

No. S-235076
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BRITISH COLUMBIA GOVERNMENT LAWYERS ASSOCIATION on its own behalf and on
behalf of all its members

Plaintiffs

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and
the **ATTORNEY GENERAL OF BRITISH COLUMBIA**

Defendant

NOTICE OF CIVIL CLAIM

Name and address of each Plaintiff

British Columbia Government Lawyers Association
c/o Goldblatt Partners LLP
20 Dundas Street West, Suite 1039
Toronto, Ontario M5G 2C2

Name and address of each Defendant

Attorney General for British Columbia
Deputy Attorney General
Ministry of Attorney General
PO Box 9290 Stn Prov Govt
Victoria BC V8W 9J7

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

PART 1: STATEMENT OF FACTS

Overview

1. This is a challenge to the *Public Service Labour Relations Amendment Act*, SBC 2023, c 27 (“Bill 5”). Bill 5 on its own, and together with operation of section 4 of the *Public Service Labour Relations Act*, RSBC 1996, c 388 as amended by Bill 5 (the “PSLRA”), infringes the freedom of association of the Plaintiff’s members and cannot be justified under section 1 of the *Canadian Charter of Rights and Freedoms* (the “Charter”).
2. The Plaintiff, the British Columbia Government Lawyers Association (“BCGLA”), is a trade union that has, since 1992, been the democratically-selected representative for lawyers (“Civil Lawyers”) working for the His Majesty the King in right of the Province of British Columbia (the “Province” or “Employer”), other than those employed as members of the staff of a court in British Columbia or who are employed in the Criminal Justice Branch of the Ministry of Attorney General (“Crown Counsel”).

3. Bill 5 amends the *PSLRA* by adding Civil Lawyers, with the exception of Civil Lawyers working for the Office of Legislative Counsel (“Legislative Counsel”), to the definition of “employee” in the *PSLRA*. This has the effect of placing Civil Lawyers into a pre-existing bargaining unit, established under s 4 of the *PSLRA*, with other professional employees employed by the Province already represented by the Professional Employees Association (“PEA”).
4. Civil Lawyers do not share a community of interest with other members of the PEA. The PEA, which represents approximately 1300 licensed professionals, has neither represented nor ever sought to represent Civil Lawyers. Civil Lawyers have never voted in favour of PEA representation and do not wish to be forced into the pre-existing PEA bargaining unit where they would only constitute a small minority of a much larger pre-existing membership that has never represented them or their interests. Instead, Civil Lawyers have democratically chosen to be represented the BCGLA.
5. Bill 5 does not provide, and the Province has not otherwise established, any independent or neutral mechanism by which the bargaining agent for Civil Lawyers can be democratically-selected and through which the question of the appropriate bargaining unit for Civil Lawyers can be determined.
6. Prior to the introduction of Bill 5 in the Legislative Assembly, the BCGLA had filed an application to be certified as the bargaining agent of Civil Lawyers under s 18 of the *Labour Relations Code*, RSBC 1996, c. 244 (the “Code”) (the “Certification Application”) and the parties were in the midst of filing written submissions to the BC Labour Relations Board (the “Labour Board”) in its capacity as an independent administrative tribunal tasked, among other things, with determining “appropriate bargaining units” based on its assessment of labour policy, including the balance between industrial stability, employee choice and maintaining communities of interest. Bill 5 had the intended and actual effect of disrupting the Certification Application.
7. For Civil Lawyers who are now included in the definition of “employee” under the *PSLRA*, the Legislature has dictated that they will be represented by a bargaining agent that they did not choose and that has never represented them before. It has further dictated that they will be placed in a bargaining unit with other employees with whom Civil Lawyers do not share any community of interest. This constitutes a substantial interference with their right to freedom of association, as guaranteed by s 2(d) of the *Charter*.
8. Bill 5 also has the effect of continuing to deny Legislative Counsel access to a meaningful process of collective bargaining altogether. Even though they have been collectively represented by the BCGLA for decades and are all included in the bargaining unit that the BCGLA sought to certify before the Labour Board, Bill 5 has the purpose and effect of separating Legislative Counsel from other Civil Lawyers with whom they do share a community of interest and precluding them from engaging in meaningful collective bargaining together. Bill 5 effectively denies Legislative Counsel the ability to participate in collective bargaining at all and is therefore a substantial and unjustified interference with right to freedom of association, as guaranteed by s 2(d) of the *Charter*.

