COURT FILE NUMBER KBG-RG-1952-2026

COURT OF KING'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE OF REGINA

APPLICANTS: **PUBLIC INTEREST LITIGATION INSTITUTE AND LAWRENCE DAVID**

RESPONDENTS: **ATTORNEY GENERAL OF SASKATCHEWAN ATTORNEY GENERAL OF CANADA**

AMENDED ORIGINATING APPLICATION

NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

Where Court of King Bench for Saskatchewan
2425 Victoria Avenue
Regina, SK S4P 4W6

Date October 1, 2026

Time 1:30 pm

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

PARTICULARS OF APPLICATION

The Applicants seeks the following remedy or order:

1. The applicants, Public Interest Litigation Institute ("PILI") and Professor Lawrence David make this application for:

a. a declaration that the Saskatchewan Legislative Assembly acted *ultra vires* the provincial power of unilateral constitutional amendment in section 45 of the *Constitution Act, 1982* by enacting section 4 of *The Saskatchewan First Act*, S.S. 2023, c. 9, which purports to amend the *Saskatchewan Act* by entrenching section 3.1 within it;

b. a declaration that the Saskatchewan Legislative Assembly acted *ultra vires* the provincial power of unilateral constitutional amendment in s. 45 of the *Constitution Act, 1982* by enacting section 5 of *The Saskatchewan First Act*, S.S. 2023, c. 9, which purports to amend the *Constitution Act, 1867* by entrenching section 90S.1 within it;

c. a declaration under section 52(1) of the *Constitution Act, 1982* that sections 4 and 5 of *The Saskatchewan First Act*, S.S. 2023, c. 9, section 3.1 of *The Saskatchewan Act* and section 90S.1 of the *Constitution Act, 1867* are unconstitutional and, therefore, of no force and effect;

d. a declaration that the Government of Canada is legally obligated to institute legal proceedings to obtain a binding judicial declaration when a province adopts legislation that purports to unilaterally amend "the constitution of the province" and/or "the Constitution of Canada" pursuant to section 45 of the *Constitution Act*, 1982, and that the Government failed in its obligation by not doing so with respect to sections 4 and 5 of The *Saskatchewan First Act*;

e. public interest standing to bring this Application;

f. costs of this Application plus applicable taxes; and

g. such further and other relief as this Court considers just.

The Applicants' grounds for making this Application are:

A. Overview

2. *The Saskatchewan First Act* **("*The Act*")** was passed by the Saskatchewan Legislative Assembly on March 16, 2023. Section 14 provides that *The Act* "comes into force by order of the Lieutenant Governor in Council." *The Act* entered into force on September 15, 2023.

3. Section 4 of *The Act* purports to amend the text of *The Saskatchewan Act* by entrenching a new section 3.1 within it. However, as Saskatchewan's own prior practices show, amendments to the text of *The Saskatchewan Act* are not permitted under the provincial power of unilateral constitutional amendment entrenched in s. 45 of the *Constitution Act, 1982*. Section 45 does not authorize provinces to amend the text of the Constitution of Canada, which includes *The Saskatchewan Act*;

4. Section 5 of *The Act* purports to amend the text of the *Constitution Act, 1867* by entrenching a new section 90S.1 within it. However, amendments to the text of the *Constitution Act, 1867* are not permitted under the provincial power of unilateral constitutional amendment entrenched in s. 45 of the *Constitution Act, 1982*.

5. In addition, amendments to "the constitution of the province" within the meaning of section 45 of the *Constitution Act, 1982* are limited to enactments that bear upon the operation of an organ of the enacting level of government. Even if sections 3.1(1) of *The Saskatchewan Act* and 90S.1(1) of the *Constitution Act, 1867* satisfied this requirement, the same cannot be said for sections 3.1(2), 3.1(3),

90S.1(2) or 90S.1(3), which are statements of public and economic policy. In addition, sections 3.1(1) and 90S.1(1) are *ultra vires* sections 92 and 92A of the *Constitution Act, 1867*, violate sections 96 and 101 of the *Constitution Act, 1867*, and also violate the unwritten constitutional principle of judicial independence.

6. The Applicants therefore seek an order under section 52(1) of the *Constitution Act, 1982* declaring sections 4 and 5 of *The Saskatchewan First Act* unconstitutional and of no force and effect. As is customary, this order should have immediate retroactive effect and should not be suspended for any period.

7. At the outset, the Applicants emphasize that they agree with the policy statements appearing in s. 90S.1 and have great respect for Saskatchewan, its people, and its elected representatives and other public servants. The premise of this application is quite simple: any amendment to the *Constitution Act, 1867* or to *The Saskatchewan Act* can only be achieved using the lawful and therefore legitimate rules of constitutional amendment listed in Part V of the *Constitution Act, 1982*.

8. To this end, the Applicants note that the insertion into the *Constitution Act, 1867* of section 90S.1(2) and (3) ~~in its entirety~~ could lawfully be achieved by way of a constitutional amendment made pursuant to the bilateral formula for constitutional amendments in s. 43 of the *Constitution Act, 1982*. The same is true for the insertion of sections 3.1(2) and (3) into *The Saskatchewan Act* – as shown by the bilateral amendment used to insert section 24 into that same *Act* in 2022. The entrenchment of s. 90S.1(1) into the *Constitution Act, 1867* and of section 3.1(1) into *The Saskatchewan Act of 1905* could only be lawfully achieved if it is divorced from section 3(3) of The *Saskatchewan First Act*, as a province cannot unilaterally define the scope of its legislative powers under sections 92 or 92A of the *Constitution Act, 1867*. ~~The same is true for the insertion of sections 3.1(2) and (3) into *The Saskatchewan Act* – as shown by the bilateral amendment used to insert section 24 into that same *Act* in 2022.~~.

B. The Applicants

9. The present application is being pursued by two Applicants individually and collectively, namely: Public Interest Litigation Institute ("PILI") and Professor Lawrence David, BA (Concordia), BCL/LLB (McGill), LL.M (Harvard).

B.1 Public Interest Litigation Institute

10. The Applicant, Public Interest Litigation Institute ("PILI"), is an unincorporated association, with offices in Ottawa and Montreal. PILI was established in December 2024 by Lawrence David, the President and Founder. Mr. Jeffrey Orenstein, is PILI's Vice-President, and a member in good standing of the Barreau du Québec since 2002 and of the Law Society of Ontario since 2011;

11. As per its Mission Statement and Statement of Principles, PILI is dedicated to using strategic litigation and advocacy as vehicles for access to justice in order to advance the rights, interests, and values at the heart of Canada's liberal democracy and to ensure the primacy of constitutionalism and the rule of law as guides and constraints on the exercise of public power;

12. In advancing this mission, PILI launches or intervenes in public and private law litigation bearing upon the public interest, constitutionalism, and the rule of law generally, and provides strategic counsel to lawyers and third parties involved in litigation. In advancing its principles, PILI's mission is also partly educational, as it increasingly involves law students at the University of Ottawa's Faculty of Law to provide research assistance as a means of introducing them to public interest litigation, appeals, interventions, and litigation heard by the Supreme Court of Canada. This, in turn, contributes to cultivating the next generations of public interest lawyers and advocates;

13. PILI intervenes in litigation at different levels of court, and intends to expand PILI's standing as a vehicle for advancing access to justice. PILI also collaborates with lawyers interested in advancing the public interest and the rule of law, providing lawyers with free strategic advice, litigation insights, assistance, and support. PILI is independent, non-partisan, apolitical and neutral.

14. Represented by the co-Applicant, Professor Lawrence David, occasionally with Mr. Orenstein, PILI has had the distinct honour of intervening before the Supreme Court of Canada in several appeals of significant public and/or national importance. This includes significant appeals involving the interpretation and application of the Canadian constitution – including appeals involving the Respondents the Attorney General of Saskatchewan and the Attorney General of Canada.

14.1 In particular:

- *Government of Saskatchewan as represented by the Minister of Education v. UR Pride Centre for Sexuality and Gender Diversity* (SCC No. 41979): submissions focused on the pre-emptive and omnibus invocation of s. 33 of the *Canadian Charter of Rights and Freedoms* (hearing to be held in Winter 2027);

- *English Montreal School Board v. Attorney General of Quebec* (SCC No. 41231): submissions focused on whether the precedent in *Ford v. Attorney General of Quebec*, [1988] 2 S.C.R. 712 should be partly overruled to prohibit the pre-emptive invocation of s. 33 of the *Canadian Charter of Rights and Freedoms* (hearing held March 23-26, 2026; judgment under reserve);

- *Attorney General of Quebec v. Joseph-Christopher Luamba* (SCC No. 41605): submissions focused on whether the precedent in *R. v. Ladouceur*, [1990] 1 S.C.R. 1257 should be overruled to prohibit the warrantless and suspicionless apprehension of motorists in Quebec and the rest of Canada (hearing held on January 19-20, 2026; judgment under reserve);

- *His Majesty The King v. Abdel Karim Chemlal* (SCC No. 41766): submissions focused on the legal standard applicable to authorize a safety search of a person who is neither arrested nor under investigative detention (hearing scheduled for October 6, 2026);

- *Ontario Place Protectors v. His Majesty The King in Right of Ontario* (SCC No. 41805): submissions focused on the effect of combining full or partial privative clauses with statutory immunity provisions limiting governmental liability in private law (hearing scheduled for October 13, 2026);

- *GCT Canada Limited Partnership v. International Longshore and Warehouse Union Ship and Dock Foremen, Local 514* (SCC No. 41951): submissions focused on the intersection between judicial deference and the vertical axis of *stare decisis* in judicial review of administrative action in Canada;

15. PILI has also intervened or been granted leave to intervene in the following private law appeals, with submissions focusing on *stare decisis* as an indispensable component of the Supreme Court of Canada's constitutional jurisdiction and of the Canadian judicial hierarchy (*Aphria Inc. v. Canada Life Assurance Company* (SCC No. 41665) and *H.N. v. Board of Education of School District No. 61 (Greater Victoria)* (SCC No. 41910)) and on access to justice for consumers in national class actions involving violations of the federal *Competition Act* (*NHK Spring Co. Ltd. et al. v. Tony Cheung, et al.* (SCC No. 41451).

