IN THE COURT OF APPEAL FOR SASKATCHEWAN

BETWEEN:

CHRIST THE TEACHER ROMAN CATHOLIC SEPARATE SCHOOL DIVISION NO. 212 APPELLANT (DEFENDANT)

- and –

GOVERNMENT OF SASKATCHEWAN

APPELLANT (DEFENDANT)

- and –

GOOD SPIRIT SCHOOL DIVISION NO. 204

RESPONDENT (PLAINTIFF)

- and -

PUBLIC SCHOOL BOARDS' ASSOCIATION OF ALBERTA

PROPOSED INTERVENOR

NOTICE OF MOTION FOR LEAVE TO INTERVENE

TAKE NOTICE that the Public School Boards' Association of Alberta [the "PSBAA"], intends to apply to the Court of Appeal at the Court House, 2425 Victoria Avenue, Regina, Saskatchewan, on a date and time to be set by the Registrar, for an order pursuant to Rule 17 of *The Court of Appeal Rules* granting the PSBAA leave to intervene and present argument related to the constitutional issues in the within appeal, and a companion appeal, by filing a factum and making oral submissions at the hearing of the appeal on terms and conditions described in the Brief of Law filed in support of this Motion.

THE GROUNDS UPON WHICH THIS MOTION IS BASED are as follows:

1. The appeal involves issues described at paragraph 4 of the decision of the Court of Queen's Bench of Saskatchewan in *Good Spirit School Division No. 204 v Christ the Teacher Roman Catholic Separate School Division No. 212 and The Government of Saskatchewan, 2017 SKQB 109*:

[4] In essence then, this action, begun 12 years ago, poses two basic questions. First, is government funding of non-minority faith students in Saskatchewan's separate schools a constitutionally protected component of separate schools under s. 93 of the Constitution Act, 1867? The defendants, the Government of Saskatchewan [Government] and Christ the Teacher Roman Catholic School Division [CTT], the successor to Theodore Roman Catholic School Division, submit such funding is; GSSD submits such funding is not. Second, if such funding is not constitutionally protected under s. 93 of the Constitution Act, 1867, does it infringe ss. 2(a) and 15 of the Charter? The Government and CTT submit it does not infringe the Charter; GSSD submits it does infringe the Charter.

2. Alberta and Saskatchewan share parallel constitutional provisions for education, arising from:

- common history of Alberta and Saskatchewan, including their simultaneous creation as Provinces in 1905;
- parallel wording in s. 17 of the *Saskatchewan Act* s. 17 and s. 17 of the *Alberta Act*; and
- similarity in the Ordinance in effect in the North-West Territories, given constitutional effect by s. 17 of the *Saskatchewan Act* and s. 17 of the *Alberta Act*.

3. Today, Alberta and Saskatchewan also share parallel practices for funding of separate schools. As was the case in Saskatchewan, the Government of Alberta funds separate schools for all children in attendance at those schools without regard to their religious affiliation.

4. The Judgment of the Saskatchewan Court of Appeal on the constitutional questions described in paragraph 4 of the decision under appeal will therefore be of immediate persuasive application to the parallel constitutional regime in Alberta, and the parallel funding practice in Alberta.

5. The PSBAA was incorporated as a Society in Alberta in 1989.

6. The Bylaws of the PSBAA provide that membership in the PSBAA is open to any separate or public school jurisdiction in Alberta that subscribes to the objects of the PSBAA, pays the fees of the PSBAA, and agrees to be bound by and act in accordance with the Bylaws of the PSBAA. At this time the PSBAA is comprised of 28 out of the 41 public school boards operating in Alberta. The PSBAA's membership includes both rural and urban public boards.

7. The Objects of the PSBAA include the following:

- To promote and enhance Public school systems to meet the needs of our students; and
- To identify and seek resolution of issues fundamental and specific to public school systems.

8. In keeping with these Objects, and pursuant to the Bylaws, the following Resolution was carried at a Special Meeting of the PSBAA held in Red Deer, Alberta, on June 3, 2017:

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That the Public School Boards' Association make application to the Saskatchewan Court of Appeal for Intervenor Status in the Good Spirit School Division v Christ the Teacher School Division & Government of Saskatchewan matter.

