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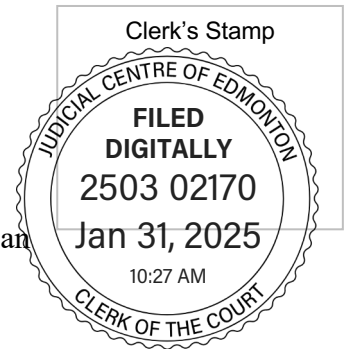
COURT OF KING'S BENCH OF  
ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFFS

KATHERINE KERBER, litigation guardian  
of A.B., DEBBIE SPEARS, litigation  
guardian of C.D., MARTIN DOYLE,  
litigation guardian of Ryan Doyle, and  
MELISSA BAKER, litigation guardian of  
JOCELYN BAKER



DEFENDANT

HIS MAJESTY THE KING IN RIGHT OF  
ALBERTA and THE MINISTER OF  
EDUCATION (DEMETRIOS  
NICOLAIDES)

**DOCUMENT**

**STATEMENT OF CLAIM**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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File No. 172-00100

## **NOTICE TO DEFENDANTS**

You are being sued. You are a defendant.

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

**Note: State below only facts and not evidence (Rule 13.6)**

**Statement of facts relied on:**

### **Overview**

1. This case is about the government of Alberta's intentional and flagrant discrimination against disabled children, the Minor Plaintiffs, by issuing a Ministerial Order to deny these children the right to access education. This measure has no other purpose than to save the province money on

educational support workers' wages - off the backs of children with mental or physical disabilities.

2. The Plaintiffs are all litigation guardians of minor students in the Edmonton Public School Board Division (“**EPSB**”). The Minor Plaintiffs have disabilities so complex that they have not been in school since Friday, January 10, 2025, or, they have been on modified schedules since then. The Minor Plaintiffs, because of their disabilities, require a support worker to *attend* school. This support is provided through a trained, dedicated and specialized educational assistant (“**EA**”).
3. Also, since January 10, 2025, there are approximately 1200 children in EPSB who are at home full time. There are 2500 children on modified schedules. And there are thousands of other children who require an EA to *learn* in school.
4. There are approximately 2000 EAs in EPSB. Despite their importance to the education system, most EAs are paid an annual non-salaried amount, based on 35-hour work weeks, between \$31,740 and \$43,193. EAs have not received a meaningful raise in 10 years.
5. The Defendant, His Majesty the King in Right of Alberta (“**HMKA**”), issued a “**Wage Cap**” to EPSB in relation to the EAs’ collective bargaining and in the form of a directive under the *Public Sector Employers Act*, SA 2019, c P-40.7. EPSB, in turn, is fully funded by HMKA. This means, by design, EPSB has limited bargaining power *vis à vis* the EAs.
6. On Thursday, January 9, 2025, in this deliberately frustrated bargaining environment, the EAs union, CUPE 3550 issued a 72-hour strike notice (“**Notice**”). There is no bargaining to be done outside the Wage Cap; unless the EAs capitulate, there will be no resolution, and the strike will last for an indefinite duration.
7. Despite this Notice, neither HMKA, nor the Defendant, Minister of Education Demetrios Nicolaides, took steps to ensure adequate funding was provided to EPSB so that the Minor Plaintiffs could remain in school during the strike in accordance with section 3(1) of the *Education Act*, SA 2012, c E-0.3.
8. Instead, without notice, on Sunday January 12, 2025, from Calgary, Minister Nicolaides issued a Ministerial Order #002/2025 providing an exemption to section 2 of the *In-person learning Regulation* Alta Reg 226/2022. The Ministerial Order explicitly allows EPSB to discriminate against the Minor Plaintiffs on the basis of their disability and, as consequence, require the Minor Plaintiffs to stay home, in whole or in part, from school during the indefinite strike. The Ministerial Order violates section 3(1) of the *Education Act*.

9. Based on the Ministerial Order, the Minor Plaintiffs have been denied the right of access to education since January 10, 2025. There are an estimated 1200 children similarly affected by the Ministerial Order in EPSB; they have not been in school. The Wage Cap adversely also impacts the Minor Plaintiffs because of their disability.
10. This Ministerial Order is therefore unlawful and unconstitutional. It is *ultra vires* the *Education Act*. The Ministerial Order, with the Wage Cap, breaches section 15(1) of the *Charter of Rights and Freedoms* and cannot be saved pursuant to section 1. By issuing the unlawful Ministerial Order and the Wage Cap, Minister Nicolaides and HMKA committed misfeasance in public office with at least conscious disregard for the Minor Plaintiffs.
11. Given the conspicuous violations in the Ministerial Order, the Minor Plaintiffs seek a remedy pursuant to section 24(1) of the *Charter of Rights of Freedoms* in the form of an interim suspension of the Ministerial Order that will allow the Minor Plaintiffs and the estimated 1200 (at home full time) and 2500 (modified schedule) children in EPSB to go to school again.