16. Over and above all, however, PILI has distinct expertise, interest, and involvement in constitutional law, in constitutional litigation, and in leveraging public interest litigation as an indispensable instrument for access to justice and giving voice to individuals, communities, and issues that cannot otherwise reasonably be adjudicated due to resource and other limitations.

17. The Supreme Court of Canada's repeated conferral of intervener status to PILI in appeals of significant national and/or public importance is a testament to its capacity to intelligently contribute to complex legal and constitutional debates; to assist the court in its consideration of issues with considerable potential impacts; and to its ability to play a meaningful and constructive role in litigation involving various public and private sector stakeholders, including the Attorney General of Saskatchewan and the Attorney General of Canada.

18. Nourished by the considerable experience of the undersigned and co-Applicant Professor David in litigation before Canadian courts PILI's proposed application will proceed with due regard for professionalism, proportionality, candour, and intellectual rigour.

B.2 Professor Lawrence David

19. The Applicant, Lawrence David, is a Canadian citizen born and raised in Montreal, Quebec. He is a lawyer and member in good standing of the Law Society of Ontario since 2016 and, since

2018, a law professor at the University of Ottawa's Faculty of Law, teaching constitutional law, administrative law, and criminal law and procedure in the English and French Common Law programs;

20. ~~After his completing his primary, high school, CEGEP, and undergraduate education in Montreal (Concordia University, BA, 2010),~~ Professor David completed his legal education at McGill University's Faculty of Law (BCL/LLB, 2014) and at Harvard Law School (LL.M, 2018), where his studies at the latter focused on US and comparative constitutional law;

21. After completing a judicial clerkship at the Quebec Court of Appeal in 2013-2014, Mr. David secured an articling position at the Department of Justice Canada's headquarters in Ottawa, Ontario, which he commenced after graduating from McGill in May 2014. Immediately after completing his articling requirements, Mr. David clerked at the Supreme Court of Canada in 2015-2016, only to secure a position as Research & Policy Advisor at the Privy Council Office in 2016-2017.

22. In May 2017, Professor David transferred to Justice Canada until August 2017, when he went on academic leave to complete his Master of Laws (LLM) studies at Harvard Law School. After completing his LLM studies in May 2018, he returned to his position at Justice Canada in Ottawa, and commenced teaching at the University of Ottawa's Faculty of Law in September 2018. In 2020-2021, Professor David also held the position of Senior Legal and Policy Advisor to the 40 Senators comprising the Independent Senators Group at the Senate of Canada, before returning to Justice Canada.

23. In 2023, Professor David departed from Justice Canada to explore private sector and public interest legal opportunities, which he pursues to the present day, in addition to continuing to teach at the University of Ottawa's Faculty of Law. Through his experiences, Professor David has had the honour and privilege of acquiring experience and contributing to the policies, programs, and operations of all three branches of Canadian government, in both English and French.

24. This is a testament to Professor David's resolute commitment to Canadian constitutional democracy, the rule of law, the vitality and strength of Canada's democratic institutions, and his passionate desire to contribute to that enterprise – a passion that has animated the last 18 years of his life, including 9 years as servant of the Crown in a variety of professional roles in the three branches of government.

25. Professor David has been fortunate to cultivate a burgeoning and impactful litigation career before Canadian and Quebec courts, in a variety of complex matters of significant public or national importance.

26. Mr. David has appeared as counsel and delivered oral submissions before the Supreme Court of Canada, the Quebec Court of Appeal, the Quebec Superior Court, the Federal Court, the Supreme Court of British Columbia, the Ontario Superior Court, and the Ontario Court of Justice, in addition to writing submissions or otherwise contributing to numerous legal proceedings filed before other courts in Canada.

27. As concerns appearances before the Supreme Court of Canada, Professor David argued the appeal in *Quebec Major Junior Hockey League et al. v. Lukas Walter et al.* (SCC No. 41532), on February 16, 2026, with the judgment currently under reserve. This is in addition to acting as counsel for interveners in fifteen (15) appeals heard or to be heard by the Supreme Court between 2024 and 2027.

28. In addition to the aforementioned appeal in *Walter* and the appeals involving PILI, Professor David has or will appear as counsel in the following appeals on behalf of interveners other than PILI:

- *Canadian National Railway Company v. Alberta Pacific Forest Industries Inc.* (SCC No. 42092): submissions focusing on whether the Federal Court and Federal Court of Appeal's jurisdiction to undertake judicial review is constitutionally protected (hearing scheduled for November 12, 2026);
- *Ville de Québec v. Jardins de Vérone S.E.C.* (SCC No. 41748): submissions focused on the correctness standard of review and appeals of judicial reviews of statutory appeals decided by a court of justice (hearing held on May 12, 2026, judgment under reserve);
- *Democracy Watch v. Attorney General of Canada*, 2026 SCC 28: submissions focusing on the unconstitutionality of privative clauses;
- *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7: submissions focusing on the discriminatory nature of regulatory exclusions of asylum seekers from Quebec's subsidized childcare spaces program;
- *TransAlta Generation Partnership LLP v. Alberta*, 2024 SCC 37: submissions focused on the standard of review for subordinate or delegated legislation in Canadian administrative law;
- *Auer v. Auer*, 2024 SCC 36: submissions focused on the standard of review for subordinate or delegated legislation in Canadian administrative law;

29. Professor David is the author of various legal publications, including *Stare Decisis, The Charter and The Rule of Law in The Supreme Court of Canada* (LexisNexis, 2020), the only monograph on the doctrine and practice of constitutional *stare decisis* in the Supreme Court of Canada. This publication was notably cited by the Supreme Court of Canada in *R. v. Bouvette*, 2025 SCC 18 and in the academic publications of various constitutional scholars around the world.

30. As part of his study, practice, teaching, and resolute commitment to constitutionalism and the rule of law, Professor David insists that any changes to Canada's constitutional framework must only be undertaken pursuant to the legal and therefore legitimate methods of constitutional amendment listed in Part V of the *Constitution Act, 1982*;

C. The Respondents

31. The Attorney General of Saskatchewan is charged with the regulation and conduct of all litigation for or against the Crown or any department, in respect of any subject within the authority or jurisdiction of the Legislature of the province of Saskatchewan.

32. The Attorney General of Canada is charged with the regulation and conduct of all litigation for or against the Crown or any department, in respect of any subject within the authority or jurisdiction of Canada.

D. Standing

33. PILI and Professor Lawrence David should each and both be granted public interest standing to bring this Application. Each and both Applicant meet the criteria for public interest standing:

a. *The case raises a serious justiciable issue*: As described below, the Application raises serious justiciable issues about

i. whether the Saskatchewan Legislative Assembly acted *ultra vires* s. 45 of the *Constitution Act, 1982* by enacting section 4 and 5 of *The Saskatchewan First Act*, S.S. 2023, c. 9, which purport to amend, respectively, *The Saskatchewan Act* and the *Constitution Act, 1867*;

ii. whether the Government of Canada is legally obligated to institute legal proceedings to obtain a binding judicial declaration when a province adopts legislation that purports to unilaterally amend "the constitution of the province" and/or "the Constitution of Canada" pursuant to section 45 of the *Constitution Act*, 1982, and that the Government failed in its obligation by not doing so with respect to sections 4 and 5 of The *Saskatchewan First Act*;

b. *The Applicants have a genuine interest in the matter*: PILI and Professor Lawrence David are responsible for launching ongoing legal proceedings challenging the constitutionality of provincial legislation purporting to unilaterally amend the *Constitution Act, 1867* pursuant to the provincial power of unilateral constitutional amendment power entrenched in section 45 of the *Constitution Act, 1982*. These constitutional challenges directly resonate with the challenge filed in this Honourable Court. The first challenge concerns legislation enacted by Quebec's National Assembly purporting to abolish the Oath of Allegiance required to be taken by