9. Section 17 of *The Court of Appeal Rules* provides for interventions in proceedings before the Saskatchewan Court of Appeal.

10. The Deputy Registrar of the Saskatchewan Court of Appeal has advised that persons seeking to intervene file a Motion returnable on a date and time to be fixed by the Registrar. The motion would consist of a Notice of Motion, Affidavit(s) and Written Submissions relating to the satisfaction of the criteria for intervention. The Intervenor would also file a Factum. These Motion materials, and the Intervenor Factum, will be placed by the Registrar before the Panel appointed to hear this appeal; and would be heard by that Panel when the merits of the Appeal are heard. That Panel will not be appointed until the appeal is perfected, i.e. after the Appeal Books are filed, and after the Appellants and the Respondent have filed their Factums. The person seeking to intervene should therefore be prepared to attend at the hearing of the merits of the appeal, and argue both the Motion to obtain Intervenor status and also the Factum (assuming Intervenor status is granted).

11. The PSBAA seeks to intervene in the present appeal to make submissions on the constitutional issues engaged by the Notices of Appeal filed by Christ the Teacher Roman Catholic Separate School Division No. 212 and the Government of Saskatchewan. The constitutional issues in the Notices of Appeal are described in the Brief of Law. The PSBAA would not propose to tender new evidence in respect of the merits of the appeal. The PSBAA would propose to file a Factum after the Appellants and Respondent have filed their respective Factums. This complies with the process for intervention in this appeal described by the Deputy Registrar of the Court of Appeal.

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12. The PSBAA has a legitimate interest in this appellate litigation because the constitutional framework for education in Saskatchewan is parallel to that in Alberta, and Alberta has funding arrangements that are materially similar to those at issue in this appeal. Both provinces fund non-minority faith students in separate schools. The PSBAA has sufficient interest to warrant intervention because the outcome in this appeal will influence constitutional law applicable to education in Alberta.

13. The PSBAA, which represents many public school boards in Alberta operating in rural and urban settings, can provide a different and useful perspective that will be of assistance to the Court in its consideration of the constitutional issues in the Notices of Appeal. None of the existing parties have the perspective, because none operate in Alberta. The breadth of experience in educational delivery across both rural and urban areas in Alberta collectively experienced by the members of the PSBAA provides unique insight into the educational funding issue at the core of the constitutional issues in the Notices of Appeal, and distinguishes the PSBAA from the Appellant and Respondent School Districts.

14. Participation of the PSBAA will not increase the number of issues the parties themselves have included in the proceeding via the Notices of Appeal, will not delay the hearing, will not prejudice any party, and will not transform the Court into a political arena. Participation of the PSBAA as an Intervenor will contribute to the orderly and expeditious administration of justice in the Saskatchewan Court of Appeal by adding a different and useful perspective on the issues of constitutional law before the Court. The PSBAA satisfies the legal criteria for intervention outlined in *Whatcott v Saskatchewan (Human Rights Tribunal)*, 2008 SKCA 95 (CanLII), and other cases cited in the Brief of Law filed in support of this Motion.

THE FOLLOWING MATERIALS WILL BE RELIED UPON IN SUPPORT OF THIS MOTION:

- This Notice of Motion;
- Affidavit of Mary Lynne Campbell;
- Brief of Law demonstrating that the PSBAA meets legal criteria for intervention;
- A Factum, to be filed by the PSBAA after the Appellants and Respondent file their Factums; and
- Such further and other material as counsel may advise and this Honourable Court may permit, whether via case management or otherwise.

DATED at the City of Edmonton, in the Province of Alberta, this 16th day of November, 2017.

SHORES JARDINE LLP

Per:

Kirk Lambrecht

Kirk Lambrecht Q.C. Solicitors for the Proposed Intervenor, Public School Boards' Association of Alberta

This Notice of Motion was delivered by:

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AND TO:

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AND TO:

McKercher LLP Barristers & Solicitors 374 – 3rd Avenue South Saskatoon, SK S7K 1M5 Telephone: (306) 653-2000 Fax: (306) 653-2669 Email Address: <u>c.hirschfeld@mckercher.ca</u> Lawyer in charge of file: Collin K. Hirschfeld, Q.C. and Curtis J. Onishenko Acting on Behalf of Christ the Teacher Roman Catholic Separate School Division No. 212