

COURT FILE NUMBER

1403 00282

COURT

COURT OF QUEEN'S
BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFFS

UNITED NURSES OF
ALBERTA, HEATHER
SMITH, AND IRENE GOUIN

DEFENDANT

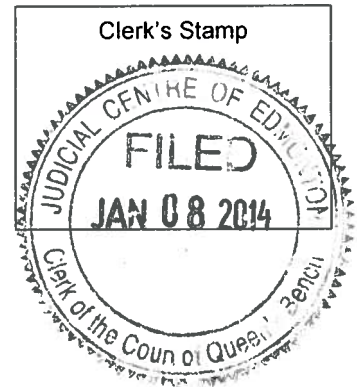
HER MAJESTY THE QUEEN
IN RIGHT OF ALBERTA, AS
REPRESENTED BY THE
MINISTER OF JOBS, SKILLS
TRAINING AND LABOUR

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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NOTICE TO DEFENDANT

You are being sued. You are a defendant.

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

Statement of facts relied on:

PARTIES

1. The Plaintiff, the United Nurses of Alberta ("UNA"), has been a trade union since 1977. UNA currently represents approximately 30,000 registered nurses, registered psychiatric nurses, student nurses, and allied healthcare professionals in Alberta employed by a variety of employers in Alberta.

2. The *Labour Relations Code*, RSA 2000, c L-1 ("*Labour Relations Code*") establishes the Labour Relations Board (the "Board"). The Board has certified UNA as the bargaining agent for various groups of its members employed by various employers. The majority of UNA members are subject to Division 16 of the *Labour Relations Code* as they are employed by employers who are subject to Division 16 of the *Labour Relations Code* such as: Alberta Health Services ("AHS"); approved hospitals under the *Hospitals Act* operated by Covenant Health across Alberta; approved hospitals under the *Hospitals Act* operated by the Bethany Group; and the Lamont Health Care Centre ("Affected Employers"). UNA brings this claim on its own behalf and on behalf of its members subject to Division 16 of the *Labour Relations Code* ("Affected Members").

3. UNA, on behalf of its Affected Members, and the Affected Employers have entered into a collective agreement with a term from April 1, 2010 – March 31, 2013. Formal notices to commence collective bargaining for a new collective agreement were exchanged in January 2013, and since May 2013 the parties have been collective bargaining.

4. The Plaintiff, Heather Smith ("Smith"), is a registered nurse, president of UNA, and an officer and representative of UNA.

5. The Plaintiff, Irene Gouin, is a registered nurse who is an employee of Covenant Health at the Grey Nuns Hospital in Edmonton and an Affected Member of UNA.

6. The Defendant, Her Majesty the Queen in Right of Alberta, as represented by the Minister of Jobs, Skills, Training and Labour, is responsible for the *Labour Relations Code* and the *Public Sector Services Continuation Act*, SA 2013 ("Bill 45").

7. Bill 45 was introduced into the Legislature of Alberta on November 27, 2013. On December 11, 2013 Bill 45 received Royal Assent and became a validly enacted law in Alberta and subject to constitutional challenge at any time prior to or after proclamation. At no time prior to the introduction of Bill 45 in the Alberta Legislature, or subsequent to its introduction and

prior to it receiving Royal Assent, did the Defendant consult with UNA or any other trade union affected by Bill 45 regarding Bill 45.

SUMMARY OF THE CLAIMS

8. The Plaintiffs state that Division 16 of the *Labour Relations Code* (sections 96-104) which prohibits strikes or threatening to cause a strike, violates the freedom of expression and the freedom of association of UNA's Affected Members, UNA, and/or UNA's representatives or officers. These freedoms are protected under sections 2(b) and 2(d) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act 1982* being Schedule B to the *Canada Act 1982 (UK), 1982, c 11* ("*Charter*") and the violations of these freedoms are not demonstrably justified under section 1 of the *Charter*.

9. With respect to Bill 45, the Plaintiffs state that it violates the following fundamental freedoms of UNA's Affected Members, UNA, and/or UNA's representatives or officers, as guaranteed in the *Charter*: freedom of expression (s. 2(b)); freedom of association (s. 2(d)); the right to life liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice (s. 7); the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal (s. 11(d)); and the right not to be subjected to cruel and unusual punishment (s. 12). These violations are not demonstrably justified under section 1 of the *Charter*.

10. With respect to Bill 45, the Plaintiffs state that it violates s. 1(a) of the *Alberta Bill of Rights*, RSA 2000, c A-14 ("*Bill of Rights*") which guarantees the right of individuals to liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law.

