

Clerk's Stamp:

COURT FILE NUMBER

2003-12720

COURT

COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFFS

ASSOCIATION
CANADIENNE-FRANÇAISE
DE L'ALBERTA, and
JO-ANNE NOLETTE

DEFENDANTS

HER MAJESTY THE QUEEN
IN RIGHT OF ALBERTA AS
REPRESENTED BY THE
MINISTER OF ADVANCED
EDUCATION, and
THE GOVERNORS OF THE
UNIVERSITY OF ALBERTA

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
THE PARTY FILING
THIS DOCUMENT

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NOTICE TO THE 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.

Statement of facts relied on

I. THE PARTIES

1. The Plaintiff, the Association canadienne-française de l'Alberta ("ACFA"), is a body politic and corporate incorporated in 1964, pursuant to *An Act to Incorporate l'Association canadienne-française de l'Alberta*, SA 1964, c 107, which specifies that the objects of the ACFA include:

"(a) to rescue from oblivion the memories of the early inhabitants, missionaries, fur traders, explorers and settlers in Alberta of French origin,

(b) to promote the intellectual, moral, social and material welfare of the Canadians of French origin in Alberta,

(c) to promote the study of the French language and the formation of adult education groups [...]."

2. According to its by-laws and regulations, the objects of the ACFA are also:

"(a) to represent the French-speaking population of Alberta;

(b) to promote the physical, intellectual, economic, cultural and social well-being of French-speaking Albertans;

(c) to encourage, facilitate and promote French language learning and the appreciation of the Albertan *Francophonie*;

(d) to ensure communication with French-speaking Albertans;

(e) to promote harmonious and constructive relationships with all institutions of the Canadian *Francophonie* and Albertan society;

(f) to promote the inclusion of French-speaking Albertans of all origins within a pluralistic francophone space [Translation]."

3. The Plaintiff, Jo-Anne Nolette, is a resident of Edmonton. Ms. Nolette is a Canadian citizen whose first language learned and still understood is French and who received her primary school instruction in French in Canada, and accordingly has rights under s 23 of the *Canadian Charter of Rights and Freedoms* ("Charter"). Her children attend a French-language elementary school.

4. The Defendant, Her Majesty the Queen in Right of Alberta ("Government of Alberta"), as represented by the Minister of Advanced Education ("the Minister"), is responsible, *inter alia*, for the administration of the *Post-Secondary Learning Act*, SA 2003, c P-19.5 ("*PSLA*").
5. The Defendant, The Governors of the University of Alberta ("the University"), is a body corporate constituted as the board of governors of the University by *An Act respecting the University of Alberta*, SA 1910 (2nd sess), c 7, ss 11-12 and continued under s 126(2) of the *PSLA*.

II. FACTUAL CONTEXT

A. *Origins of the Campus Saint-Jean*

6. In 1908, *Les Révérends Pères Oblats de Marie Immaculée des Territoires du Nord-Ouest* ("*les Oblats*") established a college then named the *Juniorat Saint-Jean* at Pincher Creek, Alberta, to provide French-language secondary and post-secondary education in an immersive, French environment.
7. In 1911, the *Juniorat Saint-Jean* was relocated to lands in the Bonnie Doon neighbourhood of the City of Edmonton, hereinafter referred to as "the College site".
8. In 1961, the *Juniorat Saint-Jean* was incorporated as the *Collège St. Jean d'Edmonton* pursuant to *An Act to incorporate Le College St. Jean d'Edmonton*, SA 1961, c 94.
9. On November 27, 1970, *les Oblats* and the *Collège St. Jean d'Edmonton* entered into an agreement with the University, whereby the parties established the *Collège universitaire Saint-Jean*, to provide university level education programs for students who chose to pursue their studies in French and to live or to study in a predominantly French environment in affiliation with the University ("the College program"), including a university-level French-language teacher training program to respond to the significant demand for French-language teachers in Alberta and

Western Canada. This agreement was followed by a supplemental agreement dated November 30, 1970, and an extension and amending agreement on September 1, 1975.

10. Thereafter, *les Oblats* expressed their willingness to withdraw from operating the *Collège universitaire Saint-Jean* and to sell the College site to the University, provided that the College program be “maintained, improved and expanded” by the University on the College site.
11. The Government of Alberta commissioned a study to assess options for future educational uses of the resources of the *Collège Saint-Jean d’Edmonton*. In 1975, the Government of Alberta received and approved the recommendation of Dr. Arthur Gilbert McCalla that the College program should be maintained, improved and expanded at the College site.

