

COURT FILE NUMBER

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF(S) ALBERTA MEDICAL ASSOCIATION (CMA ALBERTA DIVISION), DR. CHRISTINE MOLNAR, DR. PAUL BOUCHER, AND DR. ALISON CLARKE

DEFENDANT(S) HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

DOCUMENT **STATEMENT OF CLAIM**

Clerk's Stamp

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**NOTICE TO DEFENDANT**

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

**A. The Parties**

1. The Plaintiff, the Alberta Medical Association (CMA Alberta Division) ("AMA"), is a society incorporated in accordance with the provisions of the Alberta *Societies Act*, RSA 2000, c. S-14. The AMA has historically represented the political, clinical, and economic interests of the

overwhelming majority of physicians practicing in and across Alberta. Its objects include, *inter alia*, representation of its members in respect of the requirement for, provision of, and payment for medical services.

2. The Plaintiff, Dr. Christine Molnar, is an individual resident of Calgary, Alberta. She is the current president of the AMA and has been a member of the AMA since 1985. She has been a physician since 1976 and practices in the area of diagnostic radiology, with a specialty in nuclear medicine.

3. The Plaintiff, Dr. Paul Boucher, is an individual resident of Calgary, Alberta. He is the President-Elect of the AMA and has been a member of the AMA since 2007. He has been a physician since 1995 and practices in the area of critical care, with a specialty in internal medicine.

4. The Plaintiff, Dr. Alison Clarke, is an individual resident of Strathmore, Alberta. She is the former president of the AMA and has been a member of the AMA since 1993. She has been a physician since 1990 and practices in the area of family medicine.

5. The Defendant, Her Majesty the Queen in Right of Alberta operates a Department of the Government of Alberta, the Ministry of Health (collectively, "AH," or "Government of Alberta") responsible, *inter alia*, for the day to day administration of the Alberta Health Care Insurance Plan ("the Plan") as legislatively provided for in the *Alberta Health Care Insurance Act*, RSA 2000, c. A-10 ("the AHCIA").

## **B. Necessary Facts**

### **Brief Summary**

6. The Government of Alberta has recognized the AMA as the exclusive bargaining agent for physicians in the province of Alberta in respect of the negotiation of terms and conditions of physician compensation for the delivery of medical services, as well as a representative of physicians on health matters that concern physicians. In line with this recognition, the

Government of Alberta has entered into various agreements with AMA about the terms and conditions of physicians' work, including about physician remuneration. Through these voluntarily negotiated agreements, the Government of Alberta and AMA have agreed that AMA and its members have had the right to resort to an independent third-party dispute resolution mechanism to resolve bargaining disputes. The *Charter* requires the Government of Alberta to respect the right of physicians to come together and bargain collectively, which includes having access to an effective dispute resolution mechanism, and to not infringe on that right.

7. By unilaterally terminating AMA's agreement with the Government of Alberta, by engaging in a superficial "negotiation" with AMA and by unilaterally removing AMA's right to invoke an arbitration process to resolve bargaining disputes, the Government of Alberta has infringed and denied the *Charter* rights of AMA and its members. The Plaintiffs ask the Court to find this Government of Alberta conduct to be unlawful and to remedy the infringement by ensuring that physicians in Alberta have access to a meaningful and effective process of negotiation and, failing agreement, to an independent third party dispute resolution process.

#### **The Minister's Authority under the AHCIA**

8. One of the responsibilities of the Minister of Health ("the Minister") as outlined in s. 3(1) of the AHCIA is to administer and operate on a non-profit basis the Plan to provide benefits for basic health services to all residents of Alberta.

9. In accordance with the authority granted by s. 40(1) of the AHCIA, the Minister is entitled to enter into agreements with any government, person or unincorporated group of persons respecting any matter relating to the administration or operation of the Plan, or providing for any matter for which no provision is made elsewhere in the AHCIA or in regulations passed under the AHCIA that the Minister considers necessary. Further, the Minister has the right to implement any agreement so made.

