

COURT FILE NUMBER

COURT

COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFF(S)

ALBERTA UNION OF PROVINCIAL
EMPLOYEES, GUY SMITH, SUSAN
SLADE, AND KAREN WEIERS

DEFENDANT(S)

HER MAJESTY THE QUEEN IN RIGHT
OF ALBERTA

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

NUGENT Law Office
10020 – 82 Ave
Edmonton AB T6E-1Z3
Tel: 780 439 3232
Fax: 780 439 3032

Patrick Nugent
pat@nugentlawoffice.ca

Clerk's Stamp

NOTICE TO DEFENDANT(S)

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.

A. The parties

1. The Plaintiff, Alberta Union of Provincial Employees ("AUPE"), is a trade union representing employees in the province of Alberta.
2. The Plaintiff, Guy Smith, is an individual resident of Edmonton, Alberta, and is the President of AUPE. He is a Child and Youth Care Worker, employed by the Government of Alberta

(the “Government”) in Children’s Services, and as such is a member of the AUPE Crown bargaining unit.

3. The Plaintiff, Susan Slade, is an individual resident of Calgary, Alberta, and is a Vice President of AUPE. She is a Licensed Practical Nurse employed by Alberta Health Services and as such is a member of AUPE in the Alberta Health Services’ Auxiliary Nursing Care bargaining unit.

4. The Plaintiff, Karen Weiers, is an individual resident of Airdrie, Alberta and is a Vice President of AUPE. She is a Unit Clerk employed by Alberta Health Services at the Peter Lougheed Hospital in Calgary, Alberta, and as such is a member of AUPE in the Alberta Health Services’ General Support Service bargaining unit.

5. AUPE brings this claim on its own behalf and on behalf of all its members. All aspects of the claim set out below are raised in respect to AUPE and all its members, including Guy Smith, Susan Slade, and Karen Weiers.

6. The Defendant is Her Majesty the Queen in Right of Alberta (referred to herein as the “Crown in Right of Alberta” or the “Crown”).

B. Necessary Facts

Brief Summary

7. The Government of Alberta recently passed Bill 1, the *Critical Infrastructure Defence Act*. Bill 1 imposes stiff fines and imprisonment as penalties for willfully entering, damaging, obstructing, or interfering with “essential infrastructure” “without lawful right, justification or excuse”. “Essential infrastructure” is defined incredibly broadly and can include sidewalks, boulevards and ditches. Moreover, Cabinet, without any notice or democratic oversight, can add to or change what is considered “essential infrastructure” under the *Critical Infrastructure Defence Act* at any time. Bill 1 will have a chilling effect on legitimate and peaceful protests, demonstrations, strikes and leafleting, activities essential to a healthy democracy.

8. AUPE asserts that by interfering in legitimate protests, demonstrations, strikes and leafleting, Bill 1 breaches freedom of expression, freedom of assembly and freedom of

association, all fundamental *Charter* rights. Bill 1's vague and overbroad language, as well as Bill 1's grossly disproportionate and arbitrary prohibitions, breach section 7 of the *Charter* by depriving individuals of liberty in a way not consistent with the principles of fundamental justice. In these and other ways, Bill 1 significantly interferes with the rights and freedoms of Albertans. Finally, Bill 1 also unlawfully intrudes on federal jurisdiction, impermissibly breaching the division of powers under the Canadian Constitution.

Further Facts

9. AUPE represents more than 95,000 employees under approximately 140 collective agreements in the province of Alberta.

10. AUPE is the exclusive bargaining agent for bargaining unit employees of the Crown in Right of Alberta to whom the *Public Service Employee Relations Act*, RSA 2000 c P-43 ("PSERA") applies, and is certified as such by the Alberta Labour Relations Board (the "Board") Certificate No E-1. There are approximately 24,000 AUPE members in the Crown bargaining unit.

11. AUPE also represents approximately 13,000 other employees under PSERA. These employees are employed by various public employers, such as non-academic staff at various post-secondary educational institutions.

12. The remaining members of AUPE work for employers who are covered by the Alberta *Labour Relations Code*, RSA 2000, c L-1 (the "Code"). This group includes members who work for employers operating public hospitals and Alberta Health Services.

13. Notably, AUPE is the exclusive bargaining agent for bargaining unit employees of Alberta Health Services in the Auxiliary Nursing Care Bargaining Unit ("AHS(ANC)"), pursuant to Alberta Labour Relations Board certificate 98-2017. There are approximately 16,100 AUPE members in the AHS(ANC Unit).

14. AUPE is also the exclusive bargaining agent for bargaining unit employees of Alberta Health Services in the General Support Services Bargaining Unit ("AHS(GSS)"), pursuant to Alberta

Labour Relations Board certificate 140-2017. There are approximately 25,600 AUPE members in the AHS(GSS Unit).

15. AUPE represents members of its various bargaining units in relation to bargaining collective agreements, the administration of collective agreements (including prosecuting grievances), matters of professional discipline, and in relation to various other matters concerning the workplace and public policy.

16. On February 25, 2020 the Government introduced Bill 1, "*Critical Infrastructure Defence Act*" (referred to herein as "Bill 1"). Bill 1 received royal assent on June 17, 2020.

