



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 fresh as amended notice of application of the Vancouver Lesbian Collective, filed 30 June 2026 (the “notice of application”).

The application respondents estimate fine application will take 2 days.

Part 1: ORDERS CONSENTED TO

The application respondent does not consent to the granting of any of the orders set out in Part 1 of the notice of application, on any terms.

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of all of the orders 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 Vancouver Lesbian Collective (“VLC”) seeks to be added as an intervenor in this statutory appeal.
2. The VLC states that it has a direct interest in this appeal because (a) it is concerned that the Panel’s conclusions will undermine hard-fought accommodations that promote substantive equality for women and lesbians, and (b) the Panel’s conclusions will chill its ability to advocate in favour of equality rights for women and lesbians.¹
3. The VLC states that the “Panel would force VLC to include as a ‘lesbian’ any male who on the basis only that he sees himself as a lesbian and expects other to see him as a lesbian. VLC could lose its ability to control its membership and define who is a lesbian. VLC could become legally required to accommodate males who see themselves as lesbians and expect VLC to see them as lesbians.”²
4. The VLC states that it will make submissions about how the Panel’s conclusions “uniquely impact lesbians and chills VLC’s ability to advocate in favour of its mandate.”³

The Panel’s decision

5. 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
6. The Panel admitted expert evidence to assist in understanding the differences between “sex” and “gender,” as well as the experiences of transgender people.⁵
7. 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
8. 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

¹ Fresh as Amended Notice of Application (“NOA”) at para. 20; Affidavit of Jacqueline Gullion affirmed 29 June 2026 (“Gullion Affidavit”) at para. 19.

² NOA at para. 23.

³ NOA at para. 29.

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

9. 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

10. 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

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

11. Applicants for intervenor status fall into two broad categories: (a) those who are directly affected by the proceeding in which they seek to intervene, and (b) those who offer a special perspective on an issue of public importance.¹²
12. 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 intervenor 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
13. 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
14. Where an applicant does not have a direct interest, the court may nevertheless grant intervenor 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
15. 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

¹² *Gibraltar 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

16. 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
17. 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

No direct interest in the litigation

18. The VLC states that it has a direct interest (rather than a public interest) in the proceeding.²⁰
19. To establish a direct interest, the VLC must show that the decision will affect the VLC's rights or liabilities. Mere concern about a precedent does not constitute a direct interest.²¹
20. The VLC's materials do not establish that its rights or liabilities will be affected by the outcome of the Petition. The Petition relates to the Panel's decision to discipline one of its members. It is unclear how a decision about discipline of a regulated professional will have any impact on an advocacy group that could never face discipline under the applicable statute.
21. The VLC has not explained how the decision of a regulator in respect of a member of the profession will "force" the VLC to admit anyone into its membership, cause the VLC to "lose the ability to control its membership and define who is a lesbian", or cause the VLC to become "legally required to accommodate males who see themselves as lesbians and expect VLC to see them as lesbians."²² The Panel has no ability to impose any requirements on VLC at all, let alone requirements that they admit certain types of people into its membership or define lesbianism in a certain way. VLC remains free to admit whomever it chooses into its membership. VLC members remain free to self-identify however they wish and to have romantic relationships with whomever they wish. The Panel's decision has no effect on how VLC operates or how its members live.

¹⁷ *Equustek* at para. 8.

¹⁸ *Carter* at para. 14.

¹⁹ *Equustek* at para. 9.

²⁰ NOA at paras. 20–26.

²¹ *Equustek* at paras. 5, 6, 7.

²² NOA at para. 23.

22. The VLC has also not explained how the Panel’s disciplinary decision will “undermine hard-fought accommodations that promote substantive equality for women and lesbians” or “chill its ability” to advocate in favour of equality rights for women and lesbians.²³ The Panel’s authority extends to disciplining members of the nursing and midwifery professions. It cannot modify human rights law in British Columbia, nor did it purport to. The Panel has no ability to dictate what the VLC believes or says, nor did it purport to.

No public interest in the litigation

23. VLC argues it has a direct interest in the litigation. It is unclear whether it also seeks to advance that it has a public interest in the litigation.
24. If VLC is asserting a public interest, it fails to meet the test. 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.”²⁴
25. Regarding the first criterion, this is a statutory appeal of a disciplinary decision. It is crucial to appreciate what the Panel did and did not decide. The Panel examined specific statements made by a registrant of the College and considered whether each statement (a) was discriminatory and/or derogatory, and (b) had a sufficient nexus to the profession.
26. The Panel made findings about sex, gender, and the experience of transgender people, based on expert evidence. These findings were relevant to whether statements were discriminatory or derogatory. The VLC clearly disagrees with many of these findings.²⁵ However, as discussed above, the VLC appears to misunderstand the import of the decision, as evidenced by its claims that the decision will stifle the VLC’s ability to advocate and determine its own membership, will prevent lesbians from identifying as they wish, and will prevent lesbians from having relationships with whomever they wish. None of that is accurate. Contrary to the VLC’s submissions, the Panel’s decision also has no

²³ NOA at para. 20.

²⁴ *Friedmann* at para. 15.

²⁵ NOA at para. 21.

effect on human rights laws (including accommodations),²⁶ nor does it render same-sex attraction “morally or legally unacceptable.”²⁷

27. The VLC’s application therefore misconstrues the nature of the case.
28. For similar reasons, it is not clear that the case has a dimension that legitimately engages the VLC’s interests. The VLC seeks to address issues that do not arise from the case.
29. As for the representativeness of the VLC’s views, it is not clear that the VLC has the expertise to put forward the views it espouses. It appears that the VLC has never intervened in a court case before, nor has it participated in any Parliamentary or Senate committees, conducted research, engaged with international bodies, or otherwise made significant public contributions. The VLC’s activities appear to be limited to hosting events and engaging in campaigns.²⁸
30. Finally, the VLC’s proposed submissions will not assist the court. As discussed, the VLC’s interpretation of the Panel’s decision is flawed, and it seeks to address issues that are not squarely raised. Further, its brief description²⁹ of its proposed submissions reads as a series of conclusory statements, unsupported by any case law or other authorities. The VLC’s proposed argument about the law in the United Kingdom will likely duplicate submissions by Ms. Hamm, who made those very arguments to the Panel.³⁰

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit of Jacqueline Gullion affirmed 29 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 the application
respondent
Brent Olthuis KC

²⁶ NOA at para. 20.

²⁷ NOA at para. 26.

²⁸ Gullion Affidavit at para. 6.

²⁹ NOA at para. 29.

³⁰ Verdict at paras. 243–247.