

S-085226

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BRITISH COLUMBIA TEACHERS' FEDERATION,
HOSPITAL EMPLOYEES' UNION,
BRITISH COLUMBIA GOVERNMENT AND SERVICE EMPLOYEES' UNION,
FEDERATION OF POST-SECONDARY EDUCATORS OF BRITISH COLUMBIA,
BRITISH COLUMBIA DIVISION OF THE CANADIAN UNION OF PUBLIC EMPLOYEES,
CANADIAN OFFICE & PROFESSIONAL EMPLOYEES UNION, LOCAL 378,
BRITISH COLUMBIA NURSES' UNION
and MARCIA TOMS

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

DEFENDANT

WRIT OF SUMMONS

Name and Address of Each Plaintiff	British Columbia Teachers' Federation ("BCTF") Hospital Employees' Union ("HEU") British Columbia Government and Service Employees' Union ("BCGEU") Canadian Office & Professional Employees Union, Local 378 ("COPE 378") British Columbia Nurses' Union ("BCNU") Marcia Toms c/o 1350 - 355 Burrard Street Vancouver BC V6C 2G8
	Federation of Post-Secondary Educators of British Columbia ("FPSE") British Columbia Division of the Canadian Union of Public Employees ("CUPE BC") c/o 1105 - 808 Nelson Street Vancouver BC V6Z 2H2

Name and Address of Each Defendant Her Majesty the Queen in Right of the Province of British Columbia
c/o Ministry of the Attorney General
3rd Floor - 1001 Douglas Street
PO Box 9280 Stn Prov Govt
Victoria BC V8W 9J7

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the Defendant: Her Majesty the Queen in Right of the Province of British Columbia

TAKE NOTICE that this action has been commenced against you by the Plaintiffs for the claim(s) set out in this Writ of Summons.

IF YOU INTEND TO DEFEND this action, or if you have a set off or counterclaim that you wish to have taken into account at the trial, **YOU MUST**

- (a) **GIVE NOTICE** of your intention by filing a form entitled "Appearance" in the above Registry of this Court, at the address shown below, within the Time for Appearance provided for below and **YOU MUST ALSO DELIVER** a copy of the Appearance to the Plaintiffs' address for delivery, which is set out in this Writ of Summons, and
- (b) If a Statement of Claim is provided with this Writ of Summons or is later served on or delivered to you, **FILE** a Statement of Defence in the above Registry of this Court within the Time for Defence provided for below and **DELIVER** a copy of the Statement of Defence to the Plaintiffs' address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the Registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

- (a) **YOU FAIL** to file the Appearance within the Time for Appearance provided for below, or
- (b) **YOU FAIL** to file the Statement of Defence with the Time for Defence provided for below.

TIME FOR APPEARANCE

If this Writ of Summons is served on a person in British Columbia, the Time for Appearance by that person is seven (7) days from the service (not including the day of service).

If this Writ of Summons is served on a person outside British Columbia, the Time for Appearance by that person after service, is twenty-one (21) days in the case of a person residing anywhere within Canada, twenty-eight (28) days in the case of a person residing in the United States of America, and forty-two (42) days in the case of a person residing elsewhere.

[or, if the Time for Appearance has been set by Order of the Court, within that time.]

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the Plaintiffs within fourteen (14) days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this Writ of Summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above.

[or, if the Time for Defence has been set by Order of the Court, within that time.]

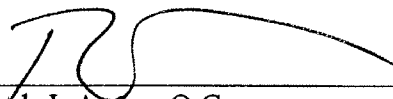
(1) The address of the Registry is:	800 Smithe Street Vancouver BC V6Z 2E1
(2) The Plaintiffs' addresses for delivery are:	For the Plaintiffs BCTF, HEU, BCGEU, COPE 378, BCNU and Marcia Toms: Arvay Finlay Barristers 1350 – 355 Burrard Street Vancouver, British Columbia V6C 2G8
Fax number for delivery (if any):	604.687.1941
	For the Plaintiffs FPSE and CUPE BC: McGrady & Company Lawyers Box 12101, Nelson Square 1105 – 808 Nelson Street Vancouver BC V6Z 2H2
Fax number for delivery (if any):	604.734.7009

