

COURT FILE NUMBER

1903 13387

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFFS

HEALTH SCIENCES ASSOCIATION OF ALBERTA, MICHAEL PARKER and JASON SOKLOFSKE

DEFENDANTS

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, as represented by THE PRESIDENT OF TREASURY BOARD AND MINISTER OF FINANCE

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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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.

STATEMENT OF FACTS RELIED ON:

a) The Parties

1. The Plaintiff Health Sciences Association of Alberta ("HSAA") is the certified bargaining agent for paramedical technical and professional employees (the "Bargaining Unit employees") who are employed by Alberta Health Services ("AHS"), the Bethany Nursing Home of Camrose, and the Lamont Health Centre (the "Employers") and to whom Division 16 of Part 2 of the *Labour Relations Code* (the "Code") applies. HSAA brings this application on behalf of itself as a certified bargaining agent, and on behalf of the Bargaining Unit employees.

2. HSAA is also the certified bargaining agent for numerous other paramedical technical and professional healthcare employees across Alberta who are employed by employers who are funded directly or indirectly by AHS.
3. The Plaintiff Michael Parker ("Parker") is an HSAA member and a long serving EMS employee, and he is the President of HSAA.
4. The Plaintiff Jason Soklofske is an Advanced Care Paramedic (EMS) employed by AHS and is a Bargaining Unit employee, and he is a member of HSAA.
5. The Defendant Her Majesty the Queen in Right of Alberta, as represented by the President of Treasury Board and Minister of Finance, is responsible for enacting the *Public Sector Wage Arbitration Deferral Act* ("Bill 9").

b) HSAA / AHS Collective Agreement (April 1, 2017 – March 31, 2020)

6. HSAA represents a diverse group of healthcare employees who are employed by the Employers in over 55 primary classifications including psychologists, physiotherapists, and paramedics to Magnetic Resonance Imaging Technologists and Combined Laboratory and X-Ray Technologists, among many others.
7. The terms and conditions of employment for HSAA Bargaining Unit employees are set out in the collective agreement that HSAA negotiates with the Employers on behalf of Bargaining Unit employees.
8. The current collective agreement is in effect from April 1, 2017 until March 31, 2020 and it governs a variety of workplace terms and conditions including wage scales. The collective agreement contains a "wage re-opener provision" in respect of Year 3 of the wage scales, being the period from April 1, 2019 to March 31, 2020, that provides as follows:

Year 3 – The Parties agree that the only item open for negotiations shall be wages in the Salary Appendices of the Collective Agreement and does not include pay grade adjustments for any specific classifications. This re-opener shall not be construed in any way as "opening the agreement" for negotiations on any other issues by either side. These negotiations may begin no sooner than February 15, 2019.

If the Parties have not been able to agree upon the wage adjustment, at any time after September 30, 2019, either Party may give written notice to the other Party of its desire to

submit resolution of the wage adjustment to interest arbitration before a three-member panel comprised of a nominee of both parties and a mutually acceptable chair.

If the Parties are unable to agree upon the Chair, the Director of Mediation Services shall appoint one.

The arbitration hearing shall be held no later than November 30, 2019. In reaching its decision, the arbitration panel shall consider the matters identified in section 101 of the Alberta Labour Relations Code.

Any wage adjustment under this wage re-opener shall be retroactive to April 1, 2019.

9. The wage re-opener provision was negotiated in good faith by HSAA and the Employers in 2017/2018 and then ratified by Bargaining Unit employees in March 2018. The wage re-opener provision was a specific trade-off for Bargaining Unit employees to accept zero (0) percent wage increases for the first two (2) years of the collective agreement. But for the wage re-opener provision, the Bargaining Unit employees would not have ratified the current collective agreement with the Employers.
10. The Bargaining Unit employees have a constitutional right as part of the collective bargaining process to withdraw their labour and strike pursuant to section 2(d) of the *Canadian Charter of Rights and Freedoms* (the "Charter"). As the Supreme Court of Canada has confirmed, a meaningful process of collective bargaining requires the ability of employees to participate in the collective withdrawal of services for the purpose of pursuing the terms and conditions of their employment through a collective agreement. Where good faith negotiations break down, the ability to engage in the collective withdrawal of services is a necessary way through which workers can continue to participate in the pursuit of their collective workplace goals.
11. However, many of the Bargaining Unit employees, such as EMS employees, are statutorily prohibited from striking under section 96(2) of the Code. Instead, the Code requires many of the Bargaining Unit employees to address and resolve collective bargaining disputes through a "disputes resolution tribunal" process governed by Part 2 of the Code.
12. Part 2 of the Code and the disputes resolution tribunal processes it contemplates are the statutory mechanisms needed to ensure that the loss in bargaining power through legislative prohibition of strikes is balanced by access to a system which is capable of resolving in a fair, effective and expeditious manner disputes which arise between HSAA and the Bargaining Unit employees on the one hand, and the Employers on the other.