### **The AMA's Representation of Alberta Physicians**

10. Since July 22, 1986, the AMA has been recognized as the exclusive representative of Alberta physicians in relation to negotiations with the Minister.

11. One of the AMA's primary activities on behalf of its members since that time has been regarding the negotiation and implementation of the various agreements that apply to Alberta physicians. In combination, these agreements determine many aspects of Alberta's healthcare system, including many important working terms and conditions for the AMA's members. One of the most important terms that the AMA and AH negotiate and establish in these agreements is the compensation that physicians receive for providing medical services for the people of Alberta.

12. Section 8(1) of the AHCIA deems all physicians to have opted into the Plan. Under s 9(1) of the *AHCIA*, a physician who has opted into the Plan cannot charge or collect any compensation from an individual in return for providing an insured medical service. Instead, the only compensation a physician can receive is the amount payable by the Government of Alberta as set out under the Plan. While it may seem theoretically possible for physicians to opt out of the Plan under s 8(2) of the *AHCIA* and charge individuals directly for the provision of insured medical services, it is practically impossible for a physician to earn a livelihood this way: an individual will not pay a physician for a service that the individual could receive from another physician without having to personally pay for that service.

13. AMA's member physicians provide medical services in Alberta through a variety of different personal and corporate arrangements. Regardless of the particular type of entity through which medical services are provided, AMA's member physicians are, for labour relations and other purposes, in the position of employees with respect to AH.

14. The Labour Relations Code, RSA 2000, c L-1 (the "Code"), creates various protections that employees, including dependent contractors, can avail themselves of. However, members

of the medical profession are excluded from the definition of “employee” under the Code and, as such, are not able to make use of these protections.

15. Furthermore, AMA’s member physicians are unable to engage in strike action as a result of their ethical and professional regulatory obligations, as well as in light of the essential services that physicians provide. The *Health Professions Act*, RSA 2000, c H-7 states that a physician who contravenes a code of ethics or standards of practice (“SOP”) has engaged in “unprofessional conduct”. The College of Physicians and Surgeons of Alberta SOP entitled “Job Action” states: A regulated member **must not** withdraw services with the direct or indirect purpose of supporting job action if such action could put the immediate health of patients at significant risk” (emphasis in original). Other applicable standards and codes of practice reinforce and extend this limitation.

#### **The AMA Agreement (2011)**

16. On April 22, 2013, the (then) Minister of Health and the AMA reached an agreement relating to the provision of Insured Medical Services wherever those Services were provided, including:

- a) the Rates for those services, as described in the Schedule of Medical Benefits (“SOMB”) or in “Arrangements”;
- b) Prices associated with a series of identified Physician Support Programs described as “Evergreened Programs”;
- c) Prices associated with a series of identified Physician Assistance Programs described as “Non-Evergreened Programs”.

This Agreement was described as the “AMA Agreement” or “AMAA”.

17. The AMA Agreement also expressly recognized the AMA as the sole and exclusive representative of all physicians practicing in Alberta in respect of a broad range of matters,

including, but not limited to, physician compensation for the provision of insured medical services (the “AMA Recognition Clause”).

18. The initial term of the AMA Agreement was from April 1, 2011 until March 31, 2018.

19. The AMA Recognition Clause was not subject to a specific term and continued indefinitely.

20. The financial matters relating to the rates described in the schedule of medical benefits (“SOMB”) and the Alternative Relationship Plans (“ARP”) and the prices associated with the Evergreened Programs were subject to renegotiation as described in Schedules 1 and 5 (Part I) of the AMA Agreement.

21. The term respecting the Non-Evergreened Programs was from April 1, 2011 until March 31, 2018 unless extended by the parties in accordance with Schedules 2 and 5 (Part II) of the AMA Agreement.

22. For all other matters in the AMA Agreement other than rates, prices associated with the Evergreened Programs and the term relating to the Non-Evergreened Programs, the term was ongoing unless ended by the mutual agreement of the parties (“the Evergreen Term”).