politicians elected to it pursuant to section 128 of the *Constitution Act, 1867*. The second concerns the National Assembly's legislation purporting to unilaterally entrench sections 90Q.1 and 90Q.2 in the *Constitution Act, 1867* – which raises several of the same issues pursued in the present application. As a leading pan-Canadian public interest litigation organization, PILI pursues strategic litigation and advocacy, including in the context of cases and interventions involving the Canadian constitution. Professor David a constitutional law practitioner and scholar whose expertise is bolstered by over 10 years of legal and policy positions in institutions including the Supreme Court of Canada, the Privy Council Office, the Department of Justice Canada, the Senate of Canada, and the House of Commons. Collectively, by December 15, 2026, the Applicants will have been involved in nine (9) appeals raising questions of constitutional law before the Supreme Court of Canada (including three appeals in which Professor David acted for interveners other than PILI). These appeals have involved, *inter alia*, section 96 of the *Constitution Act, 1867*; section 52(1) of the *Constitution Act, 1982*; and several sections of the *Canadian Charter of Rights and Freedoms*, including section 33. In 2027, PILI will be represented by Professor David in an appeal featuring the Respondent Attorney General of Saskatchewan, namely *Government of Saskatchewan as represented by the Minister of Education v. UR Pride Centre for Sexuality and Gender Diversity* (SCC No. 41979). Further, in *Alford v. Canada (Attorney General)*, 2019 ONCA 657, the Ontario Court of Appeal granted public interest standing to a law professor to institute a constitutional challenge to the constitutional competence of Parliament to pass legislation abridging Parliamentary privilege, without a constitutional amendment. The professor alleged that Parliament acted *ultra vires* s. 18 of the *Constitution Act, 1867* in enacting s. 12 of the *National Security and Intelligence Committee of Parliamentarians Act*, S.C. 2017, c. 15, which abridges Parliamentary privilege and subjects members of the Committee to possible criminal sanction. The Court of Appeal overturned the lower court's decision and granted Mr. Alford standing despite the fact that the legislation only applies to Members of Parliament, and the fact that Mr. Alford "is not a current or past member of the Committee, nor a parliamentarian" and therefore did not have a "real stake in th[e] matter."[1] This judgment is relevant to both Applicants, but is particularly relevant in concluding that Professor David has a genuine interest in the issues raised in the present application;[2]

[1] *Alford v. Canada (Attorney General)*, 2026 SCC 14, at para. 12.
[2] Note that the judgment on the merits was appealed all the way to the Supreme Court of Canada, with Professor Alford representing himself: see *Alford v. Canada (Attorney General)*, 2026 SCC 14.

c. *The proposed application is a reasonable and effective means of bringing the case to court*: PILI and Professor David have the resources, expertise, and capacity to bring this application. Professor David is a member of the Law Society of Ontario, a constitutional scholar and practitioner with a stellar litigation record before various Canadian courts. The application raises issues of significant public importance bearing on the interlocking principles of legality and access to justice, as it bears upon the limits of the powers of the Legislative Assembly of Saskatchewan to unilaterally amend the *Constitution Act, 1867* and *The Saskatchewan Act* pursuant to section 45 of the *Constitution Act, 1982*, and the extent to which the Legislative Assembly's powers under section 92 of the *Constitution Act, 1867* are limited by sections 96 and 101 of the *Constitution Act, 1867*, the independence of the judiciary and other constitutional amendment formulas entrenched in Part V of the *Constitution Act, 1982*. There are no realistic alternative means of bringing the within Application. The *Saskatchewan First Act* was passed on March 16, 2023 and entered into force on September 15, 2023. Over three years later, the constitutionality of sections 4 and 5 of *The Act* have not been challenged in any legal proceedings. As well, the Government of Saskatchewan has not sought a reference opinion from the Court of Appeal for Saskatchewan as to section 4 and/or 5's constitutionality and refused to do so when expressly invited by Members of the Legislative Assembly prior to the passage of the Act. Nor has the Government of Canada sought a reference opinion from the Supreme Court of Canada with respect to sections 4 and/or 5 of *The Saskatchewan First Act*, as it is entitled to pursuant to section 53(1)(a) and/or (b) of the *Supreme Court Act*, R.S.C., 1985, c. S-26.

34. As emphasized by the Supreme Court of Canada, public interest standing may be granted to a public interest organization such as PILI even in the absence of an individual co-plaintiff who is directly affected. In this light, the opposite is also true: public interest standing may be granted to an individual plaintiff even in the absence of an institutional public interest co-plaintiff. As such, if one of the Applicants does not have public interest standing, the Applicant that has public interest standing should be permitted to proceed with this application.

E. *The Saskatchewan First Act*

35. *The Saskatchewan First Act* ("*The Act*") was passed by the Saskatchewan Legislative Assembly on March 16, 2023. Section 14 provides that *The Act* "comes into force by order of the Lieutenant Governor in Council." *The Act* entered into force on September 15, 2023.

36. *The Act* is comprised of four Parts and 14 sections.

a. Part 1 is titled "Preliminary Matters and Constitutional Assertion" and is comprised of provisions concerning the Act's short title; the Act's purpose; non-abrogation from Aboriginal and treaty rights; and the assertion of Saskatchewan's exclusive legislative jurisdiction;

b. Part 2 is titled "Amend to Saskatchewan's Constitution" and is comprised of provisions amending the *Saskatchewan Act* (section 4); and the Constitution Act, 1867 (section 5);

c. Part 3 is titled "Economic Impact Assessment Tribunal" and concerns the establishment, composition, procedures, powers, and immunity of the aforesaid Tribunal;

d. Part 4 is titled "Regulations and Coming into Force"

37. The purpose of *The Act* is stated at s. 2(1):

> **2**(1) The purpose of this Act is to assert and confirm Saskatchewan's jurisdiction over matters exclusively assigned to Saskatchewan by the *Constitution Act, 1867* and to provide certainty with respect to the inapplicability of federal initiatives that would otherwise presume, by their unconstitutional interference, to bring uncertainty, disruption, and economic harm to Saskatchewan's economy and enterprises and to the lives of Saskatchewan's residents.

38. The present Application challenges the constitutionality of sections 4 and 5 of *The Act*. However, these sections – and, in particular, section 3.1(1) of The *Saskatchewan Act* and section 90S.1(1) of the *Constitution Act, 1867* that sections 4 and 5 respectively entrench – cannot be understood in isolation from section 3(1), 3(2) and 3(3) of *The Saskatchewan First Act*;

38.1 Section 3 provides:

> **Saskatchewan's exclusive legislative jurisdiction asserted**
> **3(1)** Saskatchewan asserts its exclusive legislative jurisdiction under the Constitution of Canada, and in particular, those matters listed in sections 92 and 92A of the Constitution Act, 1867.
>
> **(2)** Saskatchewan asserts that the doctrine of interjurisdictional immunity applies to exclusive provincial legislative jurisdiction to the same extent that it applies to exclusive federal legislative jurisdiction.
>
> **(3)** Without limiting the generality of subsections (1) and (2), Saskatchewan asserts its exclusive legislative jurisdiction under the Constitution of Canada in relation to the following matters, and asserts that these matters fall within the core of exclusive provincial legislative jurisdiction for the purposes of the doctrine of interjurisdictional immunity:
>
> (a) the exploration for non-renewable natural resources in Saskatchewan, including:
>
> (i) who may be licensed;
>
> (ii) where and when the exploration may take place; and

(iii) any terms or conditions applicable to the exploration;

(b) the development, conservation and management of non-renewable natural resources in Saskatchewan, including:

(i) who may be licensed;

(ii) where and when the development, conservation and management may take place; and

(iii) any terms or conditions applicable to the development, conservation and management, including the regulation of environmental standards and the regulation of greenhouse gas emissions and other emissions;

(c) the development, conservation and management of forestry resources in Saskatchewan, including:

(i) who may be licensed;

(ii) where and when the development, conservation and management may take place; and

(iii) any terms or conditions applicable to the development, conservation and management, including the regulation of environmental standards and the regulation of greenhouse gas emissions and other emissions;

(d) the operation of sites and facilities in Saskatchewan for the generation and production of electrical energy, including:

(i) who may be licensed;

(ii) where and when the operation may take place;

(iii) any terms or conditions applicable to the operation, including the regulation of environmental standards and the regulation of greenhouse gas emissions and other emissions; and

(iv) the source of fuel for electrical generation, including renewable and non-renewable resources;

(e) the regulation of all industries and businesses falling within the exclusive jurisdiction of Saskatchewan, including any regulations, terms or conditions applicable to the licensing of industries and businesses, including the regulation of environmental standards and the regulation of greenhouse gas emissions and other emissions;

(f) the regulation of fertilizer use in Saskatchewan, including application, production, quantities and emissions;

(g) any other prescribed matter.

39. Section 4 provides:

Saskatchewan Act amended
4 The Constitution of Saskatchewan is amended by adding the following section after section 3 of the Saskatchewan Act:

(a) in the English version:

"Autonomy of Saskatchewan
3.1(1) Saskatchewan has autonomy with respect to all of the matters falling under its exclusive legislative jurisdiction pursuant to the *Constitution Act, 1867*.

(2) Saskatchewan is and always has been dependent on agriculture, and on the development of its non-renewable natural resources, forestry resources and electrical energy generation and production.

(3) Saskatchewan's ability to control the development of its non-renewable natural resources, its forestry resources and its electrical energy generation and production is critical to the future well-being and prosperity of Saskatchewan and its people**; and**

(b) in the French version:

Autonomie de la Saskatchewan
3.1(1) La Saskatchewan jouit d'une autonomie en toute matière relevant de son champ de compétence législative exclusive en vertu de la *Loi constitutionnelle de 1867*.

(2) La Saskatchewan est dépendante, comme depuis toujours, de l'agriculture ainsi que du développement de ses ressources naturelles non renouvelables, de ses ressources forestières et de la production d'énergie électrique.