The Parties

The BCGLA

9. The BCGLA is a voluntary association and trade union formed for the purpose of representing Civil Lawyers in protecting and advancing their professional and employment interests. It was originally incorporated in 1992 under the *Society Act*, RSBC 1996, c 433 as the “LSB Lawyers Association”. It changed its name to the “British Columbia Government Lawyers Association” in 2017.
10. The Province created a job classification of “Legal Counsel”, which (since 2020) is identical to “Civil Lawyers” as defined in this Notice of Civil Claim and includes all government employees who provide legal services in relation to non-criminal matters on either a part-time or full-time basis. All non-criminal legal services provided to the Province are conducted by Civil Lawyers, except for a limited number of *ad hoc* retainers of private law firms on a contract for service basis, which are supervised by Civil Lawyers in accordance with the *Attorney General Act*. The majority of Civil Lawyers are members of the BCGLA and wish to engage in collective bargaining through the BCGLA.
11. There are approximately 350 Civil Lawyers working for the Province on a full-time basis in non-supervisory roles. Approximately 17 of those Civil Lawyers are employed in the Office of the Legislative Counsel.
12. BCGLA members voluntarily pay 0.5% of their salaries in dues and the Employer facilitated the deduction of these dues from members’ paycheques. With the enactment of Bill 5, Civil Members now pay 1% of their salaries in dues to the PEA.
13. The purposes of the BCGLA are set out in its Constitution:
 - a) to represent Legal Counsel in matters regarding remuneration, benefits and other terms and conditions of employment;
 - b) to create, promote and encourage better understanding, unity and cooperation among members of the BCGLA; and
 - c) to represent the members of the BCGLA in matters of professional interest relating to employment.

The Defendant

14. The Province is the legal person representing the executive government of British Columbia. It employs Civil Lawyers, including the BCGLA’s members, as well as Crown Counsel and other employees within the provincial public service.
15. In addition to being the Employer of Civil Lawyers, the Province has the power to introduce legislation that unilaterally creates and changes the laws that govern its employees’ access to collective bargaining.

16. The Attorney General of British Columbia is the Chief Law Officer of the Crown and is the proper Defendant in a claim seeking a declaration of constitutional invalidity.

Public Service Labour Relations Act prior to Bill 5

17. The *PSLRA* is the law that establishes the collective bargaining regime for most provincial government employees, with certain exceptions.
18. Prior to its enactment of Bill 5, the Province has established bargaining units under the *PSLRA* following determinations or recommendations from a third party independent of the employer. As set out below, this approach was followed by the Province when it enacted the *PSLRA* in the 1970s and when the BCCCA sought recognition as bargaining agent for Crown Counsel in the 1990s.
19. The *PSLRA* was established in 1973 based on the recommendations of a commission, which was made up of equal employee and employer representation and was chaired by R.D. Higgins, a neutral commissioner (the “Higgins Commission”).
20. The Higgins Commission was created to make recommendations about legislation for public service labour relations specifically to avoid the perception that the Province was conflating its role as Employer and as legislator.
21. After hearing from various employee groups, the Higgins Commission recommended two new bargaining units (in addition to a bargaining unit for employees working in the Queen’s Printer): a general unit and a general licensed professional unit. As enacted, the *PSLRA* also provided for an additional bargaining unit for nurses employed in the public service, based on the cogent and cohesive history of separate representation of nurses by their own bargaining agent.
22. The Higgins Commission made no specific comments about lawyers, and they were not included in any bargaining units. At the time of the Higgins Commission, there were very few lawyers in the public service and they were primarily in managerial roles, so their exclusion was not surprising and did not reflect an intentional policy choice with respect to whether or how Civil Lawyers should bargain with the Employer.
23. After passing the *PSLRA*, the Province created a specialized agency to perform its Employer functions, now known as the Public Service Agency (the “PSA”). The PSA and its predecessors became responsible for recommending changes to the *PSLRA*. This structure disregarded the intention of the Higgins Commission to keep public service labour relations policy distinct from the Province’s interests *qua* Employer.
24. From the time that the *PSLRA* was first introduced in 1973, until the date Bill 5 came into force on July 14, 2023, Legal Counsel were excluded from the definition of “employee” by operation of s 1(1)(b), (t), and/or (u), which provided:

"employee" means an employee as defined in the Public Service Act, or a person employed by or holding office at the pleasure of the government, but does not include any of the following: ...

