

COURT FILE NUMBER 2503 02991

COURT **COURT OF KING'S BENCH OF ALBERTA**

JUDICIAL CENTRE **EDMONTON**

PLAINTIFF **ATHANA MENTZELOPOULOS**

DEFENDANTS **ALBERTA HEALTH SERVICES, HIS MAJESTY THE KING
IN RIGHT OF ALBERTA as represented by ADRIANA
LaGRANGE in her capacity as MINISTER OF HEALTH**

DOCUMENT **STATEMENT OF DEFENCE ON BEHALF OF ALBERTA
HEALTH SERVICES**

**ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT**



NEUMAN THOMPSON

**301, 550 – 91st Street SW
Edmonton, AB. T6X 0V1**

Attention: Craig W. Neuman, K.C. / Chantel T. Kassongo, K.C.

Email: cneuman@ntlaw.ca / ckassongo@ntlaw.ca

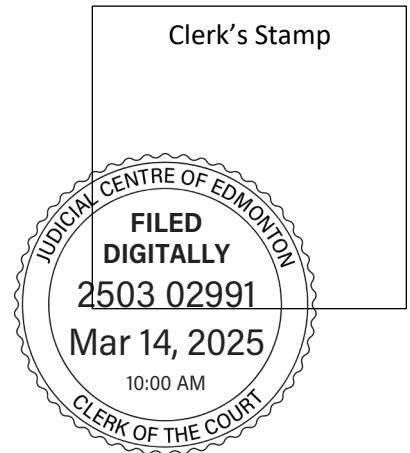
Telephone: 780-733-6556 / 780-733-6563

Facsimile: 780-488-0026

1. The Defendant Alberta Health Services (“**AHS**”) denies all allegations in the Statement of Claim, except as admitted.

2. AHS’ overall response to the Statement of Claim is that the termination of the Plaintiff’s employment with AHS was lawful and in accordance with the terms of her employment agreement with AHS, and that the Statement of Claim:
 - (a) is ill-founded, groundless and vexatious;

 - (b) should be dismissed against AHS with an order for solicitor-client costs in respect of the Plaintiff’s untrue and manufactured allegations; and



- (c) has been filed for the sole purpose of seeking further payment from AHS in excess of what the Plaintiff and AHS mutually negotiated as her severance entitlement upon termination of her employment.
3. The Plaintiff's employment with AHS ended because it lost confidence in her ability to discharge the function of her position in a competent and acceptable manner. The Plaintiff's allegations that her employment was terminated because of the investigation and audit she initiated into various AHS surgical facilities contracts is a diversion from the Plaintiff's own inadequacies and the Plaintiff is solely responsible for the termination of her employment.

Summary of the Facts

4. AHS is a regional health authority that was established pursuant to the *Regional Health Authorities Act*, RSA 2000, c. A-38, which was replaced by the *Provincial Health Agencies Act*, RSA 2000, c. P.32-5 on May 30, 2024. As a regional health authority, AHS is responsible for carrying out its operations in accordance with the strategic goals and priorities of the Alberta Minister of Health (the "**Health Minister**").
5. AHS is Canada's largest health delivery system employing approximately 105,000 employees.
6. In the fall of 2023, the Health Minister announced Alberta Health's plan to commence a significant refocus and restructuring of the health care system in order to create an improved and more effective system for the delivery of health care services to Albertans (the "**Refocus Plan**"). The Refocus Plan will have a significant impact on AHS' mandate, operations and workforce.
7. In December 2023, AHS and the Plaintiff entered into a written employment agreement (the "**Employment Agreement**") whereby AHS agreed to employ the Plaintiff as its President and Chief Executive Officer ("**CEO**") for a four-year term commencing December 7, 2023, subject to early termination without cause upon the provision of notice or payment of severance in accordance with the terms mutually agreed to by the parties. At the time the Plaintiff was hired, it was communicated to her that one of her key responsibilities as President and CEO would be to work with the Health Minister and Alberta Health regarding the implementation of the Refocus Plan.

8. It was an express or implied term of the Employment Agreement that the Plaintiff was required to diligently, efficiently and faithfully perform her duties. Without limiting the foregoing, this included:

- (a) that the Plaintiff provide effective and strategic leadership, supervision and management of AHS for the administration of all of its operations and ensure effective and efficient financial, human, capital and other resources management;
- (b) that the Plaintiff be responsible and accountable for leading the development and implementation of AHS' strategic goals related to service delivery, budget management, capital, information management and technology and business plans for AHS as well as the priorities set by the Health Minister for the health care system, which included the Refocus Plan;
- (c) that the Plaintiff ensure that the planning, business operations, and service delivery activities of AHS align with the direction and priorities of the Health Minister, including the Refocus Plan, and that she actively contribute to the successful achievement of the Health Minister's priorities and help to establish public confidence in the health care system;
- (d) that the Plaintiff be responsible for building highly productive working relationships with and engendering the confidence of the Board of Directors and employees of AHS, the Health Minister, Alberta Health, and its officers and staff, and a broad range of other key stakeholders, including the public;
- (e) that the Plaintiff ensure that the operations and activities of AHS are conducted in accordance with all applicable laws, regulations, orders, ministerial directives, standards and policies;
- (f) that the Plaintiff develop and maintain effective operational oversight over her staff and prescribe the authority, responsibility and accountability to them as it relates to the accomplishment of the specific objectives and priorities of AHS;
- (g) that the Plaintiff provide strong, effective and visible leadership to all AHS staff in order to meet AHS' goals, priorities and objectives;