17. Bill 1 prohibits individuals "without lawful right, justification or excuse" from willfully entering, damaging, obstructing, or interfering with "essential infrastructure" (s 2(1)-(3)). "Essential infrastructure" is broadly defined in Bill 1. The definition includes "highways" as defined under the *Traffic Safety Act*, RSA 2000, c T-6 (the "*Traffic Safety Act*"). The *Traffic Safety Act* defines highways as including any "thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge... whether publicly or privately owned" as well as "sidewalks and boulevards [and]... ditches" and the area between a fence and a road (*Traffic Safety Act* at s 1(1)(p)). Further, the Lieutenant Governor in Council may make regulations prescribing buildings, structures, devices, or other things as being "essential infrastructure" (s 5). Bill 1 at s 2(4) also prohibits aiding, counselling, or directing others to commit an offence under subsections 2(1)-(3).

18. Bill 1 imposes stiff penalties for contraventions. For a first offence, individuals face fines of between \$1,000-\$10,000 and/or a term of imprisonment not exceeding 6 months. For any subsequent offence involving the same premises, individuals can be fined between \$1,000-\$25,000 and/or a term of imprisonment not exceeding 6 months. Where a corporation is guilty of an offence, the fine increases from between \$10,000-\$200,000. Further, individual officers, directors, or agents of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence are then liable for that penalty, regardless of whether the corporation has been prosecuted or convicted of that offence.

19. Bill 1 also empowers police officers to arrest offenders without a warrant (s 4).

20. On or around March 31st, 2020 the collective bargaining agreements of several large bargaining units represented by AUPE expired. These bargaining units include, but are not limited to:

- i. The Government Services Bargaining Sector,
- ii. The Alberta Health Services bargaining units AHS(ANC) and AHS(GSS),

These collective bargaining agreements are now open to be re-negotiated. An inability, or perceived inability, to engage in leafletting or lawful picketing will substantially hinder AUPE's ability to meaningfully engage in the collective bargaining process.

C. Legal Basis for Claim

Freedom of Expression

21. Section 2(b) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") guarantees freedom of expression. Freedom of expression is premised upon fundamental values that promote the search for and attainment of truth, participation in social and political decision-making, and the opportunity for individual self-fulfilment through expression.

22. Legislation breaches s 2(b) of the *Charter* when it bars an individual from engaging in an expressive activity. Section 2(b) can be breached even where the restriction on expression is simply an effect of the legislation; the legislation does not need to be motivated by a purpose to restrict meaningful expression. Further, where legislation only restricts expressive activity at given public locations, s 2(b) will still be breached if an individual would expect constitutional protection for free expression at that location, so long as the expression in that location does not conflict with the fundamental values that s 2(b) is meant to serve.

23. Bill 1 infringes s 2(b) of the *Charter* by:

- i. Prohibiting public demonstrations, including leafletting and lawful picketing, on all "essential infrastructure." Leafletting and lawful picketing are both forms of expression

protected by s 2(b) and both activities promote the values underlying the freedom of expression.

- ii. Prohibiting counselling or directing others to engage in public demonstrations, on all “essential infrastructure.” Leafleting and lawful picketing are both forms of expression protected by s 2(b) and both activities promote the values underlying the freedom of expression.
- iii. Otherwise prohibiting forms of expression protected by s 2(b) in public places where one would expect constitutional protection for free expression at those locations, as prohibited expressions in those locations do not conflict with the fundamental values that s 2(b) is meant to serve.
- iv. Such other ways as counsel for AUPE may advise.

24. The infringements of section 2(b) of the *Charter* identified above are claimed in relation to AUPE and all its members in the affected units, including Guy Smith, Susan Slade, and Karen Weiers.

Freedom of Assembly

25. Section 2(c) of the *Charter* guarantees the right of individuals to peacefully assemble. Section 2 (c) includes the right to participate in peaceful demonstrations.

26. Bill 1 infringes s 2 (c) of the *Charter* by:

- i. Prohibiting peaceful public demonstrations and other assemblies on all “essential infrastructure”, and
- ii. Such other ways as counsel for AUPE may advise.

27. The infringements of s 2(c) of the *Charter* identified above are claimed in relation to AUPE and all its members in the affected units, including Guy Smith, Susan Slade, and Karen Weiers.

Freedom of Association

28. Section 2(d) of the *Charter* guarantees the right of employees to act in common to reach shared goals related to workplace issues and terms of employment. This includes the right to organize, to engage in meaningful processes of good faith collective bargaining in an attempt to achieve workplace-related goals, and to seek to negotiate important terms and conditions of employment into a collective agreement.

29. Section 2(d) of the *Charter* is breached where the purpose or effect of legislation or government conduct is to substantially interfere with the ability of employees or their bargaining agent to engage with their employer in a process of meaningful and good faith collective bargaining or the freely negotiated terms of collective agreements arrived at through a process of good faith bargaining.