B. The 1976 Agreement

12. On April 14, 1976, *les Oblats*, the *Collège universitaire Saint-Jean*, the University and the Government of Alberta signed a contract (“the 1976 Agreement”), whereby *les Oblats* agreed to sell the College site to the University provided that the College program be maintained, improved and expanded at the College site.
13. In the preamble to the 1976 Agreement, the Government of Alberta and the University recognized:

“(a) the need for French language teacher-training in order to meet the growing demand for teachers competent in the French language, as well as

(b) the need for the College program generally in order to allow more students from Alberta and the aforementioned jurisdictions [Manitoba, Saskatchewan, British Columbia, Yukon, and the Northwest Territories] to acquire an academic background in Canadian culture in the two official languages of Canada and to be qualified for the growing number of positions in government, industry and other fields which require a working knowledge of the said two languages, and

(c) the need for extension-type programs in the French language and French-Canadian culture.”

14. In the preamble to the *1976 Agreement*, the Government of Alberta and the University further recognized that:

“the College program must be maintained in facilities separate from the main campus of the University of Alberta in order that it be operated in the French atmosphere required for its success, that it will attract relatively small numbers of students with consequent higher costs per student, and that additional contributions of Canada be made in order to offset some of the said additional costs”.

15. Pursuant to the *1976 Agreement*, *les Oblats* committed to:
- i. transferring title to the College site, as well as the library books and catalogues, furnishings and equipment on the College site, to the University; and
 - ii. establishing a trust fund consisting of one-third of the purchase price of the College site and personal property, the annual income of which was used, for a period of 10 years, to assist endeavours relating to education in the French language, primarily at the post-secondary level.

16. In return, the University made, *inter alia*, the following commitments in the *1976 Agreement*:

- i. pursuant to clause 3.2, “the University covenants and agrees to use its best efforts to operate, maintain, improve and expand the College program, the buildings, equipment and supplies used in conjunction therewith as an integral part of The University of Alberta, all of the same to be located at the College site, and to refrain from establishing on the College site any program or facilities which may adversely affect the College program” and;

- ii. pursuant to clause 3.3, the University “reserves the right to reorganize the administrative and academic organization now existing at the College with a view to integrating the College operations more fully into the University without thereby detracting from the University’s covenant to maintain, improve and expand the College program at the College site.”
17. For its part, the Government of Alberta made, *inter alia*, the following commitments in the *1976 Agreement*:
- i. the Government of Alberta provided to the University of Alberta \$3 200 000 for the purchase of the College site and \$325 000 for the library books and catalogues, furnishings and equipment on the College site, with the aid of a contribution of \$1 000 000 from the Government of Canada;
 - ii. pursuant to clause 3.6, the Government of Alberta “covenants and agrees to provide to the University as and when required, funds by way of grant or otherwise in addition to funds now provided to the University as may be reasonably necessary to allow the University to perform its covenants herein, to operate, maintain, improve and expand the College program and the buildings, equipment, and supplies used in conjunction [*sic*] therewith”;
 - iii. pursuant to clause 3.7, the Government of Alberta agreed that “[w]here the Province receives grants or payments from Canada based on educational activities or student enrollment or otherwise relevant to any of the College programs or any extension thereof under the Federal-Provincial Minority Language Program or under the agreement between Canada and the Province heretofore recited, or under any extension, renewal or replacement of such program or agreement, then the Province agrees to provide such grants or payments directly to the University for the purposes of the College program without reducing in any way the regular grants made and to be made to the University by the Province for the

College program; it is further agreed that if Canada shall cease to provide such grants or payments or shall reduce the amounts thereof, that the Province will replace and continue the same on the same terms so long as a reasonable demand exists for the College program" and;

