

IN THE MATTER OF AN ARBITRATION

BETWEEN

Nova Scotia Government and General Employees Union

(the “Union”)

-and-

Nova Scotia Health Authority

(the “Employer”)

AWARD

Policy Grievance

(Classification – MAID Nurse Navigator)

Arbitrator: Lorraine P. Lafferty, Q.C.

Representing the Union: Andrew Nielsen

Representing the Employer: Kara Burry

Held at Halifax, Nova Scotia: April 7 & 8, 2021
May 11, 2021
June 4, 2021

Date of Award: July 22, 2021

1. The Employer Health Authority offers a Medical Assistance in Dying (“MAID”) service. The stated objective of the service is to comply with federal legislation from June 2016 that allows eligible Canadians to receive medical assistance in dying. In 2019, the Employer posted a new Nursing bargaining unit position with the title “MAID Nurse Navigator.” The Employer classified the position as being within the Registered Nurse classification with a pay grade of NUR6.
2. The Union grieved that the Employer improperly classified the new MAID Nurse Navigator position alleging that this new position introduced a new classification into the bargaining unit. According to Article 8.15A.(a) of the collective agreement when a new classification is introduced the parties shall meet to negotiate the rate of pay for the new classification. Article 8.15A.(a) reads as follows:

8.15 A. New Classification

(a) When a new classification covered by this Agreement is introduced, the rate of pay shall be subject to negotiations between the Employer and the Union. The Employer may implement a new classification and attach a salary to it, providing that the Union is given ten (10) days’ written notice in advance.

3. The Union seeks a declaration of a new classification for the MAID Nurse Navigator position and an order requiring the parties to negotiate a rate of pay for the classification. The Employer has denied the MAID Nurse Navigator position was improperly classified or that it introduced a new classification requiring the parties to negotiate a rate of pay. The new position has been filled by a registered nurse who by all accounts is well qualified for the position and is an asset to the service. The grievance is not related to the incumbent but related solely to the Employer’s assignment of the MAID Nurse Navigator position to the Registered Nurse classification.
4. The Employer’s process for classification uses a “whole job comparison” analysis which compares nursing jobs in the various nursing classifications. It is a factual inquiry. The issue in this grievance is whether, on a comparative basis, the MAID Nurse Navigator position

belongs in the Registered Nurse classification or whether it introduces a new classification to the bargaining unit.

5. Uncontested evidence indicated that the Registered Nurse classification is the largest classification group in the Nursing bargaining unit. It includes up to 78% of the Employer's 3,260 bargaining unit nursing positions that span many different contexts (e.g. Emergency Nurses, Palliative Care Nurses, Intensive Care Nurses, Clinical Care Nurses) and in different settings (e.g. urban, rural, inpatient, outpatient). The Employer's remaining nursing positions fall into about twenty different classifications with differing pay grades.

Background to the MAID Nurse Navigator Position

6. The Employer's delivery of MAID services has evolved since the introduction of federal legislation in 2016. From a single physician who oversaw the service working from the side of his desk, the service now has its own office and four core members - an Administrator, a Clinical Lead, a Director, and the Nurse Navigator. Together, these four coordinate all MAID service delivery in the province. The Administrator has a background in administration. He has no medical or nursing training. The Clinical Lead is a physician who spends one-half day per week on the service meeting with the core team. At other times, he is located at a different site but is available by telephone or text to provide clinical advice. The Director is a social worker who is the strategic lead for the service within the Health Authority. The Nurse Navigator coordinates and facilitates the MAID process for patients around the province. She brings the nursing perspective to the team. She reports directly to the Director.
7. As part of the MAID service team, a network of others has also taken shape made up of physicians and nurse practitioners from around the province who have agreed to serve as eligibility assessors. A patient who wishes to access the MAID service must be assessed for eligibility by two different physicians or nurse practitioners. The network of assessors includes physicians who have also agreed to administer MAID medications to eligible patients. One of a patient's two assessors must agree to act as the medication provider. The MAID Clinical Lead is one of the province's assessors and medication providers. There is as

well a Provincial MAID Advisory Committee made up of representatives from stakeholder groups who meet quarterly to support the service and address issues regarding service delivery. The MAID Nurse Navigator is a participating member of this Committee. This is a requirement stated in the MAID job description.

