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Our File:5000-C072-15-2-1  
Board File No.

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Via fax: 780-422-0970

Alberta Labour Relations Board  
#501, 10808 – 99 Avenue  
Edmonton, AB T5K 0G5

**Attention: Tannis Brown, Director of Settlement**

Dear Madam:

**Re: An Application for Determination brought by United Nurses of Alberta and Jessica Wakeford affecting Alberta Health Services  
Board File No. GE-07762**

Regarding the Board's jurisdiction and UNA's standing, the Attorney General says that:

- a. In this case, UNA may speak on behalf of itself and on behalf of its member, Jessica Wakeford. It may seek to have nurse practitioners employed by AHS included in its AHS bargaining unit according to its certificate on its own behalf, without the participation of any nurse practitioners who are excluded from the unit by the *Code*. It is squarely in the Board's jurisdiction to determine this underlying issue.
- b. Ms. Wakeford's participation is necessary to properly put the constitutionality of the *Code*'s exclusion of nurse practitioners from collective bargaining under the *Code* before the Board. While UNA may not assert the constitutional rights of excluded nurse practitioners whom it does not represent, it may assert the constitutional rights of its member with her participation, and Ms. Wakeford may assert her own constitutional rights.
- c. Since the constitutional issue is properly before the Board, the Board may decide whether UNA's underlying claim, i.e., to have excluded nurse practitioners included in its bargaining unit, has merit in light of its determination of the constitutional issue.

Further, it is prudent to have the Board, an expert tribunal, consider the constitutionality of the *Code*'s exclusion of nurse practitioners from statutory collective bargaining and the appropriate remedy if it is not constitutional.

Section 52(1) of the *Charter* provides that a law that is inconsistent with the Constitution is without force and effect only "to the extent of the inconsistency". This may not be a case where the Board may simply treat a defective provision as being without force and effect and apply the *Code*, without attention to exactly how the provision falls short. There are many ways in which the Legislature might provide a "meaningful process of collective bargaining" to nurse practitioners, which might vary from the *Code*'s statutory scheme. They may not include nurse practitioners in the same bargaining unit as registered nurses generally.

The precise character of a constitutional defect in the exclusion of nurse practitioners from bargaining under the *Code* – if there is one – and an appropriate remedy are best considered first by a decision-maker with labour relations expertise.

Yours truly,



Rod Wiltshire  
RW/jp

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