

Clerk's stamp:

COURT FILE NUMBER:

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE:

EDMONTON

APPLICANTS:

THE ALBERTA TEACHERS'  
ASSOCIATION and GREG MEEKER

RESPONDENT:

HER MAJESTY THE QUEEN IN RIGHT OF  
ALBERTA by the PRESIDENT OF  
TREASURY BOARD AND MINISTER OF  
FINANCE

ADDITIONAL RESPONDENTS:

ALBERTA INVESTMENT MANAGEMENT  
CORPORATION and the TEACHERS'  
PENSION PLANS BOARD OF TRUSTEES  
a.k.a. ALBERTA TEACHERS' RETIREMENT  
FUND BOARD

DOCUMENT:

**ORIGINATING APPLICATION**

ADDRESS FOR SERVICE AND CONTACT  
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### **NOTICE TO RESPONDENT**

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:

Date:

Time:

Where: Edmonton - Law Courts, 1A Sir Winston Churchill Square,  
Edmonton, AB T5J 0R2

Before whom: Presiding Justice in Special Chambers

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

## ORIGINATING APPLICATION

### Basis for this claim:

1. The Applicant, the Alberta Teachers' Association (the "Association") is a corporation constituted pursuant to the *Teaching Profession Act*, RSA 2000, c T-2, and that as the professional organization of teachers, promotes and advances public education, safeguards standards of professional practice and serves as an advocate for its approximately 46,000 members.
2. The Applicant, Greg Meeker, is the Principal of Coronation School in the Edmonton Public School Board. He has worked as a teacher in the province of Alberta since 1994, and has 28 years of pensionable service. From 2009-2019, he was the Chair of the Alberta Teachers' Retirement Fund Board ("ATRF").
3. Teachers in Alberta are members of a defined benefit pension plan constituted pursuant to the *Teachers' Pension Plan Act*, RSA 2000, c T-1 [TPPA]. By virtue of their employment in the teaching profession, teachers, such as Greg Meeker, contribute a portion of their income to their pension in order to receive benefits in retirement. Greg Meeker is an active member of the plan who makes regular contributions to it and will continue to do so until he retires.
4. Teachers' pension funds are managed by the Teachers' Pension Plans Board of Trustees, more commonly called the ATRF. The ATRF is jointly governed, with 50% of its members being nominated by the Lieutenant Governor in Council and 50% of its members being nominated by the Association.
5. The Association collectively represents the interests of its members who are beneficiaries of pension funds established and regulated by the TPPA.

### Amendments to the TPPA:

6. Before 2019, the ATRF was responsible for investing and managing teachers' pension assets. The ATRF's management of the assets was widely respected and resulted in investment returns that exceeded benchmarks.
7. In 2019, the Government of Alberta passed legislation, the *Reform of Agencies, Boards and Commissions and Government Enterprises Act, 2019*, SA 2019, c 15, that amended the TPPA and the *Alberta Investment Management Corporation Act*, SA 2007, c A-26.5 [AIMCo Act]. The new legislation removed the ATRF's asset management responsibilities and mandated that the ATRF enter into an investment management agreement ("IMA") with the Alberta Investment Management Corporation ("AIMCo") and transfer management of its assets to AIMCo.
8. While AIMCo is now responsible for managing teachers' pension investments, it is not responsible for determining the ATRF's approach to investment and is not directly

accountable to Alberta's teachers. Section 17.1 of the *TPPA* requires the ATRF to establish a statement of investment policies and goals (the "Investment Policy") and to ensure that teachers' pension assets are invested in accordance with the Investment Policy. AIMCo has no authority pursuant to the *TPPA* or the *AIMCo Act* to make determinations with respect to the Investment Policy.

9. It is a key component of the amendments to the *TPPA* that the ATRF retains control over, and ultimate responsibility for, teachers' pension funds. The Government of Alberta made numerous representations that the investment strategy for teachers' pensions was not being put under control of AIMCo or the Government, and that the ATRF would retain control over the Investment Policy.