## **STATEMENT OF FACTS**

### **The Parties**

#### **The Plaintiffs**

12. The “**Minor Plaintiffs**” include:
  - a. The Plaintiff, Katherine Kerber, is the parent and litigation guardian of A.B. Kerber’s child is 15 years old and has the following disabilities, including epilepsy, narcolepsy, dyslexia and a generalized learning disorder. They attend school in EPSB. They require an EA to attend school and to learn in school. This school year (2024-2025) is the first year A.B. has been able to do a full school day. Since January 13, 2025, A.B. has been on a rotational schedule, without any learning plan or ability to learn. A.B. has been pushed around to different schools and programs, including segregated programs within EPSB due to HMKA’s defunding of services.
  - b. The Plaintiff, Debbie Spears, is the parent and litigation guardian of C.D. Spears’ child is 16 years old who is diagnosed with autism spectrum disorder, mild intellectual disability disorder, Tourette’s syndrome and separation anxiety disorder. They attend school in EPSB. C.D. requires substantial E.A. support to attend school and to learn in school. C.D.’s development, as well as their emotional, psychological and physical well-being has suffered

because of HMKA's systematic defunding of education services for educational supports in EPSB.

- c. The Plaintiff, Martin Doyle, is the parent and litigation guardian of Ryan Doyle. Ryan is an 11-year-old student, in grade 6, with level 3 autism, also known as profound autism. Between January 13, 2025, and January 20, 2025, Ryan was not allowed to go to his Interactions classroom, supported by three EAs for 8 children and one teacher. Since January 20, 2025, Ryan has only been allowed to go to school 2 (two) days a week. Ryan is stressed and restless at home. He cannot attend school when EAs or other support persons are not in the classroom. The sudden change in his learning has had a significant impact on his learning, behaviours and emotions.
- d. The Plaintiff, Melissa Baker, is the litigation guardian to Jocelyn Baker. Jocelyn is a grade 5 student with Trisomy 21, a mental and physical disability. Because of her disability, Jocelyn requires an EA or support worker to attend and learn in school. She has not been able to attend school at all since January 10, 2025. On January 13, 2025, she was moved to "at home learning" due to alleged safety concerns. Jocelyn is unable to learn at home without a support worker and routine. She only receives work sheets and the possibility to connect with the teacher by telephone. Jocelyn's development is regressing because of Ministerial Order allowing her removal from school.

#### The Defendants

13. The Defendant, HMKA, is the constitutional division of power responsible for education in Canada. HMKA is the representative of the Crown in right of Alberta and the proper defendant according to the *Proceedings Against the Crown Act*, RSA 2000, c P-25.
14. The Defendant, through the Ministry of Education, exclusively funds, oversees and operates early childhood, primary and secondary public education in Alberta.
15. The Defendant, Demetrios Nicolaides, is the Minister of Education responsible for:
  - a. the Ministry of Education;
  - b. the *Education Act*, SA 2012, c E-0;
  - c. the impugned acts of misfeasance in public office under the Ministerial Order.

### **Right of Access to Education**

16. Every person in Alberta, of a certain age, including the Minor Plaintiffs have a right of access to education under section 3(1) of the *Education Act*. This right is equally and constitutionally protected by section 15(1) of the *Charter of Rights and Freedoms*.
17. In 2022, the HMKA passed an *In-person learning regulation*, Alta Reg 226/2022, that reinforces section 3(1) of the *Education Act* and, in accordance with section 3, disallowed the reinstatement of mask mandates, for any communicable disease, on the rationale that a protective mask mandate would deny those children, who *chose* not to wear a mask, a right of access to education.
18. This right of access to education does not apply to children with severe disabilities in EPSB based on the Ministerial Order #002/2025 (“**Ministerial Order**”).
19. The Ministerial Order curtails the right of access to education based on a student’s disability. The Ministerial Order exempts the Minor Plaintiffs from the *In-person learning Regulation* and allows the EPSB to deny the right of access to education to disabled children, referred to as. students with “complex needs” in the Ministerial Order.
20. There is no known economic justification to refuse to the Minor Plaintiffs access to education and/or refuse funding to ensure the Minor Plaintiffs and other disabled children have a right of access to education during the strike. Indeed, the government of Alberta boasted a \$4.4 million surplus in the last fiscal year (2023-2024).
21. The Ministerial Order exempts children from their statutory right under the guise of “health and safety”. The Defendant purported to justify this measure by blaming the Minor Plaintiffs, and similarly situated children, for the consequences of the strike and, in essence, the Wage Cap. The Ministerial Order’s stated justification was to reduce any risk of “health and safety” the Minor Plaintiffs allegedly present to themselves, other students or staff. This “health and safety” justification is undefined, subject to individual school official’s discretion and arbitrary on its face.