8. The Union called the Clinical Lead physician to give evidence about the history of the MAID service and the position of Nurse Navigator. He testified that hiring a Nurse Navigator in 2019 was a significant step in establishing a robust program which needed a qualified person with medical/nursing knowledge to work with patient needs and to deal with an increasing number of requests and logistical requirements. The Nurse Navigator needs to know the health system and MAID requirements, be able to interview patients about their current needs and end-of-life goals, and be able to liaise with physicians, nurses, and other health care providers in order to facilitate the MAID process. He described the Nurse Navigator as a “medical concierge” being the point of consistent contact for all those involved as they participate in the process. According to the Clinical Lead, the Nurse Navigator manages the program independently with little involvement from others. She is responsible for all referrals to the service and is autonomous in many respects. She talks to patients and families and populates a directory. She keeps track of patients, educates assessors about process and counsels them about individual patient requirements and timeliness. In his role as a MAID assessor, he relies on the information she provides, and if he encounters a problem, he will contact her. She is a problem solver. The Nurse Navigator is intimately involved with developing policy and procedures for the service and played a significant role with other core team members when the service undertook a detailed reconstruction of original policies that needed updating. Also, drawing on her nursing experience from other areas, the Nurse Navigator developed standardized forms that are now used on the service. She provides education on MAID to healthcare providers and others with presentations about the service. In his assessment, based on his experience working with many registered nurses in different areas over many years, the Nurse Navigator functions at a level above the level of the registered nurses with whom he has worked, which I understood to mean at a higher operational level with a higher level of autonomy.

9. The MAID service has had five or six different Directors since its inception. The present Director is a social worker, not a nurse. The immediately previous Director who served in the role for six months from January 2020 to June 2020 is an experienced nurse who has worked with the Employer in different areas including Palliative Care. The Employer called her as a witness. She testified that the Director's role is not clinical but rather a supervisory and leadership role that assists the MAID service with hospital bureaucracy. She gave evidence that during her time as Director she was also part of the collaborative process of the four core members of the team updating policies and procedures for the service. She confirmed that while she was Director the incumbent developed forms for use on the service that the incumbent brought to her for input and feedback and that of this type work will continue as forms may need revision as legislation changes. The Director also helped the incumbent with the Employer's approval process for the forms. In her assessment, the Nurse Navigator role is very process oriented. It exists to coordinate and navigate patients through a process that must meet legal requirements. The Nurse Navigator does not meet with patients or provide complex symptom pain management but does provide emotional support to patients and families during the period of time when meeting the requirements for MAID is in progress. She found similarities between the Nurse Navigator's core work and core work performed by nurses in the Registered Nurse classification; for example, making sure patients receive the care they need; working collaboratively with physicians and others; giving input on policy development which nurses do through working groups and Practice Councils. In her view, nurses have in common the same base knowledge and apply it differently on different units. She likened the incumbent's position to the position of Palliative Home Care Nurses in the Registered Nurse classification. These nurses provide therapeutic care to palliative patients and their families and coordinate patient care in home settings. They assess patients and make referrals for other services as needed. She agreed with Union counsel that these nurses have peers with whom they can interact and consult and they report to a Manager. She also agreed that MAID is a subject that brings about strong feelings in the broader community and is subject to more debate than other medical procedures.

