IN THE MATTER OF A GRIEVANCE ARBITRATION

BETWEEN:

PRAIRIE NORTH HEALTH REGION
(REFERRED TO AS THE “EMPLOYER” OR “PNHR”)

AND:

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 5111
(REFERRED TO AS THE “UNION” OR “CUPE”)

POLICY GRIEVANCE

Employee Name Tags

ARBITRATION BOARD: Allen Ponak (Chair)
Andrew Huculak (Union Nominee)
Don Soanes (Employer Nominee)

AWARD OF THE ARBITRATION BOARD

For the Union: Robert Logue & Crystal Norbeck

For the Employer: Marilyn Penner

Hearings at Lloydminster and Saskatoon, Saskatchewan
September 2, 3, 4 and 24, 2015

Award Issued: December 11, 2015

ISSUE

The issue in this case is deceptively simple. In early 2012, Prairie North Health Region introduced a new policy that required employees to wear name tags with a photo, their job title, and their first and last names. Previously, name tags had required a photo, job title, and first name only. The Union grieved the new name tag policy, challenging the requirement for last names. At the arbitration hearing, the Union advanced three grounds for removing last names from employee name tags: 1) last names violated employee privacy rights under the province's *Local Authority Freedom of Information and Protection of Privacy Act* (*LAFOIP)*; 2) last names increased personal risk, violating employee rights to a safe workplace pursuant to the occupational health and safety provisions of the *Saskatchewan Employment Act*; and 3) the rule requiring last names was an unreasonable exercise of management rights and inconsistent with the collective bargaining agreement (a "*KVP"* argument[1]).

The Employer disagreed. It was submitted that the name tag policy was reasonable, consistent with the collective bargaining agreement, and did not violate the region's statutory obligations with respect to employee privacy or health and safety. The Employer argued that the policy was adopted for legitimate business reasons, in particular to enhance the quality of patient care under a "Patient First" philosophy encouraged by the provincial government and endorsed by the health region. The Employer noted that employees in a variety of occupations, including police officers, corrections staff, and social workers wore name tags displaying their first and last names. Requiring employees to be identifiable by their last name was hardly unprecedented in the PNHR's submission.

[1] *KVP Co. Ltd., and Lumber & Sawmill Workers' Union, Local 2537* (1965) 16 LAC 73 (Robinson).

Eight witnesses testified on behalf of the Union and six witnesses were called by the Employer. Exhibits numbered 1 through 61 were entered at the outset and the course of the hearing (note that some documents were later withdrawn but the original numbering was retained to avoid confusion). At the Union's request, the last names of several of its witnesses will not be disclosed, an approach taken on a without precedent or prejudice basis should the Employer wish to challenge the non-disclosure of witness names in any future arbitration hearing or other adjudication process.

EVIDENCE

Prairie North Health Region (PNHR) is one of 13 health regions in Saskatchewan. It serves the central western part of the province with Lloydminster and The Battlefords as its urban anchors. Approximately 3300 employees, physicians included, worked for PNHR in March 2012. The region runs acute care hospitals, long term care facilities, mental health centres, clinics, and home care services, among other facilities and services. The Saskatchewan Hospital, the province's largest mental health facility, is located in North Battleford and is staffed by employees of the region. It houses a forensic psychiatric unit.

CUPE Local 5111 is the certified bargaining agent for most employees working for the PNHR (exhibit 55). It was estimated that there were approximately 2000 employees in the CUPE bargaining unit covering a wide array of occupations including licenced practical nurses (LPN's), health care aides, custodial and maintenance staff, clerical staff, and medical technologists. Many, but not all, of these employees interact directly with patients and their families. The other unions at the PNHR are Saskatchewan Union of Nurses (627 members),

Heath Science Association (235 members), and because Lloydminster spans the provincial border for health services delivery, a small number of members from two Alberta unions.

The Union and Employer are bound by a province wide collective bargaining agreement (CBA) negotiated between CUPE and the Saskatchewan Organization of Health Organizations that covers employees represented by CUPE in many health regions, including Prairie North (exhibit 1). It should be noted that the employee groups represented by CUPE in PNHR are represented by other unions in some of the other health regions in Saskatchewan. For example, the Service Employees International Union holds bargaining rights for similar employees in the Heartland Health Region and therefore would not be governed by the same collective bargaining agreement.

Introduction of Name Tag Policy

The policy requiring first and last names on employee name tags was introduced in late Winter/early Spring 2012. Employees received memos announcing the new policy and explaining the reason for it. Illustrative of these announcements is the following memo sent on February 8, 2012 from Mr. David Fan, PNHR CEO (exhibit 3):

> Over the next few months, all Prairie North Health Region staff members will receive new staff ID cards that include your photo, your full name, and your job title.
>
> Patients and clients who come to Prairie North Health Region for care, support, or other services have the right to know who is helping them and what that person's role is.
>
> Ensuring patients know the names of those in their circle of care is an important aspect of patient and family-centered care.
>
> All staff members in all departments are required to wear their ID cards while on duty. Cards are to be worn above the waist, with the name and photo clearly visible and in the line of sight of others.
>
> We will all be held accountable for meeting this standard of care. An updated identification policy (Human Resource and Labour Relations Policy #6319) will be available on MARS as of February 10.

> The new ID cards will be distributed in Lloydminster facilities next week, with other sites to follow. Information specific to your facility will be shared by email, on MARS, and on posters over the next few weeks.
>
> Please share this information with your colleagues who do not have access to email - click here for a printer- friendly version. If you have any questions, please speak with your manager.