(3) La capacité de la Saskatchewan de contrôler le développement de ses ressources naturelles non renouvelables, de ses ressources forestières et de la production d'énergie électrique est cruciale pour le bien-être et la prospérité futurs de la Saskatchewan et de sa population**".**

40. Section 5 provides:

***Constitution Act, 1867* amended**
5 The Constitution of Saskatchewan is amended by adding the following section after section 90Q.2 of the Constitution Act, 1867:
(a) in the English version:

"7. – SASKATCHEWAN

90S.1(1) Saskatchewan has autonomy with respect to all of the matters falling under its exclusive legislative jurisdiction pursuant to this Act.

(2) Saskatchewan is and always has been dependent on agriculture, and on the development of its non-renewal natural resources, forestry resources and electrical energy generation and production.

(3) Saskatchewan's ability to control the development of its non-renewable natural resources, its forestry resources and its electrical energy generation and production is critical to the future well-being and prosperity of Saskatchewan and its people; **and**

(b) in the French version

7. – SASKATCHEWAN

90S.1(1) La Saskatchewan jouit d'une autonomie en toute matière relevant de son champ de compétence législative exclusive en vertu de la présente loi.

(2) La Saskatchewan est dépendante, comme depuis toujours, de l'agriculture ainsi que du développement de ses ressources naturelles non renouvelables, de ses ressources forestières et de la production d'énergie électrique.

(3) La capacité de la Saskatchewan de contrôler le développement de ses ressources naturelles non renouvelables, de ses ressources forestières et de la production d'énergie électrique est cruciale pour le bien-être et la prospérité futurs de la Saskatchewan et de sa population".

41. In essence, the contents of sections 4 and 5 of the Act are almost identical.

F. Sections 4 and 5 of *The Saskatchewan First Act* are *ultra vires* section 45 of the *Constitution Act, 1982*

42. Sections 4 and 5 of *The Saskatchewan First Act* are *ultra vires* section 45 of the *Constitution Act, 1982* for two main reasons:

a. because textual amendments to *The Saskatchewan Act* and to the *Constitution Act, 1867* are not authorized under Saskatchewan's power of unilateral constitutional amendment entrenched in section 45; and

b. because amendments to "the constitution of the province" within the meaning of section 45 are limited to enactments that bear upon the operation of an organ of enacting level of government, and because sections 4 and 5 do not do so.

42.1 Both reasons are sequentially addressed below.

F.1. Section 45 Does Not Authorize Textual Amendments to the Constitution of Canada

43. Turning to the first reason: textual amendments to *The Saskatchewan Act* and to the *Constitution Act, 1867* are not authorized under Saskatchewan's power of unilateral constitutional amendment entrenched in section 45.

44. Section 4 of *The Saskatchewan First Act* purports to amend the text of *The Saskatchewan Act* by entrenching a new section 3.1 within it.

45. Section 5 of *The Saskatchewan First Act* purports to amend the text of the *Constitution Act, 1867* by entrenching a new section 90S.1 within it.

46. Section 45 of the *Constitution Act, 1982* provides:

Amendments by provincial legislatures **45** Subject to section 41, the legislature of each province may exclusively make laws amending the constitution of the province.	**Modification par les législatures** **45** Sous réserve de l'article 41, une législature a compétence exclusive pour modifier la constitution de sa province.

47. The text of s. 45 is unequivocal: s. 45 only authorizes each of Canada's ten provincial legislatures to amend the constitution of their respective provinces. It does not authorize the provinces to make amendments to the "Constitution of Canada".

48. Significantly, the schedule to section 52(2)(b) of the *Constitution Act, 1982* identifies the "Constitution of Canada" as including the *Constitution Act, 1867* and *The Saskatchewan Act*. As well, pursuant to section 52(c) of the *Constitution Act, 1982*, "any amendment" to the *Constitution Act, 1867*, *The Saskatchewan Act*, or to the *Canada Act 1982* or to the other Acts and orders referred to in the schedule are considered to be amendments to the "Constitution of Canada."

49. It is true that parts of "the constitution of the province" identified in s. 45 are contained in the *Constitution Act, 1867*. For example, Part V of that document is titled "Provincial Constitutions." However, this only means that *parts* of the constitution of each province are found in the text of the "Constitution of Canada" – not that s. 45 authorizes provinces to unilaterally amend the text of the "Constitution of Canada";

50. Thus, while provinces "may exclusively make laws amending the constitution of the province," such "laws" cannot purport to amend, alter, or in any other way modify the written text of the *Constitution Act, 1867* (or any other textual parts of the "Constitution of Canada"). In other words, a provincial amendment to the constitution of the province authorized by s. 45 takes the form of "laws" entirely external to the text of the Constitution of Canada. Nothing in the text, historical context, constitutional context, or purpose of s. 45 expressly or implicitly suggests otherwise.

51. Further, Saskatchewan's own constitutional practice shows that it understands that *The Saskatchewan Act* can only be amended using the bilateral formula for constitutional amendment entrenched in section 43 of the *Constitution Act, 1982*.

52. To wit, on November 29, 2021, the Saskatchewan Legislative Assembly unanimously adopted a resolution in favour of amending The *Saskatchewan Act* by repealing section 24 retroactively to August 29, 1966. Consistent with the requirements for bilateral constitutional amendments to the Constitution of Canada under section 43 of the *Constitution Act, 1982*, the House of Commons then adopted a resolution in support of Saskatchewan's proposed amendment on February 9, 2022.

53. After the House of Commons adopted the resolution, the Government of Saskatchewan issued a press release on February 9, 2022 entitled "Saskatchewan's Proposed Amendments To The Constitution Of Canada Proceed To Senate." Among other things, the press release states:

> A motion in support of the province's amendments to the Constitution of Canada received approval from the House of Commons today. The amendments, which repeal Section 24 of *The Saskatchewan Act* retroactively to August 29, 1966, will now move to the Senate whereby the Governor General has the ability to formally proclaim the amendment in force, at which point it would become law.

54. Saskatchewan's then-Minister of Justice and Attorney General, the Honourable Gordon Wyant, is quoted in the press release as saying:

> "I would like to extend our sincere thanks to the Members of the House of Commons who voted in support of this motion to amend the Constitution. This change will ensure that all Saskatchewan taxpayers, both citizens and businesses alike, continue to be fairly treated and bear responsibility for provincial taxes which support our provincial infrastructure and economy."

55. Following the adoption of a similar resolution by the Senate of Canada on April 7, 2022, the Governor General of Canada then issued a Proclamation on May 6, 2022 proclaiming the amendment to *The Saskatchewan Act* into force. The Proclamation is titled "Constitution Amendment, 2022 (Saskatchewan Act)" and features a Schedule titled "Amendment to the Constitution of Canada" The proclamation also expressly identifies that the amendment is being made pursuant to the bilateral constitutional amendment formula in section 43 of the *Constitution Act, 1982* and that its requirements have been satisfied.

56. On May 6, 2022, the Department of Justice Canada also issued a press release announcing that the Governor General had "issued a proclamation amending the Constitution of Canada to repeal section 24 of the Saskatchewan Act, retroactive to 1966" and that "[t]his constitutional amendment was reached using the bilateral constitutional amending procedure."

57. It should be noted that this amendment to *The Saskatchewan Act* marked the first time that the Act had been amended since its initial passage in 1905. Less than two years later, the Saskatchewan Legislative Assembly abandoned its own practice of resorting to the bilateral constitutional amendment formula to amend *The Saskatchewan Act* by proceeding unilaterally by way of section 4 of *The Saskatchewan First Act*.

58. Saskatchewan's resort to the provincial power of unilateral constitutional amendment is, however, fatal to the constitutionality of sections 4 and 5 of *The Saskatchewan First Act* and each and both purports to amend the Constitution of Canada and are, therefore, *ultra vires* section 45 of the *Constitution Act, 1982*.

58.1 On March 15, 2023, the day before the passage of *The Saskatchewan First Act*, the then-Minister of Justice and Attorney General of Saskatchewan appeared before the Standing Committee on Intergovernmental Affairs and Justice in the Legislative Assembly of Saskatchewan, alongside with then-Director of Saskatchewan Justice's Constitutional Branch, Mr. Mitch McAdam, KC.

58.2 Both the Minister and Mr. McAdam expressly stated their view that only some parts of *The Saskatchewan Act* of 1905 form part of the "Constitution of Canada" that cannot be unilaterally amended by the Legislative Assembly of Saskatchewan, while other parts of the Act are components of "the constitution of the province" that the Legislative Assembly can unilaterally amend pursuant to section 45 of the *Constitution Act, 1982*. According to this logic, the text forming part of the latter parts of *The Saskatchewan Act* can be unilaterally amended.

58.2 There is, with respect, no legal basis for the distinction drawn by the Minister and Mr. McAdam. The schedule to Section 52(2)(b) of the *Constitution Act, 1982* identifies *The Saskatchewan Act* in its entirety as forming part of "The Constitution of Canada" and this legal reality obtains even if *The Saskatchewan Act* also forms part of "the constitution of the province" of Saskatchewan. As a result, the Legislative Assembly of Saskatchewan cannot alter the text of any part of *The Saskatchewan Act* of 1905 – and this, whether or not it directly engages the interests of another province or of another level of government.