### **Dispute Resolution**

23. The AMA Agreement contained dispute resolution processes should negotiations relating to financial re-openers or extensions of Programs be unsuccessful.

24. Specifically, the AMA Agreement provided that should negotiations about matters as provided for in Schedule 1 to the AMA Agreement be unsuccessful, either party could serve the other party with a Request for Arbitration in accordance with Part I of Schedule 5 to the AMA Agreement.

25. The AMA Agreement also provided that should negotiations relating to the matters as provided for in Schedule 2 to the AMA Agreement be unsuccessful, either party could serve the

other party with notice that it wishes to activate and utilize the dispute resolution process of non-binding facilitation/mediation in accordance with Part II of Schedule 5 to the AMA Agreement.

**The First AMAA Amending Agreement (2016)**

26. In December of 2015, the Deputy Minister of Health asked the AMA to agree to enter voluntarily into negotiations to amend the AMA Agreement with the intention of finding cost savings.

27. With the approval of the AMA's Board of Directors, the AMA agreed to the early opening of the AMA Agreement to explore opportunities for systemic improvement, which may lead to cost savings.

28. Negotiations between the AMA and AH (with the participation of Alberta Health Services ("AHS")) relating to potential amendments to the AMA Agreement and cost savings took place during the spring and summer of 2016.

29. Agreement on amendments to the AMA Agreement and other matters was reached between the AMA and AH in mid-August of 2016 ("the AMAA Amending Agreement").

30. In the fall of 2016, the AMA sought and obtained ratification of the AMAA Amending Agreement along with associated agreements relating to various initiatives in accordance with its Constitution and Bylaws.

31. The AMAA Amending Agreement contained no provisions impacting on the term of the AMA Agreement.

32. The AMA Agreement, as amended by the AMAA Amending Agreement, continued to specify that for matters within the Evergreen Term, no earlier than one year prior to the end of the initial term and no later than 6 months prior to the expiry date (March 31, 2018) either party could serve notice on the other party of its desire to commence negotiations.

33. The AMA Agreement, as amended by the AMAA Amending Agreement, also continued to specify that for matters not within the Evergreen Term, no earlier than one year prior to the end of the initial term and no later than 6 months prior to the expiry date (March 31, 2018) either party may serve notice on the other party of its desire to commence negotiations.

#### **The Second AMAA Amending Agreement (2018)**

34. On September 26, 2017, in accordance with the provisions of the AMA Agreement as amended, the AMA and AH exchanged letters to formally open negotiations for all matters and issues pursuant to Schedules 1 and 2 of the AMA Agreement

35. Negotiations commenced, with joint meetings being held from December 5, 2017 until January 23, 2018.

36. On April 9, 2018, with the assistance of a facilitator, the parties reached agreement and signed-off on a document entitled the “AMA/AH Terms for Complete Settlement”.

37. On June 22, 2018, the (then) Minister of Health and the President of the AMA executed another agreement, the AMAA Second Amending Agreement, made effective the April 1, 2018. As well, the parties signed off on a Memorandum of Understanding that covered certain special initiatives agreed to as noted in the AMA/AH Terms for a Complete Settlement.

38. One of the terms of the AMAA Second Amending Agreement was a commitment of the Minister and AH to table legislation providing the AMA with legislative recognition of its historical right to exclusively represent Alberta physicians as previously found in the various agreements, including the AMA Agreement (as amended).

