

COURT FILE NUMBER QBG-SA-00766-2022

COURT OF KING'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE SASKATOON

PLAINTIFFS CAITLIN ERICKSON and COY NOLIN

DEFENDANTS KEITH JOHNSON, JOHN OLUBOBOKUN, KEN SCHULTZ, NATHAN RYSAVY, DUFF FRIESEN, LYNETTE ~~WHEELER~~ WEILER, JOEL HALL, FRAN THEVENOT, LOU BRUNELLE, JAMES RANDALL, TRACEY JOHNSON, SIMBO OLUBOBOKUN, ELAINE SCHULTZ, CATHERINE RANDALL, KEVIN MACMILLAN, ANNE MACMILLAN, DAWN BEAUDRY, NATHAN SCHULTZ, AARON BENNEWEIS, DEIDRE BENNEWEIS, STEPHANIE CASE, DARCY SCHUSTER, RANDY DONAUER, JOHN THURINGER, MILE TWO CHURCH INC., THE GOVERNMENT OF SASKATCHEWAN, JOHN DOES and JANE DOES

**Brought under *The Class Actions Act*, SS 2001 c C-12.01**

### **REPLY TO REQUEST FOR PARTICULARS**

The Plaintiffs, Caitlin Erickson and Coy Nolin, hereby reply as follows to the Defendant's, Government of Saskatchewan's, Request for Particulars, dated February 28, 2023:

1. With respect to paragraphs 44.1 to 44.16 of the Claim, please state the following:
  - a. The provisions of *The Education Act, 1995*, SS 1995, c E-0.2, if any, that the Plaintiffs say required the Ministry of Education [Ministry] to inspect or supervise the School;
  - b. The provisions of *The Education Regulations, 2019*, c E-0.2 Reg 29, if any, that the Plaintiffs say required the Ministry to inspect or supervise the School;
  - c. The provisions of *The Registered Independent School Regulations*, c E-0.2 Reg 27, if any, that the Plaintiffs say required the Ministry to inspect or supervise the School; and
  - d. The provisions of any other enactment, including any predecessor enactment, that

the Plaintiffs say required the Ministry to inspect or supervise the School.

**Reply:**

**The Plaintiffs reply as follows:**

- a. **Without limiting the generality of the Amended Statement of Claim, the Plaintiffs specifically plead and rely on s. 3, 4, 156, & 358 of *The Education Act, 1995*, and any similar predecessor sections in similar enactments regarding the duty of the Government of Saskatchewan to inspect and supervise the School.**
  - b. **Without limiting the generality of the Amended Statement of Claim, the Plaintiffs do not specifically plead and rely on any sections of *The Education Regulations, 2019*, regarding the duty of the Government of Saskatchewan to inspect and supervise the School.**
  - c. **Without limiting the generality of the Amended Statement of Claim, the Plaintiffs specifically plead and rely on s. 3, 5, 10, 11, 14, 15, 16, 17, 21, 22, 23, 24, 24.1, 26, 30, 31, 35, & 37 of *The Registered Independent Schools Regulations*, and any similar predecessor sections in similar enactments regarding the duty of the Government of Saskatchewan to inspect and supervise the School.**
  - d. **Without limiting the generality of the Amended Statement of Claim, the Plaintiffs specifically plead and rely on the following sections, and any similar predecessor sections in similar enactments regarding the duty of the Government of Saskatchewan to inspect and supervise the School:**
    - a. **Sections 7, 8, 9, 10 143, 151, 155, 361 of *The Education Act, 1978*;**
    - b. **Section 29 of *The Education Regulations, 1986*.**
2. With respect to paragraphs 44.21 to 44.24 of the Claim, please state the provisions of any enactment the Plaintiffs rely upon to ground the alleged fiduciary duty owed to them and the Plaintiff Classes by the Ministry.

**Reply:**

**The Plaintiffs reply as follows:**

**The Plaintiffs plead and rely on the entirety of *The Education Act, 1978* (as amended from time to time), *The Education Act, 1995* (as amended from time to time), *The Education Regulations, 1986* (as amended from time to time), and *The Registered Independent Schools Regulations* (as amended from time to time).**

**Without limiting the generality of the foregoing, the Plaintiffs specifically plead and rely on the following sections, and any similar predecessor sections in similar enactments:**

- 1. Sections 3, 4, 141, 152, & 156 of *The Education Act, 1995*;**
  - 2. Sections 7, 9, 143, 151, & 155 of *The Education Act, 1978*;**
  - 3. Sections 3, 5, 10, 11, 14, 15, 16, 17, 21, 22, 23, 26, 30, 31, & 37 of *The Registered Independent Schools Regulations*;**
  - 4. Section 29 of *The Education Regulations, 1986*.**
3. With respect to paragraphs 44.23 and 44.25 of the Claim, please state how the Plaintiffs and Plaintiff Classes were in a relationship of financial, emotional, physical and/or other dependency with the Ministry, and in a relationship "akin to that of a guardian-ward and/or parent and child".