30. Bill 1 violates s 2 (d) of the *Charter* by:

- i. Prohibiting leafleting and lawful picketing on all “essential infrastructure,”
- ii. Prohibiting aiding, counselling, or directing others to engage in leafleting and lawful picketing on all “essential infrastructure,”
- iii. Creating an environment where unions are unable to put forward their collective bargaining positions to the public,
- iv. Creating an environment where unions are unable to exert pressure on employers during collective bargaining,
- v. Undermining the ability of AUPE to perform its functions as a bargaining agent,
- vi. Prohibiting associational activities on all “essential infrastructure”, and
- vii. Such other ways as counsel for AUPE may advise.

31. The infringements of s 2(d) of the *Charter* identified above are claimed in relation to AUPE and all its members in the affected units, including Guy Smith, Susan Slade, and Karen Weiers.

Right to Life, Liberty, and Security of Person

32. Section 7 of the *Charter* guarantees everyone “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.”

33. Bill 1 deprives individuals of their liberty by:

- i. Imposing jail time for committing an offence under Bill 1,
- ii. Restricting the ability of individuals to move freely, and
- iii. Such other ways as counsel for AUPE may advise.

34. These deprivations of liberty are not in accordance with the principles of fundamental justice as the deprivations violate:

- i. The principle against vagueness,
- ii. The principle against overbreadth,
- iii. The principle against gross disproportionality,
- iv. The principle against arbitrary laws, and
- v. Such other principles as counsel for AUPE may advise.

35. The infringements of section 7 of the *Charter* identified above are claimed in relation to AUPE and all its members in the affected units, including Guy Smith, Susan Slade, and Karen Weiers.

The violations of sections 2(b), (c), and (d) and section 7 are not justified under section 1

36. The infringements of s 2(b), (c), and (d) and s 7 of the *Charter*, identified above, do not constitute a reasonable limit demonstrably justified in a free and democratic society. The infringements do not advance a sufficiently important government objective and/or they are

disproportionate with the legislation's objectives and therefore are not justified under section 1 of the *Charter*.

Alberta Bill of Rights

37. The infringements set out above in relation to sections 2 and 7 of the *Charter* also constitute, for the same reasons, breaches of s 1(a), (d), (e) of the *Alberta Bill of Rights*, RSA 2000, c A-14.

International Labour Organization Standards

38. International law requires governments to promote, through legislation and policy, freedom of association with respect to workers and unions.

39. By infringing upon the rights of workers to leaflet and lawfully picket, Bill 1 violates international law including the Vienna Law of Treaties, Vienna Convention, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171, arts. 9-14, Can. T.S. 1976 No. 47, 6 I.L.M. 368, International Covenant on Economic, Social and Cultural Rights, International Labour Organization Freedom of Association and Protection of the Right to Organize, 1948 (No. 87), International Labour Organization Declaration on Fundamental Principles and Rights at Work (1998), International Labour Organization Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

Federal Jurisdiction

40. Sections 91 and 92 of the *Constitution Act*, 1867 (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5 outline the heads of power of the Federal and Provincial Governments, respectively. Provincial Governments cannot legislate over matters which, in pith and substance, are properly within the jurisdiction of the Federal Government. Legislation that does so is *ultra vires* and must be struck down.

41. Bill 1, in pith and substance, relates to matters under Federal heads of power, including, but not limited to:

- i. Criminal law (s 91(27) of the *Constitution Act, 1867*), and
- ii. Inter-provincial pipelines (s 92(10)(a) of the *Constitution Act, 1867*).

D. Remedy Sought

42. The Plaintiffs seek:

- i. A declaration that Bill 1, or portions thereof, infringes s 2(b) of the *Charter* and is not saved under s 1;
- ii. A declaration that Bill 1, or portions thereof, infringes s 2(c) of the *Charter* and is not saved under s 1;
- iii. A declaration that Bill 1, or portions thereof, infringes s 2(d) of the *Charter* and is not saved under s 1;
- iv. A declaration that Bill 1, or portions thereof, infringes s 7 of the *Charter* and is not saved under s 1;
- v. A declaration that Bill 1, or portions thereof, is of no force or effect;
- vi. A declaration that Bill 1, or portions thereof, infringes s 1(a),(d)-(e) of the *Alberta Bill of Rights, RSA 2000, c A-14*;
- vii. A declaration, pursuant to s 2 of the *Alberta Bill of Rights, RSA 2000, c A-14*, that Bill 1, or portions thereof, is of no force or effect;
- viii. A declaration, pursuant to s 91 and 92 of the *Constitution Act, 1867 (UK), 30 & 31 Vict, c 3*, reprinted in RSC 1985, Appendix II, No 5 that Bill 1 is *ultra vires* and is of no force or effect;
- ix. An interlocutory and/or permanent injunction declaring that Bill 1, or portions thereof, is inoperative;
- x. Damages pursuant to s 24(1) of the *Charter*;
- xi. Pre-judgment interest pursuant to the Judgment Interest Act, RSA 2000 C J-1;

- xii. Costs of this Action on a full indemnity basis; and
- xiii. Such other relief, under s 52 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11* or otherwise, as the Plaintiffs may request and this Honourable Court may deem just.

NOTICE TO THE DEFENDANT(S)

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 Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(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 law suit 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(s) against you.