The policy was subsequently rolled out in stages throughout the region with employees trading their old name tags in for the new ones.[2]

Several PNHR managers testified about the origins and need for the new policy requiring last names on name tags. Ms. Irene Denis is Vice President, People, Strategy, and Performance and is a long serving part of the region's senior management team. She has always worked out of Meadow Lake and began her career as an x-ray technologist. She stated that she has always worn a name tag with her first and last name and that she had never encountered privacy or safety risks because of it. In 2012, Ms. Denis held the position of Vice President, Corporate Services. In her position, she does not have a direct care role in which she regularly interacts with patients.

Ms. Denis was closely involved in creating the new name tag policy. She testified that it arose out of the "Patient First" report commissioned by the provincial government and released in October 2009 (exhibit 51). According to Ms. Denis, the report focussed on how to put patients at the centre of the health care system. She said the objective was to create a respectful and transparent partnership between health providers and patients. The PNHR board concluded that one of the ways to accomplish this objective was to ensure that patients knew who was providing their care. In the words of Ms. Denis, "patients had the right to know who was in the

[2]The new name tags were "smart" tags embedded with scannable bar codes that allowed employee access to facilities and tracked usage of certain equipment. They also had emergency codes on the back. These aspects of the new name tags were not at issue in this arbitration.

room". Ms. Denis stated that she and other Board members believed that patients were not always aware of who was providing their care, a situation that could be remedied by putting employee last names on name tags.

The PNHR board referred the name tag policy to the region's Continuing Safety and Quality Improvement Committee ("CSQI"). This 12 person committee is composed of four board members, one of whom chaired the committee, members of the region's executive team, and the region's risk management auditor. There are no union representatives on this committee.

Ms. Denis is a member of the CSQI and the committee minutes from April 13, 2011 to November 12, 2012 were entered into evidence (exhibit 53). These minutes show that the name tag policy was reviewed and discussed at eight CSQI meetings before and after its implementation. Among the aspects of the policy mentioned in the minutes prior to implementation are: management "champions" for the policy (April 13, 2011); discipline in case of non-compliance (April 11, 2011, August 25, 2011, September 22, 2011); Information Technology capacity to create the new name tags (September 22, 2011); visibility of the name tags (August 25, 2011); and, potential safety concerns in the Saskatchewan Hospital forensics unit and the mental health facility in Battleford Union Hospital (September 22, 2011). Following implementation, the minutes make reference to safety and privacy concerns that had been raised (April 26, 2012, June 25, 2012) and compliance audits (April 26, 2012, June 25, 2012).

Ms. Denis testified that PNHR unions were not consulted about the new policy before its adoption and implementation. Unions were formally notified of the new policy in early February 2012. Ms. Denis noted that the Saskatchewan Union of Nurses, representing registered nurses, expressed no concerns. On February 8, 2012, Ms. Denis sent a memo to PNHR managers

announcing the name tag policy. The material portions of the memo are set out below (exhibit 53):

> All employees are expected to wear their name tags whenever they are on duty, allowing our patients and clients to know who is providing a service to them and what that person's job is. This is a key aspect of delivering patient and family-centered care. Having staff wear proper identification also improves security within our facilities.
>
> I expect the majority of our staff will understand and support this policy, as properly identifying yourself is a professional standard for many in the health and human services fields.

Ms. Denis was asked about name tag policies in other Saskatchewan health regions and among other health care providers. She indicated that registered nurses have long had last names on their name tags and that some other health regions had introduced or were considering a policy similar to the one in PNHR. Only CUPE, as far as Ms. Denis was aware, had challenged the policy, but she acknowledged that other regions were watching the outcome of the current grievance arbitration before deciding on policy changes. Ms. Denis also was aware of one Ontario hospital that had introduced a policy requiring last names on employee name tags, but she agreed that she had not conducted a systematic search outside Saskatchewan.

In cross-examination, Ms. Denis explained having only the first name did not fulfill the requirement of accountability in accordance with the Patient First recommendations. Patients needed to know the identity of their caregivers and that meant revealing both first and last names of employees. This requirement extended to all staff, in Ms. Denis' view, because housekeepers and custodial staff often interacted with patients and patients' families in the course of their duties. Ms. Denis was referred to page 12 of the Patient First report, the only place in the report which expressly mentions name-tags. It is found in a section titled "We know

that ‘Patient First’ will be a reality in Saskatchewan when:”. Nine illustrations are set out; the fifth one states (exhibit 51, page 12):

> A senior with complex health issues, who spends much of his surrounded by care providers, can know their first names by reading them on their name-tags. The providers, meanwhile, also know their patient’s name and work as a team to meet his needs.

Ms. Denis responded that respect and accountability require both names so that the patient will know who is in their room providing care and other services. She elaborated that last names help equalize the power between patient and caregivers. Employees know all about patients; by providing last names patients now have some knowledge about their caregivers. While she accepted that staffing schedules can help identify which employees are on duty at any given time, these schedules cannot always accurately reveal which staff were in which patient room at a specific time.

Ms. Denis agreed that no formal risk assessment, with a written analysis and report, of the impact of last names was conducted prior to devising and implementing the policy. She stated that the Director of Workplace Planning & Staffing, Ms. Carol Rohovich, was asked to assess risk. No heightened risk factors were reported to either the CSQI or PNHR board. In response to a question from the arbitration board, Ms. Denis answered that she was unaware of any surveys that assessed the impact of last name employee identification on patient and family satisfaction. She allowed that a case might be made for a different name tag approach for employees working in the forensic unit of the Saskatchewan Hospital.

