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Our File: 205-17-013 KM

July 17, 2018

Alberta Labour Relations Board
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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**

Please accept the enclosed as UNA's response to the Board's request that the parties submit proposals for the manner in which this matter should proceed.

Single Proceeding

We note we are providing this proposal after AHS has suggested in its July 12, 2018 letter to bifurcate and thereby prolong these proceedings. We oppose this suggestion.

Bifurcation of proceedings is highly unusual although not unprecedented. Previous cases bifurcating proceedings tend to do so when an initial issue would dispose of the latter issue(s). However, in this case, no party is taking the position that the challenged provisions are constitutional. To summarize the parties' submissions so far on this point, we note:

UNA and Jessica Wakeford – In its April 5, 2018 application, UNA asserts that ss. 1(1)(l)(iii) and 21 of the *Labour Code* violate the right to freedom of association protected by s. 2(d) of the *Charter*.

AHS – In its May 7, 2018 reply to the application, AHS explicitly states it takes no position on the merits of UNA's application, and repeats this assertion in its July 12, 2018 letter.

HSAA – In its April 25, 2018 application for intervenor standing, takes no position on the constitutional issue.

AUPE – Has taken no position on the merits of the constitutional issue.

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Covenant Health – In its April 26, 2018 application for party or intervenor status, has taken no position on the constitutional question, but states it will collaborate with AHS (which takes no position on the constitutional question) with regard to evidence to be called.

NPAA – Has taken no position on the merits of the constitutional issue.

Canada's Attorney General – Has indicated it will not intervene in the constitutional issue.

Alberta's Attorney General – Has taken no position on the merits of the constitutional issue.

Kevin Huntley – Has taken no direct position on the constitutional issue, but suggests (at paras 3, 4 of his letter dated June 22, 2018) that nurse practitioners' exclusion from collective action under the *Code* has allowed the profession to develop its potential and benefit patients and the health care system.

Dina Sotiropoulos and Anthony Falvi – Have taken no position on the merits of the constitutional issue.

Accordingly, three months have passed since this application was filed and no one is taking the position that the challenged provisions are constitutional. A few intervenor parties (e.g., Alberta AG and NPAA) have suggested the legislature may enact new provisions in response to the Board's decision on the constitutional issue that could change the Board's interpretation of the *Code*. While this is true, with respect, the Board cannot determine its process and procedures based on what the legislature may do in the future.

The balance of all parties' and intervenors' responses to the application concern what should happen if the Board determines the challenged provisions are unconstitutional.

The history of nurse practitioners, their exclusion from the nursing bargaining unit, the work they perform for AHS, and their efforts to negotiate with AHS will be evidence that will be necessary to decide both the constitutional issue and the determination issue that results if the constitutional question is decided as UNA and Ms. Wakeford propose (or some variation thereof). To hear this evidence, make a decision, and then potentially re-hear much of the same evidence because the hearing was bifurcated would be an unnecessary duplication. The likely result of bifurcation of the hearing would be to delay and duplicate proceedings, and if the constitutional question is determined in UNA and Ms. Wakeford's favour, Ms. Wakeford would face an unnecessary delay in the continuing denial of her s. 2(d) right to associate and participate in meaningful collective bargaining.

Procedure

We propose the following:

Witnesses and Hearing Days

UNA and Ms. Wakeford will call evidence through 3 or 4 witnesses. We anticipate needing 2-3 days for our evidence. We propose each party declare the number of days required for calling evidence for the purpose of scheduling. We propose that if any expert evidence is to be introduced (assuming it is accepted by the Board as expert evidence), the parties provide either an expert report or a will-say for the expert's proposed evidence 45 days in advance of the hearing. We further suggest that the evidentiary hearing days be booked in close proximity to each other, and to have a break in advance of oral argument.

Written Argument

We propose written argument be submitted following evidentiary hearing days and before oral argument, with UNA/Wakeford submitting written argument first along with any intervenor whose position is aligned with UNA/Wakeford; all respondent parties and intervenors submitting written argument two weeks after; and a short reply written argument by UNA/Wakeford in advance of the oral argument hearing date.

Thank-you.

Yours truly,

CHIVERS CARPENTER



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