Duties of the MAID Nurse Navigator

10. The incumbent testified that prior to accepting the position she was employed with the Employer as an Inpatient Palliative Care nurse for 3.5 years and as an Ambulatory Care Cancer Centre nurse for 2.5 years. Both positions were classified as Registered Nurse (NUR6). In both positions she reported to a charge nurse who reported to a Health Services Manager. A plan of patient care was determined in consultation with a physician from which she then worked independently to meet a patient's care needs. If complications arose, there were many resources to look to for guidance including a charge nurse, the physician or resident, the Health Services Manager, a Nurse Educator, as well as established policies. When the position of MAID Nurse Navigator, which no one had previously held, was posted she applied and was the successful candidate. She started in the position in September 2019 reporting to the Director.
11. The incumbent gave evidence of her duties and responsibilities as MAID Nurse Navigator. Because all referrals for the MAID service are sent to her office, she handles all intake for the service. Generally cancer patients make up 60% of the MAID patient population. Other patients may have neurological conditions such as Parkinson's or ALS or have organ failures such as lungs or kidney. In 2020, there were 373 MAID referrals. For 2021, the number is expected to be higher. With legislative changes permitting greater access, numbers are likely to increase even higher.
12. When the incumbent receives a referral from a family physician or other referral source she contacts the patient and family to review their end-of-life goals and to ascertain other information; for example, is the patient competent to make decisions and consent to the service? If there is a question about decision-making ability, she may arrange for competency assessment. If there is a question about clinical management, she can contact the Clinical Lead for advice. The Nurse Navigator's next task is to find willing and available assessors with appropriate expertise who can determine whether the patient meets the MAID eligibility criteria. Two assessors are required. Assessor willingness and availability can vary because assessors perform MAID service in addition to their regular practice. To comply with legislation, the Nurse Navigator must also ensure that one of the assessors agrees to be the

medication provider. Proper consent forms must be signed and witnessed. The Nurse Navigator can help a patient find a witness. The Nurse Navigator can help a patient find a date for the service. This means coordinating the patient, assessors, provider, VON nurse, family, and pharmacy. The date may need adjustment unexpectedly depending on the patient's condition. The Nurse Navigator can assist with arranging where the procedure will take place, at home or at a hospital. She has to be knowledgeable about the different hospital arrangements that exist in different parts of the province and be cognizant of each patient's timeline. She also ensures the required federal reporting is completed and returned. Many of the healthcare providers involved with MAID are new to the service and are still learning the requirements and processes. They contact her for guidance when they have questions.

13. The incumbent reports to the Director. There is no nurse Manager between the MAID Nurse Navigator and the Director as there ordinarily would be in the Employer's organizational structure for nurses in the Registered Nurse classification. As a Palliative Care Nurse or Ambulatory Care Nurse, the incumbent could seek advice and assistance from a charge nurse or Health Services Manager or peers with whom she worked who would be familiar with specific issues and procedures that had been encountered before. As MAID Nurse Navigator she has fewer supports of this sort and therefore works quite independently.
14. The Nurse Navigator has worked closely with core members of the MAID team updating MAID policies when they became outdated. She has prepared various forms – Referral Form, Intake Form, Care Coordination Form - for standardized use, with input and feedback from the Director. She has also prepared checklists of operating procedures and an Organ Donor tracking process to address organ and tissue donation on death.
15. The incumbent was shown a Position Description for the Nurse Navigator job and agreed that it was “pretty accurate” although the assigned percentages for key functions, called “Specific Accountabilities”, were in flux at the time of hearing as more time was being spent on the education component of the position in light of legislative amendments. The education component includes educating assessors and medication providers and others through individual discussion with them and by making presentations to larger groups to provide information and raise awareness. The Specific Accountabilities for the position include

Facilitating Coordination of Clinical Services, Administration, Education/Professional Development, Program Development and Learning and Research detailed in the Position Description as follows:

Specific Accountabilities

1. (60%) Facilitates Coordination of Clinical Services

- Works with service lead to provide standardized information on MAID to patients, families and providers upon request.
- Once the mandatory eligibility criteria have been met and the consent has been obtained by the most responsible physician (MRP), regarding arrangements, the Navigator will triage and coordinate services as in collaboration with the MRP.
- Assists in the collaboration and facilitation of operational processes related to MAID utilizing appropriate guidelines.
- Confers with the MAID Leadership Team, multidisciplinary health team (local and provincial) and ad hoc Specialty Team(s) to ensure seamless service delivery and transition through the health care system.
- Ensures all necessary documentation is complete and confirms death has been reported by the MRP, to the Medical Examiners Office.
- Corresponds with families and providers post MAID to offer support, grief and bereavement information. Arranges debriefing sessions for clinical staff as necessary as necessary.