Ms. Rohovich testified that she was involved with the drafting and implementation of the name tag policy, taking her direction from Ms. Denis. She recalled that Ms. Denis linked the new name tag policy to the Patient First report and advised her name tags were to include first and last names, job title, and were to have emergency codes on the back. Ms. Rohovich said

she was aware of the Patient First report but only in a general, rather than detailed, way. Soon after the name tag policy was announced, in response to queries from several managers Ms. Rohovich drafted general safety guidelines for managers to share with staff. Occupational Safety and Health was not part of her own portfolio but she stated that she consulted with the region's OHS Director and researched best practices for current and future concerns. The guidelines addressed safety issues that might arise at work and at home as a result of the new policy. These guidelines are set out below (exhibit 60):

> **General Guidelines for Ensuring Staff Safety**
>
> Both the employer and staff are responsible for making personal safety a priority. We all must take reasonable care with respect to our own personal safety at work and at home.
>
> As public employees, we cannot wear the cloak of anonymity; patients do have the right to know who is taking care of them. To deny this right contravenes the professionalism that we have all committed to as healthcare providers.
>
> To address concerns and ensure our staff are as safe as possible while providing quality Patient-First' care, Prairie North Health Region has compiled the following guidelines. Employee concerns that are brought forward will be reviewed and addressed as appropriate.
>
> ***At Work***
>
> Should there be a concern or issue with a patient, family member, or visitor, this concern should be discussed with your supervisor or manager immediately. From this discussion, the best course of action will be determined. Options include: • Re-assignment to a different patient
> • Re-assignment to a different work area
> • Temporary displacement of name tag
> • Depending on the circumstance other solutions maybe appropriate and implemented as approved by supervisor or mangers.
>
> Photo identification is considered to be a part of your uniform and department dress code policies for specific departments will address particular concerns as they relate to daily work. (ex: Dietary, EMS, etc)
>
> ***At Home***
>
> Unwanted contact at home could include phone calls, access via internet, and face-to-face contact. While contact at home from a patient, family member or visitor is not appropriate, employees should remain professional and respectful. Whether the person is just looking for help or is being bothersome, overreacting may escalate the situation.

Phone calls

If contacted at home by a patient, family member, or visitor, a firm but direct approach is advised. Ask if the person requires medical attention:

- If the answer is "yes", advise that you are not currently on duty, then direct them to the closest medical facility and provide a phone number where someone on duty can assist them.
- If the answer is "no", respectfully advise that you are not currently on duty, and that the contact is not appropriate. Redirect that if they need medical help, they can contact the closest medical facility.

Internet Contact

By being on the internet and using social media, the means and opportunity for contact by unwanted persons is there. It is the responsibility of each person using the Internet and social media to be aware and protect themselves using privacy settings that are provided.

- A recent edition of SUN Spots (September, 2011) has a great article about various facets of social media use, including a Privacy Protection 101 with a "how-to" guide for Facebook, which gives good ideas for setting privacy settings on the site. Find it online here: http://www.sunnurses.sk.ca/SS/2011/SUNSpots%2037-5%20 (final) pdf Issue #5, pg 10.

Personal Contact

- Should someone approach you outside of the workplace in a way that makes you uncomfortable and they indicate they know you through your work, remain professional and be direct that you do not want to continue the conversation or interaction with them. Make note of the incident and inform your supervisor.
- While it is not a common occurrence, should you have continued contact from an individual who is displaying questionable and you feel your safety is at risk, you should contact the authorities and if there is immediate and present danger, call 911. If this occurs, your employer should also be notified so that precautions can be taken in the workplace as well.

The Bottom Line

If you have a safety concern, please bring it up with your manager, supervisor, and/or Human Resources. We want to address concerns as they arise to keep our facilities and our Region as safe as possible for all employees while continuing to provide the highest quality, patient-centered care we can.

Part of Ms. Rohovich's role was to look at name tag policies of other health regions. She said that she contacted the other Saskatchewan health regions but received limited responses. She was aware that Sun Country wanted to add last names and believed that she heard from

Prince Albert that it did not require last names. She spoke to the labour relations staff at Sun Country Health Region in Spring 2011 and was told that last names had been required since 2005 and that no concerns had been raised or grievances filed over the policy.[3]

Ms. Rohovich contacted the two professional associations whose members are unionized in the PNHR. The Saskatchewan Registered Nurses' Association (SRNA) endorses first and last names on employee name tags. Section 1.3.1 in the SRNA Mission Statement states that "individual RNs and RN(NP)s consistently use their first and last name and title for identification to the public" (exhibit 57). The Saskatchewan Association of Licensed Practical Nurses (SALPN) encourages its members to display their first and last name. While this endorsement was not in the SALPN mission statement, Ms. Rohovich drew attention to an October 2011 SALPN newsletter in which the following short article appeared (exhibit 58):

> Many of today's nursing professionals feel only a first name introduction to a patient is required and often identification tags are not worn.
>
> LPNs are regulated nursing professionals and therefore accountable to the patient, the employer and the profession. LPNs should introduce themselves to patients with a last name as well as professional designation.
>
> Nursing professionals are among the few professionals that are able to practice without disclosing a full name. Teachers, doctors, lawyers, and police officers are fellow professionals identified with a last name. A nursing professional might ask themselves if they would hire a lawyer with a business card or sign bearing only a first name?
>
> The SALPN encourages LPNs to introduce themselves with a last name and LPN designation. This demonstrates both professionalism and accountability for the LPN and the nursing profession. Please join in us in encouraging full introductions upon initiation of patient care.

