

IN THE COURT OF KING’S BENCH OF  
NEW BRUNSWICK

DANS LA COUR DU BANC DU ROI DU  
NOUVEAU-BRUNSWICK

TRIAL DIVISION

DIVISION DE PREMIÈRE INSTANCE

JUDICIAL DISTRICT OF FREDERICTON

CIRCONSCRIPTION JUDICIAIRE DE  
FREDERICTON

IN THE MATTER of an application for  
judicial review and declaratory relief  
pursuant to Rule 69 and Rule 38 of the New  
Brunswick *Rules of Court*

DANS L’AFFAIRE d’une requête en  
revision judiciaire et de jugement  
déclaratoire en vertu de la règle 69 et la  
règle 38 des Règles de procédure du  
Nouveau-Brunswick

BETWEEN:

ENTRE:

**THE CANADIAN CIVIL LIBERTIES  
ASSOCIATION**

**THE CANADIAN CIVIL LIBERTIES  
ASSOCIATION**

Applicant

Requérant

- and -

- et -

**THE PROVINCE OF NEW  
BRUNSWICK, as represented by the  
MINISTER OF EDUCATION AND  
EARLY CHILDHOOD  
DEVELOPMENT**

**LA PROVINCE DU NOUVEAU-  
BRUNSWICK, représentée par le  
MINISTRE DE ÉDUCATION ET  
DÉVELOPPEMENT DE LA PETITE  
ENFANCE**

Respondent

Intimée

**NOTICE OF MOTION  
(FORM 37A)**

**AVIS DE MOTION  
(FORMULE 37A)**

TO:

DESTINATAIRE:

**THE MINISTER OF EDUCATION AND  
EARLY CHILDHOOD  
DEVELOPMENT**

**LE MINISTRE DE ÉDUCATION ET  
DÉVELOPPEMENT DE LA PETITE  
ENFANCE**

c/o The Office of the Attorney General  
Chancery Place  
675 King St  
Fredericton, NB E3B 1E9

c/o Bureau du procureur général  
Place de la Chancellerie  
675 rue King  
Fredericton, N-B E3B 1E9

The applicant will make a motion to the Court at 427 Queen Street, Fredericton, New Brunswick, on a date to be determined by the Court for an Order that:

(a) The time to schedule and hear this motion be abridged; and

(b) The Applicant, the Canadian Civil Liberties Association (“CCLA”), be granted public interest standing in relation to the above-referenced application.

Le requérant présentera une requête à la Cour, située au 427, rue Queen, à Fredericton (Nouveau-Brunswick), à une date qui sera déterminée par la Cour, pour obtenir une ordonnance qui :

(a) Le temps nécessaire pour planifier et entendre cette motion soit raccourci; et

(b) Le demandeur, l'Association canadienne des libertés civiles (« ACLC »), se voit accorder la qualité pour agir dans l'intérêt public en ce qui concerne la demande susmentionnée.

**The Grounds for the Motion are as follows:**

1. The Canadian Civil Liberties Association (“CCLA”) meets the established legal test for standing as a public interest litigant. There is a serious justiciable issue raised. CCLA has a real stake or genuine interest in the issue. In all the circumstances, the lawsuit is a reasonable and effective way to bring the issue before the Court.
2. **Serious justiciable issue raised**. In this application, CCLA seeks judicial review and declaratory relief related to the Minister of Education and Early Childhood Development’s (the “Minister”) decisions, made on June 8, 2023 and August 23, 2023 pursuant to section 6(b.2) of the *Education Act*, SNB 1997, c E-1.12, to revise the Department of Education and Early Childhood Development’s (the “Department”) sexual orientation and gender identity policy (Policy 713).
3. CCLA seeks an Order quashing the decisions because they were procedurally unfair. CCLA also seeks declarations that the revised Policy 713 CCLA: (a) was *ultra vires* the Minister because the impugned changes are contrary to the *Education Act*, SNB 1997, c E-1.12 and/or the *Human Rights Act*, RSNB 2011, c 171, (b) violates sections 15(1), 7, and 2 of the *Canadian Charter of Rights and Freedoms*, and (c) is of no force and effect to the extent that the policy prohibits the use of a transgendered or gender diverse students preferred name and preferred pronouns.
4. **Real stake or genuine interest**. The CCLA, founded in 1964, is a national, independent, non-profit, and non-governmental organization dedicated to the furtherance of human dignity and rights in Canada. The CCLA has several thousand supporters drawn from diverse backgrounds. A wide variety of people, occupations, and interests are represented in the national membership, including from New Brunswick.
5. Since its founding, the CCLA has challenged legislation, intervened and appeared in courts across Canada, presented briefs to legislative committees, and delivered programs to promote fundamental rights and freedoms for persons in Canada. CCLA is active in work that protects equality, life, liberty, security of the person, and other fundamental rights, while reconciling these with other rights and interests. It has addressed issues as diverse as: access to abortion and autonomy of pregnant women, welfare laws, privacy, safe injection sites,

prohibitions in relation to sex work, racial profiling, police accountability, refugee rights, freedom of expression for people who solicit money, mental health, and conditions of confinement. Part of this history is being involved publicly, politically, and in litigation in order to advance and protect the rights of young people and marginalized groups.