(3) The name and office address of the solicitor for the Plaintiffs BCTF, HEU, BCGEU, COPE 378, BCNU and Marcia Toms is:	Joseph J. Arvay, Q.C. Arvay Finlay Barristers 1350 – 355 Burrard Street Vancouver BC V6C 2G8
The name and office address of the solicitor for the Plaintiffs FPSE and CUPE BC is:	Leo McGrady, Q.C. McGrady & Company Lawyers Box 12101, Nelson Square 1105 – 808 Nelson Street Vancouver BC V6Z 2H2

The Plaintiffs' claim is: see attached Statement of Claim.

ARVAY FINLAY

Per:



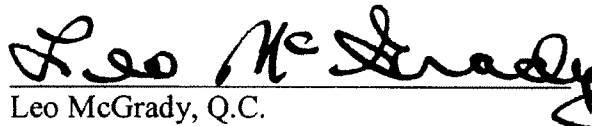
For Joseph J. Arvay, Q.C.

Solicitors for the Plaintiffs BCTF, HEU, BCGEU, COPE 378, BCNU and Marcia Toms

Dated: July 23, 2008

McGRADY & COMPANY

Per:



Leo McGrady, Q.C.

Solicitors for the Plaintiffs FPSE and CUPE BC

This **WRIT OF SUMMONS** and **STATEMENT OF CLAIM** is filed by the Solicitors for the Plaintiffs BCTF, HEU, BCGEU, COPE 378, BCNU and MARCIA TOMS, **ARVAY FINLAY**, Barristers, whose place of business and address for service is 1350 – 355 Burrard Street, Vancouver BC, V6C 2G8. Telephone: 604.689.4421 / Fax: 604.687.1941; and by Solicitors for the Plaintiffs FPSE and CUPE BC, **McGRADY & COMPANY**, Lawyers, whose place of business and address for service is Box 12101, Nelson Square, 1105 – 808 Nelson Street, Vancouver BC, V6Z 2H2. Telephone: 604.734.7003 / Fax: 604.734.7009.

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BRITISH COLUMBIA TEACHERS' FEDERATION,
HOSPITAL EMPLOYEES' UNION,
BRITISH COLUMBIA GOVERNMENT AND SERVICE EMPLOYEES' UNION,
FEDERATION OF POST-SECONDARY EDUCATORS OF BRITISH COLUMBIA,
BRITISH COLUMBIA DIVISION OF THE CANADIAN UNION OF PUBLIC EMPLOYEES,
CANADIAN OFFICE & PROFESSIONAL EMPLOYEES UNION, LOCAL 378,
BRITISH COLUMBIA NURSES' UNION
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HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

DEFENDANT

STATEMENT OF CLAIM

1. For the reasons set out herein, the Plaintiffs say that the restrictions on election advertising imposed by ss. 235.1 and 228 of the recently amended *Elections Act*, R.S.B.C. 1996, c. 106, are unjustifiable infringements of the right to freedom of expression, the right to vote, and the right to freedom of association guaranteed by the *Charter of Rights and Freedoms*, and, as such, of no force and effect pursuant to s. 52 of the *Constitution Act, 1982*.

The Plaintiff BCTF

2. The Plaintiff, British Columbia Teachers' Federation (the "BCTF"), is a certified trade union under the *Labour Relations Code*, R.S.B.C. 1996, c. 224 (the "*Code*"), with a head office at 100-550 West 6th Avenue, in the City of Vancouver, in the Province of British Columbia.