Similarly, a SALPN brochure for a professional development program advised that "the SALPN encourages the use of a name tag displaying your first and last name with professional designation. Be proud of who you are and the care you provide" (exhibit 58).

[3]The evidence showed that a grievance was subsequently filed after Ms. Rohovich had gathered her information.

Ms. Rohovich also conducted on-line searches using standard search engines like Google and subscription sites like “HR Download”. Focussing on health care, she used search terms like “photo ID”, “name tags”, “privacy”, “safety” and combinations of these terms. She testified that these searches did not provide helpful information.

Ms. Joyce Hannah-Paulhus, a registered nurse, has been Director of Health & Safety since January 2011 and, before that, Quality Control Coordinator in the Battlefords. She had no role in drafting the name tag policy. As Quality Control Coordinator, Ms. Hannah-Paulhus was responsible for patient care concerns and investigating patient and family complaints. She testified that a common complaint was the inability of patients to know who was providing their care. All employees dress in similar scrubs, all the same colour, making it difficult for patients to tell a nurse from a cleaner. Ms. Hannah-Paulhus stated that the problem could be remedied if caregivers introduced themselves and wore name tags.

While Quality Control Coordinator, Ms. Hannah-Paulhus participated in the CSQI committee and since becoming a director has sat on the regional board. According to Ms. Hannah-Paulhus, the PNHR board chair, Ms. Bonnie O’Grady, was very passionate about the name tag issue based on the Patient First report. She stated that Ms. O’Grady made clear her expectation that last names would be on name tags and used during introductions with patients.

Ms. Hannah-Paulhus was asked about health and safety issues. She offered the opinion that risk of violence and harassment can never be completely eliminated but that well defined polices and training can help reduce risk to staff. A training program called Workplace Assessment and Violence Education (known as “WAVE”) was offered as an example of the type of training employees receive. By provincial law, all workplaces must have joint employee-management safety and health committees and the PNHR complies with this requirement.

Ms. Hannah-Paulhus testified that violent incidents were among the top three reasons for employee injury, the other two being lifting injuries and slips and falls. Saskatchewan Hospital accounted almost half of the violent injuries. Ms. Hannah-Paulhus noted that the region's Workers Compensation claims have decreased by 50 percent since she became director, a drop she attributed to safety management and training programs.

In cross-examination, Ms. Hannah-Paulhus stated that she did not conduct a risk assessment before the new name tag policy was introduced. She said she would have expected a formal risk assessment, commenting that "we assess risk in everything we do". Ms. Hannah-Paulhus agreed that she had not seen a formal risk assessment related to the new policy, but assumed one would have been carried out before the new policy was implemented. She reiterated that she had no role in the creation or implementation of the policy.

Ms. Tracie Nelson is Director, Labour Relations, and was on maternity leave between February 2011 and February 2012. She had no involvement with the creation of or implementation plan for the name tag policy. After the policy was grieved by the union, Ms. Nelson investigated name tag policies in other Saskatchewan health regions. She found that five regions required last names on name tags. In four of these regions, employees were represented by other unions. In the region represented by CUPE, Sun Country, a grievance had been filed challenging the policy. The other seven regions, including Regina Qu'Appelle and Saskatoon, did not require last names on employee name tags.

Ms. Linda Shynkaruk is a registered psychiatric nurse and Director, Saskatchewan Hospital, since 2001. She has worked at the hospital for more than 30 years, the first half in direct patient care roles in all the different units, including the forensic unit. Ms. Shynkaruk has always worn a name tag with her first and last name, expressing the view that having last

names on employee name tags mattered. She stated that patients have a right to know who is caring for them and knowing the last names of caregivers can help people navigate the health care system. She testified that she had not experienced any incidents of unwanted contact by patients or their families. She was aware of incidents involving staff, but in her view these incidents were unrelated to having last names on employee ID's. Ms. Shynkaruk acknowledged that the Saskatchewan Hospital had the highest number of violent incidents compared to other regional health care facilities and agreed that the forensic unit required very secure access and egress. The forensic unit housed individual on remand who were receiving a psychiatric assessment ahead of a court date, individuals who had committed a crime but were deemed not criminally responsible because of mental illness, and individuals from correctional centres who required psychiatric treatment. Ms. Shynkaruk noted that correctional officers in secure facilities also wear ID's with their first and last names visible.

In cross-examination, Ms. Shynkaruk said she had never been called at home by a patient but understood why patients might want to reach staff, for example, to inquire about medication. She recalled some staff volunteering their home numbers and, in a few cases, even taking patients to their homes.

Employee and Union Response to Name Tag Policy

Substantial evidence was provided about employee and union responses to the new name tag policy. The day after the policy was announced, 35 employees from the Cut Knife Health Complex signed a handwritten petition addressed to CEO David Fan and the PNHR board protesting the policy. The petition reads as follows (exhibit 4):

> We the undersigned are very concerned and upset that the Region will be displaying our last names on our ID cards. We are concerned with our own privacy! We believe any client concerns can be tracked and addressed by having only our first names and job class on our ID's. We DO NOT want our last names printed on our ID cards.