**Reply:**

**The Plaintiffs reply as follows:**

**The Statement of Claim speaks for itself and outlines the particulars requested herein.**

**In addition:**

- 1. The particulars requested herein are matters of evidence not pleading and are discoverable through a Questioning in this matter (see: *Prince Albert Co-Operative Assn. Ltd. v. Lyons*, [1984] S.J. No. 110).**

2. **The particulars demanded are not reasonably required by the Government of Saskatchewan in order to plead intelligently** (see: *Saskatchewan Provincial Court Judges Assn. v. Saskatchewan (Minister of Justice)*, [1994] 9 W.W.R. 293).
3. **The Statement of Claim affords the Government of Saskatchewan sufficient information to enable it to understand “at least in broad strokes what the plaintiff’s case is about”, as is required in a pre-certification application for further particulars** (see: *Wasserman v Saskatchewan (Minister of Highways and Infrastructure)*, 2022 SKQB 17, [2022] SJ No 34).
4. With respect to paragraphs 31.h., 44.17, and 44.20 of the Claim, please identify which individuals are alleged to have committed the tort of misfeasance in public office, including when and how the misfeasance was committed.

**Reply:**

**The Plaintiffs reply as follows:**

**The Statement of Claim speaks for itself and outlines the particulars requested herein. It is alleged that the Government of Saskatchewan committed the tort of misfeasance in public office. No claim has been advanced against any individual for misfeasance in public office.**

**The names of every individual responsible for the misfeasance in public office by the Government of Saskatchewan are not currently known to the Plaintiffs due, in part, to the failure of the Government of Saskatchewan to discharge its statutory obligations pursuant to *The Freedom of Information and Protection of Privacy Act*. Having said that, the individuals responsible for the misfeasance in public office by the Government of Saskatchewan include Ministers, Deputy Ministers, employees, staff members, agents and/or representatives of the Ministry of Education for Saskatchewan since 1982 until present.**

**In addition:**

- 1. The particulars requested herein are matters of evidence not pleading and are discoverable through a Questioning in this matter** (see: *Prince Albert Co-Operative Assn. Ltd. v. Lyons*, [1984] S.J. No. 110).
- 2. The Government of Saskatchewan has better knowledge of the particulars demanded by it** (see: *Prince Albert Co-Operative Assn. Ltd. v. Lyons*, [1984] S.J. No. 110 and *Canadian Imperial Bank of Commerce v. Todd*, [1987] S.J. No. 703).
- 3. The particulars demanded are not reasonably required by the Government of Saskatchewan in order to plead intelligently** (see: *Saskatchewan Provincial Court Judges Assn. v. Saskatchewan (Minister of Justice)*, [1994] 9 W.W.R. 293).
- 4. The Statement of Claim affords the Government of Saskatchewan sufficient information to enable it to understand “at least in broad strokes what the plaintiff’s case is about”, as is required in a pre-certification application for further particulars** (see: *Wasserman v Saskatchewan (Minister of Highways and Infrastructure)*, 2022 SKQB 17, [2022] SJ No 34).
5. With respect to paragraphs 58 and 59 of the Claim, please advise if the torts of intentional infliction of mental harm or trespass to the person are alleged against the Ministry, and if so, please provide particulars of same.

**Reply:**

**The Plaintiffs reply as follows:**

**The Statement of Claim speaks for itself. It is alleged that the Government of Saskatchewan intentionally inflicted mental harm and committed trespass to the person to the Plaintiffs and Plaintiff Classes.**

**Particulars of the intentional infliction of mental harm include, but are not limited to, the allegations contained in paragraphs 44.12-44.25 of the Amended Statement of Claim.**

**Particulars of the trespass to the person include, but are not limited to, the allegations contained in paragraphs 44.12-44.25 of the Amended Statement of Claim.**

**In addition:**

- 1. The particulars requested herein are matters of evidence not pleading and are discoverable through a Questioning in this matter** (see: *Prince Albert Co-Operative Assn. Ltd. v. Lyons*, [1984] S.J. No. 110).
  - 2. The Government of Saskatchewan has better knowledge of the particulars demanded by it** (see: *Prince Albert Co-Operative Assn. Ltd. v. Lyons*, [1984] S.J. No. 110 and *Canadian Imperial Bank of Commerce v. Todd*, [1987] S.J. No. 703).
  - 3. The particulars demanded are not reasonably required by the Government of Saskatchewan in order to plead intelligently** (see: *Saskatchewan Provincial Court Judges Assn. v. Saskatchewan (Minister of Justice)*, [1994] 9 W.W.R. 293).
  - 4. The Statement of Claim affords the Government of Saskatchewan sufficient information to enable it to understand “at least in broad strokes what the plaintiff’s case is about”, as is required in a pre-certification application for further particulars** (see: *Wasserman v Saskatchewan (Minister of Highways and Infrastructure)*, 2022 SKQB 17, [2022] SJ No 34).
6. With respect to paragraphs 60-62 of the Claim, please particularize the conspiracy the Ministry is alleged to have been involved in, including:
- a. Who is alleged to have been involved from the Ministry?
  - b. Who else is alleged to have been involved?
  - c. What was done in furtherance of the alleged conspiracy, by whom and when?