#### **Legislative Recognition**

39. On December 11, 2018, the Government of Alberta brought into force Bill 24 “An Act to Recognize AMA Representation Rights”, which implemented the recognition rights contractually agreed to in the AMAA Second Amending Agreement. The consequential amendments to the AHCA followed, being s. 40.1 to the AHCA (emphasis added):

**40.1(1)** In this section and section 40.2,

- (a) “AMA Agreement” means the agreement between Her Majesty the Queen in Right of Alberta, as represented by the Minister of Health, and the Alberta Medical Association (C.M.A. Alberta Division) made effective April 1, 2011, as amended from time to time;
- (b) “compensation matters” means
  - (i) the rates of benefits payable for the provision of insured services by a physician, and
  - (ii) funding for the physician assistance programs and physician support programs referred to in the AMA Agreement, or any successors to those programs;
- (c) “physician” means a physician referred to in section 1(t)(i) who provides insured services and is paid in accordance with this Act.

**(2)** The Minister recognizes the Alberta Medical Association as the exclusive representative of physicians on compensation matters.

**(3)** The Minister recognizes the Alberta Medical Association as a representative of physicians on health matters that touch and concern physicians.

**(4)** The Minister shall engage the Alberta Medical Association in good faith and consider the Association’s representations on matters for which the Association represents physicians

### **Negotiations 2019/2020**

40. On September 3, 2019, the Minister provided the AMA with formal notice to negotiate the financial matters under the AMA Agreement as contemplated by section 40.1 (2) of the AHCA.

41. On September 25, 2019, the AMA provided the Deputy Minister of Health with a letter confirming its agreement to begin discussions, in good faith, toward achieving a new agreement between the parties. The AMA’s notice confirmed its desire to negotiate both financial matters (rates and prices) as well as details and prices relating to non-Evergreened Programs.

42. Negotiations between the parties actually commenced on November 13, 2019. The AMA and AH agreed that notwithstanding the provisions of the AMA Agreement which stated

that the 90 day “good faith negotiations” period would commence upon service of the formal notices to negotiate, the 90 day period would be deemed to have commenced on November 13, 2019.

43. Negotiations took place between the AMA and AH throughout the fall of 2019 and into 2020.

44. Commencing November 14, 2019, AH and AMA engaged in discussions about various matters relating to physician compensation and the terms and conditions applicable to physician compensation. During these discussions, AH:

- a) proposed removing items from the AMA Agreement without justification, including the dispute resolution mechanisms;
- b) artificially limited the scope of items that were subject to negotiations, claiming that proposed changes to certain matters which related to physician compensation were not compensation-related and thus would not be negotiated;
- c) served notice that Physician Support Programs (the Rural, Remote Northern Program and the Business Cost Program) would be eliminated as of April 1, 2021 notwithstanding the fact that on September 25, 2019, the AMA had provided AH with a letter confirming its agreement to begin discussions toward achieving a new agreement on these programs; and
- d) took the position that it only had a mandate to maintain a certain fixed cost for the provision of physician services and that any cost increases resulting from inflation, from extraordinary medical events (like the current COVID-19 crisis), or from increased demand for medical services due to, for example, population growth, would have to be absorbed within that fixed cost, meaning that physician compensation would have to absorb any increased cost of providing physician services over the four years of the agreement.

45. In response to AH's positions, AMA:

- a) maintained that all the items put forward by AH, and other items put forward by AMA, related to matters about which AH was obligated to negotiate with AMA;
- b) provided meaningful and substantive responses to proposals put forward by AH, in the expectation that negotiation on the proposals and responses would take place; and
- c) tabled 21 different Proposals and responses to the AH Proposals. In addition, the AMA proposed accepting a variety of significant across the board reductions in the rates paid by the Plan for Insured Services either through the SOMB or through arrangements such as ARPs.

### **Mediation**

46. On January 23, 2020, the AMA agreed to a request from AH to extend the 90-day "good faith negotiations" period provided for under the AMA Agreement until February 29, 2019 notwithstanding that the expiry date would have been February 11, 2020 (which would then have allowed the AMA to initiate the Dispute Resolution Processes including Arbitration).

47. On January 23, 2020, the parties also agreed to seek the assistance of a mediator to move negotiations forward and agreed on the identity of a mediator.

48. Mediation commenced on January 31, 2020 and proceeded until February 14, 2020 when AH advised the AMA that it would not be advancing further proposals and the parties agreed that the mediation was unsuccessful.