(b) a practising lawyer or articled student as defined in section 1 (1) of the *Legal Profession Act*, who is engaged in the practice of law; ...

(t) a person employed in the Office of Legislative Counsel;

(u) a person employed in the Legal Services Branch of the Ministry of Attorney General; ...

25. By operation of Bill 5, Civil Lawyers (except Legislative Counsel) are now included in the definition of "employee" under the *PSLRA*.
26. Section 4 of the *PSLRA* states that for the purpose of collective bargaining, every "employee" must be included in one of three units: (a) a nurses' bargaining unit; (b) a licensed professional bargaining unit; and (c) a general public service bargaining unit of all other employees.
27. This labour relations framework only applies to "employees" as defined in the *PSLRA*.
28. Section 4 of the *PSLRA* also does not apply to Crown Counsel. In the 1990s, Crown Counsel sought to have the Province recognize their right to collective bargaining through their chosen bargaining agent: the BC Crown Counsel Association (the "BCCCA"). The Province initially refused to recognize their right to collective bargaining at all, and then suggested that their rights would be recognized by their inclusion in the general licenced professionals' unit represented by the PEA.
29. In the face of job action and pressure from the BCCCA, the Province agreed to have a neutral labour arbitrator, Stephen Owen, make recommendations concerning an appropriate collective bargaining structure for Crown Counsel. In his October 1999 interim report (the "Interim Report") and his December 1999 final report, Mr. Owen recommended that Crown Counsel be represented by a democratically-chosen bargaining agent in their own bargaining unit. In his Interim Report, Mr. Owen also noted that there were similarities between Crown Counsel and Civil Lawyers conducting public interest litigation in the independent name of the Attorney General, reflecting the unique community of interest of government lawyers.
30. The Province accepted Mr. Owen's recommendation that Crown Counsel not be forced into the licensed professional bargaining unit and recognized the BCCCA as bargaining agent for Crown Counsel through an amendment to the *Crown Counsel Act*.
31. Thus, in the case of both the determination of the bargaining unit structure under the *PSLRA* when it was first introduced, and the subsequent dispute with Crown Counsel, the Province recognized the need for an arms-length process under which employees and unions were able to make their case to a neutral third party, with that independent third party making recommendations to government. Despite the BCGLA requesting a similar process in the case of Civil Lawyers, as set out below, the government refused to agree to the appointment of a neutral and independent third party, and instead proceeded unilaterally, despite its obvious and apparent conflict of interest.

32. Moreover, in the case of both nurses and Crown Counsel, the Province recognized the need to respect the right of employees to democratically select their own independent and representative bargaining agent where there was a prior established history and record of separate representation reflecting a distinct community of interest.

BCGLA's Longstanding Role Representing Civil Lawyers

33. Since its inception in 1992, the BCGLA has been the democratically-chosen representative of Civil Lawyers, both collectively and individually in their dealings with the Employer, and the Province has consistently recognized the BCGLA's representative role on behalf of Civil Lawyers.
34. From the outset until Bill 5 came into force on July 14, 2023, the Province has regularly met with the BCGLA to discuss terms and conditions of employment for Civil Lawyers. It also agreed to extend terms of the collective agreement between the Province and the BCCCA to Civil Lawyers, which until 2020 had included all salary terms and various non-salary compensation terms.
35. To the best of its ability given the absence of a collective agreement and lack of dispute resolution framework with requisite employee protections, the BCGLA has a long history of representing Civil Lawyers in discussions and negotiations with the Employer regarding salaries, joint association-management committee meetings, grievances, and other associational activities. Nevertheless, the Province refused to recognize Civil Lawyers' right to negotiate a collective agreement, engage in grievance arbitration or have a legally-recognized and protected mechanism for resolving impasses in bargaining, such as interest arbitration or the right to strike.

Civil Lawyers Possess a Distinct Community of Interest

36. Everywhere in Canada where public service lawyers bargain collectively, civil lawyers bargain either as part of their own bargaining unit or with prosecutors. Nowhere do they bargain together with other groups of public servants. This reflects a widespread recognition that government lawyers, including Civil Lawyers, have a distinct community of interest in comparison with other government employees.
37. In this connection, Civil Lawyers have a client relationship with the Province, which can involve taking instructions from members of other bargaining units as well as their supervisors.
38. For this reason, Civil Lawyers have a specific workplace interest in ensuring the independence and integrity of legal advice to the Province, which in turn reflects a fundamental aspect of the rule of law.
39. Civil Lawyers play a unique role in conducting public interest litigation in the independent name of the Attorney General and have special legal obligations in the administration of justice and in advising the Province in respect of important questions relating to the legality and constitutional validity of government action. The need to balance these requirements

with the operational and policy interests of the government of the day is a source of unique pressures in the workplace that give rise to a separate and distinct community of interest.

