

# *H* *Ontario Labour Relations Board* **HIGHLIGHTS**

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## **NEW VICE-CHAIRS**

The Board welcomes **YVON SEVENY** as a full-time Vice-Chair. Mr. Seveny practised union-side law in Ontario and Alberta and was legal counsel to the Alberta Labour Relations Board. He holds a Bachelor of Laws degree from the University of Alberta and a Master of Laws degree from Osgoode Hall Law School.

We also welcome **PAULA TURTLE** as a full-time Vice-Chair. Ms. Turtle was most recently Counsel to the Canadian Association of University Teachers and prior to that was Canadian Counsel at the United Steelworkers of America. She has appeared widely before various provincial and federal labour boards, arbitrators, tribunals and courts. Ms. Turtle has an undergraduate degree from Ryerson University and a law degree from Osgoode Hall Law School.

And the Board welcomes **C. MICHAEL MITCHELL** as a part-time Vice-Chair. He was a founding partner of Sack Goldblatt Mitchell where he practised for his entire legal career. Mr. Mitchell is co-author of the leading textbook on the Ontario Labour Relations Board. He too has appeared extensively before all manner of tribunals, and all levels of courts in Canada. He has worked as a mediator and adjudicator, and was recently a Special Advisor to the Ontario government's Changing Workplace Review. He has undergraduate and law degrees from the University of Toronto.

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## **SCOPE NOTES**

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in July of this year. These decisions will appear in the July/August issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute [www.canlii.org](http://www.canlii.org).

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**Employment Standards** – The employee sought payment for travel time when he was obliged to service clients outside of Ottawa – He travelled with a colleague, in a company car, and they shared the driving – The parties agreed the employee spent a total of 109 hours travelling during the course of his employment – The dispute arose about the characterization of those hours, and the rate of pay applicable to them – The hours included days spent away from Ottawa, and not just days the employee was travelling – Travel time differs from commuting time – Travel was integral to the job of service technician – The same rate was applicable to travel time as paid to the employee for his work as a service technician – Application dismissed; order affirmed, with a minor variance

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**1760644 ONTARIO INC. O/A CAPITAL ALARM;** RE: MATTHEW INGLIS; RE: DIRECTOR OF EMPLOYMENT STANDARDS;

OLRB File No. 3445-14-ES; Dated July 21, 2015;  
Panel: Ian Anderson, (4 pages)

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**Abandonment – Delay – Related Employer – Sale of Business** – Operative Plasterers Local 598 sought a declaration from the Board that there was a sale from Clifford to Trinity, or that the companies were related or associated – Trinity and BACU argued abandonment and delay as preliminary issues – The Board dismissed the related employer application for delay, finding that to allow the 1(4) application to proceed would cause significant prejudice to Trinity (disrupting the way in which Trinity had carried on its work for the past six years), and would give rise to immediate jurisdictional disputes – BACU and Trinity also argued that the Board had residual power to reach a similar conclusion in the sale of business provisions and that such a conclusion would be logical and proper – The Board held that, assuming Local 598 could establish there was a sale of a business, a conflict of bargaining rights between the unions would result; in fact, it is enough for one of the interested parties to *claim* such a conflict for the Board to be able to exercise its discretion under s. 69 without engaging in lengthy litigation to determine if the actual conflict exists – There is no doubt that in this case the bargaining rights of Local 598 and BACU cannot co-exist in harmony with Trinity – No principled labour relations reason exists why jurisdictional conflict should only be a consideration in the context of subsection 1(4) of the Act – A grant of the declaration that a sale had occurred would require the Board to amend Local 598's bargaining unit description to exclude those employees covered by the rights held by BACU or the Labourers; Local 598 would effectively be left with a bargaining unit of no employees; thus there is no labour relations purpose in inquiring into the application – Application dismissed

**CLIFFORD MASONRY LIMITED;** RE: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA UNION LOCAL 598; RE: CLIFFORD RESTORATION LIMITED; RE: TRINITY CUSTOM MASONRY LIMITED; OLRB File No. 0360-14-R; Dated July 24, 2015; Panel: Jesse M. Nyman (36 pages)

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**Construction Industry Grievance** – LIUNA Locals 506 and 183 sought to file grievances

relating to the assignment of work by filing a single referral to the Board for arbitration – The Board held that two grievances cannot be filed in one referral – The language of the Act is clear, and adverts to “a grievance” or “the grievance” – The Board directed the LIUNA Locals to sever the grievances and re-file, failing which both grievances would be dismissed

**PCL CONSTRUCTORS CANADA INC.;** RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; OLRB File No. 0993-15-G; Dated July 15, 2015; Panel: Lee Shouldice (3 pages)

