



ONTARIO LABOUR RELATIONS BOARD

Public Sector Labour Relations Transition Act, 1997

OLRB Case No: 3073-15-PS  
PSLRTA (Bargaining Units/Bargaining Agents)

Ontario Public Service Employees Union, Applicant v North Bay Regional Health Centre, and Health Sciences North, Responding Parties v Ontario Nurses' Association, Intervenor

COVER LETTER

TO THE PARTIES LISTED ON APPENDIX A:

The Board is attaching the following document(s):

Decision - March 22, 2017

DATED: March 22, 2017

Catherine Gilbert  
Registrar

Website: [www.olrb.gov.on.ca](http://www.olrb.gov.on.ca)

Address all communication to:

The Registrar  
Ontario Labour Relations Board  
505 University Avenue, 2nd Floor  
Toronto, Ontario M5G 2P1  
Tel: 416-326-7500  
Toll-free: 1-877-339-3335  
Fax: 416-326-7531



## ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **3073-15-PS**

Ontario Public Service Employees Union, Applicant v **North Bay Regional Health Centre**, and Health Sciences North, Responding Parties v Ontario Nurses' Association, Intervenor

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

**APPEARANCES:** Richard Blair, Kiera Chion, Ed Ogibowski and Yves Shank for the applicant; David Chondon, Angela Wiggins, Shelley Carpenter-Wright, Maureen McLelland and Diane Barbeau for Health Sciences North; Nicole Butt, Fil Falbo, Diana Kutchaw and Michelle Beaudry for the intervenor

**DECISION OF THE BOARD:** March 22, 2017

### INTRODUCTION

1. This is an application under the *Public Sector Labour Relations Transition Act, 1997*, S.O. 1997, c.21 ("the PSLRTA" or "the Act") filed by Ontario Public Service Employees Union ("OPSEU") in relation to the transfer of the North East Specialized Geriatric Service ("NESGS") from North Bay Regional Health Centre ("NBRHC") to Health Sciences North ("HSN") on April 1, 2016. The Ontario Nurses' Association ("ONA") intervened in the application.

2. The Board held a consultation at which the parties made extensive submissions based on the materials filed with the Board.

3. The NESGS has a multidisciplinary team of health care providers who provide care for older adults with complex health care needs. It is funded by the North East Local Health Integration Network ("LHIN"), was transferred from NBRHC to HSN. As a result, 16 employees were transferred, of which two - occupational therapist

("OT") and physiotherapist ("PT") – were not covered by any existing collective agreement at the HSN. However, as will become clear, a certification application filed by ONA (Board File No. 3174-15-R) for a bargaining unit of allied health, paramedical and technical employees at HSN, which included the classifications of OT and PT, has become a significant intervening event.

4. The parties agree that the transfer of NESGS from NBRHC to HSN is a partial health integration under the Act and that the changeover date is April 1, 2016. The only issue is whether the Board ought to exercise its discretion to apply the Act and make certain orders with respect to the appropriate bargaining units.

### **FACTS**

5. I will now describe the circumstances that led to this application, which were not disputed by the parties.

### **NBRHC**

6. OPSEU is the bargaining agent for a unit of paramedical employees at the NBRHC with the following bargaining unit description:

all paramedical, medical technical, Crisis Intervention and Nipissing Detoxification and Substance Abuse Program employees of North Bay Regional Health Centre including community and satellite locations, save and except Supervisors, those above the rank of Supervisor, those above the rank of Charge Technologist, office, clerical, administrative and information systems employees, students employed during the school vacation period, and persons covered by subsisting collective agreements.

7. This bargaining unit includes social workers, occupational therapists and physiotherapists.

### **HSN**

8. HSN has four bargaining units, represented by three bargaining agents: CUPE service and clerical units, OPSEU paramedical and technical unit, and ONA nurses. Additionally, HSN employs six

Medical Physicists who are part of a province-wide bargaining unit represented by the Professional Institute of the Public Service of Canada.

9. OPSEU has a bargaining unit of paramedical and technical employees at HSN comprising of approximately 554 employees with the following bargaining unit description:

all medical laboratory technologists and technicians, all radiology technologists and technicians, respiratory therapists and technicians, dietitians, pharmacy technicians-assistants, ultra sound technologists and technicians, nuclear medicine technologists and technicians, social workers, counsellors, crisis intervention workers, withdrawal managements service workers, supported independent living workers, peer support workers, and mental health workers employed by Hopital Regional de Sudbury Regional Hospital save and except manager or equivalent, and co-ordinators, supervisors, persons above the rank of supervisor, all other technical employees, students employed during the school vacation period and persons covered by other subsisting collective agreements.