LEGISLATIVE CONTEXT

Labour Relations Code

11. With respect to the employees and employers covered by it, the *Labour Relations Code* governs labour relations in the province of Alberta. Among other things, it regulates the organizing of workplaces by trade unions, the collective bargaining between trade unions and employers, and strikes by trade unions and employees and lockouts by employers. It also limits the circumstances in which a trade union and its members can go on strike.

12. The *Labour Relations Code* defines a strike as including a cessation of work, refusal to work, or a refusal to continue to work by two or more employees acting in combination or in concert, or in accordance with a common understanding *for the purpose of compelling their employer to agree to terms or conditions of employment* (s. 1(v)). There is no statutory definition in the *Labour Relations Code* for a “threat” to strike.

13. Division 16 of the *Labour Relations Code*, section 96, states:

96(1) This Division applies to the following:

- (a) firefighters and, to the extent that they bargain collectively with firefighters, municipalities and Metis settlements;
 - (b) employers who operate approved hospitals as defined in the *Hospitals Act*, and all the employees of those employers;
 - (c) employers that are regional health authorities and all of their employees to whom clause (b) does not apply;
 - (d) ambulance operators as defined in the *Emergency Health Services Act* and their employees who act as ambulance attendants as defined in that Act to whom neither clause (b) nor clause (c) applies.
- (2) No employees, trade union, employer or employers’ organization to which this Division applies shall strike, lock out, cause a strike or lockout or threaten to cause a strike or lockout.
- (3) This Division applies notwithstanding any other provision of this Act.

14. Division 16 prohibits the listed employees from striking and instead requires collective bargaining disputes involving such employees to be resolved through compulsory arbitration (s. 97).

15. Division 16 does not define what constitutes an “essential service”, nor does it provide a mechanism for determining what is an essential service. Instead, all Affected Members are prohibited from striking, causing a strike, or threatening to strike. Not all Affected Members provide an essential service.

16. While the prohibition in Division 16 is not new, until recently there was an absence of judicial recognition of the application of freedom of association to labour relations.

17. The *Labour Relations Code* empowers the Board to regulate unlawful strikes and to grant remedies as it sees fit (sections 86, 88).

Bill 45

18. Bill 45 imposes a number of restrictions and penalties on UNA’s Affected Members, including Irene Gouin, UNA, and/or UNA’s representatives or officers, that do not exist under the *Labour Relations Code*. Bill 45 does not impose corresponding restrictions and penalties on employers locking out employees or threatening to lock out employees. Bill 45 prevails over the *Labour Relations Code* to the extent there is a conflict between the two laws.

19. Bill 45 defines an employee as an individual to whom Division 16 of the *Labour Relations Code* applies, and includes all UNA Affected Members.

20. Bill 45 broadens the definition of strike such that it encompasses a wider range of activity. Under Bill 45, a “strike” is:

any of the following activities by 2 or more employees acting in combination, in concert or in accordance with a common understanding:

- (i) a cessation of work;
- (ii) a refusal to work;
- (iii) a refusal to continue to work;
- (iv) a slowdown or other diminution of services;
- (v) an activity that has the effect of restricting or disrupting production or service.

In contrast to the narrower definition in the *Labour Relations Code*, the broader definition imposed by Bill 45 captures a wider range of otherwise lawful activity by employees and no longer requires that such activity be engaged in *for the purpose of* compelling an employer to agree to terms or conditions of employment.

21. Bill 45 also creates a broad definition of “strike threat”:

- (i) the calling or authorizing by a trade union or an officer or representative of a trade union of an employees’ strike,
- (ii) a threat by a trade union or an officer or representative of a trade union to call or authorize an employees’ strike,
- (iii) the setting of a vote or other poll of employees to determine whether they wish to strike, or
- (iv) an act or threat to act that could reasonably be perceived as preparation for an employees’ strike;

This broad definition of a strike threat encompasses a wide range of otherwise lawful expression, and expressive and associational activity.

22. Bill 45 prohibits an employee or a trade union or officer or representative of a trade union from causing or consenting to a strike, and from engaging in any conduct that constitutes a strike threat or a strike (sections 4(1), (2), and (3)).

23. Bill 45 also prohibits any “person” from counseling a “person” to engage in a strike threat or a strike (section 4(4)).

24. Bill 45 permits the Minister, an employer, or an authorized person (who may be designated by regulation), to apply to the Labour Relations Board for a declaration that a strike threat or strike has occurred, and to seek the remedies set out in Bill 45. Once such declaration has been made, Bill 45 requires the Labour Relations Board and the employer to impose automatic penalties.

25. Bill 45 requires the Board, once it finds that a strike threat or strike has occurred, to, among other things:

- a) issue a directive that employees in the trade union and the trade union's officers and representatives immediately cease engaging in conduct that constitutes a strike threat (section 5(4));
- b) issue a directive that a strike end immediately (section 5(5));
- c) file such a directive with the Court which is then enforceable as a judgment or order of the court (section 5(7)).