2. (15%) Administration

- Patient Related Administration
 - Participates in the development of policies and procedures
- Serves as a MAID clinical resource to other health care providers. Liaises with other health care providers as appropriate
- Works with service lead to maintain and report NSHA data related to organizational services for MAID. Providers are required to report through federal portal in Nova Scotia.

3. (15%) Education / Professional Development

- Participates as a member of the Provincial MAID Advisory Committee
- Works with the service lead to plan, coordinate, implement and evaluate both public and health care profession awareness and educational activities related to MAID.
- Acts as a mentor to program staff, health care providers and students as required.
- Identifies personal learning needs and commits to ongoing professional development as required by the appropriate regulatory body.

4. (5%) Program Development

- Supports the ongoing, continuous improvement of the MAID program through a quality assurance and “best practice” approach.
- Participates in regular team meetings to help identify issues, problems and help facilitate recommendations for improvement.
- Participates in the interview and the orientation of new team members as required.

5. (5%) Learning and Research

- Collaborate with the approved learning and research initiatives as appropriate within the scope of the position and as authorized by management.

16. Regarding educational qualifications, the Position Description states that “education at a Master’s level considered an asset.” The incumbent does not have a Master’s Degree.

17. Regarding the number of staff managed by the Nurse Navigator, there are none. The Position Description qualifies this fact stating that the Nurse Navigator functions as a core team member and works in collaboration with internal and external stakeholders and providers across the province. The qualification reads (at p. 6):

Not required to manage staff however functions as a core member of the team, coordinating services and working in collaboration with a distributed group of internal and external stakeholders / providers across Nova Scotia.

18. The Employer’s Director, Interprofessional Practice and Learning, also gave evidence. She referred to the Specific Accountabilities identified in the Registered Nurse Position Description under the headings Assessment (25%), Planning (25%), Intervention (15%) and Evaluation (15%). In her view, comparatively, many of these same key functions are captured in the Specific Accountabilities found in the Position Description of the MAID Nurse Navigator under the heading Facilitates Coordination of Clinical Services (60%). This Director also commented on the MAID Nurse Navigator’s role in education and professional development. She described the Nurse Navigator’s role in education as information sharing or knowledge transfer distinguishing this type of education from formal education that incorporates a competency outcome. In other words, recipients of the knowledge imparted by the Nurse Navigator are not tested on how well they have understood the information and

thus there is low accountability for the success of the MAID Nurse Navigator's education delivery.

19. The Employer's Compensation Consultant gave evidence regarding the bargaining unit classification system and her decision to assign the MAID Nurse Navigator position to the Registered Nurse classification. She is very experienced working with the Nursing classification system and agreed with Union counsel that classification is not a science, but rather a judgment based on position review and knowing the organization. She explained that the Nursing classifications are based on a qualitative whole job comparison approach which predates the 1990's. The existing Nursing bargaining unit classifications have generally been intact for as long as the Compensation Consultant has known during her thirty years with the Employer. The objective of classification is to ensure consistency and internal relativity in the evaluation of salaries. Seventy-eight percent of nurses in the bargaining unit fall into the Registered Nurse (NUR6) classification. Other nursing classifications with a higher pay grade have higher accountability expectations. A few new classifications have been added to the bargaining unit in recent years usually as a result of grievance settlements.