### **Bill 21, the *Ensuring Fiscal Sustainability Act, 2019***

49. On October 28, 2019, after service of Notices to Negotiate but before negotiations between the AMA and AH commenced, and without notice to the AMA, the Minister of Health introduced for first reading Bill 21, the "*Ensuring Fiscal Sustainability Act, 2019*" which in part addressed issues relating to Physician Resource Planning on the part of the Minister, but more

importantly addressed proposed changes to the AHCIA to allow the Minister to terminate any agreement with the AMA, including the AMA Agreement. The legislation specified that the effect of the termination of any agreement was to also terminate any dispute resolution process that had commenced under any terminated agreement and had not concluded, and to render null and void all rights, privileges, obligations and interests arising out of any terminated agreement, or out of any decision or award resulting from a dispute resolution process concluded under the terminated agreement

50. On December 5, 2019, Bill 21, during negotiations between the AMA and AH, the “*Ensuring Fiscal Sustainability Act, 2019*” received Royal Assent and the sections relating to the Minister’s right to terminate the AMAA and associated matters came into force. It had the effect of amending the AHCIA by adding s. 40.2, which now reads as follows:

**40.2(1)** In this section, “regional health authority” means a regional health authority established under the *Regional Health Authorities Act*.

**(2)** The Lieutenant Governor in Council may, by order, terminate

- (a) an agreement referred to in section 40(1),
- (b) the AMA Agreement, or
- (c) any other agreement between the Crown in right of Alberta and the Alberta Medical Association, or any other person, respecting compensation matters.

**(3)** An agreement that is the subject of an order made under subsection (2) is terminated and is of no force and effect on the date specified in the order.

**(4)** For greater certainty, on the termination of an agreement under subsection (2),

- (a) any dispute resolution process that had commenced under the agreement and had not concluded is terminated, and
- (b) all rights, privileges, obligations and interests arising out of the agreement, or out of any decision or award resulting from a dispute resolution process concluded under the agreement, cease to exist.

**(5)** No action or other proceeding that is based on or is in relation to an agreement referred to in subsection (2) or the termination of an agreement under subsection (2) lies or may be instituted against the Crown, any Minister of the Crown, a regional health authority or any

employee or agent of the Crown or of a regional health authority for anything done or omitted to be done, or for anything purported to have been done or omitted to be done.

(6) For greater certainty, section 40.1(4) applies to the making of an order terminating an agreement under subsection (2).

### **Termination of the AMA Agreement**

51. Throughout negotiations, AH refused to acknowledge that the Minister's ability to unilaterally terminate the AMA Agreement through an Order in Council was oppressive and counter-productive to good faith negotiations, and refused to accede to AMA's requests that the power be suspended or eliminated through repeal of the relevant sections.

52. On February 20, 2020, in accordance with the authority granted to him by s. 40.2(2) of the AHCIA, the Minister signed an Order in Council (OC 39/2020), which stated:

the Lieutenant Governor in Council, effective February 2020, terminates the agreement between her Majesty the Queen in Right of Alberta, as represented by the Minister of Health, and the AMA, made effective April 1, 2011, as amended from time to time.

53. The AMA read about the termination in national newspapers that same day. At no time did the Minister advise the AMA of his intent to terminate the AMA Agreement.

54. The termination of the AMA Agreement by the Minister occurred during the course of scheduled negotiations, one day prior to the AMA's expressed intention to submit a further proposal to the Minister, and 9 days prior to the date upon which the AMA would have been entitled to serve formal Notice of Arbitration, February 29, 2020. Had the AMA not earlier agreed in good faith to extend the 90-day "good faith negotiating" period, AMA could have served the Notice of Arbitration on February 11, 2020.

55. By signing the Order in Council and terminating the AMA Agreement, the Minister eliminated the AMA's contractual right to serve Notice of Arbitration of financial matters on AH or its right to seek mediation/facilitation of non-Evergreened Programs.

