



Hospital Appeal Board

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DECISION NO. HAB-HA-20-A001(a)

In the matter of an appeal under the *Hospital Act*, RSBC 1996, C. 200

BETWEEN:	Katherine Puchala	APPELLANT
AND:	Northern Health Authority	RESPONDENT
BEFORE:	A Panel of the Hospital Appeal Board Cheryl Vickers, Panel Chair	
DATE:	Conducted by way of written submissions concluding on January 25, 2021	
APPEARING:	For the Appellant: Self-represented For the Respondent: Melissa Perry, Counsel	

APPLICATION

[1] This is a pre-hearing application by the Appellant seeking 1) production of documents pertaining to the Northern Health Authority Midwifery Review (the Midwifery Review), and 2) a summons compelling the attendance at the upcoming hearing of the appeal of LY, the consultant engaged by Northern Health to conduct the Midwifery Review. The applications are opposed by Northern Health.

BACKGROUND

[2] The Appellant is a midwife. Her appeal to the Hospital Appeal Board (HAB) is from the November 18, 2019 decision of the Northern Health Board of Directors upholding its decision of June 9, 2019 denying her application for appointment to the Northern Health Medical Staff. The Appellant had sought privileges to practise at Mills Memorial Hospital in Terrace, Kitimat General Hospital and Wrinch Memorial Hospital in Hazelton. The issues in the appeal presently scheduled for hearing commencing March 15, 2021 will be a) whether there is a need for a midwife at the hospitals to which the Appellant seeks privileges, and b) suitability of the Appellant.

[3] The Terms of Reference for the Midwifery Review were finalized in May 2019. The Terms of Reference recognize "that historically midwifery has made a unique contribution to obstetric services throughout Northern Health" and states the purpose of the review is "to explore innovative ways to enhance and expand that contribution within Northern Health in the future."

[4] On April 30, 2019, Northern Health secured the services of LY as an external research consultant to conduct the Midwifery Review. One of the terms of Northern

Health's arrangement with LY is that LY is to maintain possession and control of the raw data collected in conducting the Midwifery Review. LY is not an employee of Northern Health.

[5] Between May 2019 and February 2020, LY collected information directly from midwives, physicians, nurses, health leaders, First Nations' representatives, and community members from 11 communities, as well as relevant health authority and provincial leadership groups. One hundred people responded to an invitation to participate. LY conducted 29 interviews and focus groups.

[6] The raw data in the Midwifery Review comprises approximately 600 pages of interview transcriptions. LY and a research assistant used a qualitative software analysis program to code, analyze and identify themes in the raw data. LY completed this data analysis process in late December 2020.

[7] On September 17, 2020, LY made a presentation to the Northern Health Midwifery Review Steering Committee (the Steering Committee) about the emerging themes in the data related to practice setting and environment, perceived challenges and successes, as well as areas of opportunity surrounding the integration of registered midwives and midwifery generally in Northern Health. The information LY shared with Northern Health was preliminary and not specific to any particular community, program, or process, nor was it identifiable in any way. After the meeting, she circulated a brief document summarizing the themes presented to members of the Steering Committee. LY's evidence is that the document was marked confidential because it was both preliminary and incomplete and intended only to provide an update to Steering Committee Members. It was not LY's intent that the document be distributed beyond Steering Committee members because, in her view, it lacks appropriate and necessary contextualization for a general audience.

[8] LY is drafting a report for the Steering Committee outlining the findings of the analysis phase of the research. The draft is in process and has not been provided to the Steering Committee for review or comment, nor is it in a form that LY is comfortable sharing with the Steering Committee as it is incomplete.

Application for Disclosure

[9] The Appellant applies for "disclosure of documents pertaining to the NHA Regional Midwifery Review". It is not clear from her application specifically which documents she is seeking disclosure of, however in her response to the Respondent's submission, she clarifies that she is not seeking the raw data in LY's possession but "her analysis of the data she has collected". Specifically, she seeks production of the brief document circulated by LY to the Steering Committee in September 2020 summarizing themes.

[10] I am not satisfied that the brief circular of September 2020 summarizing themes is relevant to the issues in this appeal. The document is not specific to any particular community or program so cannot address the issues of midwifery need at either of the three hospitals to which the Appellant seeks appointment.

