Form 10
[Rule 3.25]

COURT FILE NUMBER	1803-20366
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFF(S)	**INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, LOCAL LODGE 146; INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS; HUGH MACDONALD; INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 955; and CHRISTOPHER FLETT**
DEFENDANT(S)	**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA**
DOCUMENT	**STATEMENT OF CLAIM**

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NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

Nature of the Claim

1. This action seeks a declaration that all or part of sections 184 to and including 191 of the *Labour Relations Code*, RSA 2000, c L-1, as amended (the *"Code")* are contrary to

freedom of association as protected by section 2(d) of the *Charter of Rights and Freedoms* (the *"Charter"*) and are not saved by section 1 of the *Charter.* This action further seeks a declaration that, in accordance with section 52 of the *Constitution Act, 1982,* all or part of sections 184 to and including s. 191 of the *Code* are unconstitutional, invalid, of no force and effect, and inoperative.

2. The Plaintiff, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, Local Lodge 146 ("Boilermakers Local 146"), is a trade union that represents approximately 4,300 workers in the Province of Alberta. The members of the Boilermakers Local 146 include journeymen and apprentice boilermakers, welders and related tradespersons and workers who work in the construction, maintenance and fabrication shops in many locations within the Province of Alberta.

3. The Plaintiff, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers ("Boilermakers International") is the parent union of its chartered local union, Boilermakers Local 146. Individuals who are members of chartered locals of the Boilermakers such as Boilermakers Local 146 are also members of the Boilermakers International. The Boilermakers International has approximately 52,000 members, with 12,000 of those members in Canada and the balance are in the United States of America. In Canada there are 8 chartered construction locals, and two chartered shipyard locals, and two chartered district lodges, as well as representing employees at about twenty industrial facilities. Boilermakers Local 146 is the largest local within the Boilermakers International in Canada and the United States of America.

4. The Plaintiff, Hugh MacDonald ("MacDonald") is a journeyman boilermaker and has been a member of Boilermakers Local 146 and Boilermakers International for 28 years. MacDonald was elected as the Business Manager and Secretary Treasurer of Boilermakers Local 146 effective July 1, 2018. MacDonald joins this claim on his own behalf as an affected member of both of the Boilermaker Plaintiffs, as a union worker in the Alberta construction industry and as an elected officer of the Plaintiff Boilermakers

Local 146. Reference in this claim to members of the Boilermaker Plaintiffs includes the Plaintiff MacDonald.

5. The Plaintiff, International Union of Operating Engineers, Local 955 ("Operating Engineers Local 955") is a trade union that represents approximately 12,500 workers in the Province of Alberta. The members of the Operating Engineers Local 955 include journeymen and apprentice operating engineers, crane operators, heavy equipment operators, mechanics, welders, equipment operators, and related tradespersons and workers who work in the construction, maintenance and shops in many locations within the Province of Alberta. The Operating Engineers Local 955 also represents a wide variety of workers employed by municipalities, in mining, in healthcare, in manufacturing, by school divisions, in transportation, in roadbuilding and on pipelines.

6. The Plaintiff, Christopher Flett ("Flett") is a serviceman and has been a member of Operating Engineers Local 955 for over 11 years. Flett was elected as the Business Manager of the Operating Engineers in September 2017. Flett joins this claim on his own behalf as an affected member of the Operating Engineers Local 955, as a union worker in the Alberta construction industry and as an elected officer of the Operating Engineers Local 955. Reference in this claim to members of the Operating Engineers Local 955 includes the Plaintiff Flett.

7. The Plaintiff, Boilermakers Local 146 has been certified by the Alberta Labour Relations Board (the "ALRB") pursuant to the provisions of the *Code* as the exclusive bargaining agent of bargaining units of general construction boilermakers with respect to many employers working within the general construction industry in Alberta. It has also been voluntarily recognized by employers as the bargaining agent for general construction boilermakers.

8. On November 28, 1988, pursuant to section 175 of the *Code,* the ALRB issued Registration Certificate #7 that confirmed the registration of the Boilermaker Contractors' Association (the "BCA") as the Registered Employer Organization ("REO") representing employers who employ employees within a bargaining unit described as

"all construction boilermakers" and for which the Boilermakers Local 146 is the bargaining agent in the general construction sector. Boilermakers Local 146 is the only trade union in the "group of trade unions" named on Registration Certificate #7 as the trade union with whom the BCA may bargain collectively.

9. Over the years, the BCA and Boilermakers Local 146 have concluded a series of registration collective agreements. The current registration collective agreement expires on April 30, 2019.