**C. Violation of section 2(d) of the *Charter***

56. Section 2(d) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) guarantees the right of individuals to act in common to counteract the power of governments and employers, and to enable individuals to achieve shared goals related to workplace issues and conditions. This right includes the right to organize, to engage in meaningful processes of good faith collective bargaining in an attempt to achieve workplace-related goals, and to seek to negotiate important terms and conditions of work into a collective agreement.

57. Section 2(d) of the *Charter* is breached where the purpose or effect of legislation or government conduct is to substantially interfere with the ability of individuals or their bargaining agent to engage with their employer in a process of meaningful and good faith collective bargaining or the freely negotiated terms of collective agreements arrived at through a process of good faith bargaining.

58. The right to strike is an essential feature of section 2(d)’s protections and is integral to meaningful collective bargaining. The ability to withdraw services in the process of negotiating a collective agreement is the “irreducible minimum” of the right protected by section 2(d). If government interference with the right to strike amounts to a substantial interference with collective bargaining, then section 2(d) will have been breached.

59. The AMA and its members accept that they provide an essential service and that AMA members’ ethical and professional obligations prevent them from engaging in strike action. The Government of Alberta knows AMA and its members are limited in this way. If individuals provide an essential service and are therefore prevented from engaging in strike action and meaningful collective bargaining, section 2(d) requires that those individuals have access to an independent third party dispute resolution process.

60. AMA’s assertion with respect to access to a third party dispute resolution process is also supported by the requirements of the *Canada Health Act*, RSC 1985, c C-6. Section 12(2) of the *Canada Health Act* provides that “reasonable compensation” for physicians is established by,

among other things, having in place a system of binding arbitration for the resolution of disputes relating to compensation.

61. The Defendant has breached s 2(d) of the *Charter* in a manner not saved by s 1 by:

- a. Enacting Bill 21, regarding its addition of s 40.2 to the AHCIA;
- b. Unilaterally terminating the AMA Agreement;
- c. Removing the ability of AMA to access an independent third party dispute resolution process;
- d. Overriding freely negotiated provisions in the AMA Agreement, as amended;
- e. Unilaterally implementing new terms and conditions of physician's work;
- f. Failing to consult with AMA in good faith about items a - e, above;
- g. Acting in bad faith by entering negotiations with AMA with no intention to meaningfully negotiate, by passing Bill 21 during negotiations, and by unjustifiably restricting the scope of negotiations;
- h. Creating an environment where meaningful collective bargaining in good faith is not possible;
- i. Undermining the ability of AMA to perform its functions as the bargaining representative of physicians in the province of Alberta; and
- j. Acting and failing to act in such other ways as counsel for AMA may advise.

62. The infringements of sections 2(d) of the *Charter* identified above are claimed in relation to AMA and all its members, including individual plaintiffs Dr. Molnar, Dr. Boucher and Dr. Clarke.

**D. Alberta Bill of Rights**

63. The infringements set out above in relation to ss 2(d) of the *Charter* also constitute, for the same reasons, breaches of s 1(e) of the *Alberta Bill of Rights*, RSA 2000, c A-14.

**E. International Labour Organization Standards**

64. International law requires governments to promote, through legislation and policy, freedom of association with respect to workers and unions.

65. By undermining freedom of association and the rights of physicians to engage in a process of meaningful, good faith negotiations with respect to important terms and conditions of work, the Government of Alberta's conduct in this case violates international law including the Vienna Law of Treaties, Vienna Convention, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171, arts. 9-14, Can. T.S. 1976 No. 47, 6 I.L.M. 368, International Covenant on Economic, Social and Cultural Rights, International Labour Organization Freedom of Association and Protection of the Right to Organize, 1948 (No. 87), International Labour Organization Declaration on Fundamental Principles and Rights at Work (1998), International Labour Organization Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

**F. Breach of Contract**

66. The termination of the AMA Agreement by AH in the face of explicit Evergreening provisions and dispute resolution processes intended to provide for the continuity of the relationship between physicians and the Government of Alberta amounts to a breach of contract by AH which ordinarily would result in a substantial claim for damages, in addition to whatever other injunctive or equitable relief the AMA might seek.