3. The BCTF represents over 40,000 teachers.

4. The Constitution of the BCTF sets out its goals which include the promotion of the cause of education in British Columbia, the promotion of the welfare of the teachers of British Columbia, and the development of programs of social justice. These goals are to be attained by the participation of the BCTF in educational, social, cooperative, electoral, political, economic, bargaining or other activities authorized pursuant to its bylaws.
5. Themes which have been addressed by BCTF advertising include: class size, class composition (inclusion of students with special needs), funding, the provision of specialist teachers, and equality of access to education.
6. The BCTF advocates for public education both generally and within the context of election campaigns.
7. The BCTF transmits its messages using a variety of media, including television, radio, newspapers, postal drops, billboards and the internet.
8. The BCTF uses advertising during the period leading up to an election to raise awareness on education issues.
9. The BCTF often jointly advertises with its member locals. It also advertises with other unions and organizations.
10. The BCTF website, which is intended to be accessed by the public, contains an archive of numerous advertisements on educational issues produced over a number of years, many of which challenge the Provincial government on policy choices and deal with issues that can be associated with government actions.
11. In the 88 days leading up to the 2005 Provincial general election, the BCTF spent over \$1 million on advertisements and other materials discussing issues that were of concern to it. Most of these issues could be associated with government actions, and some ads mentioned the Premier's name.

The Plaintiff HEU

12. The Plaintiff, Hospital Employees' Union (the "HEU"), is a certified trade union under the *Code* with a provincial office at 5000 North Fraser Way, in the City of Burnaby, in the Province of British Columbia.

13. At present, the HEU is certified to represent approximately 43,000 healthcare workers in British Columbia.

14. The HEU was formed in 1944. On December 7, 1994, the HEU became a Service Division of the Canadian Union of Public Employees ("CUPE").

15. The HEU Constitution sets out its objectives. These include defending the right of all persons to high quality hospital and medical treatment and protecting the best interests of its members.

16. During the 28 days preceding the 2005 Provincial general election, the HEU spent over \$500,000 on advertisements and other materials discussing issues that were of concern to union members. Most of these issues could be associated with government actions.

17. The contracts of 3,500 HEU members with three private companies, Sodexo MS Canada Ltd., Compass Group Canada (Health Services) Ltd. and Aramark Canada Facility Services Ltd., will end on September 30, 2008. The HEU anticipates spending on advertising in support of the bargaining for these members. This advertising would likely be critical of the government's partial privatization of the delivery of health services. Contract negotiations may continue into the next Provincial election campaign.

18. The HEU spent over \$740,000 on TV advertising motivated by bargaining for its members in 2006. Many of these advertisements were critical of government actions.

19. In 2002 and 2003, the HEU purchased advertising denouncing the newly enacted *Health and Social Services Delivery Improvement Act*, S.B.C. 2002, c.2, which permitted health sector

employers to organize their relations with employees in ways that would not otherwise have been possible under existing collective agreements. The HEU believed this legislation effectively prohibited meaningful collective bargaining on a number of specific issues. Some of its provisions were found to be unconstitutional and were struck down by the Supreme Court of Canada in 2007.

20. The HEU website, which is intended to be accessed by the public, contains an archive of numerous advertisements on healthcare issues produced over a number of years, many of which are critical of the Provincial government and deal with issues which could be associated with government actions.

The Plaintiff BCGEU

21. The Plaintiff, British Columbia Government and Service Employees' Union (the "BCGEU"), is a certified trade union under the *Code* with a provincial office at 4911 Canada Way, in the City of Burnaby, in the Province of British Columbia.

22. The BCGEU represents over 60,000 workers in the public service, health care, community social services, highways maintenance, childcare, colleges, libraries and the private sector.

23. The BCGEU Constitution sets out its objectives. These include: the promotion and furtherance of the interests of its members and working people everywhere through social, economic, cultural, financial and educational activities. To achieve this objective, BCGEU engages in public information campaigns involving paid advertising and distribution of brochures and other materials which are critical of government policies and advocate for program spending and legislative changes.

24. The BCGEU paid approximately \$77,000 for the production of a 30 minute television program, Broken Promises, documenting the effect of government program and service cuts on British Columbia communities. Broken Promises aired during the 2005 Provincial general

election campaign. DVDs containing copies of the program were sent to public libraries and are currently available to the public.

25. The BCGEU was a member of the Right to Privacy Campaign, along with the British Columbia Civil Liberties Association and other organizations. This group produces advertising and materials voicing concerns about the implications of privatization of the medical services plan and its effect on privacy of medical records.