26. Bill 45, among other things, requires an employer to suspend the deduction from payroll of union dues and to suspend remitting those union dues to the union for a minimum of three months for the first day or partial day of a strike threat or strike, plus an additional month of union dues for each additional day or partial day on which a strike threat or strike continues (section 6(1)).

27. Bill 45 (s. 9) requires a Court, upon finding a strike threat or strike occurred, to impose an "abatement order" including,

- a) an abatement order of \$1 million for each day or partial day on which a strike threat or strike occurs or continues;
- b) orders requiring the employees, trade unions, officers and representatives to immediately cease engaging in all conduct that constitutes a strike threat or a strike.

28. Bill 45 removes the procedural safeguards in Rule 105.2 of the *Alberta Rules of Court*. Alta Reg 124/2010, which must be met prior to a court making a finding of civil contempt (s. 14).

29. Bill 45 requires that if the Minister, or delegate appointed under regulation, is of the opinion that an employee has contravened the prohibition against engaging in a strike or making a strike threat, the Minister or delegate may require the employee to pay to the Crown an administrative penalty in the amount of one day's pay multiplied by the number of days or partial days in which the Minister deems the contravention occurred or continued (s. 16). This administrative penalty is imposed without notice and without a hearing. Failure to pay the administrative penalty entitles the Minister or delegate to file a copy of the notice of administrative penalty with the clerk of the Court of Queen's Bench and upon filing it becomes enforceable as if it were a judgment of the Court. An employee is entitled to request the Minister or the delegate reconsider the administrative penalty, but there is no obligation on the Minister or the delegate to do so, and if the Minister does conduct a reconsideration, it can be done without a hearing (s. 17).

30. In addition to the above penalties, Bill 45 (s. 18) makes it an offence to fail to comply with the legislation, and a party that is found guilty of the offence is liable for the following fines:

- a) for an employer or union - \$250,000.00 *and* an amount determined by the number of employees in the bargaining unit multiplied by \$50.00 and multiplied by the number of days or partial days the offence is found to have occurred;
- b) for an officer or representative of a trade union, \$10,000.00 per day or partial day the offence is found to have occurred;
- c) for an employee, one day's pay per day or partial day the offence is found to have occurred;
- d) for a person not caught by the other penalties, \$500.00 per day or partial day the offence is found to have occurred.

31. With respect to both the automatic dues suspension by an employer under section 6 of Bill 45 and the abatement orders under section 9 of Bill 45, the trade union and its officers and representatives are presumed to have violated Bill 45 unless they initiate an application to satisfy the Labour Relations Board or Court, as the case may be, that any strike threat or strike occurred

against the trade union's express instructions and all the actions of its officers and representatives have been consistent with those instructions (ss. 6(3), (4), and s. 9(10)).

CONSTITUTIONAL RIGHTS

32. As part of the supreme law of Canada, the *Charter* guarantees, among other things, that everyone has the following fundamental rights and freedoms:

- a) Freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication (section 2(b)).
- b) Freedom of association (section 2(d)).
- c) Everyone has the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice (section 7).
- d) Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal (section 11(d)).
- e) Everyone has a right not to be subjected to any cruel or unusual treatment or punishment (section 12).

THE BREACHES OF SECTIONS 2(b) AND 2(d) OF THE *CHARTER*

33. The freedom of association the *Charter* protects includes the freedom of employees to collectively withdraw their labour in whole or in part in response to workplace issues, political issues, and/or social issues; to engage in job action; to strike; to picket; to threaten to collectively withdraw their labour in whole or in part; to organize into trade unions or join trade unions; to engage in collective bargaining including good faith negotiations with an employer; and to try to compel the employer, through a withdrawal of labour if need be, to agree to terms and conditions of employment in a collective agreement.

34. The freedom of expression the *Charter* protects includes all expression associated with the associational activity described in paragraph 31 and specifically includes expression related to: collectively withdrawing labour in whole or in part; striking; picketing; threatening to

withdraw labour in whole or in part; threatening to strike; collective bargaining; and trying to compel an employer to conclude a collective agreement.

35. In guaranteeing both freedom of association and freedom of expression, the *Charter* recognizes the importance of trade unions and their members being able to act collectively in response to workplace issues, political issues and/or social issues and being able to freely communicate and express their views and opinions, through their words and actions, with each other, to the employer and to the public, about collective bargaining, workplace issues, political issues, and/or social issues, including their views about whether employees should withdraw their labour in whole or in part.

36. In addition to being protected by ss. 2(b) and 2(d) of the *Charter*, freedom of expression and freedom of association are also recognized in the common law and in international law.