The degree of noncompliance with the new policy was unclear. A number of union witnesses testified that they (and co-workers) did not comply with the new policy, covering their last name with tape or white out. Several management witnesses, based on their own personal observations or reports from supervisors, suggested that compliance was nearly universal.[4]

It is undisputed that the Union challenged the new policy as it was being rolled out at the various regional health facilities in 2012. In early June 2012, the Union posted the following notice for its members on Union bulletin boards (exhibit 13):

CUPE Local 5111 Notice: RE: New ID Tags with last name

> We have filed a grievance with the employer over this issue and at this point they are continuing with issuing the new name tags.
>
> The local proposes the following interim solutions that you as members can do:
>
> 1) If you feel that wearing the new ID tag with your last name on it could result in the possibility of you facing an increase risk then we suggest that you cover your last name and when asked to remove the cover that you invoke Section 23 of the OH&S act. Please read PNRHA's policies and follow the various appeals that are available to you including investigation by an OH&S officer.
>
> 2) If you feel that # 1 does not apply to you and yet there is some additional risk and you are not happy with this then we urge you to fill out the OH&S Near Miss or OH&S Concern Forms and forward them to your committee.
>
> If we all stand together we have a much better chance of winning this dispute. We need to support those that feel they have a concern and wish to challenge this policy.
>
> Brian Manegre [Local 5111 president]

On June 17, 2012, the Union filed a policy grievance requesting that last names be removed from employee name tags (exhibit 2). At about the same time, the local union president, Mr. Manegre, and a national CUPE representative brought Union concerns to senior

[4]It was undisputed that employees who chose not to comply with the new policy were not formally disciplined while the parties awaited the decision in the current arbitration.

management's attention through emails (exhibits 14 & 15)[5]. In particular, the Union suggested that the new policy created privacy and health and safety concerns for their members. In a memo to all staff on July 4, 2012, Ms. Denis responded that management disagreed with the Union's advice in its bulletin board notice (exhibit 13) to members regarding covering their last name and the criteria that needed to be met for refusing unsafe work. The memo reads in part (exhibit 17):

> CUPE has stated that "if you feel that wearing the new ID tag with your last name on it could result in the possibility of you facing an increase risk, then we suggest that you cover your last name and when asked to remove that cover you invoke Section 23 of the OH&S Act." It is the position of Prairie North that CUPE's instructions are not consistent with the legislation and with your obligations as an employee. While the policy may not be acceptable to all, it has been developed as part of our commitment to patient-centered care and must be followed by all employees of the Prairie North Health Region. Violation of or refusal to follow this policy may result in disciplinary action for insubordination.
>
> Prairie North takes its obligations to its employees seriously and in the event you have reasonable grounds to believe that the wearing of a name tag in accordance with the policy is unusually dangerous you must bring the situation to the attention of your immediate supervisor or manager.
>
> Any exceptions to the Photo Identification Policy (HR#6319) must be discussed with your immediate supervisor or manager indicating the specific health and safety risk so that the best course of action or options are made available.
>
> Thank you for taking the time to be informed and for your anticipated cooperation.

On July 5, 2012, the Union posted detailed information on Union bulletin boards explaining under what circumstances employees could refuse to perform work that they believed was unsafe and how the right to refuse unsafe work could be exercised in practice. The notice excerpted sections of the *Occupational Health and Safety Act* (exhibit 18). The notice did not specifically mention the new name tag policy.

[5] Exhibit 15 mentioned four members who had been contacted at home, but the Union never provided the names of these employees to management, preventing any followup.

Evidence was provided by Union witnesses who filed individual privacy and/or health and safety challenges to the new policy. Ms. Denise Fortin was a unit clerk in Lloydminster Hospital from 2001 to July 2013 and was a vice-president of Local 5111 at the time the new name tag policy was introduced (she currently works for another health region). Ms. Fortin raised the name tag issue and the right to refuse unsafe work with the region's Occupational Health and Safety Committee on July 10, 2012 and was advised the same day by the committee chair that "documented concerns are to go through HR" (exhibit 20). On July 11, 2012, the committee chair followed up with an email that "the incident reports were reviewed and no safety risks were identified so there was no further action taken" (exhibit 21).

On August 2, 2012, Ms. Fortin made a written privacy complaint (exhibit 26) by email to PNHR's privacy officer, Ms. Irene Denis. Ms. Fortin noted in her email that there was a potential conflict of interest as Ms. Denis had played a major role in implementing the new policy. In her complaint, Ms. Fortin alleged that violence against health care workers was rising and attached an article about the death of a care worker in Oregon. The gist of her concerns can be seen in the following excerpt from her email:

> After a full day on the frontline dealing with angry, irate patients because of wait times, incompetency, (in their eyes), improper treatment, illness, addictions, or maybe some unrealistic romantic feelings, etc etc, we could look forward to leaving our workplaces, and going to the safe haven of our homes with our families. With the regions policy to add our last names on our name tag, that safety has become jaded. We could go home knowing that clients/patients didn't know who we were and or where we lived. The nametag policy has not only put us at an increased risk BUT also our loved ones, our spouses, children and grandchildren The employer has stated to us in previous discussions that it is minimal, and to you it may be minimal, the majority of employers are off site, and many behind secured doors, while the employees have direct contact with these people, and therefore the minimal risk you see from where you are, we see very differently. One suggestion from HR is to unlist our phone number, as a solution, I do not see this as a solution bit a bandaid to a wound that could be greater than anticipated. The cost for each employee to unlist their phone numbers is 29.00/month, is the employer willing to pay these costs, because I do not think that there should be a cost to the employee to protect our safety, due to an employer policy.

