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May 30, 2018

Via Fax: (780) 422-0970 (3 pages)

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

Attention: Tannis Brown, Director of Settlement

Dear Ms. Brown:

Re: An application for determination brought by United Nurses of Alberta and Jessica Wakeford affecting Alberta Health Services – Board File: GE-07762

In response to the Alberta Labour Relations Board's ("ALRB") request for submissions regarding its jurisdiction to decide whether provisions of the *Alberta Labour Relations Code*, RSA 2000, c. L-1 (the "Code") offend the rights afforded to Nurse Practitioners under s. 2(b) of the *Canadian Charter of Rights & Freedoms*, Health Sciences Association of Alberta ("HSAA") has the following comments.

Since approximately 1991, labour relations boards have had the power to hear and decide constitutional questions relating to their own governing statutes and to render certain provisions in those statutes inoperative if those provisions impugn an applicant's constitutional rights. However, that authority is restricted to the current application before the tribunal/board and does not extend to the jurisdiction to declare a provision generally invalid – a power reserved for the Courts (*Cuddy Chicks Ltd. v Ontario (LRB)*, [1991] 2 SCR 5; *Martin v Nova Scotia (Workers' Compensation Board)*, 2003 SCC 54).

The authority to order that certain provisions are ineffective arises from whether or not the administrative body (in this case, the ALRB), has been granted authority by the legislature to decide questions of law (*R v Conway*, 2010 SCC 22).

In 2011, Justice Yamuchi considered these legal principles in *Alberta v UFCW, Local 401-2*, 2010 ABQB 777. He confirmed that the ALRB may decide questions of constitutional law arising from an application before it, and can also declare certain sections of the *Code* to be ineffective for the purpose of that application. However, the ALRB's jurisdiction does not go so far as to allow it to strike down a legislative provision it finds to be unconstitutional:

It is clear from the *Code* that the ALRB has the jurisdiction to rule on complaints, references and applications brought to it. In doing so, it may consider the constitutionality of provisions of the *Code*. If the ALRB determines that a particular provision is in breach of the *Charter*, it must decide the matter before it on the basis that the provision in question has no force or effect. If the *Code* breaches the *Charter* because a particular provision is absent, the ALRB must decide the matter by reading that provision into the *Code*. The ALRB may issue declarations and, in particular, may issue a declaration regarding the constitutionality of a particular provision.

However, in accordance with the jurisdictional limitation recognized in the "Chicks trilogy" and Martin, any such declaration can relate only to the complaint, reference or application directly before the ALRB. As well, it binds the parties only for purposes of that matter and to the extent that such declaration is not varied or revoked by the ALRB and is not quashed or varied by the courts.

The ALRB did not have the jurisdiction to issue a general declaration of invalidity [at paras. 48-50; emphasis added].

The effect of this restriction is that the ALRB's decision will only affect those Nurse Practitioners working for AHS, and not Nurse Practitioners working for other Alberta employers. However, as intervenor in this application, HSAA will proceed in whichever forum the parties or the ALRB consider appropriate.

We thank you for the opportunity to provide these submissions.

Regards,

SEVENY SCOTT



Per:

Dan Scott / Kelli Lemon

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