlap of the Outing Requirement and the Misgendering Requirement. Though it contemplated ~~contemplates~~ "develop[ing] a plan to speak with [the student's] parents when they are ready to do so", it also contemplated ~~contemplates~~ (in the sample procedure~~s~~) "request[ing] parental/guardian consent" "[w]hen a student requests that their preferred name, gender identity, and/or gender expression be used". Whether by design or otherwise, this vagueness would have ~~will~~ practically resulted in students' being outed to their parent(s) or guardian(s) once they had ~~have~~ "request[ed] that their preferred name, gender identity, and/or gender expression be used", even if they were ~~are~~ not "ready" to disclose their gender identity, and even if there were ~~is~~ a "reasonabl[e] expect[ation] that gaining parental consent could result in physical, mental or emotional harm to the student".

30. The Policy represented ~~represents~~ a significant and dangerous deviation from existing practice across school districts in Saskatchewan. Prior to August 22, 2023, there was no mandatory policy that school personnel be required to seek parental/guardian consent before using a student's preferred name and pronoun in the school environment.

31. Teachers and school personnel were able to use — and did use in practice — their professional judgment and discretion to respect the student's gender identity and expression without risking harm to the student by "outing" them to their parent(s) or guardian(s). Teachers were therefore able respect a student's gender identity and expression in the school environment, including in one-on-one counselling conversations, without dangerously and unnecessarily placing the student at risk of psychological, emotional, or physical harm.

32. The Policy was evidently adopted without any consideration for the potential detrimental impacts that it could have had on gender diverse students under the age of 16. The Government of Saskatchewan appeared ~~appears~~ to have formulated and adopted the Policy without any consultation with experts on education or experts on the experience of gender diverse youth.

33. Premier Scott Moe admitted the lack of expert consultation in a public statement posted on the X platform (formerly Twitter) on August 27, 2023:

E.1. The Injunction

33.1. The Applicant's application for an interlocutory injunction restraining the Government of Saskatchewan from implementing the Policy until the final disposition of this Application was heard on September 19, 2023.

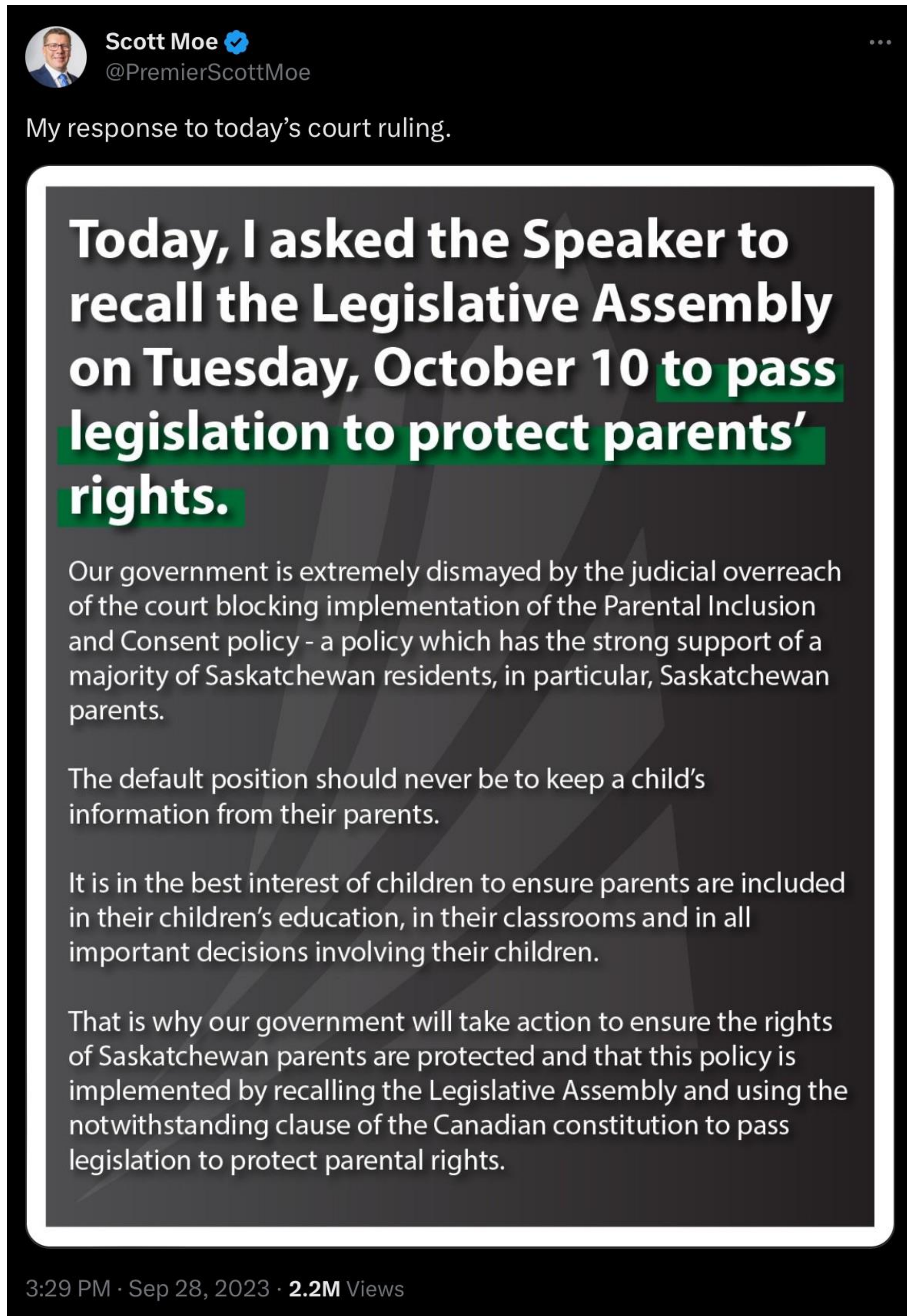
33.2. On September 28, 2023, the Court granted an interlocutory injunction (the "**Injunction**"). In so doing, the Court recognized that the public interest in the Policy was outweighed by the public interest in avoiding irreparable harm to gender diverse students under the age of 16. The Government of Saskatchewan was enjoined from implementing and enforcing the Policy until the Court determined whether it violated the *Charter* rights of gender diverse students under 16 based on a full hearing of this Application, then scheduled for November 2023.