58.3 Any distinctions between the amendment to section 24 of *The Saskatchewan Act* of 1905 and the purported entrenchment of section 3.1 therein by way of section 5 of *The Saskatchewan First Act* cannot, therefore, justify or authorize Saskatchewan's purported unilateral amendment to the text of *The Saskatchewan Act* of 1905. This Act can only be amended using the bilateral amendment formula

58.4 Section 5 of *The Saskatchewan First Act* is thus unconstitutional and of no force and effect.

F.2. Sections 4 and 5 of *The Saskatchewan First Act* Do Not Bear on the Operation of an Organ of the Government

59. Turning to the second reason that sections 4 and 5 are *ultra vires* s. 45 of the *Constitution Act, 1982* : amendments to "the constitution of the province" within the meaning of section 45 are limited to enactments that bear upon the operation of an organ of enacting level of government.

60. Even if the new section 3.1(1) of *The Saskatchewan Act* and section 90S.1(1) of the *Constitution Act, 1867* were to be seen as satisfying this requirement, – which is denied – the same cannot be said for sections 3.1(2) and 3.1(3) of *The Saskatchewan Act* or for sections 90S.1(2) and 90S.1(3) of the *Constitution Act, 1867*. Indeed, these virtually identical provisions simply contain statements of public and economic policy. The significance and accuracy of these policy statements does not, however, result in them bearing upon the operation of one or more organs of the government of Saskatchewan – namely, the executive, the legislature, or the judiciary.

60.1 The constitutional infirmities of sections 3.1(1), 3.1(2), 3.1(3) and of sections 90S.1(1), 90S.1(2) and 90S.1(3) are addressed below.

F.2.1. – Sections 3.1(1) and 90S.1(1) Cannot Constitutionally Bear on the Operation of an Organ of Government of Saskatchewan

61. Sections 3.1(1) of *The Saskatchewan Act*, and section 90S.1(1) of the *Constitution Act, 1867*, which were respectively enacted by way of sections 4 and 5 of *The Saskatchewan First Act*, are virtually identical:

3.1(1) Saskatchewan has autonomy with respect to all of the matters falling under its exclusive legislative jurisdiction pursuant to the *Constitution Act, 1867*.	**90S.1**(1) Saskatchewan has autonomy with respect to all of the matters falling under its exclusive legislative jurisdiction pursuant to this Act.

62. The Applicants are prepared to assume that these provisions bear upon the operation of the executive, judicial, and legislative organs of the government of Saskatchewan. As noted, however, one reason for concluding in the constitutional infirmity of these provisions instead arises from the fact that they purport to amend the text of *The Saskatchewan Act* and the *Constitution Act, 1867*, respectively, which exceeds the authority conferred by section 45 of the *Constitution Act, 1982*. Moreover, even if sections 3.1(1) and 90S.1(1) bear on the operation of any or all of these organs, they can only do in an unconstitutional manner.

62.1. The fundamental reason is that sections 3.1(1) and 90S.1(1) cannot be read in isolation from section 3(3) of *The Saskatchewan First*, which purports to define the core of the Legislative Assembly of Saskatchewan's legislative jurisdiction under sections 92 and 92A of the *Constitution Act, 1867*. The assertion of Saskatchewan's "autonomy with respect to all of the matters falling under its exclusive legislative jurisdiction" under sections 3.1(1) and 90S.1(1) therefore extends to those matters identified in section 3(3).

62.2. This results in Saskatchewan asserting autonomy over matters that the Legislature has itself identified as forming part of its legislative powers under sections 92 and 92A of the *Constitution Act, 1867*. However, as emphasized by the Supreme Court of Canada, the rule of law prohibits a legislature from defining the scope of its own constitutional powers absent a valid constitutional amendment.

62.3. The following constitutional defects lead to the conclusion that sections 3.1(1) and 90S.1(1) cannot constitutionally bear on the operation of any branch of the government of Saskatchewan such that these provisions are unconstitutional – and, therefore, the parts of sections 4 and 5 of *The Saskatchewan First Act* that respectively purport to entrench sections 3.1(1) and 90S.1(1) into *The Saskatchewan Act* of 1905 and into the *Constitution Act, 1867*.

i. Sections 3.1(1) and 90S.1(1) exceed the legislative power of the Saskatchewan Legislative Assembly under sections 92 and 92A of the *Constitution Act, 1867* by purporting to define the unassailable core of Saskatchewan's legislative powers under section 92A of the *Constitution Act, 1867*;

ii. Sections 3.1(1) and 90S.1(1) violate section 96 of the *Constitution Act, 1867* by trenching upon the core jurisdiction of the superior courts by purporting to define the unassailable core of Saskatchewan's legislative jurisdiction under section 92A, and are therefore *ultra vires* sections 92 and 92A of the *Constitution Act, 1867* ;

iii. Sections 3.1(1) and 90S.1(1) violate section 101 of the *Constitution Act, 1867* by trenching upon the Supreme Court of Canada's constitutionally protected jurisdiction by purporting to define the unassailable core of Saskatchewan's legislative jurisdiction under s. 92A, and are therefore *ultra vires* sections 92 and 92A of the *Constitution Act, 1867*;

iv. Sections 3.1(1) and 90S.1(1) violate the independence of the judiciary protected under the Preamble and sections 96-101 of the *Constitution Act, 1867* by purporting to dictate the content of the unassailable core of Saskatchewan's legislative powers under section 92A of the *Constitution Act, 1867* for the purposes of the doctrine of interjurisdictional immunity;

62.4. Each of these reasons is addressed below.

F.2.2. Sections 3.1(1) and 90S.1(1) Unlawfully Amend Sections 92 and 92A of the *Constitution Act, 1867*

62.5. Sections 3.1(1) and 90S.1(1) exceed the legislative power of the Saskatchewan Legislative Assembly under sections 92 and 92A of the *Constitution Act, 1867* by indirectly entrenching section 3(3) of *The Saskatchewan First Act* and purporting to define the unassailable core of Saskatchewan's legislative powers under sections 92 and 92A of the *Constitution Act, 1867*.[3]

62.6 As noted, legislative powers must be interpreted and applied in accordance with the constitution's provisions and with the nature and structure of government established under the Constitution.

62.7. This includes the unwritten constitutional principles repeatedly recognized by the Supreme Court of Canada, including constitutionalism and the rule of law.

62.8. To this end, the Supreme Court has held that "A legislature cannot alter the scope of its own constitutional powers through statute." Yet, that is precisely what sections 3.1(1) and 90S.1(1) operates to do in purporting to unilaterally define the basic unassailable core of Saskatchewan's legislative powers under sections 92 and 92A for the purposes of the doctrine of interjurisdictional immunity.

[3] This is so even if section 3(3) does not specify which of the matters it identifies respectively form part of the core of the legislative powers in sections 92 and 92A.

62.9. In doing so, sections 3.1(1) and 90S.1(1) operate to amend sections 92 and 92A of the *Constitution Act, 1867* as concerns the legislative powers of the Legislative Assembly of Saskatchewan. This is so even if section 3(3) was not entrenched into the *Constitution Act, 1867*, into *The Saskatchewan Act* of 1905 or in any other document, because sections 3.1(1) and 90S.1(1) operate to entrench section 3(3). Even if section 3(3) could be considered as mere declaratory legislation – which is specifically denied by the Applicants – the Supreme Court of Canada was clear in *Reference re Supreme Court Act*, ss. 5 and 6, 2014 SCC 21 that declaratory legislation can be *ultra vires* the enacting legislature if it purports to define or interpret constitutional provisions.

62.10. Further, sections 3.1(1) and 90S.1(1) exceed the provincial power of unilateral constitutional amendment in section 45 of the *Constitution Act, 1982* because permissible unilateral amendments to "the constitution of the province" pursuant to section 45 do not extend to matters that are "entrenched as being indivisibly related to the implementation of the federal principle…"

62.11. On its face, amendments to the definition, scope, and core of the legislative powers enumerated in sections 92 and 92A of the *Constitution Act, 1867* are manifestly "indivisibly related to the implementation" of that principle. A modification of the distribution of legislative powers enumerated in sections 91 to 95 of the *Constitution Act, 1867* can only be achieved using the general formula for constitutional amendments in section 38 of the *Constitution Act, 1982* (requiring the consent of 7 provinces representing 50 per cent of the Canadian population).

62.12. As a legislature cannot by statute alter its legislative powers under the constitution, and as any such alteration can only be achieved by constitutional amendments under the general formula, sections 3.1(1) and 90S.1(1) are *ultra vires* the Saskatchewan Legislative Assembly's legislative powers under sections 92 and 92A of the *Constitution Act, 1867*.

62.13. Sections 3.1(1) and 90S.1(1) are, therefore, unconstitutional and of no force and effect. As a result, sections 3.1(1) and 90S.1(1) cannot constitutionally bear on any organ of the government of Saskatchewan.

F.2.3. Section 3(3) Violates The Core Jurisdiction of Superior Courts

62.14. Sections 3.1(1) and 90S.1(1) violate s. 96 of the *Constitution Act, 1867* by trenching upon the core jurisdiction of the superior courts by purporting to define the unassailable core of Saskatchewan's legislative jurisdiction under sections 92 and 92A thereof. Sections 3.1(1) and 90S.1(1) are, therefore, *ultra vires* sections 92 and 92A of the *Constitution Act, 1867*.