40. Civil Lawyers also have a specific interest in avoiding partisan affiliation. The PEA, through the British Columbia Federation of Labour, is affiliated with the New Democratic Party, which may give rise to concerns or perceptions of partisan interests impacting Civil Lawyers in the exercise of their duties. This has heightened significance in the area of Civil Lawyers providing legal advice.
41. In British Columbia, the Employer itself has historically treated Civil Lawyers as a distinct group of employees for over three decades during which time, the BCGLA has reflected and fostered the collective interests of Civil Lawyers. The BCGLA holds the institutional memory and bargaining history of Civil Lawyers' labour relations relationship with the Employer. The terms and conditions of Civil Lawyers have developed separately from those of the employees represented by the PEA and in parallel with those represented by the BCCCA.
42. It is also highly disruptive to these terms and conditions to force Civil Lawyers into a different bargaining unit, and to force them to be represented by a different bargaining agent, particularly when they have consistently democratically chosen to be represented by the BCGLA and have specifically rejected being represented by the PEA.
43. Legislative counsel share this same distinct community of interest with Civil Lawyers.

History of Province's Refusal To Extend Meaningful Collective Bargaining to Civil Lawyers

44. In 2012, the BCGLA formally requested voluntary or statutory recognition as a bargaining agent for Civil Lawyers and engaged in an organizing drive to demonstrate that the majority of Civil Lawyers supported this action. The Province took the position that collective bargaining was "inappropriate" for Civil Lawyers and instead offered to allow the BCGLA to make submissions on behalf of its members for terms and conditions of employment, with those terms ultimately subject to the Province's agreement.
45. BCGLA declined to accede to this proposal, proposing instead a more equal bargaining relationship, including a meaningful mechanism for resolving impasses in bargaining, such as interest arbitration or the right to strike.
46. In 2015, after the decision of the Supreme Court of Canada in *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 and *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4, the Province acknowledged that Civil Lawyers have a right to bargain collectively under collective bargaining legislation.
47. At that time, the Province itself identified three options through which that right might be exercised and sought the BCGLA's input. The three options were: (1) recognize the BCGLA as bargaining agent for a stand-alone unit of Civil Lawyers; (2) include Civil Lawyers in a joint bargaining unit with Crown Counsel, each represented by their own exclusive bargaining agent; or (3) include Civil Lawyers in the licensed professional bargaining unit under the *PSLRA*, already represented by the PEA.

48. The BCGLA, the PEA and the BCCCA were all consulted with respect to the options under consideration for the Province's recognition of the bargaining rights of Civil Lawyers.
49. During these consultations, given the importance of the issues to BCGLA members, the BCGLA conducted a vote of its membership to determine which of the proposed options would be acceptable to the BCGLA members. The membership overwhelmingly voted in support of either option 1 or 2; there was no support for option 3. The BCGLA relayed the democratically expressed views of its' members to the Province.
50. The PEA advised the Province that it believed that Civil Lawyers should not be forced into the professional employees bargaining unit that it represents, and thus rejected option 3.
51. The BCCCA opposed a common bargaining unit with Civil Lawyers and its members (option 2), but supported a stand-alone unit for Civil Lawyers.
52. During the consultations, the PSA did not indicate that it had a preferred option, or state any reasons that Option 3 should be preferred over Option 1 or 2.
53. Nonetheless, in February 2018, the Province advised the BCGLA that it had decided the only available option it would consider for Civil Lawyers to collectively bargain would be as part of the existing professional employees' unit represented by the PEA.
54. Throughout this process, the BCGLA was not afforded any opportunity to make submissions on an appropriate bargaining structure to an independent or neutral expert in labour relations. Instead, the Province chose to interfere with the right of Civil Lawyers to be represented by their own democratically chosen and independent bargaining agent based on its own interests as employer.
55. At the time it chose Option 3, the Province stated that it did not intend to place Civil Lawyers into the licensed professionals' unit against the will of Civil Lawyers, indicating that if Civil Lawyers would not join the licensed professionals' unit, they would have no access to collective bargaining at all.
56. In June 2018, the BCGLA held an Extraordinary General Meeting where members were asked to vote for one of the following options: (a) reject the government's position and approve legal action; (b) continue as members of the BCGLA without bargaining status; or (c) accept the government's proposed amendment of the *PSLRA* to include lawyers in the professional employees' unit. BCGLA members overwhelmingly voted for option (a); only two members voted for option (b) and not a single member voted for option (c).
57. The BCGLA, Gareth Morley, Melanie Murray, Margo Foster, Micah Weintraub, and Stephanie Jackson then filed a Notice of Civil Claim on August 9, 2019, challenging the constitutionality of the exclusion of Civil Lawyers (including Legislative Counsel) under the *PSLRA*, as well as the Province's refusal to engage in meaningful collective bargaining with Civil Lawyers through their democratically-selected bargaining agent.