67. In addition, the position the Minister has taken by refusing to negotiate almost all of the Government of Alberta's proposals amounts to a refusal to negotiate issues that clearly amount

to rate decreases and therefore fall within the scope of the AMA Agreement. This amounts to a breach of contract on the part of the Minister.

68. When the Minister introduced and ultimately passed Bill 21 which resulted in the amendments to the AHCIA creating s. 40.2, the following sections were also included:

**(5)** No action or other proceeding that is based on or is in relation to an agreement referred to in subsection (2) or the termination of an agreement under subsection (2) lies or may be instituted against the Crown, any Minister of the Crown, a regional health authority or any employee or agent of the Crown or of a regional health authority for anything done or omitted to be done, or for anything purported to have been done or omitted to be done.

**(6)** For greater certainty, section 40.1(4) applies to the making of an order terminating an agreement under subsection (2).

69. The inclusion of ss 40.2(4) & (5) clearly reflect an understanding on the part of the Minister that the exercise of the termination right granted in s 40.2 would result in a breach of contract with concurrent rights of action against the Crown. Sections 40.2(4) & (5) were clearly intended to insulate the Crown from any action which would otherwise have followed for the clearly unlawful steps taken in terminating a valid and subsisting agreement.

## **G. Damages**

70. As a result of the Defendant's conduct, described above, the AMA and its members have suffered and will continue to suffer losses, including:

- a. Loss of representation and ability to meaningfully bargain terms and conditions of work;
- b. Loss of income and loss of job security; and
- c. Loss of control over terms and conditions of work and stress and anxiety as a result of such losses.

## H. Remedies Sought

71. The Plaintiff seeks the following relief:

- (a) A declaration that s. 40.2 of the AHCIA is in violation of section 2(d) of the *Charter*, that this violation is not justified under section 1 of the *Charter*, and is of no force and effect pursuant to section 52 of the *Constitution Act, 1982*;
- (b) A declaration that the Minister's actions in invoking s. 40.2 of the AHCIA and terminating the AMA Agreement is in violation of section 2(d) of the *Charter*;
- (c) A declaration that the remedies sought in (a) and (b) above also flow from breaches of the *Alberta Bill of Rights, RSA 2000, c A-14* and the Court's authority under s 2 of that Act;
- (d) A declaration that AH's course of conduct throughout negotiations substantially interfered with the freedom of association of the AMA and its members in violation of section 2(d) of the *Charter*;
- (e) A declaration that AH has a duty to engage in a process of meaningful, good faith negotiation with the AMA in respect of all agreements that impact the terms and conditions, financial or otherwise, under which physicians practice in Alberta and a corresponding direction that AH discharge that duty;
- (f) A further direction to the Defendant that the AHCIA be amended to include a provision requiring access to an independent third party dispute resolution process which may be invoked in the event of bargaining impasse between AMA and the Defendant;
- (g) In the alternative, a further declaration that the AMA Agreement, as amended, remains in full force and effect and that the AMA is entitled to avail itself of all relief, including the exercise of dispute resolution processes, otherwise available to it during, or as a result of negotiations between it and AH;

- (h) Damages under section 24(1) of the *Charter*, in the estimated amount of five million dollars (\$5,000,000.00) or such other amount as may be determined at trial;
- (i) Damages for breach of the *Charter*, breach of contract and unjust enrichment in amounts to be determined at trial, but in the estimated amount of two hundred and fifty million dollars (\$250,000,000.00) or such other amount as may be determined at trial;
- (j) Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1, as amended;
- (k) Costs on a solicitor and his own client scale; and
- (l) Such further and other relief as this Honourable Court may deem just.

**NOTICE TO THE DEFENDANT**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.