10. ONA has a bargaining unit of nursing staff at HSN comprising of approximately 1,248 employees with the following bargaining unit description:

all lay, Registered, and nurses with a temporary certificate employed by HSN engaged in a nursing capacity save and except Manager, Health Nurse, Discharge Planner and persons above the rank of Manager.

For the purpose of clarity, the parties agree the persons employed at the St. Joseph's Health Centre, Laurentian Site, and Memorial Site in positions excluded from the respective bargaining units as of December 17, 1997 remain excluded from the bargaining unit.

11. The parties made reference to HSN's extensive history of integrations and amalgamations. It is not necessary to set out these details for the purpose of this decision. I note that these parties have an extensive history and comprehensive understanding of the impact of integrations and amalgamations on bargaining unit structures in the health care sector.

### **The transfer giving rise to this proceeding**

12. The NESGS has a multidisciplinary team of health care providers who provide specialized care for older adults with complex health care needs as well as providing expert resources for health care professionals and caregivers throughout Northeastern Ontario. Although it was located at an outpatient facility in Sudbury, it was hosted by the NESGS and the employees working in the NESGS clinic were employed by NBRHC. The program is funded by the North East LHIN.

13. On April 1, 2016, the NESGS was transferred to HSN from the NBRHC, which resulted in the transfer of 16 employees to HSN: three positions for which OPSEU held bargaining rights; six positions in the bargaining unit represented by ONA; three positions that fell within the bargaining unit description in the CUPE bargaining unit at HSN; and four non-union positions.

14. The transfer included a social worker, an occupational therapist and a physiotherapist to HSN from the NBRHC. At HSN, the classifications of OT and PT are not included in the paramedical bargaining unit. Those classifications are not unionized. The social worker classification is included in the OPSEU paramedical bargaining unit.

### **Intervening Event: ONA certification at HSN**

15. On March 4, 2016 ONA filed a certification application (Board File No. 3174-15-R) for a bargaining unit of allied health, paramedical and technical employees at HSN. The bargaining unit description included the classifications of occupational therapist and physiotherapist. OPSEU intervened in the certification application.

16. The parties – HSN, ONA, OPSEU – entered into Minutes of Settlement that resulted in a certificate being issued to ONA. The parties agreed on a list of classifications that were included in the

bargaining unit. The parties agreed that the bargaining unit scope issues would be addressed by the parties in the instant application. As the parties disagree on what they meant in addressing the bargaining unit scope issues, it is necessary to set out the specific paragraph agreed to by the parties:

5. The parties agree that the bargaining unit scope issues identified in paragraphs 3 and 4 above would not affect the outcome of the Union's Application for Certification and would be addressed by the parties in the PSLRTA application.

17. There are approximately 159 employees in the ONA bargaining unit as agreed to by the parties. There are approximately 82 employees whose status remains non-union.

### **THE POSITIONS OF THE PARTIES**

18. HSN submits that there should be a single bargaining unit of allied health, paramedical, paramedical technical and paramedical professional employees. Such a group would comprise those employees currently in the OPSEU bargaining unit, those captured by the recent certificate issued to ONA, and some currently unrepresented employees. HSN states that a single bargaining unit would comprise approximately 820 employees.

19. HSN makes the following arguments in support of its position that the Board should exercise its discretion to apply the Act:

a. The transfer will rationalize the provision of services, programs and functions by consolidating services at HSN;

b. There has been a transfer from NBRHC to HSN;

c. There will be labour relations problems by requiring HSN to have two separate paramedical units with conflicting descriptions as well as resulting in service/care teams at HSN being covered by different collective agreements. As just one of many examples, it points to an outstanding OPSEU grievance asserting that the existing non-union positions, some of which are also the subject of ONA's certification application, ought to be included in the OPSEU bargaining unit.

20. HSN argues that once the Board has exercised its discretion to apply the Act, it ought to order a single paramedical bargaining unit. It argues that a single unit will avoid disputes in classifications, work assignments and overlap of duties. It further points the Board's jurisprudence as preferring a larger bargaining unit.