- iv. pursuant to clause 3.8, the Government of Alberta agreed that "[w]here the Government of Canada, for the purpose of encouraging bilingual or bicultural (French and English) education, makes available additional capital and/or additional operating or other grants to the Province beyond those referred to in the immediately preceding paragraph, which grants, if received by the University, would allow the University to improve or expand the College program above the level of support which the Province has heretofore covenanted to maintain, the Province and the University will discuss the same and if new and expanded programs that such grants might allow are within the proper priorities of the University and the Province, then the Province agrees to use its best efforts to secure the same and to provide such grants directly to the University (or other institutions of higher learning in the Province) for the purposes hereof without reducing in any way the regular grants made and to be made to the University by the Province pursuant hereto."
18. Following the *1976 Agreement*, the University commissioned a second study by Dr. Arthur Gilbert McCalla to make recommendations regarding the academic structure and operations of the *Collège universitaire Saint-Jean* within the University for the purposes of implementing the *1976 Agreement*.
 19. In a report dated January 14, 1977, Dr. McCalla found, *inter alia*, that in order to implement the academic and cultural mandates of the *College universitaire Saint-Jean* as provided by the *1976 Agreement*, the *Collège universitaire Saint-Jean* had to be given full Faculty status.

20. On or about June 20, 1977, the General Faculties Council of the University accepted the recommendation to grant full Faculty status, thereby establishing the *Faculté Saint-Jean* of the University, now known as the *Campus Saint-Jean*.
21. Since 2014, the *Campus Saint-Jean* also includes the *Centre collégial de l'Alberta*, which provides French-language college programs at the College site as a part of the University.
22. In the face of a decline in membership of *les Oblats* since the *1976 Agreement*, *les Oblats* and the *Collège Saint-Jean d'Edmonton* assigned their rights under the *1976 Agreement* to the ACFA so as to ensure its continued enforcement, pursuant to an assignment agreement dated December 5, 2013, and perfected by an assignment agreement dated June 28, 2018.
23. On or about July 31, 2018, the University and the Government of Alberta were notified in writing of the assignment in favour of the ACFA.

C. *The Campus Saint-Jean is an Important Linguistic, Cultural and Educational Institution for the French-speaking Community of Alberta*

24. The *Campus Saint-Jean* is the only French-language post-secondary institution in Alberta.
25. The *Campus Saint-Jean* offers a variety of French-language post-secondary programs to approximately 800 students, including in the fields of education, business, sciences, arts, engineering, and nursing.
26. Notably, the *Campus Saint-Jean* offers university-level French-language degrees in education, as well as various programs required to train professionals in the education sector (including, for example, a combined education and science program for secondary school science teachers, programs in business and school administration, and a certificate in French-language speech therapy).

27. The *Campus Saint-Jean* offers its programs in a unique, French environment at the College site that promotes transmission of the French language and culture.
28. The *Campus Saint-Jean* plays a significant role in the development of French-language research and higher learning for the benefit of French-speaking communities in Alberta, in Canada, and abroad.
29. Notably, the *Campus Saint-Jean* is home to the *Institut Marcelle et Louis Desrochers pour le Patrimoine et les recherches transdisciplinaires en francophonies canadiennes et internationales*, which is dedicated to the promotion and development of research and studies to address some of the challenges facing the French-speaking communities of Western Canada.
30. The *Campus Saint-Jean* is a community hub for the French-speaking community.
31. The *Campus Saint-Jean* is the oldest French-language institution in Bonnie Doon and was pivotal to the neighbourhood becoming Edmonton's French Quarter, in close proximity to four French-language schools, which is now home to businesses and community organizations and has the highest concentration of French-speakers in Edmonton.
32. The *Campus Saint-Jean's* facilities are regularly used by French-speaking community organizations.
33. The *Campus Saint-Jean* is an important linguistic, cultural and educational institution for the French-speaking community of Alberta.

D. The Shortage of French-Speaking Teachers and Educational Professionals in Alberta

34. The French-speaking population of Alberta is growing rapidly. The 2016 Census showed an increase of over 30% in the number of Albertans who declared French as their mother tongue. The number of people who declared being able to conduct a conversation in French in the Census has increased by more than 50% since the 1990s.

35. The demand for services in French in Alberta has increased, including in the field of education. Enrolment in French-language schools in Alberta has doubled in the past 20 years and is expected to increase. For the same period, the number of students in French immersion in Alberta increased by almost 60%.
36. In Alberta, there is a shortage of French-speaking teachers and other education professionals qualified to practice in French, which are needed to staff constitutionally protected French-language schools, as well as English-language schools.
37. As a result of the shortage of French-speaking staff in Alberta, the educational experience in the four French-language school boards in Alberta is not substantially equivalent to the educational experience in English-language schools.
38. Notably, as a result of the shortage of French-speaking staff, the four French-language school boards in Alberta:
 - i. recruit underqualified staff,
 - ii. rely heavily on staff from out of province,
 - iii. experience a high turnover of staff, and/or
 - iv. are understaffed,all of which have negative impacts on the quality of the educational experience and the vital role of minority language schools as community centres.
39. The *Campus Saint-Jean* is the only French-language post-secondary institution in Alberta and the only educational institution in Alberta that offers the post-secondary programs required to train French-speaking teachers and other educational professionals.