33.3. The Government of Saskatchewan did not appeal the Injunction. The time in which to do so has expired.

E.2. The Notwithstanding Clause

33.4. On September 28, 2023, Premier Moe requested that the Speaker recall the Legislative Assembly for a sitting beginning October 10, 2023 so that the government could introduce a bill invoking the Notwithstanding Clause to "protect parental rights in education", including as set out in the Policy.

33.5. In a public statement posted on the X platform on September 28, 2023, Premier Moe described the Injunction as "judicial overreach", inaccurately described "[t]he default position" (*i.e.*, in the absence of the Policy) as being "to keep a child's information from their parents", and stated that the Government of Saskatchewan would "take action to ensure the rights of Saskatchewan parents are protected and that the policy is implemented":



33.6. On October 12, 2023, the Minister of Education introduced Bill 137, *The Education (Parents' Bill of Rights) Amendment Act, 2023* in the Legislative Assembly. Unlike the Policy, Bill 137 does not contain a statement of intent or legislative purpose. The explanatory notes for Bill 137 similarly do not include a statement of intent or purpose.

33.7. The same day, the Government issued a news release entitled "'Parents' Bill of Rights' Introduced in Legislature". It states that Bill 137 "outlines a number of rights that parents have to be involved in their children's education and invokes the notwithstanding clause of the Canadian constitution to ensure parents must provide consent if a child wants to change their gender identification in school". There is no reference to supporting students in the news release.

33.8. On October 20, 2023, Bill 137 passed third reading, received Royal Assent, and came into force. *The Education Act, 1995* was amended to include section 197.4. It states:

> **Consent for change to gender identity**
>
> **197.4**(1) If a pupil who is under 16 years of age requests that the pupil's new gender-related preferred name or gender identity be used at school, the pupil's teachers and other employees of the school shall not use the new gender-related preferred name or gender identity unless consent is first obtained from the pupil's parent or guardian.
>
> (2) If it is reasonably expected that obtaining parental consent as mentioned in subsection (1) is likely to result in physical, mental or emotional harm to the pupil, the principal shall direct the pupil to the appropriate professionals, who are employed or retained by the school, to support and assist the pupil in developing a plan to address the pupil's request with the pupil's parent or guardian.
>
> (3) Pursuant to subsection 33(1) of the *Canadian Charter of Rights and Freedoms*, this section is declared to operate notwithstanding sections 2, 7 and 15 of the *Canadian Charter of Rights and Freedoms*.
>
> (4) Pursuant to section 52 of *The Saskatchewan Human Rights Code, 2018*, this section operates notwithstanding *The Saskatchewan Human Rights Code, 2018*, particularly sections 4, 5 and 13.
>
> (5) No action or proceeding based on any claim for loss or damage resulting from the enactment or implementation of this section or of a regulation or policy related to this section lies or shall be commenced against:
>
> > (a) the Crown in right of Saskatchewan;
> >
> > (b) a member or former member of the Executive Council;
> >
> > (c) a board of education, the conseil scolaire, the SDLC or a registered independent school; or
> >
> > (d) any employee of the Crown in right of Saskatchewan or of a board of education, the conseil scolaire, the SDLC or a registered independent school.

> (6) Every claim for loss or damage resulting from the enactment or implementation of this section or of a regulation or policy related to this section is extinguished.[4]

33.9. Section 197.4 of *The Education Act, 1995* legislatively entrenches the Outing Requirement and the Misgendering Requirement, both of which were previously contained in the Policy.

33.10. With respect to the Outing Requirement, section 197.4(1) mandates that, before a teacher or school employee is permitted to "use the new gender-related preferred name or gender identity" of a gender diverse student under the age of 16, parental/guardian consent must first be obtained. As a result, it is a precondition that a gender diverse student under the age of 16 must be out to their parent(s) or guardian(s) before their gender identity can be respected or affirmed in at school.

33.11. Section 197.4(2) does not alter or minimize the Outing Requirement. It simply provides that, where it is reasonably expected that obtaining parental consent is likely to result in physical, mental or emotional harm to the student, "the principal shall direct the pupil to the appropriate professionals … to support and assist the pupil in developing a plan to address the pupil's request with the pupil's parent or guardian".

33.12. Nothing in *The Education (Parents' Bill of Rights) Amendment Act, 2023* ensures that "appropriate professionals" will actually be available to students in the circumstances that section 197.4(2) describes. The Government has not announced any policy or other measure, either before or since section 197.4(2) was enacted, that would ensure the availability of "appropriate professionals". The Applicant denies that "appropriate professionals" are or will be available to students in the circumstances that section 197.4(2) describes; to the contrary, any protection that this provision might afford to gender diverse students is entirely illusory.

33.13. Regardless of any supports that may be provided to students pursuant to section 197.4(2), this provision still requires that a student be out to their parent/guardian before that student's gender identity can be affirmed and respected at school, and only then if

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4 Neither "gender-related preferred name" nor "gender identity" is defined in section 197.4 or anywhere else in *The Education Act, 1995*.

the student's parent/guardian consents. Under the legislation, a gender diverse student under the age of 16 who is not out to a parent/guardian must be denied a safe and affirming school environment.

33.14. With respect to the Misgendering Requirement, section 197.4, like the Policy before it, mandates that teachers and school employees continuously and intentionally misgender and deadname a student until parental/guardian consent is obtained to have the student's "new gender-related preferred name or gender identity" used at school. Once again, section 197.4 affords no exception to the requirement of parental/guardian consent. If a student is not yet ready to discuss their gender identity with their parents — including in circumstances when doing so is "likely to result in physical, mental or emotional harm to the pupil" — section 197.4(2) requires that teachers and school employees ignore the student's request that their preferred first name and pronoun(s) be used, even in private counselling conversations, the goal of which is to facilitate the student's coming out at home. In these circumstances, gender diverse students are required to be misgendered and deadnamed until they turn 16 and can provide consent themselves.

F. The Policy violated ~~violates~~ section 15(1) of the *Charter*

34. The Policy violated ~~violates~~ the substantive equality rights of gender diverse students under section 15(1) of the *Charter*. Section 15(1) provides that:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

35. Both in purpose and effect, the Policy created ~~creates~~ a distinction based on gender expression and identity, an analogous ground protected under section 15(1) of the *Charter*. The Policy created ~~creates~~ a distinction that specifically targeted ~~targets~~ gender diverse students under the age of 16.

36. Under the Policy, the preferred names and pronouns of cisgender students were ~~are~~ consistently and automatically respected and observed within the school environment. By contrast, the Policy singled ~~singles~~ out gender diverse students under the age of 16 for differential and disadvantageous treatment. These students were ~~are~~ required to receive parental consent before teachers and school personnel were ~~are~~ permitted to acknowledge and respect their preferred names and pronouns. The Policy therefore created ~~creates~~ a clear distinction based on gender identity and expression.