10. The Plaintiff, Operating Engineers Local 955 has been certified by the Alberta Labour Relations Board (the "ALRB") pursuant to the provisions of the *Code* as the exclusive bargaining agent of bargaining units of general construction operating engineers with respect to many employers working within the general construction industry in Alberta. It has also been voluntarily recognized by employers as the bargaining agent for general construction operating engineers.

11. On May 1, 1989, pursuant to section 175 of the *Code,* the ALRB issued Registration Certificate #24 that confirmed the registration of Construction Labour Relations an Alberta Association – Operating Engineers (Provincial) Trade Division ("CLR OE Div.") as the REO representing employers who employ employees within a bargaining unit described as "all construction operating engineers" and for which the Operating Engineers Local 955 is the bargaining agent. Operating Engineers Local 955 is the only trade union in the "group of trade unions" named on Registration Certificate #24 as the trade union with whom the CLR OE Div. may bargain collectively.

12. Over the years, the CLR OE Div. and Operating Engineers Local 955 have concluded a series of registration collective agreements. The current registration collective agreement expires on April 30, 2019.

13. Pursuant to section 184 of the *Code*, the ALRB must issue a Consolidation Order prior to the commencement of each round of collective bargaining grouping the registered employers' organizations and their paired groups of trade unions affected by the

Registration Certificates. The latest Consolidation Order was issued on July 24, 2018. The Consolidation Order creates four consolidated groups in the general construction sector affecting the parties to twenty-four separate Registration Certificates.

14. Regarding the Plaintiffs, Boilermakers Local 146/BCA Registration Certificate #7 was placed in Group 4 of the general construction sector of the July 24, 2018 Consolidation Order with the parties to six other Registration Certificates. Operating Engineers Local 955 was placed in Group 1 of the general construction sector with the parties to four other Registration Certificates.

15. From 1988 to 2007, the parties to each of the Registration Certificates collectively bargained at separate bargaining tables as contemplated by the *Code*. During that time period, there were no lawful strikes in the general construction sector, nor have there been any lawful strikes from 2007 to date. The Plaintiffs state that was due, in whole or in part, to the restrictions set out in sections 184 – 191 of the *Code* that make it virtually impossible for a strike by any individual building trades union to occur in the general construction sector in Alberta.

16. In 2010, the parties to the 24 Registration Certificates in the general construction sector entered into an agreement to try an alternative, voluntary, group collective bargaining approach, in an effort to lessen the negative impacts on collective bargaining created by the provisions of sections 184 – 191 of the *Code*. That alternative approach, commonly referred to as framework bargaining, includes a combination of both bargaining at a joint bargaining table including all the REO/groups of trade union pairs and individual bargaining tables for each separate REO/group of trade unions pairs. Each round of collective bargaining includes a decision to opt in or opt out by the trade unions and REO in registration in the general construction sector of the construction industry.

17. The Plaintiffs state that the alternative, voluntary, group collective bargaining approach did not enhance their ability as building trades unions to collectively bargain on behalf of their members. Boilermakers Local 146 and the Operating Engineers Local 955 are

not participating in the alternative, voluntary, group collective bargaining (framework bargaining) for this current round of collective bargaining.

How the Provisions of the *Code* in Question Operate

18. The Plaintiffs state that their freedom of association and that of their members, including their right to collectively bargain and strike in the general construction sector, is substantially impaired by the provisions of sections 184 – 191 of the *Code*. The processes set out in sections 184 – 191 of the *Code* generally operate in the following manner:

    a. Section 184 mandates that the ALRB make a Consolidation Order before each round of construction collective bargaining for all the REOs/group of trade union pairs for whom Registration Certificates have been granted.

    b. The legislative framework contemplates that the parties to the Registration Certificates will commence their collective bargaining at independent bargaining tables between the REO/group of trade unions pairs named in each separate Registration Certificate.

    c. While the voluntary group collective bargaining is not prohibited by the *Code* or by sections 184 – 191, it is not part of the *Code* requirements nor does the existence of such a voluntary process impact the operation of the *Code* provisions.

    d. When a trade union that is part of registration in construction decides it will consider strike action as part of its collective bargaining strategy, section 185 of the *Code* mandates that the ALRB supervise strike votes in that part of the construction industry subject to registration on the basis of the Consolidation Order. This section restricts the supervision of strike votes until at least 60% of the groups of trade unions which are part of Registration Certificates who have not settled their

collective agreement in each of the Consolidation Order groups also apply for a strike vote.