20. When classifying a Nursing bargaining unit position the Consultant starts by comparing the position to the Registered Nurse job description which was written in 2011 very broadly to cover many nurses employed in different service areas (e.g. inpatient nurses, community nurses, clinic nurses). The description for the MAID Nurse Navigator was prepared by the person who was Director of the MAID service at the time when the position was created and was drafted specifically for the Nurse Navigator position. At that time, the Consultant assessed the Nurse Navigator position as consistent with the Registered Nurse classification and when questioned by the Union affirmed that assessment because the position does not have higher level duties. When pressed on cross-examination the Consultant identified four factors at play in her analysis regarding higher level duties that differentiate higher pay grade classifications from the Registered Nurse classification: leadership, education, accountability for others, and autonomy in decision making. In the Consultant's assessment, the MAID Nurse Navigator position had no higher duties in these areas than other nurses in the Registered Nurse classification. In particular, the MAID Nurse Navigator does not manage or

have accountability for other staff and does not have responsibility to deliver a formal program of nursing education.

21. The Compensation Consultant compared the MAID Nurse Navigator position favorably with the Heart Health Patient Navigator (NUR6) position which is in the Registered Nurse classification. The Heart Health Patient Navigator is the contact person for patients referred to the Employer's Heart Health Program for cardiac surgical intervention. According to the Position Description, the Patient Navigator coordinates consultation, testing, patient and family education, provides support in decision-making and patient preparation prior to surgery. The nurse follows patients from consultation through discharge in collaboration with a care team. The Consultant also referred to the Palliative Home Care Nurse in the Registered Nurse classification as a useful comparator. This position was described by the Employer's witness who had previously served as MAID Director who testified that this nurse coordinates palliative care for patients in home settings. For contrast, the Consultant referred to the higher classified Clinical Nurse Leader in Community Mental Health and Addictions (NUR10). Key functions stated in the Position Description for that higher pay grade classification position were, among other things, selection and training of new staff; input into annual performance reviews of staff; coordinating coverage for staff absences and addressing conflicts in scheduling. The Consultant placed emphasis on the Clinical Nurse Leader's staff supervision and operational responsibilities as meriting a higher classification and salary.

Positions of the Parties

22. The Union submitted that the MAID Nurse Navigator position differs in a substantive qualitative way from positions in Registered Nurse classification and introduces a new classification to the bargaining unit. The Union addressed three areas of difference: (1) complexity; (2) autonomy; and (3) responsibility & leadership.
23. Regarding complexity, the Union referred to the fact that one person, the MAID Nurse Navigator, coordinates and manages a legislated process with many moving parts in order to

deliver the Employer's MAID service throughout the whole of the province. As well, the MAID process continues to evolve as governing legislation changes. The MAID Nurse Navigator brings together patients and their families, healthcare facilities, and health care professions (physician, nurse practitioners, VON nurses, pharmacists) to deliver the procedure and complete the MAID process. Contributing to the complexity of the work is the fact that the circumstances and timing will vary from patient to patient.

24. Regarding autonomy, the Union noted that the incumbent carries out her work largely independently. She has autonomy in arranging the delivery of the MAID service having responsibility for decision-making and problem solving on process issues. She does not have the benefit of others around her who are doing the same job or who have done the job before her. Of the four core members of the MAID team, only she has a nursing background. She reports to a Director, not a nurse Manager. The Director's position is not clinical. The Director provides assistance with hospital administration.
25. Regarding responsibility and leadership, the Union submitted that the MAID Nurse Navigator is the resource person for all of the healthcare persons participating in MAID service in the province. These participants call on her for guidance. She educates them and guides them through the process. The MAID Nurse Navigator is also a key part of policy development for the MAID service as one of the core members of the MAID team. She has exercised leadership by developing checklists for standard operating procedures, tracking tools, and referral and intake forms that are used the service.
26. The Employer on the other hand submitted that the MAID Nurse Navigator position is not substantively qualitatively different from nurse positions in the Registered Nurse classification. The position serves a coordinating role that is comparable to the Heart Health Patient Navigator position and the Palliative Home Care Nurse position both of which are in the Registered Nurse classification. The core functions of these positions focus on navigating a patient through a process from start to finish, intake to discharge. The MAID Nurse Navigator, like all nurses in the Registered Nurse classification, is responsible for her own work and problem solves. Nurses in the Registered Nurse classification contribute to information sharing and policy development when participating on working groups and