37. The Policy also imposed ~~imposes~~ a burden in a manner that had ~~has~~ the effect of reinforcing, perpetuating, or exacerbating disadvantage. Specifically, the Policy imposed ~~imposes~~ a burden on gender diverse students under the age of 16 by requiring school personnel to seek parental/guardian consent before using students' preferred names and pronouns in the school environment. For many gender diverse students, this created ~~creates~~ an impossible choice: either continue being misgendered and deadnamed in the school environment, including in one-on-one counselling conversations with trusted teachers, or be outed to their parents, which could have resulted in serious harm — emotional, mental, or physical.

38. Gender diverse people occupy a unique position of disadvantage within Canadian society, having faced discrimination in many facets of Canadian society. Gender diverse students are an especially vulnerable group. The Policy failed ~~fails~~ to take into account the unique vulnerability of these students. Indeed, the Policy had ~~has~~ the effect of reinforcing, perpetuating, or exacerbating their unique disadvantage. It violated ~~violates~~ section 15(1) of the *Charter*.

39. The limit on the section 15 *Charter* right of gender diverse students was ~~is~~ not reasonable and could not ~~cannot~~ be demonstrably justified in a free and democratic society. The Policy thus could not have been ~~cannot be~~ "saved" under section 1.

F.1. Section 197.4 of *The Education Act, 1995* violates section 15 of the *Charter*

39.1. Section 197.4 of *The Education Act, 1995* violates the substantive equality rights of gender diverse students under section 15(1) of the *Charter*. Section 15(1) provides that:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

39.2. Both in purpose and effect, section 197.4 creates a distinction based on gender expression and identity, an analogous ground protected under section 15(1) of the *Charter*. Section 197.4 creates a distinction that specifically targets gender diverse students under the age of 16.

39.3. Under section 197.4, the preferred names and pronouns of cisgender students are consistently and automatically respected and observed within the school environment. By contrast, section 197.4 singles out gender diverse students under the age of 16 for differential and disadvantageous treatment. These students are required to receive parental consent before teachers and school personnel are permitted to acknowledge and respect their preferred names and pronouns. Section 197.4 therefore creates a clear distinction based on gender identity and expression.

39.4. Section 197.4 also imposes a burden in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage. Specifically, section 197.4 imposes a burden on gender diverse students under the age of 16 by requiring school personnel to seek parental/guardian consent before using students' preferred names and pronouns in the school environment. For many gender diverse students, this creates an impossible choice: either continue being misgendered and deadnamed in the school environment, including in one-on-one counselling conversations with trusted teachers, or be outed to their parents, which could result in serious harm — emotional, mental, or physical.

39.5. Gender diverse people occupy a unique position of disadvantage within Canadian society, having faced discrimination in many facets of Canadian society. Gender diverse students are an especially vulnerable group. Section 197.4 of *The Education Act, 1995* fails to take into account the unique vulnerability of these students. Indeed, section 197.4 has the effect

of reinforcing, perpetuating, or exacerbating their unique disadvantage. It violates section 15(1) of the *Charter*.

39.6. The limit on the section 15 *Charter* right of gender diverse students is not reasonable and cannot be demonstrably justified in a free and democratic society. Section 197.4 thus cannot be saved under section 1.

G. The Policy violated ~~violates~~ section 7 of the *Charter*

40. The Policy deprived ~~deprives~~ gender diverse students of their section 7 *Charter* right not to be deprived of security of the person except in accordance with the principles of fundamental justice. Section 7 provides that:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

41. By requiring parental/guardian consent to use the preferred name and pronouns of students under the age of 16, the Policy exposed ~~exposes~~ gender diverse students under the age of 16 to psychological, emotional, and physical harm. The Policy imposed ~~imposes~~ a *dangerous* condition on gender diverse students under the age of 16. Such students would ~~are~~ only have been able access a safe and inclusive school environment *after* parental consent had ~~has~~ been obtained.

42. For some gender diverse students under the age of 16, obtaining parental/guardian consent is not feasible. The Policy exposed ~~exposes~~ these students to a serious risk of psychological, emotional, and even physical harm, either by requiring them to seek consent from their parent(s) or guardian(s) despite the consequences of doing so, or by outing the students to their parent(s) or guardian(s). The Policy therefore deprived ~~deprives~~ these students of their right to security of the person.