e. Once 60% of the groups of trade unions in a Consolidation Order group apply for a strike vote, the other groups of trade unions in that Consolidation Order group must also participate in the strike vote, whether or not they want to or have even applied to the ALRB for a supervised strike vote.

f. The ALRB has interpreted "not settled the terms of a collective agreement" to mean that a collective agreement is not settled until the union's ratification process is completed confirming the acceptance of the collective agreement by the union's members. Thus, a trade union in the process of holding a ratification vote, which might take some time if it involves mail-in ballots or multiple voting locations, regarding a recommended memorandum of agreement, will be required to participate in the strike vote process, at least until such time as its ratification process is completed.

g. Section 185 requires that the strike vote be a "single strike vote". The ALRB has interpreted that phrase to mean that the strike vote is not completed until each of the groups of trade unions have completed their strike vote. Objections to the voting constituency of any trade union, the proposed voting arrangements of a particular trade union, or other employer objections must be ruled upon by the ALRB before the strike votes are considered completed. The results of the strike vote cannot be counted until all the components of the strike vote are completed, so each trade union must wait until all the groups of trade unions included the strike vote complete their individual strike vote processes.

h. Section 185 requires that the votes of the members of the separate trade unions conducting strike votes be considered together and that two thresholds must be achieved before any of the trade unions will be found by the ALRB to have completed a strike vote in favour of a strike. The two thresholds, as set by section 185 and also as further interpreted by the ALRB, are:

i. At least 60% of groups of trade unions participating in the strike vote must have at least 50% of the votes cast by their members in favour of a strike; and

ii. At least 60 % of the employees entitled to vote and voting "in the overall consolidated vote" must vote in favour of strike action.

i. Section 186 requires that before a trade union in the construction industry can commence a strike after a successful strike vote, all of the trade unions in the Consolidation Order group who have not settled the terms of a collective agreement must serve notice to strike and go on strike at the same time. A trade union has no ability to conduct their own strike on their own schedule.

j. Sections 187 and 188 have mirror provisions to sections 185 and 186 regarding lockouts.

k. Section 189 legislates mandatory interest arbitration for those trade unions in registration who have not settled the terms of a collective agreement before 75% of the REO/groups of trade unions pairs have settled their collective agreement. That is, once 75% of the pairs have settled collective agreements, the remaining trade unions no longer have the right to strike at all. Section 189(2) states that "any strike or lockout in existence between the parties is deemed to terminate" when the 75% threshold is achieved.

l. Given the large range in the size of the different building trades unions, it is entirely possible to have the situation where more than 50% of the construction workers in the general construction sector do not have a settled collective agreement and their trade unions no longer have the right to strike under the *Code*.

m. Sections 190 and 191 give the Minister the sole power to determine the composition of and to appoint a Construction Industry Disputes Resolution Tribunal (the "CIDRT"). The Minister has the sole the power to direct the method or methods of how the remaining collective agreements will be resolve by the CIDRT.

n. Since the enactment of the 1988 *Code,* interest arbitration by CIDRTs have looked to the terms and conditions negotiated by the 75% of the settled REO/groups of trade union pairs to establish the "industry pattern". The decisions of the CIDRTs have consistently awarded the pattern to resolve the collective agreements of those trade unions who were statutorily mandated to utilize the CIDRT process. CIDRTs do not typically award full retroactive wage increases, and at best only very modest partial retroactivity has been granted. There has been very little opportunity for a trade union to achieve any unique changes or gains to their collective agreement through the CIDRT process.

Substantial Interference with Collective Bargaining and the Right to Strike

19. The Plaintiffs state that the provisions of sections 184 – 191 substantially interfere with their freedom of association as guaranteed by section 2(d) of the *Charter* in regard to the process of collective bargaining and the right to strike in the construction industry.

20. The right of an individual trade union/group of trade unions party to a Registration Certificate to freely collectively bargain, determine the process and timing of their steps in collective bargaining and to go on strike is decided, in whole or in part, by the decision of members of entirely different, separate, unrelated trade unions. While a trade union may have a carefully planned collective bargaining and strike strategy made with an informed understanding of the desires and priorities of its members, that plan and strategy may be thwarted by the decisions of members of entirely different trade unions that may have entirely different collective bargaining and striking plans.