[11] The only other documents that may possibly be relevant to the issue of need are the draft of LY's report and ultimately the final report. The draft is not in the possession or control of Northern Health. While the Respondent is incorrect in

submitting the HAB does not have the authority to order production of a relevant and admissible document from a person who is not a party (see section 34(1) of the *Administrative Tribunals Act* applicable to the Board through section 46(4.2)(d) of the *Hospital Act*), I find it is not appropriate to order production of a draft document. A draft is just that – a draft – an incomplete document that does not provide any final conclusions or analysis.

[12] The Terms of Reference for the Midwifery Review include in its scope various topics including:

- exploring local community interest in the expansion of midwifery services in the north;
- exploring the potential recruitment of midwives in areas of need;
- exploring the consequences of over-recruitment of midwives in communities with low volume of deliveries;
- identifying and exploring successful models of interprofessional collaboration and integration for maternity/obstetrical care; and
- informing a midwifery Human Resources Plan within the overall Northern Health Physician HR Plan for obstetric services with further understanding of midwifery recruitment to locales where the services are most needed.

[13] Indeed, the Terms of Reference state that “[t]he results of the review will inform the needs for midwifery services within Northern Health”. It is quite possible, therefore, that the final report will contain information relevant to the issue of need in this appeal. However, the report is not yet complete. Until the final report is ready, its relevance to issues in the appeal cannot be known or assessed, nor can its production be ordered.

[14] The Appellant has not established that there are any existing documents pertaining to the Midwifery Review that are relevant to the issues in the appeal and consequently, the application for disclosure of documents is dismissed. However, based on my review of the Terms of Reference and other material submitted in this application, I am prepared to order that **if** the final report of the Midwifery Review is complete before the hearing is complete, that it be immediately produced to the Appellant. If either party seeks to have the report admitted into evidence and there are issues as to its relevance or admissibility, the Board will deal with those issues at the hearing.

Application for Summons

[15] The Appellant asks that LY be summoned as a witness “as [LY] is the principal investigator and most knowledgeable about the data gathered throughout the Midwifery Review”. The Appellant references the goal of the Midwifery Review to assess community desire for access to midwifery care and submits that through many informal conversations with various community stakeholders, she anticipates this desire will be reflected in the findings of the Midwifery Review. Although the Appellant has already submitted letters through the document disclosure process that confirm community desire for access to midwifery care, she expresses concern the letters may be perceived as biased. She submits that because of LY’s extensive resume confirming her credibility as a researcher, her findings would unlikely be

perceived as biased. It sounds like the Appellant would like LY to provide evidence about what she heard from those she spoke with in conducting the Midwifery Review and that she anticipates that evidence will support her position on the issue of need. The Appellant would, in effect, be asking LY to testify as to the content of the raw data collected for the Midwifery Review and potentially be asking LY to express opinions and conclusions based on her analysis of the data.

[16] I am not inclined to issue a summons at this time compelling LY to provide evidence at the hearing for the following reasons. First, any evidence LY were to give about what others told her would be hearsay. If the Appellant is aware of persons who can provide their own evidence directly on the issue of need, that evidence would not be hearsay. Second, the Appellant would essentially be asking LY to share possibly relevant raw data that was collected in confidence for the purpose of the Midwifery Review. Requiring LY to give evidence as to contents of the raw data would violate LY's obligations of confidentiality and could compromise the integrity of the Midwifery Review as well as LY's professional reputation as an academic researcher. Third, until LY completes her report and finalizes her conclusions it would be inappropriate to ask her to speculate on what she thinks those conclusions might be.

[17] Weighing the potential harm of compelling LY's testimony against the Appellant's anticipation that LY's evidence will both be relevant and of assistance on the issue of need in this appeal, I find the potential harm to outweigh any potential benefit. Having said that, however, **if** the final report of the Midwifery Review is complete before the hearing, and **if** its contents are relevant to the issue of community need, it is possible that LY could be called as a witness.

CONCLUSION AND ORDER

[18] The application for immediate disclosure of documents is dismissed.

[19] The Board orders that **if** the final report of the Midwifery Review is complete before the hearing is complete, that it be immediately produced to the Appellant.

[20] The application for a summons compelling LY to testify is dismissed.

"Cheryl Vickers"

Cheryl Vickers, Panel Chair
Hospital Appeal Board

February 02, 2021