Prior to submitting this complaint, Ms. Fortin had been in email correspondence with the Office of the Saskatchewan Information and Privacy Commissioner which had advised her to first attempt to resolve the issue internally with her employer (exhibits 9 & 10).

Because Ms. Fortin had raised a possible conflict of interest, her complaint was referred to Ms. Alice Robinson, PNHR Director of Health Information and the region's alternate privacy officer. Ms. Robinson testified the that she reviewed the material provided by Ms. Fortin, two decisions of the Saskatchewan privacy commission, and relevant material provided by the PNHR labour relations, human resources, and occupational health & safety departments.

In a detailed response to the Union on October 12, 2012, Ms. Robinson concluded that requiring employees to wear name tags with last names "is not a privacy breach nor an unacceptable invasion of privacy". She further added that the question of risk was investigated and she "did not identify evidence of immediate risk to employees by the fact that the names were fully identified" (exhibit 30). Ms. Fortin testified that Ms. Robinson's memo advised her of her right to appeal the ruling to the provincial privacy commission but she did not do so in light of the grievance and the likelihood of arbitration.

Ms. Maxine Goll is an Environmental Services supervisor in Meadow Lake, a member of the bargaining unit, and a CUPE branch vice president. She has regular interaction with patients as part of her job. Ms. Goll testified that she when learned about the requirement to have her last name on her employee name tag she became concerned about her personal safety. She stated her concern arose from her experience sometime in the past, she could not recall the time period, when employee last names were on name tags and staff had been harassed by outsiders.

Ms. Goll raised her concerns with her manager and filed an occupational safety and health complaint on June 7, 2012. The complaint alleged that the name tags with her last name was “a safety concern to me and my family” (exhibit 19, page 1). Her manager, the first step in the complaint process, recommended that she abide by the new name tag policy “until the issue is resolved” (exhibit 19, page 2). Ms. Goll then filed a “Section 23 complaint” with the local occupational safety and health committee, alleging unsafe work. According to Ms. Goll, the committee denied her complaint, advising her that she had not demonstrated immediate danger. Ms. Goll appealed to Saskatchewan Occupational Health & Safety Division but her appeal was rejected as untimely (exhibits 42, 43, 44 & 45). A number of other employees in Meadow Lake filed similar complaints (exhibit 46).

In cross-examination, Ms. Goll agreed that her Section 23 complaint may have been triggered by the June 4, 2012 Union bulletin board announcement challenging the name tag policy and mentioning Section 23 as an option for individual employees (exhibit 13, set out earlier in this award).

Privacy and Safety Concerns of Individual Employees

Several employees provided evidence of their personal experiences in situations where they felt at risk. The evidence was intended to be illustrative, not exhaustive.

Ms. Nancy Black, an active member of the union executive, is a continuing care assistant at the Saskatchewan Hospital, a mental health facility. She has worked in all sections of that facility, including, up to two years ago, the 18 bed forensics unit. The forensics unit houses patients who have been convicted of or charged with a crime and is subject to tight security procedures akin to a prison. Ms. Black covers her last name on her name tag with tape, explaining that she has a family and grandchildren and “I don’t want my workplace to enter my

home". She related an incident in which a former forensics unit patient who she was escorting from RCMP cells recognized her. He called her a "f—ing bitch" and threatened to break her arms.

In cross-examination, Ms. Black explained that she removed the tape from her name tag when meeting with managers in order to leave the impression she is complying with the new policy. Ms. Black has lived in North Battleford for many years and could not say if many people in the community knew she worked at the Saskatchewan Hospital.

Ms. R is an LPN working in a long term care facility in the Battlefords. She testified that she initially complied with the name tag policy, wearing ID with her last name visible until an incident two years ago. Ms. R described admitting a 93 year old woman who subsequently passed away. Her son had accompanied the woman at the admission and he had made Ms. R uncomfortable – she described him as "not of sound mind". The son reacted angrily to his mother's death, accusing Ms. R of killing his mother. According to Ms. R, when the son arrived at the hospital he peered at her name tag, repeated her first and last names, and said "you killed my mom – I won't forget your name and I won't forget your face". A few days later, Ms. R's roommate called her during the night shift reporting a man with a car was outside their home. Ms. R reported the incident to the RCMP and through photos identified the son as a convicted sex offender. She also reported the incident to her manager but did not complete an incident report as, in her mind, the incident at her house had occurred outside work. After that, Ms. R covered her last name on her name tag.

Ms. R was aware of her professional association's recommendation that LPN's wear name tags with their first and last name, commenting that "it is not a requirement" of SALPN. She stated that patients have a right to request their medical records and that they can find out

the last names of their various caregivers through such a request. In the view of Ms. R, this multi-step process is somewhat different than wearing one's name on a clearly visible name tag. A patient may also have multiple caregivers. In cross-examination, Ms. R conceded that she is well known in the community and her last name and address she had been listed in the phone directory. Since the incident she now only uses a cell phone.