#### *The Ministerial Order*

10. After the amendments to the *TPPA* came into effect, the ATRF and AIMCo began negotiations about the statutorily-mandated IMA. While significant progress was made toward an IMA, AIMCo ultimately broke off negotiations in November 2020 without a final IMA being put in place.
11. On December 23, 2020, the President of Treasury Board and Minister of Finance issued Ministerial Order No. 42/2020 (the "Ministerial Order") pursuant to sections 6(4) and 6(5) of the *AIMCo Act* to impose terms and conditions to govern the relationship between ATRF and AIMCo. The effective date of the Ministerial Order is January 1, 2021.
12. The terms and conditions imposed by the Ministerial Order go beyond what is contemplated to be included in IMA, as defined in the *Alberta Investment Management Corporation Regulation, Alta Reg 225/2007 [AIMCo Regulation]*, and are in conflict with the ATRF's statutory and fiduciary obligation to establish the Investment Policy and ensure that funds are invested in accordance with the Investment Policy. The provisions of the Ministerial Order that are inconsistent with the *TPPA* include:
  - a. Section 2.2 compels the ATRF and AIMCo to jointly review the Investment Policy that ATRF alone is obligated, under the *TPPA*, to prepare;
  - b. Section 3.6 requires the ATRF to collaborate with AIMCo regarding amendments to the Investment Policy;
  - c. Section 3.8 gives AIMCo authority to, under some circumstances, reject an amended Investment Policy (including the Investment Policy in place as at January 1, 2021, which is deemed to be an amended Investment Policy) and excuses its obligation to comply with those parts of the amended Investment Policy to which it objects;
  - d. Section 15 provides for arbitration to resolve disputes between AIMCo and the ATRF, but expressly excludes arbitration of issues arising from AIMCo's rejection of amendments to the ATRF's Investment Policy.

13. The Minister did not consult with the Association, as the representative of the beneficiaries of the pension funds at issue, at any time before the terms and conditions were imposed by Ministerial Order. Further, the Association does not believe that the Minister consulted with the ATRF.
14. On February 5, 2021, management of a portion of the assets for which ATRF is responsible was transferred to AIMCo. Further transfers of assets to be managed by AIMCo are anticipated to occur through 2021, with a final deadline of December 31, 2021.

*The Ministerial Order is Invalid*

15. The Ministerial Order is inconsistent with *TPPA*. The inconsistencies include, but are not limited to:
  - a. The ATRF is responsible for preparing the Investment Policy and ensuring that AIMCo's investment management complies with it. Under *TPPA* and the *Teacher's Pension Plans (Legislative Provisions) Regulation*, Alta Reg 204/1995, this responsibility cannot be delegated to a third party;
  - b. The intention of the Legislature in enacting *TPPA* was to give the ATRF sole responsibility for determining the investment policies and goals that would govern how the pension funds are invested;
  - c. The Ministerial Order purports to give AIMCo the power to reject amendments to the terms of the Investment Policy that do not meet AIMCo's criteria and excludes disputes about the terms of the Investment Policy from the dispute resolution procedure set out in the Ministerial Order;
  - d. The Ministerial Order cannot conflict with the terms of the governing statutes;
  - e. It undermines the fiduciary duties imposed on the ATRF under the *TPPA* because it provides AIMCo with the authority to disregard changes to an Investment Policy that conflicts with the Investment Policy deemed by ATRF to be in the best interests of the plan (and, by extension, its teacher members);
  - f. Such further and other grounds as counsel may advise at the hearing of this application.
16. Further, or in the alternative, the Ministerial Order is inconsistent with the *AIMCo Act*. The inconsistencies include, but are not limited to:
  - a. Section 6(4) only authorizes the Minister to specify by order the terms and conditions with which investment management services be provided by AIMCo to the ATRF in place of an investment management agreement;
  - b. Pursuant to the section 8.1 of the *AIMCo Regulation*, an investment management agreement must deal with the funds and other assets for which AIMCo is to

provide investment management services, the investment management services to be provided by AIMCo, and AIMCo's cost recovery for services;