21. HSN relies on *Haliburton Highlands Health Services*, [2015] O.L.R.D. No. 2224; *Bayshore Home Health*, [2012] O.L.R.D. No. 3041; *Ottawa Transition Board*, [2001] O.L.R.D. No. 2266; *North Bay General Hospital and North East Mental Health Centre*, 2011 CanLII 9692 (ON LRB); *Champlain Community Care Access Centre*, [2007] O.L.R.D. No. 2525; *Kenora-Rainey River Districts Child and Family Services*, [2012] O.L.R.D. No. 790; *Muskoka-East Parry Sound Health Services*, 2005 CanLII 45849 (ON LRB); *North of Superior Healthcare Group*, [2016] O.L.R.D. No. 2861; *Royal Ottawa Health Care Group*, [1993] OLRB Rep. July 664; *Stratford General Hospital*, [1976] OLRB Rep. Sept 459; *Moore (Township)*, [2001] O.L.R.D. No. 2346; *Moore (Township)*, [2002] O.L.R.D. No. 149; *Hamilton (City)*, [2001] O.L.R.D. No. 4628; and *Toronto (City)*, [1998] OLRB Rep. September/October 722.

22. OPSEU agrees that the Board should exercise its discretion to apply the Act. It points to the loss of bargaining rights as a result of the transfer of services and programs and asserts that this has resulted in some employees falling outside of the scope of the collective agreement that exists between OPSEU and HSN.

23. OPSEU argues that there should be a single broader unit and that the separation of the units, as argued by ONA, would create an artificial structure.

24. OPSEU relies on *ONA v. Central Care Corporation*, 2007 CarswellOnt 5840; *O.N.A. v. Ottawa Fertility Centre*, 2008 CarswellOnt 2852; *The Ottawa Fertility Centre Inc. and Ontario Nurses' Association et al.* (2009) CanLII 80008; *Bayshore Home Health*, [2011] O.L.R.D. No. 1487, OLRB; *Children's Hospital of Eastern Ontario*, 2004 (CanLII) 2510 (ON LRB); *St. Elizabeth Health Care*, 2016 CanLII 6536 (ON LRB); *Ottawa Transition Board*, [2001] O.L.R.D. No. 2266; *North Bay General Hospital*, 2011 OLRB No. 621 (OLRB); *Stratford General Hospital*, [1976] OLRB Rep. (September) 459; *Muskoka East Parry Sound Health Services* [2005] OLRD No. 4945 (OLRB); *North Simcoe Muskoka Community Care Access Centre*, 2011 CanLII 9692 (ON LRB);

and *North of Superior Health Care Group*, [2016] OLRD No. 2861 (OLRB).

25. ONA urges the Board to consider that historically employees of HSN worked on teams under different terms and conditions without difficulty. It also points to the fact that the transfer only affects a few employees and is not the type of health care restructuring that the PSLRTA was designed to address. It argues that a consideration of the factors in s. 9(2) of the PSLRTA leads to the conclusion that the PSLRTA should not apply.

26. If the Board determines that it is appropriate to exercise its discretion, ONA argues that the existing two bargaining unit structure for paramedical employees should remain the same. It asserts that this would be the least disruptive result and also be consistent with the purposes of the PSLRTA. In the further alternative, ONA submits that a vote should be ordered if the Board determines that a single paramedical unit is appropriate.

27. ONA relies on *Bayshore Home Health*, [2011] CanLII 24546 (ON LRB); *Victorian Order of Nurses*, [2014] O.L.R.D. No. 670; *North Bay General Hospital*, [2009] O.L.R.D. No. 791; *Sunnybrook and Women's College Health Sciences Centre*, [1999] OLRB Rep. March/April 346; *Peterborough Regional Health Centre*, [2000] OLRB Rep. July/August 715; and *Penetanguishene General Hospital Inc. and Huronia District Hospital Corp. (c.o.b. North Simcoe Hospital Alliance)*, [1999] OLRB Rep. May/June 460.

## **ANALYSIS**

28. There is no dispute that the transfer of NESGS from NBRHC to HSN is a partial health integration under the PSLRTA and that the changeover date is April 1, 2016. The Board must decide whether to exercise its discretion to apply the PSLRTA and make certain orders with respect to the appropriate bargaining units.

29. The Board has the authority under section 9 of the Act to declare that the Act applies. Section 9 states as follows:

**9.** (1) An employer that is or will be subject to a health services integration or a bargaining agent that represents employees of such an employer may request the Board to make an order declaring that this Act applies to the health services integration in question.



### **Board order**

(2) The Board may by order declare that this Act applies to a health services integration if requested to do so under subsection (1).