Practice Councils. The incumbent does not interpret legislation but rather follows the prescriptive requirements of the federal legislation. No special qualifications are required to deliver the kind of education the incumbent delivers to others. In sum, the Union did not meet its onus to show a substantive qualitative difference between the work of the MAID Nurse Navigator and the work of nurses in the Registered Nurse classification.

27. The Employer also emphasized the expertise of the Compensation Consultant in dealing with classification issues and advocated deference to her decision because she was in the best position make a decision that will preserve consistency in the bargaining unit. The Employer cautioned against eroding the bargaining unit classification system that has been in place for over thirty years. In the Employer's view, unless the MAID Nurse Navigator position represents a very substantive qualitative change from the core functions of nurses in the Registered Nurse classification, a new classification should not be introduced to the bargaining unit.

Award

28. The question in this grievance is whether the position of the MAID Nurse Navigator position falls within the bargaining unit classification of Registered Nurse (NUR6) or falls outside this classification introducing a new classification into the bargaining unit. The Union bears the onus to demonstrate that the Employer's classification is incorrect.
29. The parties agreed that the question is factual in nature and the proper test is whether the duties and responsibilities of the MAID Nurse Navigator represent a substantive qualitative change from the duties and responsibilities of nurses in the Registered Nurse (NUR6) classification. Both parties referred me to *Re Nova Scotia (Dept. of Human Resources) and NSGEU (Re Buyers)*, [2001] 68 C.L.A.S 108 ("*Buyers*") where Arbitrator Outhouse described the test, at p. 33, as follows (italics added):

. . . the authorities cited by both parties are much the same effect.
The proper test to be applied is whether there has been a substantive qualitative change. Minor changes in job content or increased workload do not satisfy the test. There must be real and significant

change in core functions or responsibilities. It is not necessary, however, in my opinion, that there be a change in the overall purpose of the job as opposed to the way in which it is performed.

30. Both parties also referred me to previous Nova Scotia arbitral awards where arbitrators applied the “substantive qualitative change” test: see *Re Nova Scotia (Department of Agriculture and Fisheries) and NSGEU (Security Officers)*, [2008] 93 C.L.A.S (Kydd) and *Re Nova Scotia (Department of Transportation and Public Works) and NSGEU (Maintenance Supervisors)*, [2007] 92 C.L.A.S. 362 (Kydd). The Union referred me also to *NSGEU v. Province of Nova Scotia (Adult Protection Social Workers)* [2013], unreported (Ashley) and *IWK Health Centre v. NSGEU (Respiratory Therapists)*, [2011] 108 C.L.A.S. 36 (Kydd). In all of these cases, the collective agreement contained a provision similar to Article 8.15A.(a). In all of the cases, the arbitrators found there was a substantive qualitative difference between the work performed in the classification assigned by the employer and the work actually performed as grieved by the union. In *Re Nova Scotia (Department of Agriculture and Fisheries) and NSGEU (Security Officers)*, *supra*, the employer added new and different duties to the work performed by Security Officers. In *Re Nova Scotia (Department of Transportation and Public Works) and NSGEU (Maintenance Supervisors)*, *supra*, the core functions of the job performed by maintenance supervisors bore little resemblance to the job description of the assigned classification. In *NSGEU v. Province of Nova Scotia (Adult Protection Social Workers)*, *supra*, work performed by Adult Protection social workers required them to use more sophisticated assessment tools engaging higher levels of professional judgment than used by other social workers in the classification. In *IWK Health Centre v. NSGEU (Respiratory Therapists)*, *supra*, a small part of the work of some respiratory therapists introduced a higher level of responsibility for a particular piece of complex equipment. In that case, Arbitrator Kydd summed up the gist of arbitral authority as follows (at para. 27):

27 Overall I think that it is quite clear that current arbitral authority regards the proportion of time spent doing new work as only one factor, and that all relevant changes should be taken into account in determining whether the nature of the job has changed in a significant and qualitative way. The more important or core qualities are identified and given appropriate weight when assessing whether there

are changes that are significant. The existence of special skills and training or responsibilities may significantly outweigh the proportion of time spent performing the tasks associated with those qualities.

