

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

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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 last 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](http://www.canlii.org).

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**Construction Industry – Certification Application – Unfair Labour Practice – Remedial Certification** – Union alleged its organizing campaign was thwarted by unlawful actions of the employer – Board held that employer breached the Act by remaining silent in the face of the assault of a union organizer by an employee, and by engaging in a car chase, in which an employer representative pursued a union organizer in an aggressive and dangerous manner – Board declined to grant remedial certification because the facts demonstrated the union’s organizing campaign, despite having had plenty of “breathing room” prior to the breaches, was going nowhere – Employer’s conduct, while reprehensible and corrosive to the right of employees to designate a bargaining agent of their choosing, should be countered through remedies less extraordinary than remedial certification – Various declarations and orders made including: posting of notices, delivery of copies of decision to employees, opportunity for union to meet with employees on company premises during working hours, and provision of

employee contact information in employer’s possession or control (including personal email addresses) – Application for certification dismissed.

**RJ CONCRETE & CONSTRUCTION LTD. AND T.B.C. READY MIX INC.;** RE: LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; OLRB File No: 2670-18-R, 2687-18-U; Dated December 14, 2020; Panel: Patrick Kelly (27 pages)

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**Occupational Health and Safety Act – Appeal of a Refusal of an Inspector to Make an Order – Precautionary Principle** – OHSIA Inspector refused to make an order that the employer, a long term care home, install a plexiglass barrier at the home’s nursing station – Union argued that, given the COVID-19 pandemic, the installation of such barrier was reasonable – Employer argued, *inter alia*, that there was no evidence a barrier would fully block the virus or that the barrier would provide significant protection – Board considered whether section 25(2)(h) of the Act which requires an employer to “take every precaution reasonable in the circumstances for the protection of a worker” applied – Board applied the precautionary principle - Where health and safety are threatened, even if it cannot be established with scientific certainty that there is a cause and effect relationship between the activity and the harm, precautions that appear reasonable should be taken – Board concluded installation of a plexiglass or similar barrier at the

countertop of the nursing station was a reasonable measure for the protection of the employees – Installation ordered – Application granted.

**MAPLEWOOD NURSING HOME;** RE: UNITED FOOD AND COMMERCIAL WORKERS CANADA, LOCAL 175; RE: A DIRECTOR UNDER THE *OCCUPATIONAL HEALTH AND SAFETY ACT*; OLRB File No. 0746-20-HS; Dated December 22, 2020; Panel: C. Michael Mitchell, Vice-Chair (22 pages)

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**Related Employer / Sale of Business – Practice and Procedure – Summons to Witness**

– Responding parties served a summons to witness on one union representative and attempted, without success, to serve a second union representative – Summonses directed the witnesses to bring with them various documents – Union requested that Board quash the summons to witness which had been issued and direct the responding parties to refrain from attempting to serve the summons on the second union representative – Board held it had the authority under subsection 111(2) of the *Labour Relations Act* to summon and enforce the attendance of witnesses – It followed that the Board could quash a summons to witness – Board did not see relevance of the documents requested or the testimony that the witnesses might provide to the issues in dispute – Summons set aside – Union request granted – Matter continues.

**2343607 ONTARIO CORPORATION O/A KAYA INTERIORS;** RE: TRIGA CORPORATION; RE: NEW REVOLUTION CONTRACTING LIMITED; RE: TRIGA CPM CORP.; RE: CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATED BARGAINING AGENTS, LOCAL 397 AND LOCAL 675; OLRB File No. 1437-18-R; Dated December 10, 2020; Panel: Patrick Kelly (7 pages)

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**Unfair Labour Practice – Duty of Fair Representation – Anonymization**

– Applicant in a duty of fair representation case requested that his name be anonymized in any Board decision –

Applicant worked as a teacher and an allegation of misconduct, involving investigation by Children's Aid and the police, had been made against him – Applicant denied wrongdoing – Union filed a grievance on his behalf – Application to the Board was related to the Union's handling of that grievance – Board considered the open court principle, and the need for adjudicative proceedings to be conducted openly and transparently – Board considered the implications of the decision in *Toronto Star v. AG Ontario* and the recently enacted *Tribunals Adjudicative Records Act* – Board held applicant's name should be anonymized – Case involved unproven allegations that could seriously negatively affect the applicant's private life and professional reputation – Allowing anonymization in a case of this nature prevented meritorious complaints from being suppressed and thus preventing the proper administration of justice – Interests outweighed the open court principle in these circumstances – Matter continues.

**AB;** RE: ONTARIO ENGLISH CATHOLIC TEACHERS ASSOCIATION; RE: TORONTO ELEMENTARY CATHOLIC TEACHERS; RE: TORONTO CATHOLIC DISTRICT SCHOOL BOARD, INTERVENOR; OLRB File No: 0632-20-U; Dated December 7, 2020; Panel: Jack J. Slaughter (11 pages)

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**Unfair Labour Practice – Duty of Fair Representation – Threats of Workplace Violence**

– Applicant alleged, *inter alia*, that the union breached its duty of fair representation when it reported the content of one of his emails to his employer and the police, which ultimately led to his dismissal – Union brought a preliminary motion seeking to dismiss the application without a hearing pursuant to Rule 39.1 of the Board's Rules of Procedure – Board held the email in question contained a serious threat of violence and noted Applicant had been given repeated warnings – It was not reasonable to expect the union to confront applicant for reassurance that he did not intend to harm anyone – When presented with a violent threat by one of its members that can reasonably be interpreted as serious and imminent, union is not required to first assess the likelihood of the threat

being carried out before taking reasonable steps to mitigate the risk – Board also considered and rejected claim that solicitor-client privilege had been breached as a result of reporting email – Board accepted that threat in the email triggered an obligation to report – Board concluded that there was nothing arbitrary in the Union’s actions – Board concluded that application could not succeed in establishing that union breached its duty of fair representation – Application dismissed.

