

*H*IGHLIGHTS

Ontario Labour Relations Board

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SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in December of this year. These decisions will appear in the November/December issue of the OLRB Reports. The full text of recent OLRB decisions is available on-line through the Canadian Legal Information Institute www.canlii.org.

Employment Standards – Termination and Severance Pay – Application for review of an employment standards officer's decision concluding that there was no violation of the *Employment Standards Act, 2000* when applicant's employment was terminated for cause with no severance or termination pay as per sub-sections 2(1) and 9(1) of Regulation 288/01 – Employer discovered the applicant's directorial role in a competing start-up business – Competing business provided similar services in the healthcare industry with an operating website and board of directors – Applicant had signed Code of Conduct and Confidentiality and Non-Solicitation Agreements that explicitly demanded disclosure of possible conflicts of interest, service in a board of directors in any for-profit company, and any outside employment – Applicant argued that the start-up business posed no competition due to lack of profit or client base – Question of whether applicant engaged in disobedience or wilful misconduct – Board concluded that applicant's conduct was

disobedient and that willfulness is not a requirement when establishing disobedience under this test – In considering triviality and seriousness, Board examined emphasis placed on Code of Conduct by employer, applicant's managerial position, applicant's recruitment of another employee to the competing business, applicant's length of engagement with the competing business, and the overall erosion of trust – Application dismissed.

FRANCISCO BARAQUIO, RE: **IQVIA SOLUTIONS CANADA INC., AND DIRECTOR OF EMPLOYMENT STANDARDS**; OLRB Case No. 1487-22-ES; Dated December 14, 2023; Panel: Brian Smeenck (19 pages)

Occupational Health and Safety – Reprisal – Application alleging reprisal contrary to the *Occupational Health and Safety Act* (the "Act") – Applicant made harassment complaint against former manager – Applicant was provided with layoff notice within a week of commencement of investigation – Board reviewed elements of reprisal under the *Act*: that the employee engaged in protected activity, suffered an adverse consequence, and there was a causal connection between the two – Onus was on employer to satisfy Board that, on the balance of probabilities, the employee's exercise of rights under the Act played no part in the decision – Employer claimed that layoff occurred in normal course of business/restructuring – While evidence indicated

that applicant's role with the employer would end, no efforts were made to assess applicant's skills and re-assign, even though this process was initially promised to the applicant – At time of layoff, applicant had been identified as critical to restructuring and stood to earn a substantial bonus if she remained until the restructuring was complete – Applicant's co-worker was offered extension of layoff rather than termination and there was no satisfactory evidence explaining this discrepancy – Only material change in circumstances was the harassment complaint – Board concluded that the layoff and termination were reprisal under s. 50 of the *Act* – Application allowed.

RANDI LIBMAN, RE: **IA CLARINGTON INVESTMENTS INC.**; OLRB Case No. 19722-UR; Dated December 29, 2023; Panel: Brian Smeenck (18 pages)

Practice and Procedure – Construction Industry – Certification - Unfair Labour Practice – Union filed certification application under the *Labour Relations Act, 1995* (the “*Act*”) and accompanying unfair labour practice application – Responding party moved to amend application so that it would indicate that the local union was the applicant, rather than the provincial parent union – Responding party argued that applications and membership evidence were filed on behalf of local union and that the application must be brought by the same union that employees sought to join – Applicant submitted that the motion is untimely and undermines the foundation of the *Act*'s provisions as it relates to membership evidence in a local also being evidence of membership in the council of which the local is a part – Applicant relied on s. 12(3) of the *Act* expressly permitting the use of membership of constituent trade unions of a council as members of the council itself – Applicant also stated that a responding party may not choose the identity of the applicant – Board found that no mistake was made and that s. 12(3) was a full answer to the responding party's argument – Motion dismissed – Matter continues.

CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, RE: **SAVIC HOMES LTD.**; OLRB Case No. 2067-21-R; 2068-21-U; Dated December 18, 2023; Panel: Brian Smeenck (11 pages)

Unfair Labour Practice – Certification – Delay – CLAC brought an application for certification under the *Labour Relations Act, 1995* – Employer responded that UFCW already represented the bargaining unit by virtue of a voluntary recognition agreement (“VRA”) – CLAC claimed that the bargaining unit was empty at the time the VRA was entered into – Board conducted vote in which CLAC was unsuccessful – No post-vote submissions filed – CLAC filed an unfair labour practice alleging vote-related misconduct by the employer 13 calendar days after the post-vote submissions were due – UFCW brought motion arguing that application was untimely – Employer also submitted that allegations of misconduct should have been made as the issues arose – CLAC argued that delay was appropriate because it did not want to make bald allegations and needed to investigate – Board found that given that the allegations related to the conduct of the vote, the allegations should have been made in the time allowed for post-vote submissions and there was therefore delay in filing the application – Board found that the extent of the delay was significant, there was no satisfactory explanation of the delay, no notice of the allegations was given in the time for making post-vote submission, and there was prejudice to the incumbent union – Application dismissed.