6. Given its history fighting against rights violations in Canada, CCLA has significant experience advocating with respect to deprivations imposed on those who are already marginalized, including transgendered people and young people. CCLA has dedicated many of its efforts to ensuring the constitutionality of Canadian laws, promoting the fair and equitable enforcement of those laws, and to advocating for the life, liberty, security of the person, and equality rights of people in Canada (including those who are marginalized based on sexual orientation, gender identity and expression, and other grounds).

7. **Reasonable and effective way.** The people who are most directly affected by the revised Policy 713, namely 2SLGBTQIA+ students who do not have their parent's consent for schools to use their chosen names or pronouns, are likely unable to bring this type of court challenge. They are stuck in a catch-22. They would require a litigation guardian to pursue this application, but this would necessitate disclosing their gender identity to their parents. They would also not have the resources required to advance test case litigation. There is also substantial social stigma associated with being transgendered or gender-diverse and for advocating on behalf of transgendered or gender-diverse students. This stigma creates potential for bullying, harassment, and risks of safety of any prospective applicant.

8. CCLA is a suitable alternative person to bring this challenge. CCLA's mandate as a public interest organization devoted to the protection of civil liberties, generally, and the rights of young people and people from marginalized backgrounds in particular, the organization's legal resources and institutional capacity, and its experience acting as a party and intervener in hundreds of *Charter* claims and appeals make it well-placed to advance the present litigation in the interest of safeguarding fundamental rights and freedoms more broadly across Canada.

9. **Abridgement of time.** It is in the interests of justice to schedule and hear this motion on an abridged or urgent basis. As explained in the Affidavit of Harini Sivalingam in support of this motion, at paragraphs 21-26, the decisions under review in this Application are causing or are likely to cause harm to transgender and gender-diverse students. Resolving the Applicant's motion is a pre-condition for the other steps needed to expeditiously bring this Application to a

hearing. If hearing this motion is scheduled in the ordinary course, it will exacerbate known harms to transgender and gender-diverse students.

10. The Canadian Paediatric Society states that the harms of non-affirmation of transgender and gender-diverse children and youth include elevated risk for depression, anxiety, eating disorders, self-harm, and suicide: Sivalingam Affidavit, para. 21, Exhibit “H” [pp. 10, 108]. The New Brunswick Child and Youth Advocate has summarized many similar concerns from healthcare professionals in New Brunswick linking the decisions that are under review in the underlying Application to similar negative health outcomes: Sivalingam Affidavit, paras. 22-25, Exhibit “I” [pp. 10-12, 126-132].

11. **Jurisdiction and rules.** CCLA makes this motion pursuant to the Court’s inherent jurisdiction and Rules 1.03, 3.02, 37 and 39 of the Rules of Court, and sections 9(1) and 21 of the *Judicature Act*, R.S.N.B. 1973, c J- 2.

Upon the hearing of the motion the following affidavits or other documentary evidence will be presented:

(a) Affidavit of Harini Sivalingam, Director of the Equality Program at the Canadian Civil Liberties Association, affirmed September 8, 2023; and

(b) Such further and other affidavits and other documentary evidence as counsel for the CCLA may advise and this Honourable Court may permit.

You are advised that:

(a) you are entitled to issue documents and present evidence at the hearing in English or French or both;

(b) the applicant intends to proceed in the English language; and

(c) if you intend to proceed in the other official language, an interpreter may be

A l’audition de la motion, les affidavits ou les autres preuves littérales suivantes seront présentées:

(a) Affidavit de Harini Sivalingam, directrice du programme de l’Association Canadienne des Libertés, affirmé le 8 septembre 2023; et

(b) Tous autres affidavits et autres preuves documentaires que l’avocat de l’ACLC peut conseiller et que cette honorable Cour peut autoriser.

Sachez que :

a) vous avez le droit d’émettre des documents et de présenter votre preuve à l’audience en français, en anglais ou dans les deux langues;

b) le requérant a l’intention d’utiliser la langue anglais; et

c) si vous avez l’intention d’utiliser l’autre langue officielle, les services d’un interprète

required and you must so advise the clerk at least 7 days before the hearing.

pourront être requis et vous devrez en aviser le greffier au moins 7 jours avant l'audience.

DATED at Fredericton, New Brunswick, this day of September 11, 2023.

FAIT à Fredericton, Nouveau-Brunswick, le 11 septembre 2023.

< original signed by >

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Lawyer for applicant

Avocat du requérant

**Benjamin Perryman**

Barrister & Solicitor

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