40. Chronic underfunding of the *Campus Saint-Jean* prevents it from achieving its mandate of training enough French-speaking teachers and staff for minority language school boards in Alberta.

E. Chronic Underfunding of the Campus Saint-Jean

41. The *Campus Saint-Jean* suffers from longstanding underfunding.
42. With respect to operational funding, the *Campus Saint-Jean* is underfunded in at least four respects:
- i. Operational funding does not sufficiently offset the higher cost per student of providing French-language education in Alberta ;
 - ii. Official Languages in Education Program ("OLEP") funding has decreased in value, and has not been matched or replaced;
 - iii. Campus Alberta Grant ("CAG") funding is allocated based on a number of students substantially lower than the *Campus Saint-Jean's* actual enrolment; and
 - iv. the Government of Alberta has imposed budgetary cuts that have exacerbated the *Campus Saint-Jean's* underfunding.

i. Failure to offset the higher cost per student for French-language education at the Campus Saint-Jean

43. The cost per student of providing French-language post-secondary education is higher than the cost per student of providing such education in English in Alberta.
44. Dr. McCalla in his 1975 report found that the cost per full-time first and second-year student at the *Collège universitaire Saint-Jean* was about 50% higher than comparable figures of students in Education, Science and Arts on the University's Main Campus.

45. It was explicitly recognized in the *1976 Agreement* that the costs per student of the *Campus Saint-Jean* would be higher than the costs per student of the University's other faculties, and that federal funding would "offset some", but not all, of these higher costs.
46. The Minister provides funding to the University for operational purposes on an annual basis by means of the CAG.
47. Subject to any conditions attached to the CAG or to other grants by the Minister for the year, the University then determines the allocation to its faculties, including the *Campus Saint-Jean*.
48. To that end, the University establishes an amount of Full-Load Equivalent students ("FLEs") for each faculty for the purposes of calculating their share of the CAG.
49. The Minister does not provide sufficient funding to offset the higher cost per student at the *Campus Saint-Jean*.
50. The University does not allocate sufficient funding to offset the higher cost per student at the *Campus Saint-Jean*.

ii. Failure to replace OLEP funding

51. The *Campus Saint-Jean* also receives (through the University) operational grants from the Government of Canada through the OLEP.
52. Since at least 2009, the OLEP operational funding remitted to the *Campus Saint-Jean* by the University has decreased in value.
53. The Minister has not offset the reduction in OLEP operational funding remitted to the *Campus Saint-Jean* by the University.
54. While the OLEP requires the Minister to match federal funding, the Minister does not provide funds to the University for the *Campus Saint-Jean* in addition to the base CAG funding, inappropriately claiming that the CAG matches federal funding.

iii. CAG funding is allocated based on a number of students substantially lower than the Campus Saint-Jean's actual enrolment

55. Since the 1976 Agreement, the Campus Saint-Jean's FLE quota for the purposes of calculating its share of the CAG from the University has not tracked enrolment.
56. In or about 2014, the University mandated Dr. Pierre-Yves Mocquais, the Dean of the Campus Saint-Jean, to increase enrolment at the Campus Saint-Jean.
57. From 2014-2015 to 2019-2020, enrolment at the Campus Saint-Jean increased by approximately 40%, despite increases to the average grade required for admission in the same period.
58. In 2014-2015, the University allocated CAG funding to the Campus Saint-Jean based on 514 FLEs, compared to an actual enrolment of 541 FLEs.
59. As enrolment increased, the gap in CAG funding allocated to the Campus Saint Jean widened, as illustrated in the table below:

	Funded FLEs	Enrolled FLEs
2014-2015	514	541
2015-2016	514	529
2016-2017	514	562
2017-2018	514	655
2018-2019	524	715
2019-2020	534	752

60. The Minister has occasionally directed the University to allocate certain amounts to particular faculties.

61. For example, from 2014-2015 to 2019-2020, \$600 000 were designated by the Minister for the *Centre collégial de l'Alberta* of the *Campus Saint-Jean*, and allocated accordingly by the University. This funding is no longer so designated.
62. The Minister has never attached conditions to the CAG to ensure that funds allocated to the *Campus Saint-Jean* by the University are, at minimum, based on its actual FLE enrolment or otherwise sufficient.