### **Factors to consider**

(3) When deciding whether to make an order under this section, the Board shall consider the following factors and such other matters as it considers relevant:

1. The scope of agreements under which services, programs or functions are or will be shared by employers subject to the health services integration.
2. The extent to which employers subject to the health services integration have rationalized or will rationalize the provision of services, programs or functions.
3. The extent to which programs, services or functions have been or will be transferred among employers subject to the health services integration.
4. The extent of labour relations problems that have resulted or could result from the health services integration.

### **The application of PSLRTA**

30. The Board has said that where there is a health services integration under the PSLRTA, it will usually exercise its discretion to apply the PSLRTA (See *Central Care Corporation*, 2007 CanLII 32659 (ON LRB) at para. 70; *St. Elizabeth Health Care*, *supra*, at para. 40). I will now consider each of the factors identified in subsection 9(3) of the PSLRTA.

31. The transfer of NESGS from NBRHC to HSN is a result of an agreement between NBRHC to HSN, with the approval of the North East LHIN. However, there is no sharing of services. Thus, this is not a factor that weighs in favour of applying the PSLRTA.

32. There has been some rationalization of services in that the senior care programs and services have been integrated with HSN. Such services are provided in coordination of other HSN services. The Board was not provided with any specific evidence about the consolidation with these services. Thus, it cannot be said that this is a significant factor that favours the application of the PSLRTA.

33. With respect to the third factor, the entire NESGS has been transferred to HSN. The 16 positions formerly at NBRHC are now at HSN and this has resulted in two transfer agreements with the affected unions. This factor weighs in favour of the application of the PSLRTA.

34. The most significant factor weighing in favour of applying the PSLRTA is the labour relations problems that have resulted or could result from the health services integration. This is the factor that the parties spent the majority of their focus.

35. The first labour relations problem identified by HSN is the conflict in the bargaining units with respect to the OT and PT classifications. These classifications were covered under the OPSEU bargaining unit description at the NBRHC, but were not covered by the OPSEU bargaining unit description at the HSN. In the absence of the PSLRTA, and before the ONA certificate was issued, the OT and PT classifications would have been excluded from the bargaining unit as a result of the transfer. As the Board stated in *Bayshore, supra*, the PSLRTA serves to provide a mechanism for the preservation of bargaining rights when work is moved as a result of a health services integration. For this case, that would mean the OT and PT classifications formerly represented by OPSEU at the NBRHC would continue to be represented by OPSEU at the HSN.

36. The certificate issued to ONA creates an additional labour relations problem in that the new bargaining unit covers the OT and PT classifications. As a result, the OT and PT classifications that were formerly represented by OPSEU at the NBRHC are now represented by ONA, by virtue of the certificate issued by the Board, without regard to the impact of the PSLRTA on OPSEU's bargaining rights that were triggered when the transfer occurred.

37. The Minutes of Settlement reached by the parties in the certification application further illustrate the outstanding conflicts in the bargaining unit descriptions. The parties – OPSEU, ONA and HSN

- have an ongoing dispute about the scope of the bargaining unit descriptions and whether certain classifications are covered.

38. A further labour relations problem is the overlap in functions in having two paramedical units within the same service/care teams represented under different collective agreements. This has some similarity to the circumstances in *Haliburton Highlands Health Services, supra*, where the Board noted that the team working in the Geriatric Assessment and Intervention Network ("GAIN") team had combined employees skilled in several disciplines represented by different unions under different collective agreements. The Board described the issue as follows:

28. The clearest example of this is the GAIN team which would combine employees skilled in several disciplines who are represented by different unions under different collective agreements and, presumably, different terms and conditions of employment. Historically, much of the kind of work that the GAIN team now performs was done by employees represented by SEIU. Those services and work will now be performed by employees, some of whom are represented by CUPE and some of whom by SEIU. CUPE represented employees have not performed this kind of work in the past. It is not difficult to see that certain labour relations problems could arise from that situation. Moreover, while the GAIN team is not directly part of the integration, it is the type of rationalization and improvement in health care delivery that the integration was directed to. The relevant services were transferred, in part, so they could be delivered in a better way.

39. Similarly, in the instant matter, the constitution of two paramedical bargaining units, represented by different unions with different collective agreements, will inevitably result in disputes about work assignments, duties, and job postings. There are inherently more labour relations difficulties with having two bargaining units covering workers performing similar functions.

40. ONA argues that if any labour relations problems exist they exist because of its certification application and not because of the transfer of services. It argues that it would be inappropriate for the Board to consider labour relations problems related to its certification application.