31. The Employer also referred me to *West Lincoln Memorial Hospital and ONA, 2009* CarswellOnt 10474 (Slotnick). This was the sole arbitral award put forward that involved a nursing bargaining unit. The arbitrator there did not find a new classification was introduced. Notably however, in that case, the bargaining unit consisted of only one classification for all of the nurses in the bargaining unit. The arbitrator found, among other things, the fact of only one bargaining unit gave rise to a strong presumption that “a nurse is a nurse” and the parties did not intend to create a hierarchy of nurses. In the case before me however the Employer has already introduced at least twenty different classifications into the bargaining unit which is a significant distinguishing fact from the *West Lincoln* case. Overall, having reviewed all the cases cited to me, the conclusions in each case are necessarily highly factual. Because the analysis and determination of classification is factual, not discretionary, I do not feel compelled to defer to the decision of the Compensation Consultant. Also, the introduction of a new classification, if merited in accordance with the collective agreement, will not erode the classification structure.
32. As the Employer’s previous MAID Director testified, nurses have the same base knowledge but apply it differently on different units. I accept that there is overlap between what is required of the MAID Nurse Navigator and what is required of nurses in the Registered Nurse classification. Indeed, the MAID Nurse Navigator was hired to provide a nursing lens to the MAID process and to interact directly with patients to provide information and support so it is not surprising that the incumbent is required to draw on and apply her nursing skills in performing the role of MAID Nurse Navigator. What if anything is different about the role of the MAID Nurse Navigator from the role of nurses in the Registered Nurse classification and is it a substantive qualitative difference? The evidence persuades me that notwithstanding some overlap in roles there is a difference and it is substantive qualitative difference.
33. First, the Employer’s MAID service is in response to relatively new federal legislation. The legislation is prescriptive, but not static. The Nurse Navigator position necessarily requires the incumbent to be up to date on this legislation in order to coordinate and navigate a

process that complies with the federal law. Others in the MAID network rely on the Nurse Navigator to be cognizant of both patient needs and legal requirements in order to achieve a dignified and lawful end of life. The Nurse Navigator also educates others about the legislation, individually and in groups, in informal ways. The incumbent's need to understand and apply unique legislation is not an insignificant aspect of the job and did not appear from the evidence to be a regular part of the role of nurses in the Registered Nurse classification, although this by itself would not necessarily be a substantive qualitative change to introduce a new classification into the bargaining unit.

34. Next, the Employer proposed that the Heart Health Nurse Navigator (NUR6) and Palliative Home Care Nurse (NUR6) positions are comparable to the MAID Nurse Navigator position since all three positions focus on navigating a patient through a lengthy process of care from start to finish. There is however a significant difference in how these nurses carry out their jobs. The MAID Nurse Navigator, as the foremost person who knows (a) the MAID requirements, (b) the patient, (c) who the network team members are, and (d) how the service works around the province, has responsibility to assemble and coordinate a MAID team of assessors and other healthcare participants for each patient recognizing each patient's circumstances. In order to coordinate the service she must get the right information from the patient and communicate that information to the right assessors depending on their expertise and location and then determine their willingness and availability in relation to the patient's end-of-life goals. If the patient chooses a hospital setting, this too must be coordinated. The Clinical Lead testified that the MAID Nurse Navigator acts independently in this coordinating role with little involvement of others. There was no evidence to suggest that either the Heart Health Nurse Navigator or Palliative Home Care Nurse in the Registered Nurse classification have similar independence and responsibility, while supporting their patients, to assemble and bring together a qualified healthcare team of physicians or nurse practitioners and others for each patient and then coordinate and navigate both the patients and the teams through the healthcare process to meet patient goals as well as legislative requirements. On this basis, the degree and kind of coordinating exercised by the MAID Nurse Navigator carries greater responsibility and is qualitatively different from the coordinating conducted by the Heart Health Nurse Navigator and Palliative Home Care