62.15. Section 3(3) asserts Saskatchewan's "exclusive legislative jurisdiction under the Constitution of Canada" in regards to several non-exhaustive matters and "asserts that these matters fall within the core of exclusive provincial legislative jurisdiction for the purposes of the doctrine of interjurisdictional immunity." Sections 3.1(1) and 90S.1(1) assert Saskatchewan's "autonomy with

respect to all of the matters falling under its exclusive legislative jurisdiction" pursuant to the *Constitution Act, 1867*, which the purpose of *The Saskatchewan First Act* makes clear includes the matters identified in section 3(3).

62.16. The doctrine of interjurisdictional immunity is a constitutional doctrine developed by the Supreme Court of Canada and applied by superior courts across the country in determining whether legislation enacted by one level of government trenches upon the "basic, minimum and unassailable core" of legislative powers entrenched in sections 91, 92 and 92A of the *Constitution Act, 1867*. As previously held by the Supreme Court of Canada, the doctrine of interjurisdictional immunity applies to the federal and provincial governments. The doctrine is constrained by principle and precedent and generally only applies to matters already recognized in judicial precedent as falling within the protected core of a level of government's legislative powers.

62.17. By way of section 3(3)(a) to (f), the Saskatchewan Legislative Assembly purports to define the "unassailable core" of its legislative powers under sections 92 and 92A of the *Constitution Act, 1867*. Section 3(3)(g) empowers the Minister to identify any additional cores by regulation, essentially conferring an unfettered authority to define the contents of Saskatchewan's legislative powers under the *Constitution Act, 1867*. Sections 3.1(1) and 90S.1(1) assert Saskatchewan's autonomy in respect of the matters identified in section 3(3).

62.18. This violates the core jurisdiction of the superior courts that is protected under sections 96 to 101 of the *Constitution Act, 1867*. This core jurisdiction includes the final and authoritative interpretation and application of the Constitution of Canada. The identification of matters falling within the "unassailable core" of legislative powers enjoyed by the federal and provincial governments under sections 91, 92 and 92A, respectively, forms part of the core jurisdiction of the superior courts. The same is true for the adjudication of constitutional cases involving the doctrine of interjurisdictional immunity and determining whether laws enacted by one level of government impermissibly trench upon the unassailable core of legislative powers of another level of government.

62.19. The Supreme Court of Canada has repeatedly emphasized that the exercise of legislative powers enumerated in section 92 of the *Constitution Act, 1867* is limited by, *inter alia*, section 96 of the *Constitution Act, 1867*. This same principle applies to the exercise of legislative powers enumerated in section 92A of the *Constitution, 1867*, among others. The core jurisdiction of the superior courts can only be removed or altered by constitutional amendment under the general formula entrenched in section 38 of the *Constitution Act, 1982*.

62.20. As sections 3.1(1) and 90S.1(1) violate the core jurisdiction of the superior courts to interpret and apply sections 91, 92 and 92A of the *Constitution Act, 1867*, they also violate the constitutional principle of the separation of powers between the legislative and judicial branches of government.

62.21. Sections 3.1(1) and 90S.1(1) are, therefore, unconstitutional and of no force and effect. As a result, these sections cannot constitutionally bear on any organ of the government of Saskatchewan.

F.2.4. Sections 3.1(1) and 90S.1(1) Violate The Supreme Court of Canada's Constitutional Jurisdiction

62.22. Sections 3.1(1) and 90S.1(1) violate s. 101 of the *Constitution Act, 1867* by trenching upon the core constitutional jurisdiction of the Supreme Court of Canada by purporting to define the unassailable core of Saskatchewan's legislative jurisdiction under sections 92 and 92A. For this additional reason, section 3(3) is therefore *ultra vires* sections 92 and 92A of the *Constitution Act, 1867*.

62.23. The rationale for these conclusions echoes that supporting the conclusion that sections 3.1(1) and 90S.1(1) violate the core jurisdiction of the superior courts that is protected by sections 96 to 101 of the *Constitution Act, 1867*.

62.24. As the apex of the Canadian judicial hierarchy and the final General Court of Appeal for Canada established under section 101 of the *Constitution Act, 1867*, the Supreme Court of Canada is the final, authoritative and binding interpreter and expounder of the Constitution of Canada and all of its component parts. The Supreme Court's jurisdiction is constitutionally protected and includes the interpretation and application of every provision of the Constitution, as well as the creation, development, and application of constitutional doctrines such as the doctrine of interjurisdictional immunity.

62.25. Whether generally, or in the event of jurisprudential uncertainty and/or divergent conclusions between or among courts lower in the Canadian judicial hierarchy, it belongs exclusively to the Supreme Court of Canada to determine whether a particular matter falls within the "basic, minimum, and unassailable core" of the legislative powers enumerated in sections 92 and 92A of the *Constitution Act, 1867*. Sections 3.1(1) and 90S.1(1) violate the core constitutional jurisdiction of the Supreme Court of Canada by purporting to define and assert the protected core of Saskatchewan's legislative powers under sections 92 and 92A for the purposes of the doctrine of interjurisdictional immunity.

62.26. The Supreme Court of Canada has repeatedly emphasized that the exercise of legislative powers enumerated in section 92 of the *Constitution Act, 1867* is limited by other provisions of the *Constitution Act, 1867* – which necessarily includes section 101 thereof. This same principle applies to the exercise of legislative powers enumerated in section 92A of the *Constitution, 1867*, among others. The core jurisdiction of the Supreme Court of Canada can only be removed or altered by constitutional amendment under the general formula entrenched pursuant to section 42(1) of the *Constitution Act, 1982*.

62.27. To the extent that sections 3.1(1) and 90S.1(1) violates the core constitutional jurisdiction of the Supreme Court of Canada to interpret and apply sections 91, 92 and 92A of the *Constitution Act, 1867*, it also violates the constitutional principle of the separation of powers between the legislative and judicial branches of government.

62.28. Section 3(1) is, therefore, unconstitutional and of no force and effect.

F.2.5. Section 3(1) Violates The Independence of The Judiciary

62.29. Sections 3.1(1) and 90S.1(1) violate the independence of the judiciary by purporting to dictate the content of the unassailable core of Saskatchewan's legislative powers under sections 92 and 92A of the *Constitution Act, 1867* for the purposes of the doctrine of interjurisdictional immunity.

62.30. The independence of the judiciary is protected under the Preamble and sections 96-101 of the *Constitution Act, 1867.*

62.31. Judicial independence requires, *inter alia*, that the executive and legislative branches of government not impinge on the essential authority of the courts and of the individual justices serving within them to render decisions based solely on the requirements of the law and evidence. Legislation that interferes – or that can reasonably be seen as interfering – with the courts' adjudicative role violates the constitutional guarantee of judicial independence and is, therefore, unconstitutional.

62.32. This is the case for sections 3.1(1) and 90S.1(1).

62.33. Specifically, any court called upon to decide a constitutional challenge on federalism grounds in which either or both sections are invoked does not retain its adjudicative role, and the ability to exercise that role without interference. This is because section 3(3) purports to define the exclusive core of Saskatchewan's legislative powers under sections 92 and 92A of the *Constitution Act, 1867*, for the purposes of applying the doctrine of interjurisdictional immunity and forces courts to apply that definition as a result of sections 3.1(1) and 90S.1(1).

62.34. In doing so, sections 3.1(1) and 90S.1(1) prevents judges from independently determining whether an asserted core in section 3(3) truly forms part of that unassailable core, from independently assessing evidence and arguments led to support and defend that claim, from independently assigning that evidence weight and independently deciding these legal questions, and from then independently determining whether the doctrine of interjurisdictional immunity should be applied to prevent the application of federal legislation in Saskatchewan.

62.35. Sections 3.1(1) and 90S.1(1) require courts to apply the Legislative Assembly of Saskatchewan's definition of its own core constitutional powers and prevents courts from determining whether that definition is correct.

62.36. Sections 3.1(1) and 90S.1(1) therefore impermissibly interferes with a core judicial task – the interpretation and application of the Constitution – and violates the constitutional guarantee of judicial independence.

62.37. Legislation that interferes with judicial independence is *ultra vires* the legislative powers entrenched in the *Constitution Act, 1867* because legislative powers must be interpreted and applied in accordance with the constitution's provisions – including sections 96 to 101 – and with the nature and structure of government established under the Constitution.

62.38. As sections 3.1(1) and 90S.1(1) violate the independence of the judiciary, they are unconstitutional and of no force and effect. As a result, these sections cannot constitutionally bear on any organ of the government of Saskatchewan.

F.2.6. Sections 3.1(2), 3.1(3), 90S.1(2) and 90S.1(3) Do Not Bear on the Operation of an Organ of the Government of Saskatchewan

63. Sections 3.1(2) and 3.1(3) of *The Saskatchewan Act* and sections 90S.1(2) and 90S.1(3) of the *Constitution Act, 1867*, respectively enacted by way of sections 4 and 5 of *The Saskatchewan First Act*, do not bear upon the operation of any organ of the government of Saskatchewan.