- (h) that the Plaintiff be responsible and accountable for AHS' various budget priorities and requirements;
- (i) that the Plaintiff meet the budget targets for AHS as provided by the Health Minister and ensure an appropriate process to identify budget efficiencies required to manage to a balanced budget;
- (j) that the Plaintiff provide effective oversight and leadership regarding the mandate and priorities set by the Health Minister regarding the Refocus Plan, which included working in close collaboration with the Health Minister and Alberta Health on the following:
 - i. the transition of functions and staff from AHS to the new provincial health agencies of acute care, primary care, continuing care and mental health and addictions on the timelines mandated by the Health Minister;
 - ii. the transition of functions and staff from AHS to Alberta Health;
 - iii. the restructuring of AHS as a service delivery organization focused on acute care;
 - iv. ensuring ongoing communication with both remaining and outgoing staff regarding the status of the Refocus Plan and its impact on staff;
 - v. strategizing and implementing any necessary change management initiatives in furtherance of the Refocus Plan;
 - vi. facilitating the assignment of existing AHS contracts to the new provincial health agencies;
 - vii. providing recommendations for and oversight to the consolidation of services with the new provincial health agencies, including entering into agreements with the new provincial health agencies for the purpose of achieving a consolidated and cost-effective approach to shared corporate services;

- viii. ensuring compliance with all directives issued by the Health Minister related to the Refocus Plan, including directives related to the establishment of budgets for the new provincial health agencies, meeting the budget targets for AHS provided by the Health Minister, ensuring a proper process to identify budget efficiencies required to maintain a balanced budget, preparing a budget for 2024/25 based on AHS' new role, and overseeing and leading AHS' implementation of the recommendations set out in any reports about AHS' financial controls and structures.
9. The decision to lawfully terminate the Employment Agreement on a without cause basis was taken in the public interest and as a result of AHS' loss of confidence in the Plaintiff's ability to competently, effectively, and responsibly carry out her duties and responsibilities as President and CEO. In particular, the Plaintiff demonstrated a consistent pattern of ineffectiveness, mismanagement, and failure to execute key leadership responsibilities. Among other fundamental deficiencies, the Plaintiff displayed an alarming lack of strategic vision and leadership which severely hindered AHS's ability to fulfill its mandate and implement critical healthcare reforms. The Plaintiff's repeated unwillingness or outright refusal to meet the expectations and priorities set by the Health Minister not only stalled essential progress, but actively disrupted the operational and structural advancements required for the Refocus Plan.
10. Specifically, the Plaintiff was unwilling and/or unable to function properly as President and CEO by, among other things,
 - (a) failing to demonstrate sound, strategic and rational decision making and responsible leadership, supervision and management, and repeatedly demonstrating inefficient indecisiveness and an inability to manage critical initiatives, including as it relates to the Refocus Plan and the priorities of the Health Minister;
 - (b) failing and/or refusing to present budgets in an effective and timely manner, showing an inability to deliver necessary cost-saving measures and budgets required pursuant to the Refocus Plan;

- (c) failing and/or refusing to adequately and effectively balance the AHS budget within the funding received from Alberta Health and in accordance with the priorities and directives issued by the Health Minister;
- (d) failing and/or refusing to foster effective, productive and collaborative relationships with the Board of Directors of AHS and key stakeholders, including the Health Minister and officers and employees of Alberta Health, including engaging in unprofessional conduct with Alberta Health staff;
- (e) failing and/or refusing to provide required and necessary information to the Board of Directors of AHS and key stakeholders, including the Health Minister and offices of Alberta Health;
- (f) failing and/or refusing to properly and adequately implement the priorities of the Health Minister, and in particular those priorities associated with the Refocus Plan which, among other things, contributed to delays and unnecessary operational setbacks, in some of the timelines set by the Health Minister for the various phases of the Refocus Plan resulting in the Health Minister issuing an unprecedented number of directives due to the Plaintiff's inability to implement the priorities and fulfill the expectations of her role as President and CEO of AHS;
- (g) failing and/or refusing to effectively communicate with the AHS staff about the Refocus Plan thereby contributing to an environment of misinformation, stress and an uncertain work environment;
- (h) failing and/or refusing to provide effective and adequate leadership and direction over the AHS executive team and staff to ensure that the priorities of AHS and the Health Minister were met, including without limitation, as it relates to the Refocus Plan;
- (i) failing and/or refusing to provide leadership and visibility in community and staff engagements; and failing to establish and maintain essential relationships with healthcare stakeholders, while exhibiting a notable absence in community and staff initiatives and events;