SOUTHWESTERN ONTARIO HEALTHCARE AND SERVICE WORKERS UNION, CLAC LOCAL 303, RE: **2436217 ONTARIO INC. C.O.B. AS THE MAPLES MYLIFE RETIREMENT LIVING**, RE: UNITED FOOD AND COMMERCIAL WORKERS CANADA LOCAL 1006A; OLRB Case No. 1808-23-R;

2098-23-U; Dated December 29, 2023; Panel: Maheen Merchant (11 pages)

COURT PROCEEDINGS

Judicial Review – Unfair Labour Practice – Applicant Unions brought judicial review applications in respect of decisions of the Board determining unfair labour practice complaints – Complaints arose against background of salary grid freezes imposed by Bill 115 and subsequent *Charter* challenge determining that Bill 115 was unconstitutional – Applicant Unions had filed grievances asserting that employers’ failure to grant grid increases in 2014-2015 school year (which was unaffected by the settlement of the *Charter* challenge to Bill 115) – Complaints to the Board asserted that the Crown had induced the Unions to withdraw grid grievances in bargaining – ETFO asserted that it had withdrawn grievance only based on representation that all other unions were also being required to withdraw their grid grievances – OSSTF asserted that Crown represented that no other union would “do better” than OSSTF with respect to “compensation”, and that it withdrew its grid grievance as a result of this representation – When Applicants learned that other unions had proceeded with their grid grievances, applicants asserted that Crown had bargained in bad faith – Board concluded that Crown had bargained in bad faith with ETFO by making a misleading representation, but that Crown had not bargained in bad faith with OSSTF – Board determined that no remedy other than declaratory relief was appropriate in ETFO application – OSSTF asserted that Board’s decision dismissing its application was unreasonable and ETFO asserted that Board’s decision granting declaratory relief was unreasonable – Divisional Court concluded that there was ample evidence supporting the Board’s conclusion in the OSSTF application – Court also concluded that Board’s conclusion that no monetary compensation was appropriate in the ETFO application was reasonable in view of the uncertainty of what would have occurred had there

been no misrepresentation – Applications dismissed.

THE ONTARIO SECONDARY SCHOOL TEACHERS’ FEDERATION RE: THE CROWN IN RIGHT OF ONTARIO and THE ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 187/22; Dated December 20, 2023; Panel: Stewart, Baltman and Lococo JJ. (17 pages)

ELEMENTARY TEACHERS’ FEDERATION OF ONTARIO RE: THE CROWN IN RIGHT OF ONTARIO and THE ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 367/22; Dated December 20, 2023; Panel: Stewart, Baltman and Lococo JJ. (17 pages)

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7 th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Four Seasons Site Development Divisional Court No. 661/23	0168-17-R	Pending
Bradford West Gwillimbury Public Library Divisional Court No. 611/23	1523-23-FA	September 10, 2024
Jennifer Trumble Divisional Court No. DC-23-00002813-0000 – PEHT (Ottawa)	1566-21-PE	May 22, 2024
Robert Currie Divisional Court No. 365/23	0719-22-UR 1424-22-UR	Pending
Red N' Black Drywall Inc. Divisional Court No. 350/23	1278-19-R	March 5, 2024
All Canada Crane Rental Corp. Divisional Court No. 037/23	1405-22-G	Dismissed Motion for Leave to Appeal to Court of Appeal
Mina Malekzadeh Divisional Court No. 553/22	0902-21-U 0903-21-UR 0904-21-U 0905-21-UR	Pending
Simmering Kettle Inc. Divisional Court No. DC-22-00001329-00-JR - (Oshawa)	0012-22-ES	Pending
Elementary Teachers' Federation of Ontario Divisional Court No. 367/22	0145-18-U	Dismissed
The Ontario Secondary School Teachers' Federation Divisional Court No. 187/22	0145-18-U 0149-18-U	Dismissed
Susan Johnston Divisional Court No. 934/21	0327-20-U	Motion for Leave to Appeal to Court of Appeal
Candy E-Fong Fong Divisional Court No.	0038-21-ES	Pending
Symphony Senior Living Inc. Divisional Court No. 394/21	1151-20-UR 1655-20-UR	Pending
Joe Mancuso Divisional Court No. 28291/19 (Sudbury)	2499-16-U – 2505-16-U	Pending
The Captain's Boil Divisional Court No. 431/19	2837-18-ES	Pending
EFS Toronto Inc. Divisional Court No. 205/19	2409-18-ES	Pending

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RRCR Contracting Divisional Court No. 105/19	2530-18-U	Pending
China Visit Tour Inc. Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending
Front Construction Industries Divisional Court No. 528/17	1745-16-G	Pending
Myriam Michail Divisional Court No. 624/17 (London)	3434-15-U	Pending
Peter David Sinisa Sesek Divisional Court No. 93/16 (Brampton)	0297-15-ES	Pending
Byeongheon Lee Court of Appeal No. M48402	0095-15-UR	Pending
Byeongheon Lee Court of Appeal No. M48403	0015-15-U	Pending
R. J. Potomski Divisional Court No. 12/16 (London)	1615-15-UR 2437-15-UR 2466-15-UR	Pending
Qingrong Qiu Court of Appeal No. M48451	2714-13-ES	Pending
Valoggia Linguistique Divisional Court No. 15-2096 (Ottawa)	3205-13-ES	Pending