26. The BCGEU is a partner with the Coalition of Childcare Advocates of B.C. For more than two years, the BCGEU has purchased advertising and distributed brochures, flyers, lawn signs and window posters to the public and its members on the need for a provincially funded childcare system and the failure of current government initiatives. Public advertising by the BCGEU is frequent during May, which is Childcare Month.

27. During the 88 days preceding the 2005 Provincial general election, the BCGEU spent over \$300,000 on materials and advertising discussing issues and program shortcomings that were of concern to its members. All of these issues could be associated with government actions.

The Plaintiff FPSE

28. The Plaintiff, Federation of Post-Secondary Educators of British Columbia (the "FPSE"), is a federation of certified trade unions which has a head office at 400-550 West 6th Avenue, in the City of Vancouver, in the Province of British Columbia.

29. Together, the FPSE member unions represent over 10,000 faculty and staff in colleges, university colleges, research institutes and private institutions in British Columbia.

30. The FPSE's Constitution sets out its purposes. These include: fostering and promoting the objectives of post-secondary education, improving the economic welfare of post-secondary educators, working with other groups concerned with post-secondary education, and seeking effective representation on all relevant bodies.

31. During the 88 days preceding the 2005 Provincial general election, the FPSE spent approximately \$500,000 on advertisements and other materials discussing issues that were of concern to its members. Much of this advertising focused on the voting record on educational matters of Members of the Legislative Assembly (“MLAs”) in ridings containing or near a post-secondary institution.

The Plaintiff CUPE BC

32. The Canadian Union of Public Employees is a national trade union organization (“CUPE National”) which came into being in 1963.

33. The Plaintiff, British Columbia Division of the Canadian Union of Public Employees (“CUPE BC”), has a head office at 4940 Canada Way, in the City of Burnaby, in the Province of British Columbia. CUPE BC is a provincial division of CUPE National.

34. CUPE BC comprises approximately 200 local unions chartered by CUPE National representing approximately 71,000 employees in healthcare, education, municipalities, libraries, universities, social services, public utilities, transportation, emergency services, airlines, and non-profit societies.

35. The CUPE BC and CUPE National Constitutions set out the objectives of CUPE BC. These include: the advancement of the social, economic and general welfare of active and retired employees, the defence and extension of the civil rights and liberties of public employees, respect and conservation of the environment, and the promotion of peace and freedom in the world. The Constitution states that CUPE is to achieve these goals by, amongst other things, educating the general public and promoting desirable legislation. To achieve these objectives, CUPE BC engages in public information campaigns involving paid advertising and distribution of brochures and other materials which are critical of government policies and advocate for program, spending and legislative changes.

36. CUPE BC spent approximately \$198,000 transmitting or distributing advertising messages to the public during the 88 days preceding the 2005 Provincial general election stating

its position on issues that were of concern to it. Most of these issues could be associated with government action.

37. Some of the CUPE BC advertising messages transmitted or distributed during the 88 day period preceding the 2005 Provincial general election formed part of ongoing public information campaigns in opposition to the agenda of the provincial government, such as CUPE BC's Strong Communities campaign. Part of CUPE BC's Strong Communities campaign included joint advertising with Strong Community coalition groups in a variety of provincial electoral ridings, including those in which the cities of Nelson, Vernon, Victoria, Prince George, Campbell River, Nanaimo and Cowichan are situated.

The Plaintiff COPE 378

38. The Canadian Office & Professional Employees Union ("COPE") is a certified trade union under the *Code*.

39. The Plaintiff, Canadian Office & Professional Employees Union, Local 378 ("COPE 378"), has a head office at 4595 Canada Way, in the City of Burnaby, in the Province of British Columbia.

40. COPE 378 represents over 10,000 professional employees working in British Columbia, in the utility industry, tourism and travel, education, information technology, call centres, research, manufacturing, insurance and transit industries.

41. The COPE 378 Constitution sets out its purposes and aims. These include the promotion of progressive legislation on labour relations, labour standards and human rights. They also include cooperating with unions and organizations of unions to achieve this objective.

