



## ONTARIO LABOUR RELATIONS BOARD

Labour Relations Act, 1995

Occupational Health and Safety Act

OLRB Case No: 2460-14-HS  
Health and Safety - Appeal of Inspector's Order

Ontario Nurses' Association, Applicant v Royal Ottawa Health Care Group -  
Brockville Mental Health Centre, a Director under the Occupational Health  
and Safety Act, Responding Parties v Ontario Public Service Employees Union,  
Intervenor

Ministry of Labour F.V. No: 02784HSMV391  
OLRB Case No: 2461-14-IO  
Interim Order

Ontario Nurses' Association, Applicant v Royal Ottawa Health Care Group -  
Brockville Mental Health Centre, Responding Party

OLRB Case No: 2999-14-IO  
Interim Order

Ontario Nurses' Association, Applicant v Royal Ottawa Health Care Group -  
Brockville Mental Health Centre, and a Director under the Occupational  
Health and Safety Act, Responding Parties v Ontario Public Service Employees  
Union, Intervenor

### COVER LETTER

TO THE PARTIES LISTED ON APPENDIX A:

The Board is attaching the following document(s):

Decision - May 30, 2016

DATED: May 30, 2016



Catherine Gilbert  
Registrar

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## **ONTARIO LABOUR RELATIONS BOARD**

OLRB Case No: **2460-14-HS**

Ontario Nurses' Association, Applicant v **Royal Ottawa Health Care Group - Brockville Mental Health Centre**, a Director under the Occupational Health and Safety Act, Responding Parties v Ontario Public Service Employees Union, Intervenor

OLRB Case No: **2461-14-IO**

Ontario Nurses' Association, Applicant v **Royal Ottawa Health Care Group - Brockville Mental Health Centre**, Responding Party

OLRB Case No: **2999-14-IO**

Ontario Nurses' Association, Applicant v **Royal Ottawa Health Care Group - Brockville Mental Health Centre**, and a Director under the Occupational Health and Safety Act, Responding Parties v Ontario Public Service Employees Union, Intervenor

**BEFORE:** Matthew R. Wilson, Vice-Chair

**APPEARANCES:** Janet Borowy, Marie Kelly, Kapil Uppal, Heather McDonell, Erna Bujna, Shelby Linesmen, Mark O'Connell and Emily Elder, Student-at-Law appearing for the applicant; Michelle O'Bonsawin and Steve Duffy appearing for Royal Ottawa Health Care Group; Brian Fukuzawa and Aneesha Lewis appearing for a Director under the Occupational Health and Safety Act; Craig Flood, Katherine Ferreira, Terri Aversa, Neil Martin, Lisa McCaskell, Kevin Hudson and Cindy Ladouceur appearing for the intervenor

**DECISION OF THE BOARD:** May 30, 2016

1. These are applications filed under the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1 ("OHSA").

2. Having regard to the evidence, information and submissions provided during the consultation, including the detailed statutory declarations and documents, the *viva voce* evidence, including the evidence from several expert witnesses in respect of security in the hospital sector, and specifically, forensic treatment units and the Memorandum of Agreement between the parties, including the Ministry of Labour, the Board issues the following order pursuant to section 61(3.4) of the *Occupational Health and Safety Act*:

ONTARIO NURSES' ASSOCIATION

("ONA")

-and-

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

("OPSEU")

-and-

MINISTRY OF LABOUR

("MOL")

-and-

ROYAL OTTAWA HEALTH CARE GROUP  
- BROCKVILLE MENTAL HEALTH CENTRE

("THE HOSPITAL" or "THE EMPLOYER")

MEMORANDUM OF AGREEMENT AND ORDER

**WHEREAS:**

ONA is the exclusive bargaining agent for registered and graduate nurses employed in a nursing capacity save and except managers at Royal Ottawa Health Care Group – Brockville Mental Health Centre and represents the nurses at the Hospital inclusive of the nurses on Forensic Treatment Unit B4 ("FTU, B-4");

On October 10, 2014, an incident of workplace violence occurred on B-4 involving a nurse, "D", who was stabbed with a pen in the neck by Patient "A" on the B4 Unit. This

incident was one of a number of occurrences of workplace violence committed by Patient A on the B4 unit between August 2014 and October 2014;

The Ministry of Labour undertook an investigation of the October 10, 2014 incident in and around October 16, 2014 and October 17, 2014. The Ministry of Labour issued three orders requiring the Hospital to reassess the risks of workplace violence, inform the Ministry of a critical injury immediately and provide a report within 48 hours as required by the *Occupational Health and Safety Act* (the "Act") and implement a process banning sharps on the B4 unit unless on a control sheet which included warning signs at entrance to the unit;

