



McLENNAN ROSS LLP
LEGAL COUNSEL

Our File Reference: 181913

Chris Lane, Q.C.
Direct Line: (780) 482-9238
e-mail: clane@mross.com

Margaret Gomez, Assistant
Direct Line: (780) 482-9264

Fax: (780) 733-9726

PLEASE REPLY TO EDMONTON OFFICE

July 20, 2018

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

Attention: Tannis Brown

Dear Madam:

Re: An application for determination brought by United Nurses of Alberta and Jessica Wakeford affecting Alberta Health Services, The Alberta Union of Provincial Employees and Health Sciences Association of Alberta - Board File No. GE-07762

The following is the position of Covenant Health on the order of proceedings.

The Application seeks two primary remedies in paragraph 31:

1. A declaration that the exclusion of Nurse Practitioners from the *Labour Relations Code* is unconstitutional; and,
2. A declaration that Nurse Practitioners doing direct nursing care or nursing instruction are included in the UNA's bargaining unit.

Edmonton Office
600 McLennan Ross Building
12220 Stony Plain Road
Edmonton, AB T5N 3Y4
p. 780.482.9200
f. 780.482.9100
tf. 1.800.567.9200

Calgary Office
1000 First Canadian Centre
350 - 7th Avenue SW
Calgary, AB T2P 3N9
p. 403.543.9120
f. 403.543.9150
tf. 1.888.543.9120

Yellowknife Office
301 Nunasi Building
5109 - 48th Street
Yellowknife, NT X1A 1N5
p. 867.766.7677
f. 867.766.7678
tf. 1.888.836.6684

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Covenant submits that the Board should begin with a hearing on the constitutional issue.

As we previously noted, the Applicants cannot obtain a broad declaration that the exclusion is unconstitutional; at most the Board can only “treat the impugned provisions as invalid for the purposes before it”: *Cuddy Chicks Ltd. v. Ontario*, [1991] 2 S.C.R. 5 at paragraph 17.

We appreciate that UNA would like to pursue a remedy on behalf of all Nurse Practitioners, but as we stated previously, UNA has no standing to advance a similar position on behalf of any other Nurse Practitioners, including those employed by AHS or Covenant. UNA obviously has no bargaining rights in respect of Nurse Practitioners and cannot claim any other legal mandate to represent their interests.

Therefore, we submit that the Board should begin with a hearing on whether the exclusion of Ms. Wakeford is unconstitutional for the purposes of then deciding whether she is entitled to be included in UNA’s bargaining unit. Our reasons follow:

1. As can be seen from the submissions made by other respondents, including individual Nurse Practitioners, the issue of whether Nurse Practitioners should be in UNA’s bargaining unit promises to involve significant evidence from those parties.
2. By contrast, as UNA notes, it may be that no party opposes UNA’s position on the constitutionality of the exclusion. Of course this does not mean the Board can simply accept UNA’s position on this issue, but it does mean that there should be very little, if anything, in the way of submissions from other parties. We also expect that UNA’s case would involve very little evidence.
3. If the Board does find the exclusion unconstitutional in respect of Ms. Wakefield, that will not settle the matter for all Nurse Practitioners. Only a court decision can do that. Therefore, upon making any finding that the exclusion is unconstitutional, why would the Board continue to hear significant evidence and argument on the issue of whether Ms. Wakefield should be in UNA’s bargaining unit, when an inevitable court review of the constitutional decision may be successful?
4. Because the Board cannot strike down the exclusion of Nurse Practitioners, it follows that it cannot give the legislature an opportunity to consider curing the defect by suspending its decision for a period of time. It is conceivable that the legislature may wish to enact new legislation that would provide Nurse Practitioners rights short of full collective bargaining rights under the *Code*. This heightens the desirability of having the Board’s decision reviewed by a court before proceeding to determine whether UNA has the right to bargain for these employees.
5. We expect that AHS and Covenant may have no interest in participating in the contest over whether Nurse Practitioners should be included in UNA’s bargaining unit. But if that matter is heard and dealt with at the same time as the constitutional issue, the employers may be required to attend the entire hearing.

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We look forward to hearing from the Board on this.

Yours truly,



CHRIS LANE, Q.C.

CL/mrg

cc: Chivers Carpenter; Attn: Kristan McLeod
United Nurses of Alberta; Attn: David Harrigan/Lee Coughlan
Jessica Wakeford, c/o United Nurses of Alberta; Attn: Lee Coughlan
Alberta Health Services; Attn: Jacqueline Laviolette
Alberta Health Services; Attn: Dennis Holliday
Health Sciences Association of Alberta; Attn: Laura Hureau
The Alberta Union of Provincial Employees; Attn: William Rigutto/Larry Dawson/Carol
Drennan/Jim Petrie
Client

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MCLENNAN ROSS LLP
LEGAL COUNSEL

Fax Transmission

To: Kristan McLeod Date: July 20, 2018
 Firm: Chivers Carpenter
 Fax: 780-439-8543 No. of Pages: 4
 From: Chris Lane, O.C. File: 181913
 Phone: (780) 482-9238 Email: clane@mross.com

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Edmonton Office
 600 McLennan Ross Building
 12220 Stony Plain Road
 Edmonton, AB T5N 3Y4
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