41. While it may be true that employees worked on the same teams under different terms and conditions of employment prior to the transfer (some employees under OPSEU collective agreement and some employees as non-union), it cannot be ignored that two classifications – the OT and the PT - were transferred from an OPSEU bargaining unit to a facility where the positions were not covered by the existing bargaining unit description. This issue was not created by the ONA certification application.

42. I am also not convinced that the PSLRTA requires the Board to trace the source of the labour relations problems with surgical precision. Section 9(3) of the Act describes the factors that the Board should consider when deciding whether to make an order, which includes matters the Board considers to be relevant. When faced with the prospect of two paramedical bargaining units in the midst of a health services integration, it is an opportune time for the Board to exercise its discretion.

43. ONA further argues that the Board should take notice of the recently enacted regulations that limit situations in which a vote under PSLRTA will be held. There is no dispute the circumstances giving rise to this application predate the new regulation and do not apply to this circumstance. Thus, the Board declines to speculate on what the Legislature might have intended with respect to circumstances that existed prior to the regulations other than to note that they are not retroactive.

44. The labour relations problems that exist because of the health services integration strongly favours the Board exercising its discretion to apply the PSLRTA.

45. After careful review of the factors listed in subsection 9(3) of the PSLRTA, and in particular the labour relations problems that arise from the health services integration, it is appropriate for the Board to exercise its discretion to declare that the PSLRTA applies to the transition of services.

### **The Bargaining Unit Structure**

46. The second issue before the Board is the number and description of the bargaining rights. ONA argues that the status quo of two paramedical units is appropriate. HSN and OPSEU seek one larger unit and argue that the Board should conduct a representation vote

under the PSLRTA. For the following reasons, the Board is persuaded that it is appropriate for there to be a single bargaining unit and that a vote should be conducted to determine the bargaining agent.

47. The Board has the authority to determine the number and description of bargaining units that are appropriate. Section 22(1) of the Act reads as follows:

**22.** (1) Subject to any agreement under section 20 that is in effect, the Board, upon the application of a successor employer or any bargaining agent that has bargaining rights, may by order determine the number and description of bargaining units that are appropriate for the successor employer's operations after the occurrence of an event to which this Act applies.

48. Pursuant to subsection 22(7) of the Act, the Board is to have regard to the purposes of the Act in making its determination on the number and description of the bargaining units. The purposes of the Act are as follows:

1. The following are the purposes of this Act:
  1. To encourage best practices that ensure the delivery of quality and effective public services that are affordable for taxpayers.
  2. To facilitate the establishment of effective and rationalized bargaining unit structures in restructured broader public sector organizations.
  3. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees following restructuring in the broader public sector and in other specified circumstances.
  4. To foster the prompt resolution of workplace disputes arising from restructuring.

49. Prior to the transfer, there was an existing OPSEU paramedical unit. However, that unit did not include the OT and PT classifications.

After the transfer, and following the issuance of the certificate to ONA, there is a second paramedical unit. The latter unit's bargaining unit description remains in dispute. The Board has said that there is no presumption in favour of preserving pre-existing bargaining unit structures (See *Ottawa Transition Board, supra*). The Board has also said that it is important to take into consideration the successor employer's operational interests (see *North Bay General Hospital, supra* at paragraph 35, and *Ottawa Transition Board, supra* at para 25).

50. HSN does not object to the inclusion of the non-union employees in the bargaining unit. It refers to *Bayshore, supra*, as an example of where previously non-union employees were included in the bargaining unit description ordered by the Board under the Act.

51. If the Board were to do nothing, it would leave two paramedical bargaining units that would be fragmentary to HSN and also artificial. There is nothing natural about overlapping responsibilities, classifications, and qualifications working under different collective agreements. It would not be consistent with one purpose of the PSRLTA which is to "... facilitate the establishment of effective and rationalized bargaining unit structures in restructured broader public sector organizations."

52. I accept HSN's contention that it is more cost-effective and efficient to administer a single collective agreement for one larger unit than for two separate units. A larger unit also allows for more effective coverage for HSN and easier mobility for the employees. The Board has said that the "rationality" of a bargaining unit "...is to be assessed by consideration of what is appropriate for the operational needs of the employer along with the purposes of the PSLRTA" (*North Bay General Hospital, supra*). The present application provides a brief window whereby the Board can exercise its discretion to make the appropriate changes to the bargaining unit structures with consideration of the HSN's concerns about overlapping classifications and duties as well as the work disputes that are reasonably foreseeable.