64. The text of sections 3.1(2), 3.1(3) and sections 90S.1(2) and 90S.1(3) is identical:

3.1(2) Saskatchewan is and always has been dependent on agriculture, and on the development of its non-renewable natural resources, forestry resources and electrical energy generation and production.	**90S.1(2)** Saskatchewan is and always has been dependent on agriculture, and on the development of its non-renewal natural resources, forestry resources and electrical energy generation and production.
3.1(3) Saskatchewan's ability to control the development of its non-renewable natural resources, its forestry resources and its electrical energy generation and production is critical to the future well-being and prosperity of Saskatchewan and its people	**90S.1(3)** Saskatchewan's ability to control the development of its non-renewable natural resources, its forestry resources and its electrical energy generation and production is critical to the future well-being and prosperity of Saskatchewan and its people.

65. On their face, these provisions do not bear on the operation of any of the organs of the government of Saskatchewan. Instead, the text of these provisions consists of significant, indisputable – but nevertheless general – statements of public and economic policy.

65.1. Further, during their appearance before the Standing Committee on Intergovernmental Affairs and Justice in the Legislative Assembly of Saskatchewan on March 15, 2023, both the Minister of Justice and Attorney General and Mr. McAdam stated that sections 4 and 5 of *The Saskatchewan First Act* do not add new powers to the legislature of Saskatchewan or modify its existing powers. Sections 4 and 5 cannot therefore be said to "bear on the operation" of the legislative or executive organs of the government of Saskatchewan.

65.2. Nor do these provisions bear on the operation of the judicial branch of government. Even assuming, *arguendo*, that sections 4 and 5 are "interpretive aids" to be used by courts – as contended by Mr. McAdam – they do not bear on the operation of the judicial branch. If the contrary were true, every statutory provision that can be used as interpretive aid would amount to an amendment to the constitution of the relevant province (or to the constitution of Canada if enacted by Parliament).

65.3. Saskatchewan's statute book doubtlessly contains numerous interpretive provisions, but both the Minister and Mr. McAdam correctly informed the Committee that The *Saskatchewan First Act* marked the first time that Saskatchewan had unilaterally amended "the constitution of the province" pursuant to section 45 of the *Constitution Act, 1982*. As a result, none of the interpretive provisions in Saskatchewan's statute book – including sections 4 and 5 – count as amendments to "the constitution of the province" since they do not bear on the operation of the judicial (or any other branch) of government.

66. As a result, sections 3.1(2)~~,~~ and 3.1(3)~~,~~ of *The Saskatchewan Act* of 1905 and sections 90S.1(2) and 90S.1(3) of the *Constitution Act, 1867* are not amendments to "the constitution of the province" of Saskatchewan within the meaning of section 45 of the *Constitution Act, 1982* and sections 4 and 5 of *The Saskatchewan First Act* are *ultra vires* the Saskatchewan Legislative Assembly's powers of unilateral provincial constitutional amendment.

67. Nevertheless, as was the case with the repeal of section 24 of *The Saskatchewan Act* in May 2022, the bilateral formula for constitutional amendments in section 43 of the *Constitution Act, 1982* can readily be invoked to entrench sections 3.1(2) and 3.1(3) into *The Saskatchewan Act* and sections 90S.1(2) and 90S.1(3) into the *Constitution Act, 1867*.

G. Sections 4 and 5 of *The Saskatchewan First Act* ~~is~~ are of no force and effect

68. The conclusion that sections 4 and 5 of *The Saskatchewan First Act* are *ultra vires* Saskatchewan's power of unilateral constitutional amendments to the constitution of the province under s. 45 of the *Constitution Act, 1982* requires a remedy that vindicates the supremacy of the constitution. This remedy consists of a declaratory judgment issued under s. 52(1) of the *Constitution Act* declaring that sections 4 and 5 are *ultra vires*, unconstitutional, and, therefore, of no force or effect.

69. None of the tailored remedies alternative to a declaratory judgment issued under s. 52(1) are appropriate because sections 4 and 5 of *The Saskatchewan First Act* respectively purport to entrench section 3.1 into *The Saskatchewan Act* and section 90S.1 into the *Constitution Act, 1867* and because textual amendments to *The Saskatchewan Act* and to the *Constitution Act, 1867* are not authorized under the power of unilateral provincial constitutional amendment in s. 45 of the *Constitution Act, 1982*.

69.1. As well, tailored remedies are inappropriate for section 90.S(1) because the Minister repeatedly emphasized that the legislative intent animating it was to assert Saskatchewan's jurisdiction over the matters enumerated as falling within the core unassailable legislative powers of the Legislative Assembly of Saskatchewan in section 3(3) of *The Saskatchewan First Act* for the purposes of the application of the doctrine of interjurisdictional immunity and because a legislature cannot usurp the superior courts' and Supreme Court's jurisdiction over constitutional interpretation by unilaterally purport to define those powers.

70. As is customary, the declaration to be issued by this Honourable Court should have immediate retroactive effect to the date of its enactment and should not be suspended.

71. As noted at the outset, the Applicants emphasize that they agree with the policy statements appearing in sections 4 and 5 of *The Saskatchewan First Act* and have great respect for Saskatchewan, its people, and its elected representatives and other public servants. The premise of this application is quite simple: any amendment to the *Constitution Act, 1867* or to *The Saskatchewan Act* can only be achieved using the lawful and therefore legitimate rules of constitutional amendment listed in Part V of the *Constitution Act, 1982*. This is expressly stated in section 52(3) of the *Constitution Act, 1982*.

H. Canada Has Violated Its Obligation to Defend The Constitution

71.1 A judicial declaration should be issued declaring that the Government of Canada is legally obligated to institute legal proceedings to obtain a binding judicial declaration when a province adopts legislation that purports to unilaterally amend "the constitution of the province" and/or "the Constitution of Canada" pursuant to section 45 of the *Constitution Act, 1982*;

71.2. Canada's legal obligation was, for example, when engaged when the Legislative Assembly of Saskatchewan purported to unilaterally amend the text of the Constitution of Canada and to otherwise amend the Constitution Act, 1867 and The Saskatchewan Act of 1905 by purporting to entrench sections 90S.1 and s. 3.1 within them.

71.3. Canada's legal obligations in this regard are anchored in the powers, duties and functions of the Minister of Justice and Attorney General of Canada under the *Department of Justice Act*, R.S.C., 1985, c. J-2;

71.4. As concerns the Minister of Justice of Canada, s. 4 of the Act provides, in relevant part:

Powers, duties and functions of Minister	**Attributions**
4 The Minister is the official legal adviser of the Governor General and the legal member of the Queen's Privy Council for Canada and shall	**4** Le ministre est le conseiller juridique officiel du gouverneur général et le jurisconsulte du Conseil privé de Sa Majesté pour le Canada; en outre, il :

(a) see that the administration of public affairs is in accordance with law;	**a)** veille au respect de la loi dans l'administration des affaires publiques;
(b) have the superintendence of all matters connected with the administration of justice in Canada, not within the jurisdiction of the governments of the provinces;	**b)** exerce son autorité sur tout ce qui touche à l'administration de la justice au Canada et ne relève pas de la compétence des gouvernements provinciaux;
(c) advise on the legislative Acts and proceedings of each of the legislatures of the provinces, and generally advise the Crown on all matters of law referred to the Minister by the Crown; […]	**c)** donne son avis sur les mesures législatives et les délibérations de chacune des législatures provinciales et, d'une manière générale, conseille la Couronne sur toutes les questions de droit qu'elle lui soumet;

71.5. The Applicants contend that s. 4(a) is engaged because unilateral constitutional amendments relate to "the administration of public affairs" such that the Attorney General is obligated to ensure that they are made "in accordance with law" – especially the rules for constitutional amendment enshrined in Part V of the *Constitution Act, 1982*;

71.6. The Applicants contend that s. 4(b) is also engaged because unilateral provincial constitutional amendments are "matters connected with the administration of justice in Canada" and because unilateral provincial constitutional amendments to "the Constitution of Canada" are "not within the jurisdiction of the governments of the provinces" and only within the jurisdiction of the government of Canada. It is incumbent upon the Minister of Justice to ensure that provincial constitutional amendments do not exceed the jurisdiction of the governments of the provinces that adopt them;

71.7. The Applicants contend that s. 4(c) is also engaged because the Minister has the obligation to "advise on the legislative Acts… of each of the legislatures of the provinces" that purport to adopt unilateral constitutional amendments to "the constitution of the province" and/or "the Constitution of Canada";

71.8. As concerns the Attorney General of Canada, s. 5 of the Act provides:

Powers, duties and functions of Attorney General **5** The Attorney General of Canada […] **(d)** shall have the regulation and conduct of all litigation for or against the Crown or any department, in respect of any subject within the authority or jurisdiction of Canada […]	**Attributions** **5 Les attributions du procureur général du Canada sont les suivantes :** […] **d)** il est chargé des intérêts de la Couronne et des ministères dans tout litige où ils sont parties et portant sur des matières de compétence fédérale;

71.9. The Attorney General's power under s. 5(d) is clearly engaged because amendments to the text of "the Constitution of Canada" are exclusively "within the authority or jurisdiction of Canada" and because the Attorney General shall have the regulation and conduct of all litigation for the Crown in Right of Canada in respect of provincial legislation that purports to effect textual amendments to "the Constitution of Canada" or that otherwise exceeds the provincial power of unilateral constitutional amendment entrenched in s. 45 of the *Constitution Act, 1982*;

71.10. The Minister's powers under section 4 and the Attorney General's powers under section 5 should not be viewed in isolation, especially as the Office of the Minister of Justice and Attorney General of Canada is at all times occupied by the same person. Together, the powers of the Minister of Justice and Attorney General of Canada provide the legal basis for the obligation resting on the Attorney General of Canada to institute litigation of behalf of the Government of Canada in respect of provincial legislation that purports to unilaterally amend the text of "the Constitution of Canada" or otherwise exceeds the power of provincial unilateral constitutional amendment entrenched in s. 45 of the *Constitution Act, 1982*;

71.11. The Government's obligation arises not only from the *Department of Justice Act* but from the Government of Canada's unique position as the sole constitutional actor aside from the judiciary responsible for upholding and defending the "Constitution of Canada" as defined in section 52 of the *Constitution Act, 1982*;

71.12. As the Government's assessment of whether provincial legislation that unilaterally purports to amend the Constitution of Canada is constitutional is not determinative as to its constitutionality, and as the judiciary cannot undertake a reference or otherwise seize itself of determining the constitutionality of such legislation, the unwritten principles of constitutionalism and the rule of law that underlie the entire constitutional order combine with the Government's statutory and constitutional powers to require that the Government obtain a binding legal opinion from the judicial branch conclusively determining whether unilateral provincial constitutional amendments are constitutional.