42. COPE 378 spent over \$148,000 on advertisements and other materials discussing issues that were of concern to its members during the 28 days preceding the 2005 Provincial general election. Most of these issues could be associated with government action. Absent the

restrictions imposed by the *Election Act*, COPE 378 anticipates spending over \$200,000 on election advertising during the next Provincial general election campaign.

The Plaintiff BCNU

43. The Plaintiff, British Columbia Nurses' Union (the "BCNU") is a certified trade union under the *Code*, which has a head office at 4060 Regent Street, in the City of Burnaby, in the Province of British Columbia.

44. The BCNU represents approximately 26,000 registered nurses, registered psychiatric nurses and allied healthcare workers.

45. The BCNU Constitution sets out its purposes and aims. These include the promotion of the welfare of nurses and of the highest standard of healthcare for all.

46. During 2001, which was both an election year and a bargaining year for nurses, the BCNU spent \$600,000 on a television advertising campaign, calling on government and health employers to "Pay them what they are worth". One of the advertisements ran during a televised election debate.

47. The BCNU jointly produced a "Students Matter, Teachers Care/Nurses Care, Patients Matter" pamphlet with the BCTF which was distributed during the month preceding the 2005 election.

48. The BCNU annual convention and provincial bargaining strategy conference takes place February 13-19, 2009. In the past, the BCNU has purchased advertising to be aired while the convention is being held.

49. May 12th is International Nursing Day. The second week of May is National Nursing Week.

50. The BCNU spent over \$249,000 on advertisements and other materials discussing issues that were of concern to it during the 88 days preceding the 2005 Provincial general election. Most of these issues could be associated with government actions. Some advertisements said: "Vote Better Public Health Care."

The Individual Plaintiff

51. The Plaintiff Marcia Toms (the "Individual Plaintiff") is a resident of British Columbia and a registered voter with an address at 2751 East 5th Avenue, in the City of Vancouver, Province of British Columbia. The Individual Plaintiff has voted in every Provincial election for the last 35 years and intends to vote in the next Provincial election. The Individual Plaintiff is a member of the Plaintiff BCTF and pays dues to this union. The Individual Plaintiff relies on the Plaintiff BCTF to represent her interests and to communicate on her behalf with the government, MLAs and members of the voting public.

The Defendant

52. The Defendant, Her Majesty the Queen in Right of the Province of British Columbia, is named pursuant to the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89.

The Electoral Process

53. Elections in British Columbia are administered by the Chief Electoral Officer under the authority and pursuant to the provisions of the *Election Act*. An election is called by the Lieutenant Governor who dissolves the Legislature and issues an Order in Council directing the Chief Electoral Officer to issue the writs of election. As specified in s. 27 of the *Election Act*, the general voting day is the 28th day after the date on which the election is called.

54. The *Act* defines the 28 day period between the calling of the election and the close of general voting as the "Campaign Period."

55. The *Constitution Act*, R.S.B.C. 1996, c. 66 was amended in 2001. Section 23(2) of the *Act* now provides that an election will be called on the second Tuesday in May of the fourth calendar year following the previous general election (“Fixed Date Election”). The Lieutenant Governor can still call an election at an earlier date.

56. Under the *Election Act*, ss. 155 and 168, a political party may be registered and maintained in British Columbia by:

- a. providing the names of the party leader, a financial agent, an auditor, and one other party officer;
- b. demonstrating to the chief electoral officer that the party intends to field candidates in the next general Provincial election; and
- c. fielding two candidates in the general Provincial election.

The Election Amendment Act

57. On April 30, 2008, the Attorney General of British Columbia introduced *Bill 42*, the *Election Amendment Act, 2008*, which amends the *Election Act*. Second Reading, Third Reading, and Royal Assent occurred on May 29, 2008. There was no debate during the Committee of the Whole on this bill or during the Third Reading of the bill because of a government motion on May 6, 2008, invoking closure.