53. The integration of the two units will also minimize work disputes, classification disputes, and conflicts that often arise when there is overlap in functions. The employer has provided extensive detail about the potential conflicts on its various treatment teams. While the Board makes no findings about these conflicts – such

conflicts were disputed by ONA – the extensive list highlights, at the very least, the potential conflicts that could arise with two paramedical bargaining units.

54. The Board's preference for larger bargaining units in applications under the PSLRTA has been stated in several different contexts (see *Muskoka-East, supra* at para 22; *North of Superior Healthcare Group, supra* at para 9; and *Kenora-Rainy River Districts Child and Family Services, [2012] O.L.R.D. No. 790; North Bay, supra* at para 25). A single larger paramedical bargaining unit provides a more rationalized bargaining unit structure. With a single collective agreement for the large group of employees it will avoid having an island of employees or a fragmented group with limited mobility rights.

55. Having regard to the purposes of the PSLRTA, the Board declares that a single paramedical bargaining unit is appropriate.

56. The parties agreed that Pharmacists are not impacted by this application and no party is asking for the Pharmacists to be included in the single unit.

57. It was not disputed by the parties that if the Board determines that a single paramedical bargaining unit was appropriate that a representation vote between ONA and OPSEU must follow. Therefore, pursuant s. 23(2) of the PSLRTA, the Board directs that a vote shall occur to determine the appropriate bargaining agent. The parties are directed to make every effort to reach an agreement on the appropriate bargaining unit description and the details of the vote. The parties are referred to Labour Relations Officer Jennifer Evans to make the vote arrangements.

58. I remain seized with respect to any difficulties arising from the implementation of this decision.

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"Matthew R. Wilson"  
for the Board

## APPENDIX A

Ryder Wright Blair & Holmes LLP  
333 Adelaide Street W, 3rd Floor  
Toronto ON M5V 1R5  
Attention: Richard Blair  
Tel: 416-340-9070 Ext 223  
Fax: 416-340-9250  
Email: rblair@rwbh.ca; rgisonni@rwbh.ca

Ontario Public Service Employees Union  
2550 Victoria Park Avenue, Suite 400  
Toronto ON M2J 5A9  
Attention: Tracey Mussett  
Organizing Representative  
Tel: 416-443-8888  
Fax: 905-712-2916  
Email: tmussett@opseu.org

North Bay Regional Health Centre  
50 College Drive  
P.O. Box 2500  
North Bay ON P1B 5A4  
Attention: Kathy Cowan-Sahadath  
Interim Director of Human Resources  
Tel: 705-474-8600 Ext 2758  
Fax: 705-495-7977  
Email: Kathy.Cowansahadath@nbrhc.on.ca

North Bay Regional Health Centre  
50 College Drive  
P.O. Box 2500  
North Bay ON P1B 5A4  
Attention: Lucie Laperrière  
Interim Labour Relations Specialist  
Tel: 705-474-8600 Ext 2760  
Fax: 705-495-7977  
Email: lucie.laperriere@nbrhc.on.ca

North Bay Regional Health Centre  
50 College Drive  
P.O. Box 2500  
North Bay ON P1B 5A4  
Attention: Aline Lauzon  
Tel: 705-474-8600 Ext 2758  
Fax: 705-495-7977



Crawford Chondon & Partners LLP  
24 Queen Street E, Suite 500  
Brampton ON L6V 1A3  
Attention: David Chondon  
Tel: 905-874-9343  
Fax: 905-874-1384  
Email: dchondon@ccpartners.ca; ypatel@ccpartners.ca

Health Sciences North  
41 Ramsey Lake Road  
Sudbury ON P3E 5J1  
Attention: Rhonda Watson  
Tel: 705-523-7100  
Fax: 705-523-7062  
Email: RWatson@hsnsudbury.ca

Ontario Nurses' Association  
85 Grenville Avenue, 4th Floor  
Toronto ON M5S 3A2  
Attention: Nicole Butt  
Tel: 416-964-8833  
Fax: 416-964-8864  
Email: nicoleb@ona.org; natalieb@ona.org

Ontario Nurses' Association  
85 Grenville Avenue, 4th Floor  
Toronto ON M5S 3A2  
Attention: Beverly Mathers  
Tel: 416-964-8833  
Fax: 416-964-8864  
Email: beverlym@ona.org

Canadian Union of Public Employees  
888 Regent Street, Suite 205  
Sudbury ON P3E 6C6  
Attention: Cathy Donnelly  
Tel: 705-674-7557  
Fax: 705-674-9215  
Email: cdonnelly@cupe.ca