



July 3, 2018

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**RE: An application for determination brought by United Nurses of
Alberta and Jessica Wakeford affecting Alberta Health Services -
Board File No. GE-07762**

[1] Alberta Health Services ("AHS") by letter dated May 7, 2018 asked:

AHS requests that this Board consider whether it is the most appropriate forum to determine the constitutional issue, which issue must be determined in the first instance before this Board may embark on the determination aspect of the Application.

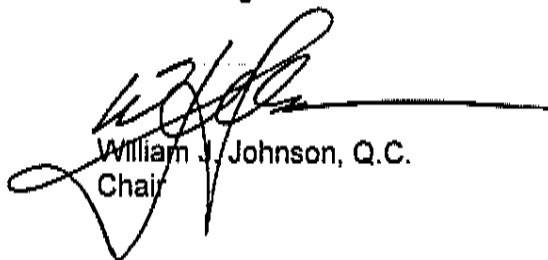
[2] The parties supplied to the Board written submissions to the AHS request. Having reviewed the written submissions of the parties, and having heard oral submissions from the parties on June 29, 2018, the Board is guided by the comments of the Supreme Court of Canada in *Cuddy Chicks Ltd. v. OLRB and UFCW, Local 175*, 1991 2 SCR 15, where the Supreme Court of Canada stated at pages 16, 17 and 18:

In the case of *Charter* matters which arise in a particular regulatory context, the ability of the decision maker to analyze competing policy concerns is critical. Therefore, while Board members need not have formal legal training, it remains that they have a very meaningful role to play in the resolution of constitutional issues. The informed view of the Board, as manifested in a sensitivity to relevant facts and an ability to compile a cogent record, is also of invaluable assistance.

... At the end of the day, the legal process will be better served where the Board makes an initial determination of the jurisdictional issue arising from a constitutional challenge. In such circumstances, the Board not only has the authority but a duty to ascertain the constitutional validity of s. 2(b) of the *Labour Relations Act*.

[3] The Board concludes it is the most appropriate forum to determine the constitutional issue in the first instance. As such, the Board will be arranging a further conference call to discuss case management of the procedure to be followed. Vice-Chair Schlesinger has been assigned to this file and will conduct the case management conference call. The parties are to submit to the Board their comments and proposals on a procedure to be followed.

[4] I ask the parties to provide Board Officer Dan Galdamez times they are available for a case management conference call.



William J. Johnson, Q.C.
Chair