- (j) failing and/or refusing to comply with the directives issued by the Health Minister, including those directives related to the Refocus Plan, the budgets for AHS and the provincial care agencies and AHS' implementation of the recommendations set out in the reports of Ernst & Young ("EY") about AHS' financial controls and structures which then required intervention by Alberta Health to oversee the implementation of the directives.
11. The Plaintiff failed to demonstrate the decision-making qualities and responsible leadership that are required of the President and CEO of AHS. Any allegations of wrongdoing on the part of AHS in the Statement of Claim are groundless. The Plaintiff's employment relationship with AHS ended because she was unable and/or unwilling to discharge the functions of her position in accordance with the terms of the Employment Agreement and in a manner expected of the leader of the largest health services provider in Canada.

Allegations in the Statement of Claim

12. The complete facts concerning the Plaintiff's conduct which led to the decision to terminate her contract of employment will come out in the course of this litigation. The key aspects of AHS's position are set out in this Statement of Defence and include the following:
- (a) AHS acted properly and lawfully throughout, in good faith, and in furtherance of its responsibilities as a regional health authority;
 - (b) Any allegations in the Statement of Claim against AHS that it acted in an arbitrary, capricious, callous, high-handed and bad faith manner or that it wrongfully and unlawfully repudiated and/or terminated the Employment Agreement or that it was induced and/or directed by the Health Minister to breach the terms of the Employment Agreement have been constructed by the Plaintiff for an improper purpose and have no basis in fact whatsoever;
 - (c) AHS terminated the Employment Agreement for the reasons outlined in paragraphs 9 and 10 above. In doing so, it acted lawfully and in accordance with the terms of the Employment Agreement.

(d) The Plaintiff's claim for wrongful dismissal is bad on its face. The Employment Agreement was terminated in accordance with its terms. AHS reserves the right to seek summary dismissal of this or any or all of the Plaintiff's claims.

13. AHS specifically denies the following (and nothing in this Statement of Defence constitutes an admission respecting any other allegation not specifically denied):

(a) In response to paragraphs 4, 8, 9, 67-69 of the Statement of Claim, Andre Tremblay ("**Tremblay**") attended the termination meeting with the Plaintiff on behalf of the Board of Directors of AHS at the request of the Board Chair, Angela Fong, and in his capacity as a member of the Board.

(b) In response to paragraphs 10, 74, 75 and 78 of the Statement of Claim, AHS denies that the Plaintiff was terminated:

i. because she authorized an internal investigation and forensic audit into various AHS surgical facilities contracts and procurement processes;

ii. in order to interfere with the investigation; or

iii. to prevent the Plaintiff from meeting with the Office of the Auditor General.

Rather the employment of the Plaintiff was lawfully terminated by AHS solely for the reasons outlined in paragraphs 9 and 10 and in accordance with the Employment Agreement. Further, the Plaintiff shared very little information with the Board of Directors of AHS about her concerns with the surgical facilities contracts, the procurement process or the internal or external investigations that she had authorized and undertook. The Board of Directors also had no knowledge at the time of the Plaintiff's termination that she was scheduled to meet with the Office of the Auditor General on January 10, 2025.

(c) In response to paragraph 14 of the Statement of Claim, Tremblay approached the Plaintiff about assuming the position of President and CEO of AHS in his capacity as a member of the Board of Directors of AHS. The Plaintiff was in no way pressured to accept the position.

- (d) In response to paragraph 66 of the Statement of Claim, the Health Minister did not “demand” that the Board of Directors terminate the employment of the Plaintiff, nor did the Board of Directors refuse the Health Minister’s “demand”. Further, Tremblay, in his capacity as interim President and CEO, cancelled the scheduled meeting with the Auditor General as he had just assumed his role and needed to review the information on the investigation before meeting with the Auditor General.
 - (e) The allegations in paragraphs 16-19, 21, 25, 26, 27, 33, 34, 48, 49, 50, 53, 55, 58, 59, 63 and 64 of the Statement of Claim regarding communication between the Plaintiff and the Health Minister and/or officers and employees of Alberta Health are unknown to AHS, but in any event are completely unconnected with, and had no bearing on, the decision to terminate the Employment Agreement.
 - (f) In response to paragraph 47 of the Statement of Claim, the Health Minister did not suggest ending the investigation.
 - (g) In response to paragraph 72, AHS has no knowledge as to the reasons for the Health Minister’s decision to dismiss the Board of Directors of AHS.
14. AHS denies that the Plaintiff has suffered losses or damages, or incurred expenses as alleged in the Statement of Claim. In the alternative, the Plaintiff has failed to make reasonable efforts to mitigate any losses or damages claimed and has failed to account for amounts she has received in mitigation of any losses or damages claimed.

Remedy sought:

15. AHS respectfully requests that:
- (a) this action against AHS be dismissed;
 - (b) the Plaintiff be ordered to pay solicitor-client costs for having made unsubstantiated allegations without any evidence or proper basis.