43. This deprivation of security of the person was ~~is~~ not in accordance with the principles of fundamental justice, including arbitrariness, overbreadth, and gross disproportionality. The Policy therefore infringed ~~infringes~~ the section 7 *Charter* right of gender diverse students under

the age of 16 not to be deprived of security of the person except in accordance with the principles of fundamental justice.

44. This infringement of the section 7 *Charter* right of gender diverse students under the age of 16 was ~~is~~ not reasonable and could not ~~cannot~~ be demonstrably justified in a free and democratic society.

G.1. Section 197.4 of *The Education Act, 1995* violates section 7 of the *Charter*

44.1. Section 197.4 of *The Education Act, 1995* deprives gender diverse students of their section 7 *Charter* right not to be deprived of security of the person except in accordance with the principles of fundamental justice. Section 7 provides that:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

44.2. By requiring parental/guardian consent to use the preferred name and pronouns of students under the age of 16, section 197.4 exposes gender diverse students under the age of 16 to psychological, emotional, and physical harm. Section 197.4 imposes a *dangerous* condition on gender diverse students under the age of 16. Such students are only able access a safe and inclusive school environment *after* parental consent has been obtained.

44.3. For some gender diverse students under the age of 16, obtaining parental/guardian consent is not feasible. Section 197.4 exposes these students to a serious risk of psychological, emotional, and even physical harm by requiring them to seek consent from their parent(s) or guardian(s) despite the consequences of doing so, and by denying them a safe and inclusive environment at school, as well as at home, unless they receive that consent. Section 197.4 therefore deprives these students of their right to security of the person.

44.4. This deprivation of security of the person is not in accordance with the principles of fundamental justice, including arbitrariness, overbreadth, and gross disproportionality. Section 197.4 of *The Education Act, 1995* therefore infringes the section 7 *Charter* right of gender

diverse students under the age of 16 not to be deprived of security of the person except in accordance with the principles of fundamental justice.

44.5. This infringement of the section 7 *Charter* right of gender diverse students under the age of 16 is not reasonable and cannot be demonstrably justified in a free and democratic society.

G.2. The Policy violated section 12 of the *Charter*

44.6. The Policy violated the section 12 *Charter* right of gender diverse students not to be subjected to cruel and unusual treatment. Section 12 provides that:

> Everyone has the right not be subjected to any cruel and unusual treatment or punishment.

44.7. "Treatment" within the meaning of section 12 may include state conduct in contexts other than that of a penal or quasi-penal nature. As such, treatment may include an active state process in which the state exercises control over the individual.

44.8. Students under the age of 16 — including vulnerable gender diverse students — are subject to the special administrative control of the state. *The Education Act*, *1995* requires persons of compulsory school age, defined as having "attained the age of six years but not having attained the age of 16 years" to attend school or receive instruction in a registered home-based education program or approved online learning provider. The Minister has wide powers under *The Education Act, 1995* in relation to persons of compulsory school age and all pupils (students) of whatever age, including, among other things, to:

(a) establish goals and objectives for the elementary and secondary education system;

(b) establish performance measures and targets for the elementary and secondary education system;

(c) develop, implement and evaluate elementary and secondary education policies;

(d) specify, approve or recommend textbooks, library books, reference books, other learning resources, apparatus, equipment and other materials that the minister considers necessary to ensure an optimum quality of instructional services in schools;

(e) determine the subjects of instruction and issue courses of study for each grade from kindergarten to Grade 12, or any combination of those grades, for all schools;

(f) determine compulsory and optional subjects and course requirements for completion of a grade of instruction;

(g) make provision for the training of teachers, including those required for new or special programs or services to pupils;

(h) approve the form of the register of attendance and the manner of its use in recording the daily attendance of pupils;

(i) make provision for the registration of independent schools;

(j) make provision for the inspection and supervision of registered independent schools;

(k) make provision for the registration of home-based education programs;

(l) make provision for the monitoring of registered home-based education programs; and

(m) from time to time, give a written directive to a board of education, the conseil scolaire, or the SDLC to take any action that the Minister considers necessary in relation to the operations of the board of education, the conseil scolaire or the SDLC, as the case may be.