Ms. Valerie Blais is an LPN who works in Battleford Union Hospital, an acute care facility, working on a variety of units. She initially wore her name tag with her last name visible but stopped after a 2012 incident. According to Ms. Blais, she was working on a medical unit when a new patient was admitted with mental health issues. The patient subsequently called Ms. Blais at home at night on her landline on several occasions. The call was not answered but call display revealed the patient's name. Ms. Blais disconnected her landline at her roommate's request and stopped wearing her name tag.

Ms. Blais raised several other concerns. She described an attempt by a patient to add hospital staff as Facebook friends. When her last name was visible she would get questions about whether she was related to others with the same last name; in her view, this was an intrusion into her privacy as she did not want to discuss her family with people she did not know. Ms. Blais testified that threats from patients are not uncommon for various reasons including alcohol withdrawal, domestic disputes, and dissatisfaction with care.

In cross-examination, Ms. Blais acknowledged that patients could find out her last name by requesting their medical records and treatment charts. She also conceded that some patients would know her from the general community. Ms. Blais was asked about her own Facebook profile. She agreed that her profile contained her last name and personal photos and could be accessed simply by searching her first name and where she worked.

Ms. K works as a continuing care and office assistant in the Battleford Mental Health and Addiction Centre. While in her current job she has been telephoned by a patient at home who was able get her number from the phone book after finding her last name from a medical form. Ms. K brought to the matter to the attention of her manager and it was agreed that she could henceforth use her initials, not full name, on medical forms.

Prior to her current position, Ms. K worked for three years at Saskatchewan Hospital in various units, including the forensic unit. She testified that she did not wear her name tag with her last name while working at Saskatchewan Hospital, explaining that she "did not feel comfortable" doing so. Ms. K described a disturbing event in 2013 when she working in the forensic unit. She was conducting continuous observation of a patient, incarcerated for murder and cannibalism. While hovering over her, he began shouting profanities and threatened to find her and "slit her throat" upon his release. Ms. K notified management, contacted the RCMP (who later pressed charges), and prepared a written statement (exhibit 22). She took a two week leave following the incident; when she returned the patient had been transferred to another facility. With respect to the name tag policy, Ms. K commented that "why should we give criminals our last name and a way to find staff outside work".

Ms. Anita Blum works in Saskatchewan Hospital as a continuing care assistant. She testified that she does not feel safe for herself or her family in having her last name visible to patients. In cross-examination, Ms. Blum acknowledged that she had brought her children to the hospital on occasion when picking up or dropping off things and that patients would have seen them. Ms. Blum was not aware that her Facebook profile could be accessed by anyone, strangers and friends alike, by simply inputting her first name and Prairie North Health Region. Her profile contains her first and last names, photos of her family, and where she worked

(exhibit 47). Ms. Blum commented that she would be changing her Facebook profile privacy settings at her earliest opportunity.

Ms. D is an LPN working in the women's health and birthing ward at the Battleford Union Hospital. She is the CUPE facility representative. Ms. D testified that she was not happy with the new name tag policy although she complies with it. She stated that does not share personal information with patients although she is frequently recognized in the community having helped in the delivery of hundreds of babies.

Ms. D related an incident that occurred prior to the introduction of new name tag policy. A patient and her family became very hostile and were fighting with each other and hospital security. They became verbally abusive towards her, swearing at her, and accusing the staff of not providing proper care. Ultimately they left the hospital, stating they were going to Saskatoon to get better care. When Ms. D required a signed release form, the patient told her to "f— off". Later that day, she received a call from the admitting department alerting her that the patient (and his family) were returning to the hospital threatening to shoot the doctors and nurses. The hospital was placed into a lockdown, the RCMP advised, the patient and his family were arrested. Ms. D stated that at the time she had a listed phone number, making it easy for her to be found. In her view, having the last name on name tags invites problems and jeopardizes her safety by making it too easy for disgruntled patients and their families to find her. In cross-examination, Ms. Day acknowledged that she was not aware that patients could access their medical charts and obtain the last names of caregivers.

Ms. Marilyn Goll has worked as an in-scope supervisor in a health care facility in Meadow Lake for many years. She is a local union vice-president. She stated that she felt unsafe under the new name tag policy based on previous experience in the Meadow Lake

facility. It was Ms. Goll's evidence that last names had been on name tags many years previously, but had been removed following security concerns over staff being stalked at work and at home.

Safety Incidents after Introduction of New Name Tag Policy

Employer witnesses were unanimous that no safety related incidents attributable to the visibility of last names on employee ID's had been reported in the region during the approximately three years that new name tag policy had been in effect. However, it was accepted that if an incident had not been reported it was possible that management would not be aware of it.

Ms. Denis testified that she would have been advised by managers of any incidents that stemmed from the new name tag policy. As well, she participated in a morning senior leadership teleconference that reviewed critical incidents, workplace injuries, and operational issues. Had there been a safety problem, she would have known about it. Ms. Denis stated that CUPE had made allegations about problems (especially in exhibit 15) but had never provided any names or specific details. Ms. Nielsen and Ms. Hannah-Paulhus provided similar evidence; management had never received any specific information regarding union allegations of problems arising from the name tag policy.

Ms. Rohovich testified that she was not aware of any incidents directly related to having last names on employee name tags. Because employees raised concerns, however, Ms. Rohovich developed a set of safety guidelines that were designed to help managers answer employee questions (exhibit 60). The guidelines addressed potential safety issues at work and outside work. One of several options recommended for incidents at work is "temporary displacement of nametag".

