



Healthcare Update – February 2023

Healthcare Related Cases of Interest

- a) Additional Grounds: an employer cannot raise additional grounds for discharge where the employer was sufficiently aware of the additional allegations prior to terminating the Grievor and where the nature of the additional allegations would expand the scope of inquiry and delay arbitration proceedings.*
- ***[King Nursing Home Ltd. v CLAC, Local 304](#) (Randazzo, January 16, 2023)***

This was an interim decision arising out of a termination grievance. The Grievor had 15.5 years of service and was terminated after the employer, who operates a for-profit long-term care facility, alleged that the Grievor stole towels and Personal Protective Equipment (“PPE”), and shipped these items to the Philippines for profit. After hearing evidence from the first witness, the employer sought leave to claim insurance fraud as additional grounds for discharge and requested production of “all the relevant information including the Grievor’s prescription records from 2015 to 2020.” The union objected to the employer’s requests, arguing that the employer was previously aware of the alleged insurance fraud prior to terminating the Grievor, that the employer’s late assertion of a new allegation prejudiced the union’s ability to properly respond, and that the employer had failed to properly particularize the new allegation.

Arbitrator Randazzo dismissed the employer’s requests finding that the allegation of insurance fraud expanded the scope of inquiry and would delay and lengthen the arbitration proceedings. He further held that the employer was sufficiently aware of the allegations of insurance fraud prior to terminating the Grievor and the employer’s failure to raise the allegations in a timely manner, “has robbed the parties of the opportunity to canvas the allegations through the grievance procedure.”



b) Shift Premium: an RN who works an additional shift prior and contiguous to her scheduled four shifts on a 2D/2N rotation is entitled to premium rates for the work she performs on her fifth consecutive shift.

- ***Ottawa Hospital v Ontario Nurses' Association (Parmar, January 30, 2023)***

The Grievor was a Registered Nurse who worked a 2 Day/2 Night (2D/2N) rotation and was scheduled to work her 2D/2N rotation on January 17, 18, 19, and 20, 2019. The Grievor was offered and accepted an additional day shift on January 16, 2019. She worked and was paid premium rates for the January 16th shift in accordance with Article 14.01(a) of the Central Agreement/N.2 of the Local Agreement (the overtime provision). She was paid straight time for the January 17th – 20th shifts. The union argued that the Grievor was entitled to receive premium pay for her January 20th shift based on the local language in Article H.1(a) which read as follows:

ARTICLE H – 2 DAY/2 NIGHT SCHEDULING

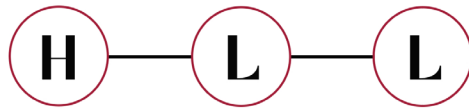
H.1 The following regulations shall govern the scheduling of work for nurses working a 2D/2N schedule.

The scheduling provisions will be as follows:

(a) Nurses will not be required to work more than four (4) days in a row. If a nurse works a fifth (5) day she/he will receive pay at time and one half for the first four hours and double time for the remaining hours.

The Hospital argued that the Grievor was entitled to the premium under H.1(a). but the premium attached to the January 16 shift and was rightfully paid. Arbitrator Parmar upheld the grievance finding that the Grievor was entitled to premium rates for the January 20 shift – the fifth consecutive day that she worked:

...it simply is not logical to read this Article as meaning that if a nurse works a “fifth day”, then she will receive the specified premium pay rate



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for work she performs on some other unreferenced and unidentified day (at para 24).

c) Expanding a Grievance: the union cannot, by way of particulars, unilaterally expand a grievance to encompass a matter not grieved.

- **[Cornwall Community Hospital v Ontario Public Service Employees Union, Local 402 \(Flaherty, February 22, 2023\)](#)**

The union filed a Group Grievance in 2018 alleging that the Mental Health Counsellor (“MHC”) position was improperly classified and should be placed on the same pay grid as the Social Worker position. The parties agreed that a related individual grievance concerning the same issue would proceed to arbitration first; that grievance was dismissed in October 2020. In November 2021, the arbitrator directed the union to provide particulars regarding its Group Grievance. The union provided its particulars in January 2022, asserting for the first time that the Group Grievance concerned the MHC pay rate as compared to Addiction Counselors and made no reference to Social Workers. The Hospital objected to what it characterized as an improper expansion of the grievance. Arbitrator Flaherty upheld the Hospital’s objection finding that a request for particulars was not, “an invitation to reframe the grievance, to raise new issues based on different facts, or to seek an entirely different remedy” (at para 14). The union’s claim that the MHCs’ pay should be assessed in relation to Addiction Counsellors amounted to an expansion of the Grievance and the arbitrator had no jurisdiction to address this new allegation.

Legislative Update – Bill 60

On February 21, 2023, the Ontario Legislature introduced [Bill 60 – Your Health Act](#).

If passed, the Bill would repeal *the Independent Health Facilities Act* (“IFHA”) and replace it with the *Integrated Community Health Services Centre Act*. (“ICHSCA”). The ICHSCA allows licensed community health centres to provide OHIP covered surgical and diagnostic services at no cost to patients. The



Minister of Health or the Director, as appointed by the Minister, will have discretionary power to issue licenses for the centres following a license application. Applicants will be required to implement policies for infection prevention and control, mandate a process for receiving and responding to patient complaints, and demonstrate how the centre will improve wait times and patient experiences while integrating with the existing health system partners.

Bill 60 also amends numerous other acts including the *Fixing Long-Term Care Act, 2021*, the *Health Insurance Act*, and the *Public Hospitals Act*. These amendments allow health care workers registered in other provinces and territories to start working in Ontario without having to first register with an Ontario regulatory college. They also broaden the definition of “physician” and “registered nurse” to include “other prescribed persons” as set out in the Regulations.

Bill 60 has passed First Reading and is currently being debated in Second Reading. We will keep you updated on the status of Bill 60, and its resulting implications for the healthcare sector, as it proceeds through the legislature.

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