44.9. Students' rights and opportunities at school depend on decisions made and actions taken by various branches and aspects of the Government of Saskatchewan and its employees and agents, including teachers and school personnel.

44.10. The Policy intentionally targeted gender diverse students under the age of 16, an especially vulnerable and uniquely disadvantaged group, by requiring parental/guardian consent for the use of a new "preferred name, gender identity, and/or gender expression" at school and otherwise requiring state employees to deadname and misgender them, causing significant harm to those students as a result of the requirement legislatively imposed by the state. Such treatment is degrading and dehumanizing, and intrinsically incompatible with human dignity.

44.11. The state-imposed treatment of the Policy violated the section 12 *Charter* right of gender diverse students under 16 as it was cruel and unusual.

44.12. The Policy's Outing Requirement and Misgendering Requirement were both grossly disproportionate and intrinsically incompatible with the recognition of the human dignity of gender diverse students under the age of 16. Through the Policy, the state required gender diverse students under the age of 16 to out themselves to their parents/guardians before agents of the state, namely teachers and school personnel, were permitted to acknowledge, validate, or respect the student's intrinsic identity and dignity. Moreover, agents of the state were required to continuously and intentionally invalidate the identity of gender diverse students under the age of 16 who, for whatever reason, had not obtained parental or guardian consent. The Policy therefore infringed the section 12 *Charter* right of gender diverse students under the age of 16 not to be subjected to cruel and unusual treatment.

44.13. This infringement of the section 12 *Charter* right of gender diverse students under the age of 16 was not reasonable and could not be demonstrably justified in a free and democratic society.

G.3. Section 197.4 of *The Education Act, 1995* violates section 12 of the *Charter*

44.14. Section 197.4 violates the section 12 *Charter* right of gender diverse students not to be subjected to cruel and unusual treatment. Section 12 provides that:

> Everyone has the right not be subjected to any cruel and unusual treatment or punishment.

44.15. "Treatment" within the meaning of section 12 may include state conduct in contexts other than that of a penal or quasi-penal nature. As such, treatment may include an active state process in which the state exercises control over the individual.

44.16. Students under the age of 16 — including vulnerable gender diverse students — are subject to the special administrative control of the state. *The Education Act, 1995* requires persons of compulsory school age, defined as having "attained the age of six years but not having attained the age of 16 years" to attend school or receive instruction in a registered home-based education program or approved online learning provider. The Minister has wide powers under *The Education Act, 1995* in relation to persons of compulsory school age and all pupils (students) of whatever age, including, among other things, to:

(a) establish goals and objectives for the elementary and secondary education system;

(b) establish performance measures and targets for the elementary and secondary education system;

(c) develop, implement and evaluate elementary and secondary education policies;

(d) specify, approve or recommend textbooks, library books, reference books, other learning resources, apparatus, equipment and other materials that the minister considers necessary to ensure an optimum quality of instructional services in schools;

(e) determine the subjects of instruction and issue courses of study for each grade from kindergarten to Grade 12, or any combination of those grades, for all schools;

(f) determine compulsory and optional subjects and course requirements for completion of a grade of instruction;

(g) make provision for the training of teachers, including those required for new or special programs or services to pupils;

(h) approve the form of the register of attendance and the manner of its use in recording the daily attendance of pupils;

(i) make provision for the registration of independent schools;

(j) make provision for the inspection and supervision of registered independent schools;

(k) make provision for the registration of home-based education programs;

(l) make provision for the monitoring of registered home-based education programs; and

(m) from time to time, give a written directive to a board of education, the conseil scolaire, or the SDLC to take any action that the Minister considers necessary in relation to the operations of the board of education, the conseil scolaire or the SDLC, as the case may be.

44.17. Students' rights and opportunities at school depend on decisions made and actions taken by various branches and aspects of the Government of Saskatchewan and its employees and agents, including teachers and school personnel.

44.18. Section 197.4 intentionally targets gender diverse students under the age of 16, an especially vulnerable and uniquely disadvantaged group, by requiring parental/guardian consent for the use of a new "gender-related preferred name" or "gender identity" at school and otherwise requiring state employees to deadname and misgender them, causing significant harm to those students as a result of the requirement legislatively imposed by the state. This treatment is degrading and dehumanizing, and intrinsically incompatible with human dignity.