**Reply:**

**The Plaintiffs reply as follows:**

- a. **The names of every individual that participated in the alleged conspiracy by the Government of Saskatchewan are not currently known to the Plaintiffs due, in part, to the failure of the Government of Saskatchewan to discharge its statutory obligations pursuant to *The Freedom of Information and Protection of Privacy Act*. Having said that, the individuals that participated in the alleged conspiracy by the Government of Saskatchewan include Ministers, Deputy Ministers, employees, staff members, agents and/or representatives of the Ministry of Education for Saskatchewan since 1982 until present.**
- b. **Paragraph 60 of the Statement of Claim speaks for itself. The Defendants are alleged to have participated in the conspiracy.**
- c. **The Statement of Claim speaks for itself and outlines the particulars requested herein.**

**In addition:**

1. **The particulars requested herein are matters of evidence not pleading and are discoverable through a Questioning in this matter (see: *Prince Albert Co-Operative Assn. Ltd. v. Lyons*, [1984] S.J. No. 110).**
2. **The Government of Saskatchewan has better knowledge of the particulars demanded by it (see: *Prince Albert Co-Operative Assn. Ltd. v. Lyons*, [1984] S.J. No. 110 and *Canadian Imperial Bank of Commerce v. Todd*, [1987] S.J. No. 703).**
3. **The particulars demanded are not reasonably required by the Government of Saskatchewan in order to plead intelligently (see: *Saskatchewan Provincial Court Judges Assn. v. Saskatchewan (Minister of Justice)*, [1994] 9 W.W.R. 293).**
4. **The Statement of Claim affords the Government of Saskatchewan sufficient information to enable it to understand “at least in broad strokes what the plaintiff’s case is about”, as is required in a pre-certification application for**

**further particulars** (see: *Wasserman v Saskatchewan (Minister of Highways and Infrastructure)*, 2022 SKQB 17, [2022] SJ No 34).

7. With respect to paragraph 67 of the Claim, please advise which allegations are directed toward the Ministry.

**Reply:**

**The Plaintiffs reply as follows:**

**The Statement of Claim speaks for itself. All allegations contained in paragraph 67 of the Statement of Claim are directed toward the Government of Saskatchewan, as well Mile Two Church Inc., the Individually Named Defendants, the Principal Defendants, and the Unidentified Corporate Officers.**

8. With respect to paragraph 68 of the Claim, please advise which allegations, if any, are directed toward the Ministry.

**Reply:**

**The Plaintiffs reply as follows:**

**The Statement of Claim speaks for itself. All allegations, except those contained at paragraphs 68(g) & (h), contained in paragraph 68 of the Statement of Claim are directed toward the Government of Saskatchewan, as well Mile Two Church Inc., the Individually Named Defendants, the Principal Defendants, and the Unidentified Corporate Officers.**

9. With respect to the remedies requested at paragraph 31.a. of the Claim, please advise which of the listed causes of action are alleged against Saskatchewan, and on behalf of whom.

**Reply:**

**The Plaintiffs reply as follows:**



**It is not alleged that the Government of Saskatchewan committed the tort of battery. However, all other allegations are alleged against the Government of Saskatchewan both directly and as a part of the alleged conspiracy.**

10. Please state the provisions of The Limitations Act, SS 2004, c L-16.1, if any, that the Plaintiffs rely upon with respect to their claims against Saskatchewan, and the facts grounding their reliance on same.

**Reply:**

**The Plaintiffs reply as follows:**

**Neither *The Limitations Act*, SS 2004, c L-16.1, nor any other act purporting to impose any form of limitation period has been plead in this matter by any defendant, including the Government of Saskatchewan. As such, the issue of a limitation period, under *The Limitations Act*, SS 2004, c L-16.1, or any other statute, is not alive in this action and the Plaintiffs do not currently plead or rely on any provisions of the said Act.**

11. To the extent not referenced in the Claim or in response to any of the above requests, please state the enactments and provisions, where possible, that the Plaintiffs and Plaintiff Classes rely upon with respect to their claims against Saskatchewan.

**Reply:**

**The Plaintiffs reply as follows:**

**The Statement of Claim speaks for itself. In addition, see the references herein to enactments and provisions which the Plaintiffs rely upon.**

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 2<sup>nd</sup> day of June, 2023.

**SCHARFSTEIN LLP**

Per: 

Solicitors for the Plaintiffs,  
Caitlin Erickson and Coy Nolin

## **CONTACT INFORMATION AND ADDRESS FOR SERVICE**

Name of Firm: Scharfstein LLP  
Name of lawyer in charge of file: Grant J. Scharfstein, K.C. / Samuel W. Edmondson  
Address of Legal Firm: 200 Princeton Tower  
123 – 2<sup>nd</sup> Avenue South  
Saskatoon SK S7K 7E6  
Telephone Number: (306) 653-2838  
Fax Number: (306) 652-4747  
Email address: gscharfstein@scharfsteinlaw.com / sedmondson@scharfsteinlaw.com  
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