BCGLA's Application for Card-Based Certification

58. In 2022, the *Code* was amended by the *Labour Relations Code Amendment Act, 2022*, SBC 2022, c 22, which received Royal Assent on June 2, 2022. This amendment introduced a card-based certification process in BC for employees covered by the *Code*, whereby a bargaining agent would be certified for an appropriate bargaining unit of employees if 55% of them signed a membership card with prescribed wording. The Province's stated purpose for this amendment was to reduce impediments to certification and enable workers to join a union when a clear majority of employees in a bargaining unit indicate they want to.

59. The *Code* further provides for a procedure to determine the appropriate bargaining unit and bargaining agent on an application before the Labour Board for employees as defined in the *Code*. In particular, the *Code* provides:

22.1 If a trade union applies for certification as the bargaining agent for a unit, the board

- (a) must determine if the unit is appropriate for collective bargaining, and
- (b) may, before certification, include additional employees in or exclude employees from the unit.

23 If the board is satisfied that

- (a) on the date the board receives an application for certification under this Part at least 55% of the employees in the unit are members in good standing of the trade union, and
- (b) the unit is appropriate for collective bargaining,

the board must certify the trade union as the bargaining agent for the employees in the unit.

60. On November 29, 2022, in recognition of its members' democratically-expressed wishes for the BCGLA to be recognized as their bargaining agent, the BCGLA applied at the Labour Board for certification under the *Code* for a bargaining unit of all persons employed by the Province as legal counsel, other than Crown Counsel and employees otherwise excluded under s 1(1)(a) and (b) of the *Code* ("Certification Application"). The proposed unit included Legislative Counsel. Well over 55% of the employees in the proposed bargaining unit signed membership cards selecting BCGLA as their bargaining agent. The Board held, without objection, that the BCGLA meets the definition of "trade union" under the *Code*. The only issue before the Board was the applicability of the *Code* to these employees. There was no dispute that the bargaining unit was appropriate.

The Province Enacted Bill 5 in the Midst of the Labour Board Proceedings

61. Despite the pending certification application proceeding before the Labour Board – in fact, the parties were in the process of exchanging written submissions in the Certification Application – on February 9, 2023, the Province introduced Bill 5 for First Reading.
62. Bill 5 was introduced without any form of meaningful consultation with the BCGLA, its members, or the PEA.

The Operation and Effect of Bill 5

63. Bill 5 repealed s 1(1)(b) and (u) of the *PSLRA* and replaced them with the following:
 - (b) a practising lawyer or articulated student as defined in section 1 (1) of the *Legal Profession Act*, who is engaged in the practice of law and who is
 - (i) employed in the Criminal Justice Branch of the Ministry of Attorney General,
 - (ii) employed in the Office of Legislative Counsel, or
 - (iii) employed as a member of the staff of a court in British Columbia;
 - (u) a person employed in the Legal Services Branch of the Ministry of Attorney General, other than a person who is a practising lawyer or articulated student as defined in section 1 (1) of the *Legal Profession Act* and who is engaged in the practice of law;
64. This amendment had the effect of removing the exclusion of Civil Lawyers (except Legislative Counsel) from the *PSLRA*.
65. However, neither Bill 5 nor the *PSLRA* as amended, include any provision to enable the determination of the appropriate bargaining unit or bargaining agent for the newly included class of employees.
66. Rather, because of Bill 5, Civil Lawyers (except Legislative Counsel) have now been forced into the licensed professional bargaining unit created by s 4(b) of the *PSLRA* and represented by the PEA.
67. There were more than 1,300 employees in the PEA bargaining unit, before the forced inclusion of Civil Lawyers. As a result, Civil Lawyers constitute a very small portion of the pre-existing composition of the PEA bargaining unit.
68. In response to the introduction of Bill 5, members of the BCGLA voted over 97% in favour of job action in opposition to Bill 5. As a result, the Province engaged in discussions with BCGLA. During these discussions, the BCGLA proposed that a neutral third party provide

public recommendations on the appropriate bargaining unit structure for Civil Lawyers after hearing from all interested parties. The Province refused this proposal.