**JOHN PACHECO; RE: ONTARIO PUBLIC SERVICE EMPLOYEES UNION; RE: THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF THE SOLICITOR GENERAL; OLRB File No. 1414-20-U; Dated December 18, 2020; Panel: Matthew R. Wilson (17 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>Mir Hashmat Ali</b> Divisional Court No. 275/20	0629-20-U	Pending
<b>Guy Morin</b> Divisional Court No. 20-DC-2622 <span style="float: right;"><b>(Ottawa)</b></span>	2845-18-UR 0892-19-ES	Pending
<b>SNC Lavalin Nuclear Inc.</b> Divisional Court No. 473/20	3488-19-ES	April 20, 2021
<b>KD Poultry</b> Divisional Court No. 20-DC-2611 <span style="float: right;"><b>(Ottawa)</b></span>	0618-19-ES 1683-19-ES 1684-19-ES 2165-19-ES	June 2, 2021
<b>Paul Gemme</b> Divisional Court No. 332/20	3337-19-U	Pending
<b>Fortis Construction Group Inc.</b> Divisional Court No. 395/20	1638-17-R	May 11, 2021
<b>Aluma Systems Inc.</b> Divisional Court No. 456/20	2739-18-JD	Pending
<b>Anthony Hicks</b> Federal		
<b>Capital Sports &amp; Entertainment Inc.</b> Divisional Court No. 20-DC-2593	1226-19-ES	Pending
<b>Rochelle Sherwood</b> Divisional Court No. 074/20	1551-19-U 1557-19-UR	Pending
<b>Joe Mancuso</b> Divisional Court No. 28291/19 <span style="float: right;"><b>(Sudbury)</b></span>	2499-16-U – 2505-16-U	Pending
<b>Abdul Aziz Samad</b> Divisional Court No. 019/20	3009-18-ES	Pending
<b>Daniels Group Inc.</b> Divisional Court No. 018/20	0279-16-R	Pending
<b>Community Care Access Centers</b> Divisional Court No. 720/19	0085-16-PE 0094-16-PE	May 12-13, 2021
<b>Audrey Thomas</b> Divisional Court No. 436/19	2508-18-U	Pending
<b>The Captain's Boil</b> Divisional Court No. 431/19	2837-18-ES	Pending
<b>Kuehne + Nagel Ltd.</b> Divisional Court No. 393/19	0433-18-R	Pending

<b>Todd Elliott Speck</b> Divisional Court No. 371/19	1476-18-U	November 18, 2020
<b>New Horizon</b> Court of Appeal No. C68664	0193-18-U	Pending
<b>Doug Hawkes</b> Divisional Court No. 249/19	3058-16-ES	May 17, 2021
<b>EFS Toronto Inc.</b> Divisional Court No. 205/19	2409-18-ES	Pending
<b>RRCR Contracting</b> Divisional Court No. 105/19	2530-18-U	Adjourned due to pandemic
<b>AB8 Group Limited</b> Divisional Court No. 052/19	1620-16-R	Adjourned due to pandemic
<b>Tomasz Turkiewicz</b> Divisional Court No. 262/18, 601/18 & 789/18	2375-17-G 2375-17-G 2374-17-R	November 19, 2019
<b>Deloitte Restructuring Inc.</b> Divisional Court No. 238/18	2986-16-R	November 18, 2019
<b>China Visit Tour Inc.</b> Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending
<b>Front Construction Industries</b> Divisional Court No. 528/17	1745-16-G	Adjourned due to pandemic
<b>Enercare Home</b> Divisional Court No. 521/17	3150-11-R 3643-11-R 4053-11-R	Pending
<b>Ganeh Energy Services</b> Divisional Court No. 515/17	3150-11-R 3643-11-R 4053-11-R	October 21, 2019
<b>Myriam Michail</b> Divisional Court No. 624/17 <b>(London)</b>	3434-15-U	Pending
<b>Peter David Sinisa Sesek</b> Divisional Court No. 93/16 <b>(Brampton)</b>	0297-15-ES	Pending
<b>Byeongheon Lee</b> Court of Appeal No. M48402	0095-15-UR	Pending
<b>Byeongheon Lee</b> Court of Appeal No. M48403	0015-15-U	Pending
<b>R. J. Potomski</b> Divisional Court No. 12/16 <b>(London)</b>	1615-15-UR 2437-15-UR 2466-15-UR	Pending
<b>Qingrong Qiu</b> Court of Appeal No. M48451	2714-13-ES	Pending
<b>Valoggia Linguistique</b> Divisional Court No. 15-2096 <b>(Ottawa)</b>	3205-13-ES	Pending