71.13 The contrary conclusion results in provinces having unchecked authority to unilaterally amend the Constitution of Canada and/or the constitution of the province, without any independent, impartial and binding determination. This undermines constitutionalism and the rule of law and prima facie violates the basic postulate that "[a] legislature cannot alter the scope of its own constitutional powers through statute";[4]

[4] e.g. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 56.

71.14.The Government of Canada has repeatedly failed to fulfill its legal obligation to undertake legal proceedings in respect of provincial legislation that purports to unilaterally amend the text of "the Constitution of Canada" or otherwise exceeds the power of provincial unilateral constitutional amendment entrenched in s. 45 of the *Constitution Act, 1982*;

71.15. In particular, the Attorney General of Canada has failed to institute legal proceedings or otherwise challenge any of the following unilateral provincial constitutional amendments purportedly adopted pursuant to s. 45 of the *Constitution Act, 1982*, which constitute the three first times in Canadian history that s. 45 has been invoked;

- On June 1, 2022, Quebec adopted *An Act respecting French, the official and common language of Québec*, S.Q. 2022, c. 14, which purports to entrench new sections 90Q.1 and 90Q.2 into the text of the *Constitution Act, 1867*;

- On December 9, 2022, Quebec adopted *An Act to recognize the oath provided in the Act respecting the National Assembly as the sole oath required in order to sit in the Assembly*, S.Q. 2022, c. 30, which purported to entrench the new section 128Q.1 into the text of the *Constitution Act, 1867*; [5]

- On May 16, 2023, Saskatchewan adopted *The Saskatchewan First Act*, S.S. 2023, c. 9, which purports to entrench new sections 90S.1(1), 90S.1(2) and 90S.1(3) into the text of the *Constitution Act, 1867* and s. 3.1 into *The Saskatchewan Act of 1905*;

71.16. The Attorney General of Canada has the legal power and authority to institute legal proceedings to determine the constitutionality of the above provincial legislation as well as any other provincial legislation that purports to amend the text of "the Constitution of Canada" or otherwise exceeds the provincial power of unilateral constitutional amendment in s. 45 of the *Constitution Act, 1982*;

71.17. Pursuant to section 4(d) and 5(c) of the *Department of Justice Act*, the Minister has the authority to advise the Governor in Council to refer to the Supreme Court of Canada any provincial legislation that purports to amend the text of "the Constitution of Canada" or otherwise exceeds the provincial power of unilateral constitutional amendment in s. 45 of the *Constitution Act, 1982*. The *Supreme Court Act*, R.S.C., 1985, c. S-26, is unequivocal that a reference may be sought in respect of provincial legislation:

References by Governor in Council Referring certain questions for opinion	**Renvois par le gouverneur en conseil Questions déférées pour avis**
53 (1) The Governor in Council may refer to the Court for hearing and consideration important questions of law or fact concerning	**53 (1)** Le gouverneur en conseil peut soumettre au jugement de la Cour toute question importante de droit ou de fait touchant :

[5] The Applicants have filed a constitutional challenge to the Act and to s. 128Q.1 in the matter of *Public Interest Litigation Institute, et al. v. Attorney General of Quebec, et al.*, No. 500-17-139512-266.

(a) the interpretation of the *Constitution Acts*;	**a)** l'interprétation des *Lois constitutionnelles*;
(b) the constitutionality or interpretation of any federal or provincial legislation;	**b)** la constitutionnalité ou l'interprétation d'un texte législatif fédéral ou provincial;
[…]	[…]
(d) the powers of the Parliament of Canada, or of the legislatures of the provinces, or of the respective governments thereof, whether or not the particular power in question has been or is proposed to be exercised.	**d)** les pouvoirs du Parlement canadien ou des législatures des provinces, ou de leurs gouvernements respectifs, indépendamment de leur exercice passé, présent ou futur.

71.18. The Attorney General of Canada's failure to pursue any legal proceedings in this regard – including the seeking of an advisory opinion from the Supreme Court of Canada – constitutes a failure to fulfill the obligation imposed on the Minister of Justice under s. 4 of the *Department of Justice Act* and the obligations imposed on the Attorney General of Canada, under s. 5 of the Act;

71.19. A judicial declaration should therefore be issued declaring that the Government of Canada is legally obligated to ensure that amendments to the Constitution of Canada be made in accordance with the applicable constitutional amendment rules entrenched in Part V of the *Constitution Act, 1982* – especially, but not exclusively, when provinces purport to unilaterally amend "the constitution of the province" and/or "the Constitution of Canada" pursuant to section 45 of the *Constitution Act, 1982*;

I. Costs

72. Public Interest Litigation Institute is an unincorporated non-profit association that has brought this constitutional Application in the public interest. Professor Lawrence David is a teacher who has shepherded this Application in the public interest. Both Applicants should be relieved of any adverse costs award if the Application is unsuccessful, in whole or in part.

73. Such further and other grounds as counsel may advise and this Honourable Court may permit.

In support of this Amended Application, the applicants rely on the following material or evidence:

74. The following documentary evidence will be used at the hearing of this Application:

a. Government of Saskatchewan, Press Release titled "Saskatchewan's Proposed Amendments To The Constitution Of Canada Proceed To Senate", dated February 9, 2022;

b. Department of Justice Canada, News Release titled "Proclamation of a constitutional amendment issued to repeal outdated tax exemption", dated May 6, 2022;

c. Public Interest Litigation Institute, "Mission Statement and Principles";

d. Print-outs from the Supreme Court of Canada's electronic docket;

e. Lawrence David's Profile Page from the University of Ottawa's Faculty of Law's website;

f. Government of Saskatchewan, Press Release titled "Province Introduces The *Saskatchewan First Act*", dated November 1, 2022;

g. Legislative Assembly of Saskatchewan, Standing Committee on Intergovernmental Affairs and Justice, Hansard Verbatim Record, No. 21, March 15, 2023, Twenty-Ninth Legislature;

h. Legislative Assembly of Saskatchewan, Standing Committee on Intergovernmental Affairs and Justice, Minute No. 21, Legislative Chambers, Wednesday, March 15, 2023, 3:59 p.m.;

i. Government of Saskatchewan, Press Release titled "Province Passes *Saskatchewan First Act*", dated March 16, 2023;

j. Affidavit of Mr. Jeffrey Orenstein, Vice-President of the Public Interest Litigation Institute, to be sworn a later date;

k. such further and other evidence as counsel may adduce and this Honourable Court may admit.

Applicable Rules, Acts, and Regulations:

75. *The King's Bench Rules*, Sask. Gaz. October 13, 2023, 1835, rr. 1-3, 1-4, 1-5, 1-6, 1-7, 3-49, 3-55, 3-56, 3-60, 3-72, 11-1;

76. *The King's Bench Act*, S.S. 2023, c. 28;

77. *The Saskatchewan First Act*, S.S. 2023, c. 9;

78. *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11;

79. *The Constitution Act, 1867*;

80. The *Saskatchewan Act*;

81. *Constitution Amendment, 2022 (Saskatchewan Act)*, SI/2022-25;

82. *The Constitutional Questions Act, 2012*, S.S. 2012, c. C-29.01;

83. Such further and other rules, acts, and regulations as counsel may advise and this Court may permit.

DATED at Ottawa, Ontario, this ~~16th~~ 24th day of September, 2026.



Lawrence David, LL.M counsel for
Public Interest Litigation Institute

This notice is issued at the above-noted judicial centre on the _____ day of _____ , 2 _____ .

Court Seal

_____
Local Registrar

NOTICE

You are named as a respondent because you have made or are expected to make an adverse claim with respect to this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form.

A party moving or opposing an originating application must serve on each of the other parties and file a brief of written argument in accordance with the timelines specified in rule 3-50. The applicant's brief must be served and filed at least 10 days before the hearing. The respondent's brief must be served and filed at least 5 days before the hearing.

If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must serve a copy of the affidavit and other evidence on the originating applicant at least 10 days before the originating application is to be heard or considered.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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To the extent that this is permitted under the Rules, the Applicants hereby consent to electronic service by email sent to lawrencedavidlegal@gmail.com and ldavid@pili-ilip.ca. Alternatively, please send an electronic copy of any document that is physically served.