Court File No. S-252688
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF A STATUTORY APPEAL

PURSUANT TO SECTION 40 OF
THE HEALTH PROFESSIONS ACT, R.S.B.C. 1996, C. 183

BETWEEN:

AMY HAMM

PETITIONER

AND:

BRITISH COLUMBIA COLLEGE OF NURSES AND MIDWIVES

RESPONDENT

APPLICATION RESPONSE

Application response of: British Columbia College of Nurses and Midwives (the "College" or the "application respondent")

THIS IS A RESPONSE TO the notice of application of the College of Physicians and Surgeons of British Columbia, filed 26 June 2026 (the "notice of application").

The application respondents estimate the application will take 2 days.

Part 1: ORDERS CONSENTED TO

The application respondent consents to the granting of all of the orders set out in Part 1 of the Notice of Application.

Part 2: ORDERS OPPOSED

The application respondent does not oppose the granting of any of the orders set out in Part 1 of the Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

There are no paragraphs in Part 1 of the notice of application in respect of which the application respondent takes no position on the granting thereof.

Part 4: FACTUAL BASIS

The Applicant

1. The College of Physicians and Surgeons of British Columbia ("CPSBC") seeks to be added as an intervenor in this statutory appeal.

2. The CPSBC states that it has a public interest in this appeal because the determination of issues will likely impact its ability under the *Health Professions and Occupations Act*, SBC 2022, c. 43 ("*HPOA*") to regulate acts of discrimination, including off-duty conduct which may be discriminatory,[1] and statements and expressions in contravention with ethics standards, practice standards, and/or other regulatory objectives under the *HPOA*.[2]

3. The CPSBC states that it will make submissions about (a) non-discrimination as a core value of healthcare professions, (b) the nexus between a licensee's off-duty conduct and the profession, (c) the limits on a licensee's s. 2(b) rights to fulfill statutory objectives, and (d) the relationship between protecting the public interest and promoting professional and respectful public expression of licensees.[3]

The Panel's decision

4. The Panel's task was to determine if a regulated professional under its jurisdiction had engaged in unprofessional conduct by making discriminatory or derogatory comments about a protected group while linking those statements to her profession.[4]

5. The Panel admitted expert evidence to assist in understanding the differences between "sex" and "gender," as well as the experiences of transgender people.[5]

6. The Panel examined each of the statements made by Ms. Hamm to determine if each one was discriminatory and/or derogatory and, if so, whether Ms. Hamm had identified herself as a nurse or nurse educator in making them.[6] The Panel explained that regulators may discipline members of the profession for conduct that occurs outside the practice of the profession where there is a sufficient nexus with the profession.[7] Accordingly, the Panel limited its consideration to Ms. Hamm's statements in which she identified herself as a nurse or nurse educator.[8]

7. The Panel noted that Ms. Hamm was free to disseminate her views in the public without identifying herself as a nurse or nurse educator or her affiliation with the College. She was

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[1] Notice of Application ("NOA") at para. 36.
[2] NOA at para. 37.
[3] NOA at para. 39.
[4] *British Columbia College of Nurses and Midwives v Hamm*, 2025 BCCNM 1 ("Verdict") at para. 186.
[5] See, e.g., Verdict at paras. 165, 172, 175, 177.
[6] Verdict at paras. 204–205, 261, Appendix A.
[7] Verdict at para. 212.
[8] Verdict at para. 205.

also free to disseminate her views while identifying herself as a nurse or nurse educator if she did so in a manner that is not discriminatory or derogatory.[9]

The Petition

8. Ms. Hamm argues that the Panel made the following errors:

(a) It erred in law, or mixed fact and law, in expanding the scope of the term "discriminatory" to include disagreement with gender ideology and transgenderism generally and/or in finding that the Petitioner's statements were discriminatory (in circumstances where the Petitioner was neither providing a service nor offering a benefit), derogatory or otherwise constituted unprofessional conduct;

(b) It erred in law in finding that the use of sarcasm, mockery, derision or other "tone" which the Panel found unpalatable meant that the Petitioner's good faith intentions and the social value of her speech, otherwise relevant to the question of "unprofessional conduct," was invalidated;

(c) It erred in law, or mixed law and fact, in finding a sufficient nexus between the impugned comments and the profession;

(d) It erred in law by balancing the Petitioner's *Charter* s. 2(b) rights against a non-existent statutory objective and/or by prioritizing alleged harms to the integrity of the nursing professions;

(e) It erred in law in interpreting the protection of s. 2(b) to be limited to political speech, or less available to non-political speech;

(f) It erred in law, or mixed law and fact, by favouring one "marginalized" group over another and demeaning women's rights and protections, contrary to ss. 15(a) and 28 of the *Charter*;

(g) It made a palpable error in mixed fact and law by accepting, without reservation, a scientifically novel and unsettled opinion on the multidimensional nature of sex as presented by the BCCNM's experts without clearly stating why their evidence was favored over that of the Petitioner's experts;

(h) It made an error of law in holding the Petitioner to the standard of a lawyer.[10]

9. Ms. Hamm also argues that the Panel's penalty decision was unreasonable and disproportionate, and that the cost decision was "crushing and disproportionate to the issue, as well as punitive in nature."[11]

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[9] Verdict at para. 258.

[10] Amended Petition to the Court dated 13 September 2025 ("Amended Petition") at para. 27.

[11] Amended Petition at paras. 103–104.