Nurse. I also note that although the incumbent does not have a Master's degree, the Position Description for MAID Nurse Navigator states that education at the Master's level would be an asset which is indicative of complexity in the role of MAID Nurse Navigator that would benefit from higher education. There is no similar statement regarding the benefit of a Master's degree in the Position Description for nurses in the Registered Nurse classification.

35. Added to the foregoing, one factor leading to a higher-classified nursing position that was identified by the Compensation Consultant is accountability for staff or, in other words, responsibility to manage staff. As recognized in the Position Description, the MAID Nurse Navigator does not manage staff. There is no staff to manage. In reference to managing staff, however, the Position Description does recognize that the incumbent is "a core member of the team" and coordinates service "working in collaboration with a distributed group of internal and external stakeholders/providers across Nova Scotia". This statement appears to recognize the fact that the MAID Nurse Navigator is a core member of what could be considered a close-knit "management team" for the MAID service and, in coordinating the service the Nurse Navigator in effect informally "manages" teams of external stakeholders – patients, assessors, providers, nurses, pharmacists – around the province in order to meet the needs of patients and the service, albeit not managing in a formal way that carries responsibility for employee performance reviews and the like. This view of the incumbent's role as an informal "manager" is reinforced by the fact there is no intermediary Manager between the incumbent and the MAID Director to whom she reports. As a core member of the "management team," she reports directly to a Director. As part of the team, she is also required under the Specific Accountability of Program Development to participate "in the interview and orientation of new team members as required."
36. The MAID Nurse Navigator also has a Specific Accountability for administration including "participating in development of policies and procedures" and serving as a "clinical resource to health care providers", as well as a Specific Accountability for education and professional development working with the Clinical Lead to "plan, coordinate, implement and evaluate both public and health care profession awareness and educational activities related to MAID." The Clinical Lead confirmed in his evidence that the incumbent was intimately involved with

the team developing policies and procedures, that she has developed referral and intake forms for the service, and she participates in delivering educational presentations. Notably, she is the person on the team other professionals contact and look to for guidance when they have questions. The incumbent acts as a resource to the wider MAID network team and is also an education resource for patients, families and healthcare providers. The type of education delivered, while not competency tested, has a broad reach as the recipients include all members of the MAID community including patients, physicians, nurse practitioners, nurses, pharmacists and also members of the public at large who might be contemplating the procedure.

37. In sum, the MAID Nurse Navigator position requires of the incumbent a combination of nursing skills exercised largely independently, understanding of unique legislative requirements, knowledge of the health system and health providers across the province, and the ability to act as an educational resource to others. Importantly, the MAID Nurse Navigator is a core member of the small team that manages MAID service delivery in the province and has duties and responsibilities that call on management skills including direct involvement in the development of policies and procedures. All of this information is relevant and taken as a whole differentiates the MAID Nurse Navigator position from nursing positions in the Registered Nurse classification in a substantive qualitative way.
38. In conclusion, I find that the differences in the duties and responsibilities of the MAID Nurse Navigator meet the requirement of substantive qualitative change from the duties and responsibilities of a Registered Nurse (NUR6) to introduce a new classification. Therefore, the grievance is allowed. The parties are directed to meet to negotiate a rate of pay in accordance with Article 8.15A.(a) of the collective agreement.

DATED AT Halifax, Nova Scotia, this 22nd day of July, 2021.



Lorraine P. Lafferty, QC
Arbitrator