44.19. This is made all the more apparent by the Government of Saskatchewan's decision to recall the Legislative Assembly to pass Bill 137 and legislatively entrench the Outing Requirement and Misgendering Requirement of the Policy ***after*** evidence of the potential for

irreparable harm to gender diverse students under the age of 16 had been tendered and accepted by the Court, and ***in response*** to the Injunction. The Government of Saskatchewan took these steps in the face of the Court's finding that the Policy would cause irreparable harm to gender diverse students under the age of 16. Unconscionably, the purpose and effect of Bill 137, and now section 197.4 of *The Education Act, 1995*, is evidently to inflict such irreparable harm on gender diverse students, notwithstanding the protection of sections 2, 7, and 15 — but not section 12 — of the *Charter*.

44.20. The state-imposed treatment of section 197.4 of *The Education Act, 1995* violates the section 12 *Charter* right of gender diverse students under 16 as it is cruel and unusual.

44.21. Section 197.4's Outing Requirement and Misgendering Requirement are both grossly disproportionate and intrinsically incompatible with the recognition of the human dignity of gender diverse students under the age of 16. Under section 197.4, the state requires gender diverse students under the age of 16 to out themselves to their parents/guardians before agents of the state, namely teachers and school personnel, are permitted to acknowledge, validate, or respect the student's intrinsic identity and dignity. Moreover, agents of the state are required to continuously and intentionally invalidate the identity of gender diverse students under the age of 16 who, for whatever reason, have not obtained parental or guardian consent. Section 197.4 therefore infringes the section 12 *Charter* right of gender diverse students under the age of 16 not to be subjected to cruel and unusual treatment.

44.22. This infringement of the section 12 *Charter* right of gender diverse students under the age of 16 is not reasonable and cannot be demonstrably justified in a free and democratic society.

H. The Policy would have been ~~is~~ of no force and effect

45. The Policy prior to being rescinded, constituted ~~constitutes~~ "law" within the meaning of section 52(1) of the *Constitution Act, 1982*. The Policy was ~~is~~ a Ministerial Directive under s. 4.02 of *The Education Act, 1995*. School divisions — and by extension, individual schools and school personnel — had ~~have~~ no discretion regarding the use of a student's preferred pronouns. Pursuant to the Policy, school personnel would ~~will~~ only have been able to use a

student's preferred name and pronouns after the requisite parental/guardian consent had ~~has~~ been obtained. The Policy constituted ~~constitutes~~ a binding policy of general application, that was ~~is~~ appropriately characterized as "law" for the purposes of section 52(1).

46. The Policy's Outing Requirement and Misgendering Requirement each violated sections 7, 12, and 15 of the *Charter* and could not ~~cannot~~ be saved by section 1. As such, these requirements would have been ~~are~~ of no force and effect under section 52(1) of the *Constitution Act, 1982*. Since the Policy as a whole could not ~~cannot~~ stand without these requirements, it would have been ~~is~~ of no force and effect and should have been struck down in its entirety under section 52(1).

H.1. A declaration should issue with respect to section 197.4 of *The Education Act, 1995*

46.1. Nothing in section 197.4 of *The Education Act, 1995* ousts the power of the Court to judicially review legislation for compliance with the *Charter*. Subsection 197.4(3) of *The Education Act, 1995* simply provides that the law shall operate notwithstanding non-compliance with sections 2, 7, and 15 of the *Charter*. A declaration that section 197.4 of *The Education Act, 1995* violates sections 7, 12, and 15(1) of the *Charter* remains available under sections 24(1) and 52(1) and at common law, and is an available, appropriate, and necessary remedy in the circumstances.

46.2. A declaration would have important effects despite subsection 197.4(3) of *The Education Act, 1995*. It would further democratic accountability by ensuring that Saskatchewan voters understand that the legislation passed by their elected representatives unreasonably and unjustifiably limits the *Charter* rights of gender diverse students under the age of 16, so that Saskatchewanians are fully informed in order to hold their representatives accountable, including at the next election.

46.3. In addition, from October 20, 2028, section 197.4 will no longer operate notwithstanding the law's non-compliance with sections 2, 7, and 15 of the *Charter*. A declaration would have practical effect as of that date. Whether section 197.4 of *The Education Act, 1995* violates the section 7, 12, and 15 *Charter* rights of gender diverse students under the age of 16 in a manner that is not reasonable or demonstrably justifiable

under section 1 remains a live controversy — in respect of which evidence has already been filed with this court — precisely because, after the Court issued the Injunction, the Government took immediate steps to legislatively entrench the Policy's arbitrary, overbroad, and grossly disproportionate limitation of the *Charter* in the hopes of deflecting judicial scrutiny. It would be a false economy to defer adjudication of these issues to a later date.