iv. Measures Exacerbating the Campus Saint-Jean's Chronic Underfunding, notably in 2019-2020 and 2020-2021

63. Since the *1976 Agreement*, the Government of Alberta has taken further measures exacerbating the *Campus Saint-Jean's* chronic underfunding.
64. For 2019-2020, the Government of Alberta imposed budget cuts which resulted in a reduction of 4,7% of the CAG funding remitted to the *Campus Saint-Jean* by the University.
65. For 2020-2021, the Government of Alberta imposed further budgets cuts which resulted in a further reduction of 8,6% of the CAG funding remitted to the *Campus Saint-Jean* by the University.
66. For 2020-2021, the Government of Alberta also directed that the University may not access any of its carry-over funds, such that the University directed that the *Campus Saint-Jean* may not access its carry-over funds.

F. Impacts of the Chronic Underfunding of the Campus Saint-Jean

67. Chronic underfunding has prevented and prevents the *Campus Saint-Jean* from fulfilling its cultural, linguistic, and educational mandates, including:
- i. operating, maintaining, improving and expanding the College program as contemplated by the *1976 Agreement*;
 - ii. training sufficient numbers of French-speaking teachers and other staff to address shortages in French-language school boards in Alberta; and

- iii. fulfilling the *Campus Saint-Jean's* mandate as an important linguistic, cultural and educational institution for the French-speaking community of Alberta.
68. For example, in 2012-2013, the *Campus Saint-Jean* had accumulated debts of approximately \$3 000 000. The *Campus Saint-Jean* laid off approximately 44% of its support staff in 2013-2014, among other measures.
 69. As another example, by April 2020, to cope with the Government of Alberta's budgetary measures, the *Campus Saint-Jean* decided not to replace four out of 32 permanent faculty positions lost to retirement, lay off approximately 20 contractual instructors, cancel or not renew contracts for five administrative positions, and transform two full-time positions into part-time positions.
 70. On or about April 30, 2020, the *Campus Saint-Jean* presented a budget to the University further scaling back programs for 2020-2021 and resorting to \$1 000 000 in carry-over funds.

G. Some Measures Taken by the ACFA to Seek to Ensure Compliance

71. In meetings with the Minister on April 14, 2020 and May 26, 2020, and in its correspondence of April 28, 2020, the ACFA requested that the Minister direct the University to increase the *Campus Saint-Jean's* share of CAG funding to track its actual FLE enrolment. The Minister advised the ACFA to discuss the matter with the University.
72. In a meeting held June 23, 2020 and in its correspondence of June 29, 2020 with the University, the ACFA requested that the University increase the *Campus Saint-Jean's* share of CAG funding to track its FLE enrolment. The University did not provide a response to this request.
73. In correspondence dated July 9, 2020, the ACFA requested that the Minister, the University, or both, provide and/or allocate CAG funding to the *Campus Saint-Jean* with that matches its FLE enrolment for the 2020-2021 school year. The Minister's

response of July 28, 2020 provided no assurances that he would resolve the problem.

74. On July 13, 2020, the ACFA received correspondence from Minister (the English version of which was dated June 26, 2020 and the French version of which was dated July 7, 2020), in which he indicated that he believed the matter to be resolved, providing no assurances that he would take any action to address the underfunding of the *Campus Saint-Jean*.
75. In a meeting on July 16, 2020 with the University, the ACFA was advised that no concrete measures were proposed to address the chronic underfunding of the *Campus Saint-Jean*. Further, the University proposed to move the College program from the College site to the Main Campus, and suggested that the ACFA had to make a choice between funding for the College site, or for programs.
76. In correspondence dated July 29, 2020, the ACFA reiterated that the Minister and the University were in breach of their obligations under the *1976 Agreement* and s 23 of the *Charter*, and requested that (a) the Minister, the University, or both, provide the *Campus Saint-Jean* with CAG funding that matches its actual FLE enrolment in time for the 2020-2021 school year, and (b) the University provide assurances that it will refrain from moving the *Campus Saint-Jean* from the College site.