### **The Minor Plaintiffs**

22. Because of their respective disabilities, the Minor Plaintiffs require a specialized, dedicated and trained person so that they can attend school *and* to learn. This assistance is provided through an EA.
23. The Minor Plaintiffs cannot learn at home. In fact, some or all of the Minor Plaintiffs will regress and have regressed developmentally when removed from a structured, in-person learning environment, as offered to their non-disabled peers.
24. Since 2019, the Minor Plaintiffs have already been adversely impacted to the Defendants' education funding cuts. The education funding and services cuts continue to have a disproportionate impact on children with disabilities, such as the Minor Plaintiffs. These impacts have included the increased use of segregated programs and classrooms for children with disabilities, excluding them from their peers and, in essence, society, on the basis of their mental or physical disability.
25. The Minor Plaintiffs are part of a historically disadvantaged group. In Alberta, disabled persons have been subject to previously reprehensible and currently insidious discriminatory policies and practices, including but not limited to the *Sexual Sterilization Act*, only repealed in 1972.

### **EA Strike**

26. On January 9, 2025, the EAs collective bargaining agent, CUPE 3550 issued a strike notice (“**Notice**”). The Minor Plaintiffs were advised that they could not come to school during the strike. Approximately 1200 other students in EPSB were also asked to stay home during the strike, due to their disabilities. Approximately 2500 students were placed on a modified schedule and/or rotating schedule.
27. The strike commenced on January 13, 2025. Three weeks later, as of January 31, 2025, there is no end in sight, nor any plan to accommodate the Minor Plaintiffs.

### **Wage Cap**

28. The Plaintiffs allege that HMKA has the sole power to end the strike if it lifts the Wage Cap imposed on EPSB in respect of the EAs.
29. The strike and associated bargaining are controlled by the HMKA. HMKA issued a Wage Cap in the form of a directive towards any school board employer, including EPSB (section

1(a.2)(iii) of the *Public Sector Employers Act* (“PSEA”). Section 3(1) of the PSEA allows the Minister to issue a directive:

- a. “before, during and after a collective bargaining or related process”;
  - b. requiring “compensation for employees who are subject to collective agreements”;
  - c. including “fiscal limits the employer must operate within when engaging in collective bargaining”. There are penalties for employers who do not follow the HMKA directives.
30. The HMKA, through this legislation, purports to remove any “cause of action” against HMKA (section 6.4) for indirect or direct results of the Wage Cap.
31. So far as the Plaintiffs know, HMKA has issued a Wage Cap directive to EPSB respecting the 2024-2025 bargaining process with the EAs union. This means that EPSB can only offer the wage the Defendants say it can.
32. Predictably, in this controlled bargaining environment, the EPSB left the bargaining table on January 28, 2025, with no plan to return and no plan to accommodate the Minor Plaintiffs.

### **Impacts on the Plaintiffs**

33. As a result of the Defendants’ actions and inactions, in whole or in part, including but not limited to the Wage Cap and the Ministerial Order, the Minor Plaintiffs and similarly situated children have suffered severe and disproportionate adverse effects including but not limited to:
- a. Harm to their dignity and worth as a human being;
  - b. Harm to their worth as a member of Canadian society, equally deserving of concern, respect and consideration;
  - c. Social exclusion, segregation and ostracization from their peers due to their disability;
  - d. Regression in learning and social skills;
  - e. Emotional trauma and psychological harms;
  - f. Perpetuation of historic and insidious disadvantage and harms.

### **LIABILITY**

#### **Unlawful: *Ultra Vires***

34. The Ministerial Order is unlawful. In denying the right of access under section 3(1) of the *Education Act* is plainly and obviously, *ultra vires*. The Defendant cannot amend legislation and/or take away rights through the *In-person learning regulations* or through a Ministerial Order.