H.2. Section 197.4 of *The Education Act, 1995* is of no force and effect

46.4. The Outing Requirement and Misgendering Requirement in section 197.4 of *The Education Act, 1995* each violate sections 7, 12, and 15 of the *Charter* and cannot be saved by section 1. Section 197.4 operates notwithstanding sections 2, 7, and 15 of the *Charter*, as set out in subsection 197.4(3) of *The Education Act, 1995*. It does ***not*** operate notwithstanding section 12 of the *Charter*. As such, the Outing Requirement and Misgendering Requirement are each of no force and effect under section 52(1) of the *Constitution Act, 1982* insofar as they violate section 12 of the *Charter* and will be of no force and effect as at October 20, 2028 insofar as they violate sections 7, 12, and 15 of the *Charter*.

46.5. Since section 197.4 of *The Education Act, 1995* cannot stand without these requirements, it is of no force and effect (owing to its violation of section 12 of the *Charter*) and should be struck down in its entirety under section 52(1) of the *Constitution Act, 1982*.

46.6. In addition, section 197.4 of *The Education Act, 1995* would be of no force and effect but for subsection 197.4(3) (owing to its violation of sections 7, 12, and 15 of the *Charter*) and therefore will be of no force and effect as of October 20, 2028, and should be struck down as at that date.

I. Costs

47. UR Pride is a non-profit organization that has brought this *Charter* Application in the public interest. UR Pride should be relieved of any adverse costs award if its Application is unsuccessful.

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

In support of this Application, the applicant relies on the following material or evidence:

48. The following documentary evidence will be used at the hearing of this Application:

(a) the affidavit of Ariana Giroux, affirmed August 31, 2023;

(b) the affidavit of Dr. Travers, affirmed August 31, 2023;

(c) the affidavit of A.B., affirmed August 30, 2023;

(d) the affidavit of Corinne Pirot, affirmed August 31, 2023;

(e) the affidavit of Nicholas Day, affirmed August 31, 2023; ~~and~~

(e.1) the affidavit of Elizabeth Saewyc, affirmed September 9, 2023;

(e.2) the affidavit of Travis Salway, affirmed September 11, 2023;

(e.3) the affidavit of Brittany Bezmutko, affirmed September 11, 2023; and

(f) such further and other evidence as counsel may adduce and this Honourable Court may admit.

Applicable Rules, Acts, and Regulations:

49. *The King's Bench Rules*, Sask. Gaz. October 13, 2023, 1835, rr. 1-3, 1-4, 1-5, 1-6, 1-7, 3-49, 3-55, 3-56, 3-60, 11-1;

50. *The King's Bench Act*, S.S. 2023, c. 28;

51. *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11;

52. *The Constitutional Questions Act, 2012*, S.S. 2012, c. C-29.01;

53. *The Education Act, 1995*, S.S. 1995, c. E-0.2;

54. *The Education (Parents' Bill of Rights) Amendment Act,* S.S. 2023*;* and

55. Such further and other rules, acts, and regulations as counsel may advise and this Court may permit.

DATED at Toronto, Ontario, this ~~31st day of August~~ 1st day of December, 2023.

McCARTHY TETRAULT LLP

Per:

Adam Goldenberg
Counsel for the Applicants

This notice is issued at the above-noted judicial centre on the _______ day of

_________________________ , 2 ______ .

____
Local Registrar

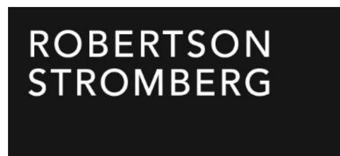
NOTICE

You are named as a respondent because you have made or are expected to make an adverse claim with respect to 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 applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form.

The rules require that a party moving or opposing an originating application must serve any brief of written argument on each of the other parties and file it at least 3 days before the date scheduled for hearing the originating application.

If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must serve a copy of the affidavit and other evidence on the originating applicant at least 10 days before the originating application is to be heard or considered.

CONTACT INFORMATION AND ADDRESS FOR SERVICE



ROBERTSON STROMBERG LLP
Barristers & Solicitors
Suite 600, 105 – 21st 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 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