III. BREACH OF THE 1976 AGREEMENT

77. The *1976 Agreement* is a valid and binding contract.
78. The University has a contractual obligation pursuant to clause 3.2 of the *1976 Agreement* to "use its best efforts to operate, maintain, improve and expand the College program, the buildings, equipment and supplies used in conjunction therewith as an integral part of The University of Alberta, all of the same to be located at the College site, and to refrain from establishing on the College site any program or facilities which may adversely affect the College program".

79. A contractual obligation to use “best efforts” imposes a higher obligation than a “reasonable effort”, and means “taking, in good faith, all reasonable steps to achieve the objective, carrying the process to its logical conclusion and leaving no stone unturned”.
80. The University breached its obligation under clause 3.2 of the *1976 Agreement* by failing to use its best efforts to allocate sufficient operational funding to the *Campus Saint-Jean* to operate, maintain, improve and expand the *Campus Saint-Jean*.
81. In particular, the University breached its obligation under clause 3.2 of the *1976 Agreement* by:
- i. failing to allocate sufficient operational funding to offset the higher costs per student at the *Campus Saint-Jean*; and
 - ii. allocating CAG funding to the *Campus Saint-Jean* based on a number of FLE students substantially lower than the *Campus Saint-Jean*'s actual FLE enrolment.
82. Further, the University breached its obligation under clause 3.2 of the *1976 Agreement* by failing to use its best efforts to obtain sufficient funding from the Government of Alberta to operate, maintain, improve and expand the *Campus Saint-Jean*.
83. The Government of Alberta has a contractual obligation pursuant to clause 3.6 to “provide to the University as and when required, funds by way of grant or otherwise in addition to funds now provided to the University as may be reasonably necessary to allow the University to perform its covenants [...] to operate, maintain, improve and expand the College program and the buildings, equipment, and supplies used in conjunction [*sic*] therewith”.

84. The Government of Alberta breached its obligation under clause 3.6 of the *1976 Agreement* by failing to provide sufficient operational funding to enable the University to operate, maintain, improve and expand the *Campus Saint-Jean*.
85. Further, the Government of Alberta failed to take measures to ensure that the *Campus Saint-Jean* received sufficient operational funding given reductions in OLEP operational funding remitted to the *Campus Saint-Jean* by the University, as required pursuant to clauses 3.6, 3.7 and 3.8 of the *1976 Agreement*.
86. In particular, the Government of Alberta breached its obligation under clauses 3.6, 3.7 and 3.8 of the *1976 Agreement* by:
- i. failing to provide sufficient operational funding to offset the higher costs per student at the *Campus Saint-Jean*;
 - ii. failing to match and replace federal funding to offset the higher costs per student at the *Campus Saint-Jean*, as required pursuant to clauses 3.7 and 3.8 of the *1976 Agreement*;
 - iii. failing to take measures to ensure that sufficient CAG funding is allocated to the *Campus Saint-Jean* to operate, maintain, improve and expand the *Campus Saint-Jean*, including allowing CAG funding to the *Campus Saint-Jean* to be allocated based on a number of FLE students lower than the *Campus Saint-Jean's* actual FLE enrolment; and
 - iv. imposing further budget cuts that force the *Campus Saint-Jean* to substantially reduce course offerings and staff.

IV. BREACH OF SECTION 23 OF THE CHARTER

87. Section 23 of the *Charter* gives certain Canadians the right to have their children receive primary and secondary school instruction in French in Alberta that is substantively equivalent in quality to instruction in English.

88. Section 23 of the *Charter* must be interpreted in a manner consistent with its purpose of preserving and promoting the development of official language minority communities, as well as with its unifying purpose of accommodating mobility by enabling citizens to move anywhere in the country without fearing that they will have to abandon their language and culture.
89. The Government of Alberta has a positive obligation to implement the institutional measures needed to give effect to the right to a substantively equivalent educational experience pursuant to s 23 of the *Charter*, including mobilizing resources to publicly fund instruction and enacting legislation and regulations.
90. A substantial shortage of qualified French-speaking teachers and staff needed to provide substantively equivalent primary and secondary school instruction in French in Alberta violates the right to a substantively equivalent educational experience and is therefore contrary to s 23 of the *Charter*.
91. Without limiting the generality of the foregoing, French-language minority school boards
- i. whose teachers and staff are not properly trained,
 - ii. that rely heavily on out-of-province recruitment,
 - iii. that experience high turnover of teachers and staff, or
 - iv. that are understaffed,
- cannot provide a substantively equivalent educational experience within the meaning of s 23 of the *Charter*.
92. High turnover and dependence on out-of-province recruitment negatively impacts the vital role of French-language minority schools as community centres, and therefore infringes s 23 of the *Charter*.

