

BRITISH COLUMBIA  
**LABOUR RELATIONS BOARD**

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MULTIPLE FAX TRANSMITTAL

Date:	<u>December 7, 2016</u>
Time:	<u>3:45 p.m.</u>
Pages:	<u>4</u>
(including the cover page)	

From:	<u>Chrissie Robinson</u> Executive Assistant to Jennifer Glougie, Vice-Chair
Faxed By:	<u>Chrissie</u>

RE: British Columbia Nurses' Union -and- Canadian Office and  
 Professional Employees Union, Local 378  
 (Part 5 - Case No. 70031/16)

**To:** Lawson Lundell **Fax No:** 604-669-1620  
**Attention:** Ritu N. Mahil

**To:** Black Gropper **Fax No:** 604-632-9950  
**Attention:** Carolyn M. Janusz / Allan E. Black, Q.C.

*Please find attached Board letter dated December 7, 2016.  
 Hard copies will not follow by mail.*

**\*\*NOTE: FACSIMILE OPERATOR, PLEASE CONTACT THE ABOVE INTENDED RECEIVER  
 AS SOON AS POSSIBLE. THANK-YOU**

BRITISH COLUMBIA  
LABOUR RELATIONS BOARD

December 7, 2016

"BY FAX"

TO INTERESTED PARTIES:

Re: British Columbia Nurses' Union -and- Canadian Office and  
Professional Employees Union, Local 378  
(Part 5 - Case No. 70031/16)

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The British Columbia Nurses' Union (the "Employer") applied under Part 5 of the *Labour Relations Code* (the "Code") for an order that the Canadian Office and Professional Employees Union, Local 378 (the "Union") engaged in illegal picketing. The application concerned allegations of picketing at two hotels, the Executive Inn and the Chateau Granville, where the Employer was hosting meetings. The Employer's application is scheduled to be heard on Wednesday, December 14, 2016. After the Employer's application was filed and the hearing scheduled, the parties entered into a new collective agreement.

The Board's policy is that, once the parties have entered into a collective agreement, there is no longer a live controversy under Part 5 of the Code that affects the rights of the parties. As a result, the Board will generally not proceed to hear Part 5 applications once a labour dispute has been resolved on the basis they are moot. While the Board has discretion to hear moot applications, it will generally do so only in special circumstances. Those special circumstances, set out in the Supreme Court of Canada's decision in *Borowski v. Canada (Attorney General)* (1989), 57 D.L.R. (4<sup>th</sup>) 231 (SCC) ("*Borowski*"), are described as follows in *Sun Rype Products Ltd.*, BCLRB No. B70/2008, 157 C.L.R.B.R. (2d) 106:

1. Cases where a decision of the application would have some practical effect on the *rights* of the parties;
2. Cases involving disputes of a recurring nature *and* that are of such brief duration that "the dispute will have always disappeared before it is ultimately resolved"; and
3. Cases which raise an issue of sufficient "*public importance*" that "a resolution is in the public interest" despite the cost of judicial involvement. (at para. 9, cites omitted)

By letter dated December 1, 2016, I asked the parties to provide submissions with respect to whether the hearing into the Employer's Part 5 application should proceed in the circumstances.

The Union says the present application does not fit into any of the special circumstances recognized in *Borowski*. It says the allegations set out in the Employer's application do not raise an issue of public importance, are not of a brief and recurring duration and a determination on the merits would have no practical effect on the rights of the parties. As a result, the Union says, the Board should decline to determine the Employer's moot application.

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The Employer says the application should be heard despite the fact the parties have resolved their collective bargaining dispute. It says tensions between the parties remain high as a result of misinformation disseminated through social media during the strike. A determination on the merits of the applications is necessary, it says, in order for the parties to move forward. In particular, the Employer says the Union engaged in "blatant misrepresentation" on its Facebook page and failed to correct that misinformation after its application was filed. It further says that the Union failed to make any attempt to advise its members regarding where and when strike activity is permissible or to advise its members of its undertaking with respect to the present application. For these reasons, it says, the first and third of the special circumstances identified above are satisfied and the dispute should be determined on its merits.

The Union replies that the Employer's allegations about misrepresentation are unparticularized and, in any event, unfounded. It says the Employer has not alleged or established any instances in which the Union communicated misinformation with respect to picketing or strike action. It further says it was under no obligation to advise its members of its undertaking on Facebook or otherwise and, in any event, the Employer itself made the membership aware of that undertaking in its own communications. Regardless, any decision to disseminate or not disseminate such information does not give rise to any of the three categories of special circumstances in which the Board will hear a moot application.

I have considered the parties' submissions and the cases on which they rely. I am not persuaded that a determination of the application on its merits would have any practical effect on the parties' rights moving forward now that the labour dispute is resolved. I am similarly not persuaded that the tension between the parties arising out of the labour dispute or arising as a result of the information disseminated (or not disseminated) during the labour dispute is sufficient to establish a basis on which to justify a determination of the application on its merits. I find that the facts alleged in the present applications do not fall within any of the categories of special circumstances set out in *Borowski*. As a result, I find the Employer's application is moot and I decline to exercise my discretion to hear it on the merits.

The Employer's application is dismissed on the basis it is moot. Accordingly, the hearing scheduled for December 14, 2016 is cancelled.

Yours truly,

LABOUR RELATIONS BOARD

Jennifer Glougie  
Vice-Chair

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December 7, 2016

**Interested Parties**

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