Part 5: LEGAL BASIS

Principles

10. Applicants for intervenor status fall into two broad categories: (1) those who are directly affected by the proceeding in which they seek to intervene, and (2) those who offer a special perspective on an issue of public importance.[12]

11. An intervenor that is directly affected by the proceeding is "in a position analogous to that of a party. His, her, or its rights will be determined by the appeal." The proposed intervener must "demonstrate that the decision in the appeal will directly determine his, her, or its rights or liabilities. The mere fact that an appeal judgment may set a precedent that will have some effect on the applicant's legal position does not constitute a direct interest." A direct interest has been "contrasted with simply being concerned about the effect of a decision or being affected by it because of its precedential value." Few prospective interveners can demonstrate a direct interest in litigation.[13]

12. The "fact that the outcome might ultimately adversely impact individual members of a proposed intervenor is not … sufficient to constitute the necessary direct interest, since the Court would not … be directly considering their rights or liabilities."[14]

13. Where an applicant does not have a direct interest, the court may nevertheless grant intervener status if the case "raises public law issues that legitimately engage the applicant's interests, and the applicant brings a different and useful perspective to those issues that will be of assistance in resolving them."[15] In such cases, the court must consider:

    (a) the nature of the issue before the court (particularly whether it is a "public" law issue);

    (b) whether the case has a dimension that legitimately engages the interests of the would-be intervenor;

    (c) the representativeness of the applicant of a particular point of view or "perspective" that may be of assistance to the court; and

    (d) whether that viewpoint will assist the court in the resolution of the issues or whether the prospective intervenor is likely to "take the litigation away from those directly affected by it."[16]

14. In considering interventions based on public interest, "the Court is attempting to ensure that important points of view are not overlooked. Intervenors on this basis must

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[12] *Gibralter Mines Ltd v Harvey*, 2021 BCSC 927 at para. 10; *Equustek Solutions Inc v Google Inc*, 2014 BCCA 448 ("*Equustek*") at paras. 5–9.
[13] *Equustek* at paras. 5–7.
[14] *Carter v Canada (Attorney General)*, 2012 BCCA 502 ("*Carter*") at para. 12.
[15] *Carter* at para. 13.
[16] *Friedmann v MacGarvie*, 2012 BCCA 109 ("*Friedmann*") at para. 15.

demonstrate that it is in the Court's interest (or, more broadly, in the public interest), rather than their own, for them to be heard."[17]

15. Factors that weigh against granting status include "the possibility that an intervenor will expand the proceeding by raising new or immaterial issues, or create an undue burden or injustice for the parties ... by, for example, forcing them to respond to repetitive arguments."[18]

16. The scope for such interventions is "very limited":

> While the intervenor must be able to present a perspective that is not already before the Court, it must not expand the litigation by raising matters that are not already part of it. Further, it must not attempt to take over or "hijack" the litigation by changing its focus to an issue that is peripheral to the case as it is presented. The niche that may be occupied by an intervenor is, therefore, necessarily a very narrow one. For that reason, intervenor status is not granted as a matter of course.[19]

Public interest in the litigation

17. In the College's assessment, the CPSBC's materials meet the test to be granted intervenor status because of its public interest in the litigation. As set out above, the court must consider:

    (a) the nature of the issue before the court (particularly whether it is a "public" law issue);

    (b) whether the case has a dimension that legitimately engages the interests of the would-be intervenor;

    (c) the representativeness of the applicant of a particular point of view or "perspective" that may be of assistance to the court; and

    (d) whether that viewpoint will assist the court in the resolution of the issues or whether the prospective intervenor is likely to "take the litigation away from those directly affected by it."[20]

18. Beginning with the nature of the issue, this appeal raises public law issues regarding (a) the type of conduct or statements that constitutes discrimination in health care, (c) the potential harm of discriminatory conduct to the integrity of healthcare professions, and (d) the balance of a registrant's s. 2(b) freedom of expression rights against a regulatory body's statutory objective to protect the public interest.[21]

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[17] *Equustek* at para. 8.
[18] *Carter* at para. 14.
[19] *Equustek* at para. 9.
[20] *Friedmann* at para. 15.
[21] Amended Petition at para. 27.

19. The CPSBC has demonstrated that these questions of public law legitimately engage its interests. The decision from this Court will likely affect the CPSBC's regulatory powers.[22] The respondent College and the CPSBC are both established under the *Health Professions Act* and continued under the *HPOA*. They share the same statutory mandate and exercise the same scope of regulatory powers.[23]

20. Regarding the representativeness of the applicant, the CPSBC has established that it represents a particular perspective that may assist the Court. As a health profession regulatory body, the CPSBC has expertise in the determination of when the conduct of registrants should be subject to regulatory action and the role of regulatory colleges in ensuring non-discrimination in healthcare. The CPSBC also has experience intervening before this Court and the British Columbia Court of Appeal.[24]

21. Finally, the CPSBC's viewpoint will assist the Court in the resolution of the issues. Its proposed arguments offer useful guidance about the type of registrant conduct that falls within a college's regulatory ambit, the relationship between non-discrimination and healthcare, the mandate of regulatory colleges to protect the public interest, and the balancing exercise between a registrant's s. 2(b) *Charter* rights and the fulfillment of regulatory objectives.[25]

22. The CPSBC confirms that it will not file additional evidence, add to the appeal record, or add new issues.[26]

<u>Part 6: MATERIAL TO BE RELIED ON</u>

1. Affidavit #1 of Graeme Keirstead, KC, affirmed 26 June 2026.
2. The pleadings.
3. The Panel's decisions on verdict and penalty/costs.

☒ The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

Date: 10 July 2026

Signature of Lawyer for Application Respondent,
Brent Olthuis KC

[22] NOA at para. 37.
[23] NOA at para. 29.
[24] NOA at paras. 33, 38.
[25] NOA at para. 39.
[26] NOA at para. 40.