ONA appealed the decision of the Ministry of Labour inspector to not issue certain orders, pursuant to s. 61 of the *Act*, including but not limited to, failing to order that the Hospital take every precaution reasonable in the circumstances to protect workers in the B-4 unit from a risk of workplace violence and the failure to order a comprehensive program, policies, measures and procedures to protect workers in the future, pursuant to applications to the OLRB (2460-14-HS (the main s. 61 appeal of inspector's orders, October 2014), 2461-14-IO (interim order #1 for security professionals), 2999-14-IO (seeking further interim orders #2));

On November 26, 2014, the Ontario Labour Relations Board ("OLRB") ordered the Hospital, until the Board makes a final decision with respect to these applications or otherwise,

to place an adequate number of properly trained security professionals in the B4 Unit, who are present 24 hours per day to accompany nurses when they provide nursing care or escort violent patients, and would be authorized to place their hands on a patient and detain them for the purposes of protecting themselves and the staff from injury.

Ontario Public Service Employees Union, the sole bargaining agent of all service and clerical staff and all paramedical staff employed by The Royal Ottawa Health Care Group at or administered from the Brockville Mental Health Centre, was granted intervenor status in ONA's

applications to the OLRB in Board File 2460-14-HS, 2461-14-IO and 2999-14-IO;

On December 15, 2015, the OLRB issued a further interim order that clarified the interim order of November 26, 2014 in Board File No. 2461-14-IO as follows:

While security professionals are not to perform nursing functions, the security professionals may accompany nurses on Unit B4 in the performance of their duties and provide back up and support to the health care team inclusive of restraint, as directed by the Team Lead, Charge Nurse and/or other person occupying a similar position, for the purposes of protecting themselves and the staff from injury. This applies notwithstanding the wishes of any patient.

The parties acknowledge that:

- (a) as of June 15, 2016, the Hospital will introduce a new electronic and personal alarm system, the Ekahu, to summon immediate assistance which is linked to the FTU Control room. The Hospital will set down this new measure in writing and training will be provided to the workers in use of the new measure;
- (b) The Hospital physically redesigned the B4 unit, effective August 1, 2015 and ONA withdrew its relief in respect of this issue on September 4, 2015; and
- (c) On or about April 13, 2016, Patient A was discharged from the Hospital.

And whereas a consultation with respect to the Applications was convened before Vice- Chair Matthew Wilson over a number of days, in which the parties filed detailed statutory declarations and documents with the Board, called *viva voce* evidence and the Board heard from several expert witnesses in respect of security in the hospital sector, and specifically, forensic treatment units;

And whereas mediation was held on May 24 and May 27, 2016 before Vice Chair Wilson;

And whereas the parties agree to the following as the basis for an order by the OLRB pursuant to ss. 61(3.4) of the *Act*, in consideration of the obligations of Part III.01 of the *Act* and the *Health Care Regulations 67/93*, as a full and final settlement of the issues in dispute;

NOW THEREFORE, the parties agree as follows:

1. The recitals herein are an integral part of this Memorandum of Agreement and Order.
2. In this Memorandum of Agreement and Order, "Health Care Team" or "Health Care Staff" includes but is not limited to Registered Nurses and Registered Practical Nurses and for further clarity includes any member of the service and clerical staff and all paramedical staff who may be expected to encounter a person with a risk of workplace violence, as defined in s. 1 of the *Act*.
3. This Agreement is without prejudice to OPSEU's grievance regarding the employment status of security guards at the Hospital.
4. This Agreement is without prejudice to the position that the parties may take in other proceedings.
5. Nothing in this Memorandum of Agreement precludes the workers and the Union's right to enforce their rights under the *Act* inclusive of a request that an inspector investigate the matter.