**Unconstitutional: Section 15**

35. The Ministerial Order, the Wage Cap and/or other Defendants' actions and/or inactions breach the Minor Plaintiffs' rights protected under section 15(1) of the *Charter*.
36. The Ministerial Order contains a *prima facie* and explicit distinction based on the Minor Plaintiffs' mental or physical disability.
37. The Ministerial Order, the Wage Cap and/or other Defendants' actions and/or inactions
- a. On their face and/or in their impact, create a distinction based on an enumerated ground (mental or physical disability) under section 15(1) of the *Charter*;
  - b. Deny and/or curtails the Minor Plaintiffs' and other disabled students' right of access to education, protected under section 3(1) of the Education Act, in manner that is discriminatory;
  - c. Create adverse impacts for the Minor Plaintiffs and disabled students as compared to their non-disabled peers;
  - d. Reinforce, perpetuate and exacerbate the Minor Plaintiffs' and other similarly situated disabled students' disadvantage.
38. The Ministerial Order, the Wage Cap and/or the Defendants' actions and inactions contravene articles 1, 23, 28 and 29 *United Nations Convention on the Right of the Child*, Can. T.S. 1992 No. 3 and articles 7 and 24 of the *Convention on the Rights of Persons with Disabilities*, Can. T.S. 2010 No. 8. Canada is a party to these conventions and they inform the application of section 15(1) of the *Charter* in this case.
39. The Ministerial Order, the Wage Cap and/or the other Defendants' actions or inactions:
- a. cannot be saved by section 1 of the *Charter*;
  - b. are not reasonable limits prescribed by law;
  - c. cannot be demonstrably justified in a free and democratic society.



40. To the extent the Wage Cap is protected by section 6.4 of the *PSEA*, the Plaintiffs plead that section 6.4 of the PSA violates section 96 of the *Constitution Act, 1867* in removing access to the superior courts, including to realize the fundamental right of association recognized in section 2(d) of the *Charter*.

**Misfeasance in Public Office**

41. HMKA and/or Minister Nicolaides are liable for misfeasance in public office because they:
- a. are public office holders;
  - b. deliberately and unlawfully limited the Minor Plaintiffs' rights to access education;
  - c. were aware that this conduct was unlawful and likely to harm the plaintiff and/or had a conscious disregard to the consequences of their actions towards the Minor Plaintiffs.
  - d. acted with bad faith or improper purpose, including in acting with the improper purpose of discrimination through Ministerial Order, contrary to the *Education Act* and/or to avoid the economic pressure of the strike and thus the financial cost of accommodating the Minor Plaintiffs.
42. As a result of the Defendants actions, the Minor Plaintiffs have suffered compensable harms as outlined above.

**REMEDY SOUGHT:**

43. The Plaintiffs seek the following in relief:
- a. an Order pursuant to section 24 of the *Charter of Rights and Freedoms*, the common law, or all of the above, declaring that the Ministerial Order, the Wage Cap and/or other Defendants' actions/inactions to be of no force and effect, as they breach section 15(1) of the *Charter of Rights and Freedoms*, and cannot be saved pursuant to section 1;
  - b. an Order pursuant to section 24 of the *Charter of Rights and Freedoms*, the common law, or all of the above, granting the Minor Plaintiffs exemptions to the Ministerial Order and ordering immediate access to education in the same manner as their non-disabled peers;

- c. an Order pursuant to section 24 of the Charter granting the Minor Plaintiffs *Charter* damages in the respective amounts of \$25,000;
- d. a Declaration that the Ministerial Order is *ultra vires* of the *Education Act* and therefore unlawful;
- e. an Interlocutory Order pursuant to section 24 of the *Charter*, the common law, or all of the above:
  - i. suspending the Ministerial Order and/or the Wage Cap until the final resolution of this action; and/or
  - ii. in the alternative, granting the Minor Plaintiffs an exemption to the Ministerial Order until the final resolution of this action;
- f. a Declaration that HMKA and Minister Nicolaides committed misfeasance in public office and an award of general, special and punitive damages in the global amount of \$150,000 for each Minor Plaintiff or such other amount to be determined at trial;
- g. costs, including special costs, full indemnity costs, and advanced costs, and applicable taxes on those costs; and
- h. such further and other relief deemed appropriate by this Honourable Court.

**NOTICE TO THE DEFENDANT**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of King's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.