- c. The terms and conditions with which investment management services are provided by AIMCo do not include setting the investment policy for the ATRF or other designated institutions;
  - d. The *AIMCo Act* does not authorize the Minister or AIMCo to prescribe or vary the ATRF's Investment Policy through an investment management agreement;
  - e. The Minister cannot impose terms and conditions in an investment management agreement that AIMCo could not adopt;
  - f. The Ministerial Order is inconsistent with AIMCo's statutory fiduciary duties because it imposes a limitation on AIMCO's liability that is not in the best interests of the ATRF or teachers whose pension funds are put at risk by AIMCo's provision of investment management services;
  - g. Such further and other grounds as counsel may advise at the hearing of this application.
17. The Ministerial Order is unreasonable and could not have been passed by a reasonable statutory delegate because it is inconsistent with the *TPPA* and the *AIMCo Act*.
  18. Further, or in the alternative, the Ministerial Order was subject to a duty of procedural fairness owed to the ATRF and the Association. The ATRF and the Association were entitled to be consulted and provided with an opportunity to provide input on the possible contents of the Ministerial Order, such as the provisions giving AIMCo veto power over the ATRF's Investment Policy.
  19. This duty of procedural fairness was breached when the Association and the ATRF were not consulted about the Ministerial Order because:
    - a. The Ministerial Order was imposed without consulting the ATRF or the Association, and impacts investment decisions relating to billions of dollars of teachers' pension assets;
    - b. The Ministerial Order overrides the express grant of authority to the ATRF to determine and take responsibility for the Investment Policy;
    - c. The Ministerial Order makes AIMCo the sole arbiter of disputes relating to the Investment Policy where a disagreement with the ATRF arises, overriding the ATRF's co-governance model;
    - d. The Ministerial Order exposes teachers' pension funds to greater risk, in light of AIMCo's recent high-profile investment failures and underperformance relative to the returns realized by the ATRF's management of the pension funds;

- e. The Government of Alberta repeatedly made representations that the ATRF would retain control over the Investment Policy and teachers' pension funds, thereby creating a reasonable expectation that the ATRF and Association would be consulted before any decisions about the terms of the investment management agreement that would affect the ATRF's role in managing those funds;
  - f. Such further and other grounds as counsel may advise at the hearing of this application.
- 20. Further, or in the alternative, the Ministerial Order is unreasonable.
  - 21. This Application is time-sensitive, given that the transfer of the ATRF's pension assets to be managed by AIMCo has already begun and must be completed no later than December 31, 2021. The Association requests that this matter proceed on an expedited timeline.
  - 22. Such further and other grounds as counsel may advise at the hearing of this application.

**Remedy sought:**

- 23. A declaration that Ministerial Order No. 42/2020 of the Department of Treasury Board and Finance is invalid and *ultra vires*.
- 24. In the alternative, an Order setting Ministerial Order No. 42/2020 of the Department of Treasury Board and Finance aside.
- 25. An Order prohibiting the transfer of additional pension assets from ATRF management to AIMCo management until such time as the parties negotiate an IMA, or alternatively a valid Ministerial Order governing same is enacted.
- 26. If necessary, an Order expediting the hearing of this Application.
- 27. Costs of this proceeding.
- 28. Such further and other relief as this Honourable Court considers just and appropriate.

**Affidavit or other evidence to be used in support of this Application:**

- 29. Affidavit of Jason Schilling, sworn March 5, 2021.
- 30. The record of proceedings on which Ministerial Order No. 42/2020 of the Department of Treasury Board and Finance was based.
- 31. Such further and other evidence as counsel may advise and this Honourable Court may permit.

**Applicable Acts and Regulations:**

- 32. *Alberta Investment Management Corporation Act*, SA 2007, c A-26.5.

33. *Alberta Investment Management Corporation Regulation*, Alta Reg 225/2007.
34. *Interpretation Act*, RSA 2000, c I-8.
35. *Teachers' Pension Plans Act*, RSA 2000, c T-1.
36. *Teachers' Pension Plans (Legislative Provisions) Regulation*, Alta Reg 204/1995.
37. Such further and other acts and regulations as counsel may advise.

**WARNING:**

You are named as a Respondent because you have made or are expected to make an adverse claim in respect of the personal property identified in 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 Applicants and as against all persons claiming under the Applicants. You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the Applicants are entitled to make without any further notice of them to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and time shown above. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the Applicants a reasonable time before the application is to be heard or considered.

cc: Minister of Justice and Solicitor General of Alberta