58. The provisions of *the Election Amendment Act* came into force on May 29, 2008, except for s. 11 which comes into force on September 1, 2009, and ss. 31-59 which come into force on November 1, 2008.

59. The *Election Amendment Act, 2008* amends the definition of election advertising in the *Election Act*. It modifies the spending limits on election expenses imposed on political parties, introduces limits on spending on election advertising by third parties, and extends those limits beyond the election campaign.

60. Section 60 of the *Election Amendment Act, 2008*, as enacted, extends the definition of “election advertising” in s. 228 of the *Election Act* to include advertising during the 60 days preceding the calling of the election (the “Pre-Campaign Period”) and to include advertising that takes a position on an issue with which a registered political party or candidate is associated.

61. Section 51 of the *Election Amendment Act, 2008* modifies the spending limits on election expenses incurred by political parties and candidates, set by ss. 198 and 199 of the *Election Act*. As amended, s. 198 imposes an overall limit of \$4.4 million on election expenses incurred by a political party during the Campaign Period. For Fixed Date Elections, s. 198 imposes an overall limit of \$1.1 million during the Pre-Campaign Period. As per s. 218 of the *Election Act*, political parties which exceed these limits:

- a. are liable to a penalty of double the amount by which they were exceeded, and
- b. will be deregistered for six months.

62. Section 67 of the *Election Amendment Act, 2008* adds ss. 235.1, 235.3 and 235.3 to the *Election Act*. Section 235.1 introduces limits on spending on election advertising by third parties. The global limit is \$150,000, of which at most \$3,000 can be in relation to a specific electoral district. For Fixed Date Elections, it applies to all advertising during the Pre-Campaign Period and the Campaign Period. For other elections, the limit applies to advertising during the Campaign Period. Section 235.2 provides for substantial penalties for any violation of s. 235.1. Violators:

- a. must pay a fine of ten times the amount by which they have exceeded the limits; and
- b. will be deregistered for the next general election, and hence ineligible to sponsor election advertising.

63. The BCTF, the BCGEU, the HEU, COPE 378, CUPE BC, and the FPSE in conjunction with other organizations purchased advertising between the first and second readings of the

Election Amendment Act, 2008, objecting to the third party spending limits. These advertisements were part of a public outcry over the Bill, which led to an amendment of the Act, introduced by the government, which decreased the duration of the period to which the spending limits applied for certain elections, from 148 days to 88 days. The total cost of this advertising exceeded \$50,000.

Government Action and Advertising

64. The budget day fixed by s. 6 of the *Budget Transparency and Accountability Act* of 2001 is the third Tuesday of February. This falls within the Pre-Campaign Period.

65. The government spends money to purchase election advertising within the meaning of the *Election Act* as amended during the Pre-Campaign and Campaign Periods.

66. Section 3.1 of the *Election Act*, as amended, provides that the third party spending limits of s. 235.1 do not apply to the government in the carrying out of its duties.

The Charter Violations

67. The *Election Act*, as amended, infringes the Plaintiffs' constitutionally protected rights to freedom of expression contrary to s. 2(b) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"). Particulars of this infringement include:

- a. Section 235.1 prevents or impedes the Plaintiff Organizations and their members, including the Individual Plaintiff, from effectively presenting their views and concerns in the public square during the Pre-Campaign Period, while the Legislature is in session, thereby restricting the reasoned political discourse which ensures that governmental policy choices are sensitive to the needs and concerns of a broad range of citizens.
- b. Section 235.1 prevents or impedes the Plaintiff Organizations and their members, including the Individual Plaintiff, from effectively communicating their position

on election issues during the Pre-Campaign and Campaign Periods, thereby depriving them of one of the primary means whereby they can participate in the open debate and political process which animates the determination of social policy.

- c. Section 235.1 prevents or impedes the Plaintiff Organizations and their members, including the Individual Plaintiff, from airing their concerns with respect to government action, including legislation, or responding to government election advertising during the Pre-Campaign and Campaign Periods, thereby depriving them of one of their strongest defences against unfair treatment by the government. It also prevents or impedes advertising in support of government action by anyone other than the government.
- d. Section 228 extends the definition of election advertising to advertising on an issue associated with a political party, thereby preventing or impeding the Plaintiff Organizations from purchasing advertising related to their day to day activities, including collective bargaining and the shaping of legislation which concerns their members.