69. Bill 5 passed Third Reading on May 10, 2023, and was given Royal Assent on May 11, 2023. Bill 5 came into force by regulation on July 14, 2023.

70. As further described further below, the purpose and effect of Bill 5 is to deny the BCGLA and its members their associational rights protected by s 2(d) of the *Canadian Charter of Rights and Freedoms*, to substantially interfere with the bargaining power of Civil Lawyers to the benefit of their Employer, and to otherwise interfere with the representative role that the BCGLA has historically played on behalf of Civil Lawyers.

71. For its part, the Province has improperly and unconstitutionally used its legislative power in order to privilege its financial interests and bargaining position over a group of employees who sought recognition of their collective bargaining rights through the legislatively-established process, and for the purpose and effect of depriving them of their right to engage in a meaningful collective bargaining process through representation by their longstanding and democratically-chosen bargaining agent. Indeed, as a result of Bill 5, Civil Lawyers are forced to be represented by the very bargaining agent which they democratically refused to choose for themselves.

72. Furthermore, under Bill 5, Legislative Counsel, who are also members of the BCGLA, continue to be excluded from the *PSLRA*, are excluded from any bargaining unit, and are segregated and precluded from bargaining together with other Civil Lawyers. This exclusion is abundantly clear from Bill 5's amendment to s 1(1)(b), failure to repeal s 1(1)(t), and its addition of the following clarification to s 1(3) of the *PSLRA*: "For the purposes of this Act, the Office of Legislative Counsel is not considered to be in the Legal Services Branch of the Ministry of Attorney General."

PART 2: RELIEF SOUGHT

73. The plaintiffs seek the following relief:

- a) a declaration pursuant to s 52 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11* ("*Constitution Act*"), that the *Public Service Labour Relations Amendment Act, 2023* on its own, and in conjunction with s 4 of the *Public Services Labour Relations Act*, unjustifiably infringes s 2(d) of the *Charter*, by denying Civil Lawyers a meaningful process of collective bargaining, and is therefore of no force or effect;
- b) a declaration pursuant to s 52 of the *Constitution Act* that, by imposing the PEA as bargaining agent for Civil Lawyers (except Legislative Counsel), or alternatively by doing so without any appropriate bargaining unit determination by the Labour Board or equivalent expert and independent administrative body, the *Public Service Labour Relations Amendment Act, 2023* on its own, and in conjunction with s 4 of the *Public Services Labour Relations Act*, unjustifiably infringes s 2(d) of the *Charter* and is therefore of no force or effect;

- c) a declaration pursuant to s 52 of the *Constitution Act* that the *Public Service Labour Relations Amendment Act, 2023* unjustifiably infringes s 2(d) of the *Charter* by denying Legislative Counsel access to any meaningful collective bargaining process and is therefore of no force or effect;
- d) damages to BCGLA and affected lawyers arising from the unjustified breach of s 2(d);
- e) costs, including special costs and applicable taxes on those costs; and
- f) such further and other relief as counsel may advise and this Honourable Court deems just, including but not limited to further and other relief under s 24(1) of the *Charter* and s 52 of the *Constitution Act, 1982*.

PART 3: LEGAL BASIS

74. The plaintiff relies on

- a) Sections 1 and 2(d) of the *Charter*; and
- b) Section 24(1) of the *Charter* and section 52 of the *Constitution Act, 1982*.

Section 2(d)

Generally

- 75. Section 2(d) of the *Charter* guarantees the right of everyone to freedom of association, including the right of employees to organize and to engage in a meaningful process of collective bargaining through their own democratically-selected and independent bargaining agent.
- 76. Meaningful collective bargaining requires that employees have a degree of choice and independence sufficient to enable them to determine and pursue their collective interests.
- 77. Section 2(d) is infringed by government conduct or legislation that substantially interferes with employees' right to organize and bargain collectively through a bargaining agent that is both democratically-chosen by and accountable to them, and that is capable of effectively representing their particular collective goals in the bargaining process.
- 78. The right to meaningful collective bargaining must be understood in context. Where the majority of a group of employees have a long-standing, democratically-selected bargaining agent that represents their employment and professional interests, legislation interferes with this right if it forces those employees to exercise their constitutionally-protected collective bargaining rights through a bargaining agent they did not choose, and in a bargaining unit that does not (and cannot) reflect their unique community interest or permit them to independently pursue their own interests and priorities.