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**Abandonment – Collective Agreement – Construction Industry Grievance** – Local 183 brought a motion challenging the validity of the collective agreement between Quality Sterling and Local 27 giving rise to this grievance, arguing that since Quality Sterling was a member of the Resilient Flooring Contractors' Association of Ontario, an accredited association, any individual agreement between Quality Sterling and the Carpenters was void pursuant to s. 140(1) of the Act – Local 27 countered, asserting that the motion should be dismissed either for delay or because Local 183 had acknowledged the validity of the Carpenters' bargaining rights and collective agreement in another proceeding, thus the motion is subject to *res judicata* or is an abuse of process – The Board outlined the history of the accreditation order, various negotiations of collective agreements, memoranda and minutes of RFCAO meetings, and held that the reasons for decision issued in the other proceeding could have no application to the instant grievance: there was nothing untimely about Local 183's assertion here of the applicability of s. 140(1) to the collective agreement; moreover, the RFCAO was not a party to the other proceeding so could not make any submissions regarding the arguments of Local 183 – The Board found that the RFCAO had consistently maintained its bargaining rights although it never applied to the Board for a declaration that the Quality Sterling collective agreement was void – Although the accreditation order applies only to the residential sector in Board Area No. 8 and Local 27 is grieving about work beyond that Board Area, bargaining rights are exercised by way of a province-wide agreement and the operation of s. 140(1) nullifies the entire agreement with Quality Sterling – Finally, the Board was satisfied that the merger,

amalgamation or transfer of jurisdiction among Carpenter Locals resulted in Local 27 being the successor of any of its predecessors for purpose of this grievance – Application dismissed

**QUALITY STERLING GROUP; RE: CARPENTERS AND ALLIED WORKERS, LOCAL 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA;** OLRB File No. 1645-14-G; Dated July 14, 2015; Panel: Lee Shouldice (19 pages)

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**Health and Safety – Standing** – ONA filed an appeal of the failure of an inspector to require security guards placed in a psychiatric unit of the hospital for the protection of nurses and other staff – The Board issued an interim order directing that properly trained security professionals be placed in the unit 24/7 – A patient residing in the unit sought standing to participate in the appeal on the merits – In determining whether the Board ought to exercise its discretion to grant the patient's request, the Board had to be persuaded that he had a direct legal interest in the proceeding, or that he would be providing assistance to the Board independent of the submissions of the already named parties – The Board refused standing for the patient: it is not being asked to make orders about this patient, other patients, or even the patient population in general; his concerns relate more to decisions made about treatment and rehabilitation, the hospital's responsibility; he has other venues for challenging the hospital's decisions – Matter continues

**ROYAL OTTAWA HEALTH CARE GROUP - BROCKVILLE MENTAL HEALTH CENTRE; RE: ONTARIO NURSES' ASSOCIATION; RE: A DIRECTOR UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT;** OLRB File No: 2460-14-HS, 2461-14-IO & 2999-14-IO; Dated July 13, 2015; Panel: Matthew R. Wilson (10 pages)

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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<sup>th</sup> Floor, 505 University Avenue, Toronto.



## Pending Court Proceedings

| Case name & Court File No.  | Board File No.                         | Status                   |
|---|--|--------------------------|
| <b>Labourers' International Union of North America, Local 1059</b><br>Divisional Court No. 384/15                         | 0883-14-R                              | Pending                  |
| <b>Universal Workers Union, Labourers' International Union of North America, Local 183</b><br>Divisional Court No. 368-15 | 1938-12-R                              | Pending                  |
| <b>LBM Construction Specialties Inc.</b><br>Divisional Court No. 353/15   | 0121-14-R                              | Pending                  |
| <b>Royal Ottawa Health Care Group - Brockville Mental Health</b><br>Centre Divisional Court No. 15-2123 (Ottawa)          | 2460-14-HS<br>2999-14-IO<br>3000-14-IO | Pending                  |
| <b>EMT Contractor Division Inc</b><br>Divisional Court No. 32-15 (London)   | 3514-13-R                              | Pending                  |
| <b>Carlene Bailey</b><br>Divisional Court No. 173/15  | 0480-13-U                              | Pending                  |
| <b>Valoggia Linguistique</b><br>Divisional Court No. 15-2096  | 3205-13-ES                             | Pending                  |
| <b>Toran Carpentry Inc.</b><br>Divisional Court No. 49/15   | 0229-13-R                              | Pending                  |
| <b>Sentry Electrical (Canada) ULC</b><br>Divisional Court No. 041/15  | 0505-14-R                              | October 2, 2015          |
| <b>Charles Zubovits</b><br>Divisional Court No. 3/15  | 1368-04-U                              | September 29, 2015       |
| <b>Royal Ottawa Hospital</b><br>Divisional Court No. 14-62782 (Ottawa)  | 2461-14-IO                             | Pending                  |
| <b>BACU (BMC Masonry)</b><br>Divisional Court No. 459/14  | 3236-13-R<br>0451-14-U                 | September 17, 2015       |
| <b>Dean Warren</b><br>Divisional Court No. 345/14   | 2336-13-U                              | September 22, 2015       |
| <b>Donald A. Williams</b><br>Divisional Court No. 327/14  | 1129-13-U                              | November 10, 2015        |
| <b>PCL Constructors Canada Inc.</b><br>Divisional Court No. 240/14  | 3414-11-G                              | November 26, 2015        |
| <b>Godfred Kwaku Hiamey</b><br>Divisional Court No. 345/13; 346/13  | 2906-10-U<br>3568-10-U                 | May 11, 2015<br>Reserved |