93. Access to French-language post-secondary instruction in Alberta is necessary to address the shortage of French-speaking teachers and staff for French-language minority school boards in the province, and therefore, to implement s 23 of the *Charter*.
94. As the only French-language post-secondary institution in Alberta, the *Campus Saint-Jean* is the only institution in Alberta capable of training qualified teachers and staff for French-language minority school boards in Alberta.
95. Due to insufficient operational funding, the *Campus Saint-Jean* is unable to train enough teachers and other staff for French-language minority school boards in Alberta.
96. The Government of Alberta's failure to provide sufficient operational funding to the *Campus Saint-Jean* to train enough teachers and other staff for French-language minority school boards in Alberta is an unjustified breach of s 23 of the *Charter*.
97. In allocating funding for French-language post-secondary education to the *Campus Saint-Jean*, the University is engaged in an activity that is governmental in nature for the purposes of s 32 of the *Charter*, and is therefore bound by the *Charter*.
98. Without limiting the generality of the foregoing, in allocating funding for French-language post-secondary education to the *Campus Saint-Jean*, the University is implementing a government policy or program and is therefore bound by the *Charter*.
99. The University has a positive obligation to implement the institutional measures needed to give effect to s 23 of the *Charter*.
100. The University's failure to allocate sufficient operational funding to the *Campus Saint-Jean* is an unjustified breach of s 23 of the *Charter*.

V. BREACH OF THE PRINCIPLE OF THE PROTECTION OF MINORITY RIGHTS

101. The protection of minority rights is an underlying constitutional principle, independent from any specific constitutional provisions for the protection of minority rights.
102. The underlying principles of the Canadian Constitution, including the protection of minority rights, have normative force and are binding upon governments. They give rise to substantive legal obligations, which constitute substantive limitations upon government action. The underlying principles of the Canadian Constitution, including the protection of minority rights, also assist in the interpretation of the text and the delineation of spheres of jurisdiction, the scope of rights and obligations, and the role of political institutions.
103. Government discretion must be exercised in a manner consistent with underlying constitutional principles, including the principle of the protection of minority rights.
104. The Minister must exercise his discretion in relation to funds for post-secondary education in a manner consistent with the underlying constitutional principle of the protection of minority rights.
105. In exercising his discretion to grant funds for post-secondary education, the Minister failed to provide sufficient funding to the *Campus Saint-Jean* in a manner consistent with the underlying constitutional principle of the protection of minority rights.
106. In particular, the Minister's failure to provide sufficient funding to the *Campus Saint-Jean* unjustifiably impairs its role as an important linguistic, cultural and educational institution for the French-speaking community of Alberta, and is accordingly inconsistent with the underlying constitutional principle of the protection of minority rights.

107. The University must exercise its discretion to allocate funds to the *Campus Saint-Jean* in a manner consistent with the underlying constitutional principle of the protection of minority rights.
108. In exercising its discretion to allocate funds to the *Campus Saint-Jean*, the University failed to provide sufficient funding to the *Campus Saint-Jean* in a manner consistent with the underlying constitutional principle of the protection of minority rights.
109. In particular, the University's failure to provide sufficient funding to *Campus Saint-Jean* unjustifiably impairs the *Campus Saint-Jean's* role as an important linguistic, cultural and educational institution for the French-speaking community of Alberta, and is accordingly inconsistent with the underlying constitutional principle of the protection of minority rights.

Language of Proceedings

110. The Plaintiffs invoke the right to use French in these proceedings pursuant to s 4 of the *Languages Act*, RSA 2000, c L-6.

Remedy Sought

111. The Plaintiffs seek:

Breach of the 1976 Agreement

- i. A declaration that the Government of Alberta has an obligation to provide the operational funds necessary to operate, maintain, improve and expand the *Campus Saint-Jean* pursuant to the *1976 Agreement*;
- ii. A declaration that the Government of Alberta is in breach of its obligation to provide the operational funds necessary to operate, maintain, improve and expand the *Campus Saint-Jean* pursuant to the *1976 Agreement*, in particular by:

- a. failing to provide sufficient operational funding to offset the higher costs per student of minority language education at the *Campus Saint-Jean*;
 - b. failing to match and replace federal operational funding to offset the higher costs per student of minority language education at the *Campus Saint-Jean*;
 - c. failing to take measures to ensure that sufficient CAG funding is allocated to the *Campus Saint-Jean* to operate, maintain, improve and expand the *Campus Saint-Jean*, including failing to direct that CAG funding remitted to the *Campus Saint-Jean* by the University track actual FLE enrolment; and
 - d. imposing further budget cuts that force the *Campus Saint-Jean* to substantially reduce course offerings and staff.
- iii. A declaration that the University has an obligation to use its best efforts to allocate the operational funds necessary to operate, maintain, improve and expand the *Campus Saint-Jean* pursuant to the *1976 Agreement*;
 - iv. A declaration that the University is in breach of its obligation to use its best efforts to allocate the operational funds necessary to operate, maintain, improve and expand the *Campus Saint-Jean* pursuant to the *1976 Agreement*;
 - v. An order requiring the University to allocate sufficient operational funding to operate, maintain, improve and expand the *Campus Saint-Jean*, taking into account the higher cost per student at *Campus Saint-Jean*;
 - vi. An order requiring the University to allocate CAG funding to the *Campus Saint-Jean* based on its actual enrolment;

- vii. An order requiring the University to use its best efforts to obtain sufficient operational funding from the Government of Alberta to operate, maintain, improve and expand the *Campus Saint-Jean*;
- viii. A declaration that the Government of Alberta must provide to the *Campus Saint-Jean* operational funding that tracks its actual enrolment and offsets the higher cost per student at the *Campus Saint-Jean* since 2018-2019 inclusive in specific performance of its obligation to ensure sufficient funding for the *Campus Saint-Jean* pursuant to the *1976 Agreement*;
- ix. An order requiring the University to allocate to the *Campus Saint-Jean* operational funding that tracks its actual enrolment and offsets the higher cost per student at the *Campus Saint-Jean* since 2018-2019 inclusive in specific performance of its obligation to allocate sufficient funding for the *Campus Saint-Jean* pursuant to the *1976 Agreement*;

Breach of s 23 of the Charter

- x. A declaration that the Government of Alberta has an obligation to provide sufficient operational funding to the *Campus Saint-Jean* to train sufficient numbers of qualified teachers and staff for French-language minority school boards in Alberta pursuant to s 23 and s 24(1) of the *Charter*;
- xi. A declaration that the Government of Alberta unjustifiably infringed s 23 of the *Charter* by failing to provide sufficient operational funding to the *Campus Saint-Jean* to train sufficient numbers of qualified teachers and staff for French-language minority school boards in Alberta pursuant to s 23 and s 24(1) of the *Charter*;
- xii. An order that the Government of Alberta must provide sufficient operational funding to the *Campus Saint-Jean* to cover the cost of training sufficient numbers of qualified teachers and staff for French-language minority school boards in Alberta pursuant to s 23 and s 24(1) of the *Charter*;

- xiii. A declaration that the University's decisions regarding the allocation of operational funding for French-language post-secondary education are subject to the *Charter*;
- xiv. A declaration that the University has an obligation to allocate sufficient operational funding to the *Campus Saint-Jean* to train sufficient numbers of qualified teachers and staff for French-language minority school boards in Alberta pursuant to s 23 and s 24(1) of the *Charter*;
- xv. A declaration that the University unjustifiably infringed s 23 of the *Charter* by failing to allocate sufficient operational funding to the *Campus Saint-Jean* to train sufficient numbers of qualified teachers and staff for French-language minority school boards in Alberta pursuant to s 23 and s 24(1) of the *Charter*;
- xvi. An order that the University must allocate sufficient operational funding to the *Campus Saint-Jean* to cover the costs of training sufficient numbers of qualified teachers and staff for French-language minority school boards in Alberta pursuant to s 23 and s 24(1) of the *Charter*;

Principle of the Protection of Minorities

- xvii. A declaration that the Minister failed to provide sufficient operational funding to the *Campus Saint-Jean* in a manner consistent with the underlying constitutional principle of the protection of minority rights;
- xviii. A declaration that the University failed to allocate sufficient operational funding to the *Campus Saint-Jean* in a manner consistent with the underlying constitutional principle of the protection of minority rights;

Other relief

- xix. Costs of this Action on a full indemnity basis; and

- xx. Such other relief in law and equity as the Plaintiffs may request and this Honourable Court may deem just.

NOTICE TO THE DEFENDANTS

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 plaintiffs' 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 plaintiffs against you.