79. In enacting Bill 5, the Province is acting as both employer and legislator, using its powers as legislator to impose a collective bargaining framework and outcome that privileges its preferences as Employer over the expressed democratic wishes of Civil Lawyers, for the purpose and with the effect of substantially interfering with their capacity to engage in meaningful collective bargaining through their democratically-chosen bargaining agent. Moreover, in contrast to other designated bargaining models, the structure Bill 5 created did not follow recommendations of a neutral expert in labour relations after hearing from interested parties, nor did it respect the right of employees to democratically select their own independent and representative bargaining agent where there has been a prior established history and record of separate representation reflecting a distinct community of interest. Rather, the structure Bill 5 imposed resulted from employer interference (based on the unilaterally determined interest of the Province as employer), which interference in both purpose and effect of overrode the capacity of Civil Lawyers to retain a sufficient degree of control, choice and independence so as to be able to pursue the workplace goals they wish to advance through a meaningful process of collective bargaining.

Breach of s 2(d) with respect to Civil Lawyers

80. Civil Lawyers have a constitutional right to be represented by the independent bargaining agent, chosen democratically by them, which has represented them since 1992. By failing to recognize the BCGLA as the democratically-chosen and independent bargaining agent for Civil Lawyers, including Legislative Counsel, Bill 5 in both purpose and effect substantially interferes with the capacity of Civil Lawyers to engage in a meaningful collective bargaining process, and to do so through their own democratically selected independent and representative association.

81. In addition, by dictating the bargaining agent which is to represent Civil Lawyers, Bill 5 denies Civil Lawyers the degree of independence and choice of bargaining agent sufficient for them to be able to determine and pursue their collective interests through a meaningful process of collective bargaining, respectful of their own unique community of interest. This is particularly the case when the licensed professionals bargaining unit represented by the PEA, into which the Province is forcing Civil Lawyers, is the very unit that Civil Lawyers have consistently and clearly opposed joining. To the contrary, Civil Lawyers have overwhelmingly expressed their clear and unequivocal desire to be represented by the BCGLA as their democratically-selected, independent and representative bargaining agent. The Province's insistence that Civil Lawyers be represented by the PEA in the all-professionals bargaining unit, rather than by their own democratically-chosen bargaining agent, erodes the constitutionally-protected choice and independence of bargaining agents to such a degree as to constitute substantial interference with a meaningful process of collective bargaining, contrary to s 2(d) of the *Charter*.

82. This substantial interference is compounded by the fact that the number of non-lawyer professionals in the PEA bargaining unit is substantially larger than the number of Civil Lawyers that the Province proposes to add to the PEA bargaining unit. As a result, forcibly including Civil Lawyers (other than Legislative Counsel) in the PEA unit results in Civil

Lawyers not having effective and meaningful input into the selection and determination of their unique collective interests, contrary to s 2(d) of the *Charter*.