37. Both the *Labour Relations Code* and Bill 45 unconstitutionally interfere with the freedom of association of UNA, Heather Smith, Affected Members including Irene Gouin, UNA's officers, and UNA's representatives, by restricting their ability to withdraw their labour in whole or in part and to participate in strikes, and/or job action, or to threaten a withdrawal of labour, strikes, and/or job action, in collective bargaining or in response to workplace, political, and/or social issues.

38. The *Labour Relations Code* and Bill 45 also unconstitutionally interfere with the ability of UNA, Heather Smith, Affected Members including Irene Gouin, UNA officers, and UNA representatives, to engage in expressive activity. The *Labour Relations Code* prohibits threatening a strike as defined in that legislation. The broader definition of strike under Bill 45, coupled with a prohibition on activity that could "reasonably be perceived as preparation for an employee's strike", is so broad as to further restrict forthright and passionate discussion about workplace issues, political issues, social issues, and/or collective bargaining, including whether job action or withdrawal of labour should occur.

39. UNA, Heather Smith, Affected Members including Irene Gouin, UNA's officers, and UNA's representatives, must be able to communicate with each other, the employer, and the public, about collective bargaining, workplace issues, political issues, and/or social issues, through, among other things, picketing, leafleting, and other expressive activity. Such communication includes communication about the employer's position on particular issues, UNA's position, and UNA's possible responses to the employer's position.

40. Bill 45 also unconstitutionally restricts the freedom of expression of any person including their freedom to express opinions on whether job action including withdrawal of labour should occur.

THE BREACHES OF SECTIONS 7, 11(d), AND 12 OF THE CHARTER

41. The *Charter* recognizes that the principles of fundamental justice and fairness apply when penalties are being imposed on individuals represented by trade unions, or the officers and representatives of trade unions. Section 7 of the *Charter* also recognizes that the principles of fundamental justice apply when such penalties deprive individuals of their liberty and of their ability to make important personal choices and to express those choices regarding workplace issues, political issues and/or social issues; and when such penalties deprive individuals of their security of the person by impacting on their psychological integrity.

42. Section 11(d) of the *Charter* recognizes that every person is entitled to be presumed innocent, to not have to prove they are not guilty, and to a fair and public hearing.

43. Section 12 of the *Charter* recognizes that penalties imposed for illegal activity should not be cruel or unusual, that is, they should not be grossly disproportionate to the illegal activity.

44. Bill 45 unconstitutionally deprives Affected Members including Irene Gouin, officers or representatives of UNA, of their liberty and security of the person, not in accordance with the principles of fundamental justice, and denies their right to be presumed innocent by presuming they are guilty of various breaches of Bill 45 unless they apply to Court to disprove their guilt.

45. Bill 45 unconstitutionally violates employees' rights and Affected Members' including Irene Gouin's rights, by imposing "administrative penalties" on them without a hearing either initially, or even upon appeal.

46. The penalties imposed by Bill 45 are grossly disproportionate to the enumerated breaches and offences and amount to cruel and unusual punishment.

BREACH OF THE *BILL OF RIGHTS*

47. The *Bill of Rights*, section 1(a), guarantees that an individual is not to be deprived of the enjoyment of their property, including by payment of fines, except by due process of law. Bill 45 violates the *Bill of Rights* by imposing fines, administrative penalties and other financial consequences without the due process of law.

RELIEF SOUGHT

48. The Plaintiffs' seek the following relief:

- a) A declaration that Division 16 of the *Labour Relations Code*, specifically s. 96, violates sections 2(b) and 2(d) of the *Charter* and is not saved by section 1 and is of no force or effect.
- b) A declaration that the definition of strike and strike threat in Bill 45 and the consequences that flow as a result of a finding of a strike or strike threat in Bill 45, as set out in sections 1(j), 1(k), 2, 4, 5, 6, 9, 11, and 16, violate sections 2(b) and 2(d) of the *Charter* and are not saved by section 1 and are of no force or effect.
- c) A declaration that Bill 45, sections 5, 6, 9, 14, 16, and 17, violate ss. 7 and 11(d) of the *Charter* and are not saved by section 1 and are of no force or effect.
- d) A declaration that Bill 45, sections 6, 9, 14, 16, 17, and 18, violate s. 12 of the *Charter* and are not saved by section 1 and are of no force or effect.
- e) A declaration that Bill 45, sections 6, 9, 14, 16, 17, and 18 violate section 1(a) of the *Bill of Rights*.

- f) Costs of this Action.
- g) Such other relief as may be requested and this Honourable Court deems just.

NOTICE TO THE DEFENDANT

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

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

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

WARNING

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