### **Security professionals**

6. On an on-going basis, the Hospital will provide security professionals as noted in paragraph 8 below.
7. The Hospital will establish and maintain a main security office within the FTU Control Room near the main entrance of the FTU ("the bubble").
8. The security professionals will be assigned as follows:
  - (a) one security professional will be assigned 24 hours-7 days per week to the FTU Control Room near the B2 main floor entrance to control access and egress doors and sally-ports to the overall FTU building and shall be assigned to the

monitor the CCTV cameras in the FTU control room. It is understood that the Hospital will rewire the CCTV cameras from the B3 and B4 units to the FTU Control Room on or before June 15, 2016, nothing herein will change the existing monitors at the care desks on B3 and B4;

- (b) one security professional will be assigned 24 hours-7 days per week as the Unit-Assist Officer with the duties to include:
  - (i) primary duty to enter any FTU patient care units to assist and to support the Health Care Team when requested to manage and to prevent potential workplace violence, or actual violent episodes as directed by the Manager of Patient Care Services and the Team Lead or Charge Nurse and/or other person occupying a similar position;
  - (ii) such activities and situations may involve, but not be limited to, placing/removing a high risk patient into restraints, removing a patient from seclusion, activities of daily living such as bathing or toileting, the administration of medication to a non-compliant patient and/or supporting the Health Care Team during times of patient and ward inspections. This applies notwithstanding the wishes of any patient;
  - (iii) to conduct routine and random patrols of the care units;
  - (iv) to respond to Code Whites; and
  - (v) will not include the regular duties assigned to the Perimeter officer as set out in paragraph (c) below.
- (c) one security professional will be assigned on a daily basis as the Perimeter Officer and the regular duties shall include: (i) perform routine patrols of the BMHC perimeter, (ii) provide security to BMHC grounds and public spaces, excluding the Secure Treatment Unit (STU), (iii)

to assist with the transporting of patients at risk of workplace violence as so required and directed by the Manager of Patient Care Services or the Team Lead, the Charge Nurse, and/or other person occupying a similar position notwithstanding the wishes of any patient, (iv) distribute pin money, and (v) respond to Code Red if present onsite.

9. Any and all decisions regarding the deployment of security professionals pursuant to this Memorandum of Agreement and Order shall be made reasonably, in good faith and in accordance with the precautionary principle. In the event of a dispute regarding the deployment of security professionals, the parties agree that a meeting with the worker(s) involved, the Manager of Patient Care Services, the Director of Patient Care Services or delegate, the relevant Team Lead, Charge Nurse and/or person occupying a similar position and a worker member of the Joint Health and Safety Committee, if available, shall be held as soon as practicable and no later than 24 hours after the dispute to review and resolve the dispute.
10. The Hospital agrees that the new model of security professionals shall be introduced no later than 30 days from the signing of this Memorandum of Agreement and Order during which time the Interim Order will remain in effect.
11. The Hospital will ensure that the security professionals who are deployed pursuant to this Memorandum of Agreement and Order are licensed under Ontario legislation and with certification as a G4S Tier 2 Healthcare Security Professional or its equivalent.
12. The security professionals' training will include effective communication, crisis management, subject restraint-compliant/active, sharp edge weapons defense, advanced defensive tactics, mental health training 101, the use of Pinel restraints and Non-Violent Crisis Intervention training. The security professionals shall be properly trained to place their hands on a patient and/or detain the patient for the purposes of protecting themselves, the patient, the staff and others from injury as directed by the Health Care Team.

13. The Hospital, in consultation with the Manager of Patient Care Services and the Team Lead, the Charge Nurse, and/or other person occupying a similar position will take additional measures to deploy additional security professionals to deal with unforeseen or exceptional circumstances. The parties agree that there may be occasions where the additional security professionals so deployed are unable to meet the NVCII requirement and/or have orientation at the FTU.
14. The Hospital will provide security professionals with orientation at the FTU, including but not limited to the B4 Unit.
15. In addition to the training as described in paragraph 12, all security professionals will be trained in all the Hospital's safety and workplace violence policies and procedures, and specifically in the Code White procedures. The security professionals shall respond to all Code Whites at the BMHC (excluding the STU). The Code Team Lead (CTL as per Hospital Code White policy) will be authorized to use and to direct the participation of security professionals in a Code White procedure until a Registered Nurse, Charge Nurse or Director/Manager Patient Care Service/delegate arrives and assumes the role as the CTL.
16. During a Code White, at the request of the CTL, the security professional will provide physical restraint when directed and use such physical force as may be reasonably required to ensure the safety of Health Care Staff, the patient involved and other patients. In an acute emergency situation, security professionals may provide restraint without specific direction or instruction from the CTL following the approaches provided from their training.
17. At the request of a physician or the Manager of Patient Care Services and the unit's Team Lead, Charge Nurse and/or other person occupying a similar position, security professionals will be made available to temporarily assist Health Care Staff in anticipated high risk activities with patients who have a history of violence and/or a demonstrated elevated and/or unpredictable risk of violence. Such activities include, but not be limited to, placing/removing a high risk patient into restraints, removing a patient from

seclusion, activities of daily living such as bathing or toileting and the administration of medication to a non-compliant patient.