68. The *Election Act*, as amended, infringes the Individual Plaintiff's constitutionally protected right to vote contrary to s. 3 of the *Charter*. Particulars of this infringement include:

- a. Section 235.1 prevents or impedes the Individual Plaintiff and other members of the Plaintiff Organizations from effectively bringing their concerns and views to the attention of MLAs during the Pre-Campaign Period thereby interfering with their right to effective representation.
- b. Section 235.1 prevents or impedes third parties from effectively bringing policy options to the attention of MLAs during the Pre-Campaign Period, thereby rendering the representation the MLAs provide to the Individual Plaintiff and other members of the Plaintiff Organizations less effective.

- c. Section 235.1 prevents or impedes third parties from effectively communicating their position on election issues during the Pre-Campaign and Campaign periods, thereby curtailing the diversity of perspectives heard and assessed by the electorate and interfering with the informational component of the right to vote of the Individual Plaintiff and other members of the Plaintiff Organizations; and
- d. Section 235.1 prevents or impedes the Individual Plaintiff and other members of the Plaintiff Organizations from effectively expressing an opinion about the formation of public policy and the functioning of public institutions during the Pre-Campaign and Campaign Periods, thereby interfering with their right to play a meaningful role in the selection of elected representatives.

69. The *Election Act*, as amended, infringes the Individual Plaintiff's constitutionally protected rights to freedom of association contrary to s. 2(d) of the *Charter*. Particulars of this infringement include:

- a. Section 235.1 substantially interferes with the ability of the Individual Plaintiff and other members of the Plaintiff Organizations to associate with a view to promoting work-related interests.
- b. Section 235.1 prevents or impedes the Individual Plaintiff and other members of the Plaintiff Organizations from associating to collectively exercise their constitutional right to freedom of expression in the pursuit of common goals.
- c. Section 235.1(b) prevents or impedes the Individual Plaintiff and other members of the Plaintiff Organizations from associating to collectively exercise their lawful right to spend up to \$150,000 each on election advertising.

70. The *Charter* violations set out herein are not reasonable limits that can be demonstrably justified in a free and democratic society and cannot, therefore, be saved by s. 1 of the *Charter*.

WHEREFORE the plaintiff claims as follows:

- (a) a declaration that ss. 235.1 and 228 of the *Election Act* are inconsistent with the *Charter of Rights and Freedoms* and, as such, of no force and effect pursuant to s. 52 of the *Constitution Act, 1982*;
- (b) costs, including special costs, and
- (c) such further and other relief as to this Honourable Court may seem just.

Place of trial: Vancouver BC

ARVAY FINLAY

Per:



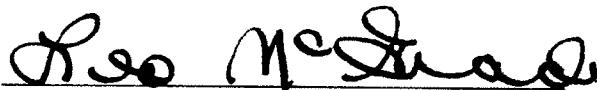
Joseph J. Arvay, Q.C.

Solicitors for the Plaintiffs BCTF, HEU, BCGEU, COPE 378, BCNU and Marcia Toms

Dated: July 23, 2008

McGRADY & COMPANY

Per:



Leo McGrady, Q.C.

Solicitors for the Plaintiffs FPSE and CUPE BC

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EMPLOYEES' UNION, BRITISH COLUMBIA GOVERNMENT AND
SERVICE EMPLOYEES' UNION, FEDERATION OF POST-SECONDARY
EDUCATORS OF BRITISH COLUMBIA, BRITISH COLUMBIA DIVISION
OF THE CANADIAN UNION OF PUBLIC EMPLOYEES, CANADIAN
OFFICE & PROFESSIONAL EMPLOYEES UNION, LOCAL 378, BRITISH
COLUMBIA NURSES' UNION and MARCIA TOMS

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA

DEFENDANT

**WRIT OF SUMMONS AND
STATEMENT OF CLAIM**

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