21. Outside of the part of the construction industry subject to registration, the *Code* contains a complete legislated process for collective bargaining, applications for supervised strike votes, the provision of strike notice and the commencement of strikes in sections 75 – 83. The provisions of sections 75-83 apply to the other strikes in Alberta for unions in all sectors, including for unions operating in the construction industry

outside of registration. There is currently at least one union operating extensively in the construction industry outside of registration. The Plaintiffs state that there is no reason why building trades unions and their members who are subject to registration should not enjoy the same rights as the rest of the trade unions and their members in Alberta.

22. The Plaintiffs state that trade unions which represent members in the construction industry in Canada outside of Alberta are not subject to the kind of restrictions on their free collective bargaining and right to strike that exist regarding the registration part of the construction industry in Alberta.

23. The Plaintiffs state that their process of collective bargaining and their right to strike are substantially interfered with by sections 184 – 191 of the *Code,* including as explained below:

    a. Each trade union should be free to work with only its own members to establish its collective bargaining strategy, the timing of collective bargaining, the timing of an application for a strike vote, the conduct of a strike vote and the calling of a strike. Especially important is the ability of a trade union to hold eleventh hour collective bargaining and push back the date and timing of commencement of a strike to accommodate the potential for a resolution of the collective agreement. Sections 184 – 191 of the *Code* profoundly interfere with each of those actions.

    b. The requirements of the *Code* force all of the trade union members of a Consolidation Order group to work together regarding applications for strike votes, the holding of a strike vote, the counting of the strike vote, the giving of strike notice and the commencement of a strike. Each of those trade unions are bound by the duty to bargain the conclusion of their collective agreement in good faith. The members of each of those trade unions has a constitutional right to free collective bargaining and to strike. There are no legislative provisions to resolve conflicts between these obligations and rights.

c. There are no legislative provisions to compel any of the REO/groups of trade union pairs in a particular Consolidation Order group to cooperate with the strike vote and strike processes set in motion by others in the group. The requisite delay in seeking orders from the ALRB to force reluctant trade unions and their members to participate causes prejudice to those trade unions seeking to go on strike in a timely manner.

d. The goal of collective bargaining is to achieve a collective agreement that the trade union, its members and the employers can all agree to. The processes set out in sections 184 – 191 do not end or curtail the ongoing pursuit of that goal and the duty to do so in good faith. When one trade union reaches a memorandum of settlement, there is considerable pressure on the others in the Consolidation Order group and on the ALRB to put any section 184 – 191 applications or processes that are underway on hold while ratification of that agreement is conducted. However, those delays prejudice the other trade unions in the Consolidation Order group that are seeking to use the economic weapon of a strike by delaying them and possibly taking that right away entirely as the 75% threshold of settled collective agreements is reached.

e. Sections 184 – 191 of the *Code* add extraneous pressures to the overall collective bargaining process. All the trade unions must try to be aware of the activities of other trade unions in their Consolation Order group and be aware of how the timing of the decisions and activities of the other trade unions will impact them. In addition, all of the trade unions must try to be aware of the activities of all of the other trade unions in the sector, for example, the general construction sector, because when 75% of them reach collective agreements, the rest are forced out of the bargaining process to legislated interest arbitration. They must try to do this without any right to any of that information.

f. While the need to involve all the REO/groups of trade union pairs in a Consolidation Order group in strike vote applications, strike votes, counting of

strike votes, strike notice, commencement of a strike, can unduly delay the strategic decisions of those trade unions and their members seeking to go on strike, these applications can equally prejudice a trade union and its members whose strategic plan is unexpectedly rushed.

g. The legislative provisions in section 185 of the *Code* that require both that a majority of votes from the members of a trade union seeking a strike vote mandate and that a majority of the votes of the overall members in the Consolidation Order group both be in favour of striking takes the decision to strike away from the members of one trade union. One union's members might vote in favour of a strike and yet not be allowed to strike because the members of the other trade unions in the Consolidation Order group do not vote to strike, or vice versa. Both outcomes are a substantial interference with the process and strategic decisions of the collective bargaining process and with the right to strike of any particular trade union and its members.

h. The legislative requirement that construction industry collective bargaining proceed using a strike/lockout model and then turn on the shortest of notice to an interest arbitration (CIDRT) model substantially interferes with collective bargaining. The strategic approach to each of these models is entirely different and made all the more difficult given that a trade union has no control over the timing of this model shift.

i. There is no basis to remove the right to strike in the construction industry for those trade unions who are part of registration. The fact that those trade unions who operate in the construction industry outside of registration have no limitations on their right to strike underlines the lack of any basis to remove the right to strike. This is particularly so when compared to other sectors in Alberta, other sectors in the other Provinces, and the construction sector in other Provinces, where the restrictions on the right to strike set out in *Code* are far less restrictive.