### **Security Professionals and Known High Risk Patients**

18. As determined by the Manager of Patient Care Services and the Team Lead, Charge Nurse and/or other person occupying a similar position, and in further consultation with the applicable Health Care Team and the Joint Health and Safety Committee (JHSC), in the event that a patient with a known risk of workplace violence and/or violent behaviour is introduced to the FTU or an existing patient is deemed to pose a continuing elevated risk for violence, (i) increased and/or enhanced random patrols of the patient wards will be held; (ii) a security professional will be assigned as an enhanced temporary physical presence, either during all health care activities which are considered to have the potential for a risk of workplace violence towards Health Care Staff or on a temporary continuing basis. The security assignment will be reviewed on a daily basis by the Manager of Patient Care Services, the Charge Nurse and/or other person occupying a similar position. The security assignment will be evaluated based upon the data and information provided by the Health Care Team from the daily safety huddles.

### **Patients admitted through the Corrections Services Canada-Royal Ottawa Health Care Group Agreement ("CSC agreement")**

19. In advance of the admission of a patient as part of the CSC agreement, Health Care Staff assigned to the B4 unit on a regular basis will be provided with information and a briefing regarding the risk of violence and the Hospital's safety plan for workers in respect of the new admission as soon as reasonably possible and not less than two weeks prior to the patient's admission.
20. The Manager of Patient Care Services and the Team Lead or Charge Nurse and/or other person occupying a similar position, and in further consultation with the applicable Health Care Team, on the day of admission, will assign a security professional to assist Health Care Staff in physical interventions and during all health care

activities which are considered to have the potential for a risk of workplace violence to Health Care Staff. Further assignment of security professional will be reviewed as per paragraph 8(b) and subject to paragraph 9 of this Memorandum of Agreement and Order.

21. It is understood that while performing all of the above roles, security professionals are not to perform health care functions, including nursing functions and patient and ward inspections. However, the security professionals may accompany Health Care Staff in the performance of their duties and provide security back up and support to the Health Care Team inclusive of restraint, as directed by the Manager of Patient Care Services, Team Lead, Charge Nurse, and/or other person occupying a similar position, for the purposes of protecting themselves, the patient, other staff and others from injury. This applies notwithstanding the wishes of any patient.

### **Staff Training**

22. The Hospital shall retain consultants to design and provide specialized training for any and all workers, managers, and supervisors assigned to, called into and/or working on the B4 unit to meet the specific needs of workers on the B4 Forensic Treatment Unit in consideration of the B4 environment, the patient specific risks and the unpredictable, volatile and violent client population. The training shall be provided with practice demonstrations and shall include:
  - (i) specialized defence from sharp edged weapons; and
  - (ii) specialized safe holds and techniques when utilizing a forcible chemical restraint.
23. All time spent by workers on training shall be considered hours worked for all purposes under the respective collective agreements.
24. In designing the training, the consultants shall obtain relevant information and input from the Hospital, the Unions, and the JHSC. The training shall be completed by October 31, 2016.

**Provision of information and flagging a person with history of violence and risk of workplace violence**

25. By no later than August 31, 2016, the Hospital agrees to provide information and instruction to all Health Care Staff assigned to or likely to be assigned to the B4 unit in respect of:
  - (a) the Hospital's new Flagging protocol inclusive of the staff duties and responsibilities when reporting to a unit, the integral purpose of the morning safety huddles and Shift Change safety report in relationship to the flagging procedure;
  - (b) post new larger and readable signage at the B3 and B4 entrances that staff are required to attend to the nursing care station first for a safety status report;
  - (c) move the Whiteboard on the B4 Nursing Care station to a location accessible to all staff;
  - (d) written procedure for flagging and the information to be discussed at the safety huddles;
  - (e) the Hospital shall have all Health Care Staff review the protocol and safety huddle procedure and sign that the protocol and procedure has been read and reviewed; and
  - (f) the Manager of Patient Care Services shall ensure that staff assigned to the unit's day shift attend the morning safety huddle if available and staff assigned to the unit's night shift attend the Shift Change safety report. If a staff member is not able to attend, the Team Lead or Charge Nurse will provide the information from the safety huddle and Shift Change safety report to this individual.
26. The Hospital agrees to develop and implement a new visual and electronic flagging policy and associated procedures which will identify all persons with a risk of workplace violence. The flagging system shall be

designed to provide such information to all Health Care Staff. In so doing, the Hospital shall obtain input from the Unions, and the Joint Health & Safety Committee. The new flagging policy and procedures will include:

- (i) a new electronic flag on the patient's e-chart inclusive of violence triggers, behaviours and risks and control measures or procedures to protect workers;
  - (ii) a new Visual alert flagging policy to replace the current "Yellow Dot" system which will be readily visible to all staff, including those who do not have access to the e-chart; and
  - (iii) the new visual flag system/procedure shall provide a graded "risk status" and "risk state" scale to reflect the patient's history of violent behaviour and risk of workplace violence and any and all information provided or discussed during the daily safety huddle and any changes during the shift.
27. This new visual system shall be in writing and developed in consultation with the JHSC no later than October 31, 2016.
28. All staff shall be trained on the new visual flagging system no later than October 31, 2016 and such policy and procedure shall be implemented on or before October 31, 2016.
29. The new electronic system shall be implemented on or before December 31, 2016.

### **Risk Reassessment**

30. The parties agree that the Hospital will conduct a written risk reassessment of the B4 unit no later than November 30, 2016 by a consultant jointly agreed to by the parties. The reassessment shall rely upon, but not be limited to, analysis of incident reports, daily safety huddle reports and relevant information from workers, and other relevant parties, previous assessments, and JHSC recommendations.

31. The risk reassessment shall include analysis of the physical environment, patient acuity, work flow, existing policies, measures, procedures, the new flagging policy and procedure, adequacy of training of staff and security professionals, security response times to Code Whites, and whether hazards and any gaps in the protection of workers' health and safety exist.
32. Copies of the risk reassessment shall be made available to all parties and members of the JHSC for review. The parties agree to reconvene within 30 days of receiving the written risk reassessment report to discuss the implementation of the report's findings.

### **JHSC Committee**

33. Pursuant to par. 32.0.1(1)(c) of the *Act* and Sections 8 and 9 0. Reg. 67/93 the Hospital shall, in consultation with the JHSC, ensure any and all workplace violence policies, procedures, measures and training will be reviewed and updated to reflect the new measures and procedures as outlined above. The review shall be completed no later than December 31, 2016.
34. The parties agree that each Union shall be provided with an additional 6 days per year of union leave with pay by the Hospital and no loss of service, seniority, and credits for JHSC members as selected by each Union and at such time as determined by each Union, for additional workplace health and safety training and any activities and duties related to their role as a union JHSC member.

### **OLRB Proceedings**

35. The parties agree that they will jointly request that the OLRB issue an Order pursuant to ss. 61(3.4) of the *Act* as follows:
  - (a) The Interim decision issued on November 26, 2014 shall be vacated pursuant to this agreement and replaced with an order which makes this Memorandum of Agreement enforceable as if an Order of the Board as set out below.

- (b) This decision fully resolves the issues in ONA's Applications in Board Files Nos.: 2460-14-HS, 2461-14-IO, 2999-14-IO, and the OPSEU intervention to the same files.
36. The Board's Order shall be posted in the workplace for 9 months from the issuance of the order.
37. This Memorandum of Agreement and Order is enforceable as an Order of the Board as it would be under ss. 96(7) of the *Labour Relations Act* and the Board shall remain seized in respect of any dispute regarding the administration, application, violation and/or interpretation of the Memorandum of Agreement and Order. Prior to a hearing with respect to this Memorandum of Agreement and Order being held, the workplace parties shall first raise any dispute regarding the administration, application, violation and/or interpretation of the Memorandum of Agreement and Order at the Joint Health and Safety Committee and shall involve the Ministry of Labour, if necessary.
38. In the event of a dispute regarding the administration, application, violation and/or interpretation of the Memorandum of Agreement and Order, the parties may jointly request the assistance of a mediator in order to resolve the dispute. The parties may request that this mediation be held on an expedited basis.
39. If the hearing is convened, the matter will proceed by way of an initial case management hearing and the parties agree to request such hearing take place on an expedited basis.
40. This Memorandum of Agreement and Order may be executed in counterparts.

Signed at Toronto, Ontario on May 27, 2016.

For:

ONTARIO NURSES' ASSOCIATION    ROYAL OTTAWA HEALTH  
CARE GROUP  
BROCKVILLE MENTAL  
HEALTH CENTRE

\_\_\_\_\_  
\_\_\_\_\_

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

\_\_\_\_\_  
\_\_\_\_\_

3. The Board so orders.

“Matthew R. Wilson”  
for the Board

## APPENDIX A

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