13. The wage re-opener provision in the current collective agreement is a disputes resolution tribunal process under Part 2 of the Code, and was specifically agreed to by the parties to resolve disputes over Year 3 wage scales without the risk of Bargaining Unit employees withdrawing their services as part of the collective bargaining process.
14. HSAA and those Bargaining Unit employees without an ability to lawfully strike must have access to a fair, effective and expeditious alternative mechanism for resolving bargaining impasses, such as the interest arbitration process set out in the wage re-opener provision, or they are left without any meaningful way to exercise their section 2(d) Charter rights in light of section 96(2) of the Code.

c) Wage re-opener bargaining / Bill 9 – section 2(d) Charter violation

15. On February 21, 2019, HSAA and the Employers began negotiations under the wage re-opener provision. No agreement was reached, and the parties remained significantly apart in terms of any wage increases. HSAA did not expect that further negotiations would be successful in bridging the gap between the parties, and HSAA understood the Employers were of the same view. Therefore, HSAA intended to engage the interest arbitration process during the period of October 1 and November 30, 2019 as set out in the wage re-opener provision. The expected interest arbitration timeframe would ensure that Bargaining Unit employees would have a binding decision on their Year 3 wage scales on a relatively expeditious basis, and during which time period the Bargaining Unit employees were still statutorily prohibited from exercising their constitutional right to strike.
16. HSAA understood and expected that interest arbitration hearings involving the Alberta Union of Provincial Employees ("AUPE") and various public employers including AHS, and the United Nurses of Alberta ("UNA") and AHS, would be heard by June 30, 2019 and the arbitration decisions issued by the time HSAA and the Employers began their own interest arbitration. The outcomes of the AUPE / AHS and UNA / AHS interest arbitrations were expected to form some of the relevant comparators for wage scales in healthcare bargaining. Therefore, the AUPE / AHS and UNA / AHS interest arbitration decision would be relevant to the HSAA / AHS interest arbitration.
17. Further, the HSAA / AHS interest arbitration under the wage re-opener provision would influence HSAA collective bargaining with other employers across Alberta who are funded directly or indirectly by AHS.

18. However, on June 13, 2019 the Defendants introduced Bill 9, which then passed Third Reading on June 19, 2019. Bill 9 prohibited, among other things, the commencement, continuation or completion of any interest arbitration decision under the HSAA / AHS collective agreement wage re-opener provision until March 15, 2020. Bill 9 does not prohibit the Defendants from further delays or outright cancellation of the interest arbitration provision, and gives the Lieutenant Governor in Council wide latitude to expand the scope of the regulation to other employees employed in other HSAA bargaining units across Alberta.
19. Bill 9 was passed without any meaningful consultation with HSAA or any other union, it completely violates the wage re-opener provisions and negotiated timelines, and it has substantially interfered with the collective bargaining process between HSAA and the Employers. The Defendants have substantially and unjustifiably re-written the wage re-opener agreement, and have violated the carefully structured negotiations and bargain that HSAA, the Employers, and the Bargaining Unit employees had specifically agreed to when the collective agreement was ratified in March 2018.
20. The Bargaining Unit employees are now left without a right to strike but also without a fair, effective and expeditious alternative mechanism for resolving their collective bargaining dispute over the Year 3 wages. As a result Bill 9 is not minimally impairing and it violates section 2(d) of the Charter in respect of the Plaintiffs.
21. The Defendants have violated section the 2(d) Charter rights of the Plaintiffs by enacting Bill 9 as it:
 - a. violates and overrides a key collectively bargained provision that was critical to having the collective agreement ratified by Bargaining Unit employees in March 2018;
 - b. unilaterally and without consultation re-wrote the collective agreement and cancelled the upcoming interest arbitration structure and the agreed upon time frame between HSAA and the Employers;
 - c. deprives Bargaining Unit employees of their ability to address Year 3 wages in a fair, effective and expeditious manner;
 - d. undermines the ability of HSAA to properly and effectively bargain on behalf of the Bargaining Unit members; and

e. such further and other ways as the Plaintiffs may advise.

22. The infringement of the Plaintiffs' section 2(d) rights is unjustified in a free and democratic society and is not justifiable under section 1 of the Charter.
23. The infringement also violates section 1(e) of the *Alberta Bill of Rights*, RSA 2000, c. A-14 as well as various international laws including the Article 8(1) of the *International Covenant on Economic, Social and Cultural Rights*, 993 U.N.T.S. 3, and the *Charter of the Organization of American States*, Can. T.S. 1990 No. 23. Article 45(c).

d) Remedy Sought

24. The Plaintiffs seek:
 - a. A declaration that the *Public Sector Wage Arbitration Deferral Act*, or portions thereof, are an unjustifiable infringement of the Plaintiffs' section 2(d) Charter rights and are not saved by section 1 of the Charter;
 - b. A declaration that the *Public Sector Wage Arbitration Deferral Act*, or portions thereof, is of no force or effect;
 - c. A declaration that the *Public Sector Wage Arbitration Deferral Act*, or portions thereof, are an unjustifiable infringement of section 1(e) of the Alberta Bill of Rights, and pursuant to section 2 of the Alberta Bill of Rights, are of no force or effect;
 - d. Damages pursuant to section 24(1) of the Charter;
 - e. Costs; and
 - f. Such further and other relief as the Plaintiffs may request and this Honourable Court may deem justified.

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

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.