j. The use of the 75% of REO/groups of trade union pairs as the threshold for removing the right to strike to those unsettled trade unions is also unjustified. The 75% threshold can be reached without a majority of the actual trade union members being covered by settled collective agreements. This interference is even more pronounced when it is understood that the "industry pattern" of terms and conditions of employment that will be imposed by the mandatory CIDRTs on that unsettled majority of workers will have been set by the collective agreements negotiated on behalf of a minority number of trade union members.

k. The Minister's powers and mandated actions substantially interfere with free collective bargaining and the right to strike. Those powers and mandated actions include no discretion except to refer disputes to CIDRTs as soon as the 75% settlement threshold has been reached, unilateral authority to choose the members of the CIDRT without agreement of the trade unions affected, unilateral authority to determine the methods of arbitration without the agreement of the trade unions affected, and a requirement that all strikes are deemed ended as soon as the Minister refers items in dispute to a CIDRT.

l. In regard to the parallel lockout provisions, a trade union which is engaged in productive, good faith collective bargaining with their REO will be dragged into a potential lockout if 60% of the REOs in their Consolidated Order group seek to hold a lockout vote, give lockout notice and/or commence a lockout. Again, the trade union's free collective bargaining is being profoundly impacted by the activities of employers and trade unions that are not related to it and over which it has no authority.

m. Such further and other impacts as may be proven and argued in Court.

24. The Plaintiffs submit that any consultations that occurred before the introduction of sections 184 – 191 into the *Code* in and around 1988 are irrelevant. The rights of trade unions and their members to free collective bargaining and to strike were not recognized to be a part of section 2(d) of the *Charter* at that time. As such, any

consultations were not meaningful in that they could have had no consideration of these important constitutional rights and thus are not useful in assessing whether or not these sections violate the *Charter* or are saved by section 1 of the *Charter*.

25. The Plaintiffs state that there were many legislatives changes made to the *Code* in 2016 and 2017. During the Defendant's consultations regarding those changes, the Plaintiffs Boilermakers Local 146 and Boilermakers International provided written submissions seeking that sections 184 – 191 be repealed.

26. While the Defendant was aware of the current understanding of freedom of association, including the right to free collective bargaining and the right to strike, it did not make changes to the restrictions set out in sections 185 – 191 of the *Code*. Those sections remain the same as when they were enacted in 1988.

27. The Plaintiffs state that sections 184 – 191 of the *Code* violate the rights of the affected trade unions and their members, including MacDonald and Flett, to free collective bargaining and to the right to strike. The Plaintiffs state that they and their members are restricted in their free collective bargaining and their right to strike in more significant manner than the other trade unions and their members in Alberta, and in the rest of Canada, without any factual or policy basis for that distinction.

28. The Plaintiffs state that the restrictions on their freedom of association and that of their members are not reasonably justified in a free and democratic society and thus are not saved by section 1 of the *Charter*.

International Law

29. The Plaintiffs also rely upon international law to which Canada and Alberta are parties to and bound by, and in particular that international law which requires governments to guarantee freedom of association and freedom of expression to workers and unions, including but not limited to:

a. *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171, articles 19, 21, and 22;

b. *International Covenant on Economic, Social and Cultural Rights*, 999 U.N.T.S. 171, article 8;

c. International Labour Organization, *Freedom of Association and Protection of the Right to Organise, 1948 (No. 87)*, 68 U.N.T.S. 17, articles 3, 11;

d. International Labour Organization, *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*, 96 U.N.T.S. 257, articles 1-2;

e. International Labour Organization, *Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*, 37 I.L.M. 1233, preamble and article 2; and

f. *Charter of the Organization of American States*, Can. T.S. 1990 No. 23, article 45(c) and (g).

Relief Requested:

30. The Plaintiffs seek the following relief:

a. A declaration that all, or in the alternative, part of sections 184 – 191 of the *Labour Relations Code*, RSA 2000, c L-1, as amended are contrary to section 2(d) of the *Charter of Rights and Freedoms* and are not saved by section 1 of the *Charter.*

b. A declaration that, in accordance with section 52 of the *Constitution Act, 1982*, all, or in the alternative part, of sections 184 – 191 of the *Labour Relations Code* are unconstitutional, invalid, of no force and effect and inoperative.

c. Such interim relief as the Plaintiffs may seek if needed in respect to the current round of collective bargaining in relation to the collective agreements that expire on April 30, 2019.

d. Costs

e. Such further and other relief as this Honourable Court deems appropriate.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.