83. This substantial interference is further compounded and reinforced by the fact that – unlike other professional employees in the civil service – Civil Lawyers, conduct public interest litigation on behalf of the Attorney General, and have special legal obligations in the administration of justice and in advising the Province in respect of important questions relating to the legality and constitutional validity of government action. Civil Lawyers advise the Attorney General, who has a unique role to play in advising Cabinet to ensure the rule of law is maintained. Further, as part of their job duties, Civil Lawyers must at times take or consider positions contrary to the interests of other public servants, including other professionals in the public service who are represented by the PEA in the all-professionals bargaining unit into which the Province has forced Civil Lawyers by enacting Bill 5.
84. A meaningful process of collective bargaining includes being represented by a bargaining agent able to independently pursue employees' own bargaining priorities and interests. By precluding Civil Lawyers from being represented by their chosen bargaining agent and forcing them to bargain through the PEA in a large and diffuse bargaining unit with employees with whom they do not share a community of interest, Bill 5 substantially interferes with the capacity of Civil Lawyers to engage in a meaningful process of collective bargaining.
85. The need for, and appropriateness of, Civil Lawyers being separately represented in collective bargaining by their own independent and freely-chosen bargaining agent has been consistently recognized in other Canadian jurisdictions, where government lawyers are represented by their own democratically-selected bargaining agents in lawyers-only bargaining units. The Province has also recognized this principle with respect to Crown Counsel, who are in a standalone bargaining unit represented by an independent bargaining agent: the BCCCA. This provides further contextual support for a finding that Bill 5 and the operation of s 4 of the *PSLRA* (as amended) substantially interfere with the s 2(d) rights of Civil Lawyers.
86. Furthermore, the Employer has unconstitutionally used its position as legislator to advance its bargaining position and eliminate the funding base of the BCGLA, at the same time as the BCGLA was in the midst of the Certification Application before the Labour Board seeking certification and doing so after a decades-long relationship where the Employer had consistently recognized the representative role of the BCGLA. This further compounds the substantial interference with the associational freedoms of Civil Lawyers in both purpose and effect, including their right to be seek representation through the bargaining agent they have democratically chosen, and to engage in meaningful collective bargaining through that bargaining agent.
87. Alternatively, the combined effect of Bill 5 and s 4 of the *PSLRA*, in imposing the PEA as the bargaining agent for Civil Lawyers, and precluding the Labour Board or any independent, neutral and expert decision-maker to determine whether a bargaining unit comprised of Civil Lawyers is an appropriate bargaining unit, substantially interferes with Civil Lawyers' s 2(d) right to a meaningful process of collective bargaining, including even the possibility of being

represented by their own democratically selected, independent and representative bargaining agent.

Breach of s 2(d) with respect to Legislative Counsel

88. By excluding Legislative Counsel from the *PSLRA*, Bill 5 substantially interferes with the capacity of Legislative Counsel to engage in any meaningful collective bargaining process. Indeed, in the Labour Board proceedings, the Province conceded that excluding Civil Lawyers from access to collective bargaining legislation infringed s 2(d) of the *Charter*. This concession included Legislative Counsel and yet Bill 5 reinforces this s 2(d) infringement.
89. Moreover, by precluding the BCGLA from representing Legislative Counsel together with other Civil Lawyers, Bill 5 dilutes their collective power to negotiate together with other employees with whom they share a distinct community of interest, thereby substantially interferes with the capacity of both Legislative Counsel and other Civil Lawyers to engage in a meaningful collective bargaining process reflecting their historically shared unique community of interest and relationship.

Section 1

90. These infringements do not constitute reasonable limits prescribed by law that can be demonstrably justified in a free and democratic society, the burden of proof of which lies with the defendant.
91. The Province's breach of s 2(d) of the *Charter* by failing to provide Civil Lawyers (including Legislative Counsel) and by refusing to recognize their democratically-selected bargaining agent within the statutory framework of the *PSLRA* or otherwise; or alternatively by precluding the Labour Board from determining whether a unit of Civil Lawyers (including Legislative Counsel) would be an appropriate bargaining unit, does not advance a pressing or substantial government objective, nor does it meet the requirements of proportionality.

Plaintiffs' address for service:	Goldblatt Partners LLP c/o Moore Edgar Lyster LLP 200-375 Water Street Vancouver, B.C. V6B 0M9
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Fax number address for service:	416-591-7333
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Email address for service:	sbarrett@goldblattpartners.com
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Place of trial:

Vancouver, British Columbia

The address of the registry is:
V6Z 2C5

800 Smithe Street, Vancouver, British Columbia,

Dated:


Signature of
[] plaintiff [X] lawyers for plaintiff
For: Steven M. Barrett
Goldblatt Partners LLP

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM

A constitutional challenge under s 2(d) of the *Charter* to the 2023 *Public Service Labour Relations Amendment Act* and s 4 of the *PSLRA* which denied Civil Lawyers working for the defendant their right to a process of meaningful collective bargaining, including the right to be represented by a democratically-selected and independent bargaining agent of their choice, including by excluding certain Civil Lawyers from meaningful bargaining within the statutory framework of the *Public Service Labour Relations Act* altogether.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING

[Check one box below for the case type that best describes this case]

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES

[Check all boxes below that apply to this case]

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☒ constitutional law

- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

Part 4: [If an enactment is being relied on, specify. Do not list more than 3 enactments]

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being
Schedule B to the Canada Act 1982 (UK), 1982, c 11.

Public Service Labour Relations Amendment Act, SBC 2023, c 27.

Public Service Labour Relations Act, RSBC 1996, c 388.