

**IN THE COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
JUDICIAL CENTRE OF REGINA**

IN THE MATTER OF *THE LICENSED PRACTICAL NURSES ACT*
AND BYLAWS

and

IN THE MATTER OF COMPLAINTS AGAINST
WILLIAM WHATCOTT OF REGINA, SASKATCHEWAN

WILLIAM WHATCOTT

of
Regina, Saskatchewan

Petitioner

- and -

**THE SASKATCHEWAN ASSOCIATION
OF LICENSED PRACTICAL NURSES**

Respondent

ARGUMENT

1. FOR THE SAKE of the within Argument, we are prepared to concede that every charge set out in the application is true.
2. THE ENCLOSED MATERIAL establishes that the Petitioner, William Whatcott, honestly believed, not like many others, that Planned Parenthood is an immoral abortion provider and facilitator, which provides birth control information and abortion referrals to unmarried couples and minors.
3. THE ACTIONS OF Whatcott were part of a peaceful protest against Planned Parenthood generally, and Planned Parenthood Regina Inc. in particular.

4. IT IS RESPECTFULLY SUBMITTED that it would be unfair to look at each and every word spoken and each and every action taken at the time of his picket and protest. To do so, one would miss the forest for the trees. Rather, his activities must be seen for what they were, a peaceful protest against Planned Parenthood and Planned Parenthood Regina Inc. in particular.

5. WHETHER THE STATEMENTS made were actually true or not is also irrelevant. That is an issue to be decided by the civil suit launched by Planned Parenthood. Clearly, Whatcott believed them to be true, and was exercising his right to free speech, a right protected by Section 2 of the *Canadian Charter of Rights and Freedoms*. Section 2 of the Charter reads as follows:

As Whatcott=s actions were also motivated by his religion, it is respectfully submitted that the action taken by The Saskatchewan Association of Licensed Practical Nurses (hereinafter referred to as the Association) violated (a), (b) and (c) of Section 2 of the Charter.

6. CANADA=S CHARTER OF RIGHTS AND FREEDOMS protects the right of free expression, and opinion in particular. In both of the decisions of Assie v. Chartered Accountants (2001), 210 Sask.R.16 (QB) the professional associations wanted to discipline one of their members. The Court held that Section 2 of the Charter applied. It is respectfully submitted that *Canada=s Charter of Rights and Freedoms*, and Section 2 in particular, are applicable to professional associations.

7. THE NEXT ISSUE is whether the action of the Association violates Section 2 of the Charter. Whatcott=s picketing was motivated by his religious beliefs, but also his thought, belief, opinion and expression. Picketing is a form of another medium of communication protected under

Section 2 of the Charter. Planned Parenthood Regina Inc. is believed to be funded by the Regina Health District and Whatcott wished to bring attention to the immorality of the organization. If the Charter cannot protect speech on political and religious issues, including sexual politics, the Charter would lose its meaning.

8. ONCE THE CHARTER applies, the onus then is on the Association to show that restrictions on Whatcott=s picketing activities constitute reasonable limits on the Petitioner=s freedom of expression that can be demonstrably justified in a free and democratic society and are therefore saved by Section 1 of the Charter. The onus of proof is on the Respondent.

9. THE LEADING DECISION is College of Dental Surgeons v Rocket and Price (1992) SCR 232, and these principles are set out in the Assie Decision noted above. The Association must satisfy the Court of three things:
 1. *the measures designed to meet the legislative objective must be rationally connected to the objective;*
 2. *the means used should impair as little as possible the right or freedom in question; and*
 3. *there must be proportionality between the effect of the measures which are responsible for limiting the Charter right and the legislative objective of the limit on those rights. In effect, this involves balancing the invasion of rights guaranteed by the Charter against the objective to which the limitation of those rights is directed.*

It is respectfully submitted that the disciplinary proceedings being taken by the Association could not rationally be connected to the legislative objective, and lacks any possible proportionality between the effect of their proceedings and the right protected by the Charter. If the hearing proceeds, the hearing in itself would send a chill over every member of every professional association in Canada.

9. IT IS SUBMITTED that if *The Licensed Practical Nurses Act*, or any of its Bylaws, are interpreted so as to prohibit Whatcott from participating in peaceful protest, then that section of the Act or Bylaws would also violate *The Saskatchewan Human Rights Code* S.24.1
10. SECTIONS 4, 5, 6, 9 AND 17 of *The Saskatchewan Human Rights Code* read as follows:

Right to freedom of conscience

4. Every person and every class of persons shall enjoy the right to freedom of conscience, opinion and belief and freedom of religious association, teaching, practice and worship.

Right to free expression

5. Every person and every class of persons shall, under the law, enjoy the right to freedom of expression through all means of communication, including, without limiting the generality of the foregoing, the arts, speech, the press or radio, television or any other broadcasting device.

Right to free association

6. Every person and every class of persons shall enjoy the right to peaceable assembly with others and to form with others associations of any character under the law.

Right to engage in occupations

9. Every person and every class of persons

shall enjoy the right to engage in and carry on any occupation, business or enterprise under the law without discrimination on the basis of a prohibited ground.

Right to membership in professional and trade associations

17. Every person and every class of persons shall enjoy the right to membership, and all the benefits appertaining to membership, in any professional society or other occupational association without discrimination on the basis of a prohibited ground.

11. SECTION 44 OF *The Saskatchewan Human Rights Code* reads as follows:

Act takes precedence unless expressly excluded

44. Every law of Saskatchewan is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Act unless it falls within an exemption provided by this Act or unless it is expressly declared by an Act of the Legislature to operate notwithstanding this Act.

Although the *Charter of Rights and Freedoms* only applies to Parliament, the Government of Canada and the legislature and government of each province, it is respectfully submitted that Section 44 of *The Saskatchewan Human Rights Code* is broader, in that it states that every law of Saskatchewan is inoperative to the extent that it authorizes or requires the doing of anything prohibited by the Act. In addition, there is no saving provision such as Section 1 of the Charter.

12. IT IS RESPECTFULLY SUBMITTED that the Act or Bylaws of the Association were passed under the authority of *The Licensed Practical Nurses Association* and it clearly could be said to be a law of Saskatchewan. Accordingly, any provision that violated *The Saskatchewan Human Rights Code* would be inoperative.

DATED at Weyburn, Saskatchewan, this 23rd day of September, 2002.

NSWB LAW FIRM P.C. INC.

Per: _____
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