Employee Privacy and Last Names

Evidence was provided about ways in which patients and their families could obtain the last names of employees other than through name tags. Facebook profiles often provide last names and other personal information. The evidence showed that employees with Facebook accounts were not aware that their last names could be readily accessed by people who were not their Facebook "friends" simply by using first names and place of work. As well, a number of employees live and work in relatively small communities and they acknowledged that patients and families might well know them, their families, and where they lived quite apart from work.

Evidence was canvassed about the legal rights of patients (or their designates) to gain access to their medical records under the *Health Information Protection Act*. This evidence showed that requests for medical records can be made to the facility health records department and must be provided other than in exceptional circumstances. According to Ms. Denis, a patient's health record would normally reveal the last name of anyone who provided direct patient care. Even if a caregiver used only initials on a patient chart, the patient would be entitled to the caregiver's full name. The names of employees who provided ancillary care, such as housekeeping, would not normally be disclosed. In response to a question from the arbitration board, Ms. Denis agreed that the heath records department might alert caregivers if a request for records seemed overly focussed on the caregivers rather than the care itself.

COLLECTIVE BARGAINING AGREEMENT

ARTICLE 4 - MANAGEMENT RIGHTS

4.01 **Management Rights**

> The Union acknowledges that it is the right of the Employer(s) to manage its operation and to direct the working force. Management rights as set out in this agreement are subject to the terms of the Collective Agreement.

ARTICLE 15 - OCCUPATIONAL HEALTH & SAFETY

15.01 **Occupational Health and Safety**

a) The Local of the Union and the Employer(s), as a matter of principle, recognize that occupational health and safety is a shared concern. They will cooperate on promoting and improving rules and practices which will enhance the physiological, psychological and social well-being with respect to working conditions for all Employees in accordance with *The Occupational Health and Safety Act*, and it is further agreed that *The Occupational Health and Safety Act and Regulations* form part of this Collective Agreement. There shall be no discrimination, no penalty, no intimidation and no coercion when Employees comply with this Article.

b) CUPE members participating on Joint Occupational Health and Safety Committees and performing their duties, as required by the Committee, as outlined in *The Occupational Health and Safety Act* shall suffer no loss of payor benefits.

c) The legal Joint Occupational Health and Safety Committee(s) shall be the Facility/Agency Committee.

ARTICLE 17 - HARASSMENT

17.01

(a) **Definition of Harassment**:

Harassment means any objectionable conduct, comments or display by a person that is directed at a worker; and is made on the basis of race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin, union activity or; is repeated, intentional, sexually oriented practice that undermines an Employee's health, job performance or workplace relationships or endangers an Employee's employment status or potential; or is repeated, intentional, offensive comments and/or actions deliberately designed to demean and belittle an individual and/or to cause personal humiliation; or constitutes a threat to the health or safety of the worker.

(b) **Examples of Harassment**

Examples of harassment are:

- Verbal abuse or threats;
- Unwelcome remarks, jokes, innuendoes or taunting about a person's body, attire, age, marital status, ethnic or national origin, religion, sexuality, etc;
- Displaying of pornographic, racist or other offensive or derogatory pictures, cartoons or printed matter;
- Practical jokes which cause awkwardness or embarrassment;
- Unwelcome invitations or requests, whether indirect, explicit or intimidating;
- Leering or other gestures;
- Unnecessary physical contact such as touching, patting, pinching or punching;
- Physical assault; and
- Bullying.

17.02 **Principle of Fair Treatment**

The principle of fair treatment is a fundamental one and both the Emp1oyer(s) and the Local of the Union do not and will not condone any improper behavior on the part of any person which would jeopardize an Employee's dignity and well-being and/or undermine work relationships and productivity.

17.03 **Shared Responsibility**

The Employer(s) and the Local of the Union acknowledge a shared responsibility to:

- prevent harassment;
- promote a safe, abuse-free working environment;
- uphold the philosophy of zero tolerance of harassment.

17.04 **Co-operation**

Employees and Local of the Union representatives will be expected to co-operate with Management in identifying situations, reporting promptly and disclosing all information in order to facilitate the investigation.

17.05 **Policy**

The Employer(s) shall ensure a policy is developed jointly with the Local of the Union to address the issue of workplace harassment. The policy shall ensure that:

- Individuals are aware of the seriousness with which the parties view harassment;
- Incidents are jointly investigated in a prompt, objective, sensitive, and confidential manner not precluding the use of a third (3rd) party;
- The Employer will provide the Local of the Union with written documentation related to any formal harassment investigation including the complaint, conclusions and recommendations;
- The necessary corrective action is taken;
- Employees/Managers are provided with the education necessary for them to prevent harassment, identify harassment when it occurs and where applicable, how to carry out an investigation. Such training shall be considered time worked and the Employee shall suffer no loss of payor benefits.

17.06 **Attempt to Resolve**

a) If an Employee believes that they have been harassed, an Employee should tell the alleged harasser to stop.

b) If the harassment does not stop at this point, or if the harassed Employee does not feel able to approach the alleged harasser directly, that Employee, or the Local of the Union, should file a formal harassment complaint documenting the event(s) complete with time, date, location, names of witnesses and details for each event.

c) Upon receipt of any verbal or written formal harassment complaint the Employer shall attempt to resolve it through any means deemed appropriate in the particular circumstances of the complaint. The Employer must maintain written notes of their actions.

Failure to resolve shall result in the initiation of a formal investigation as per Article 17.05.

ARTICLE 18 - VIOLENCE

18.01 **Violence in the Workplace**

The Employer(s) and Local of the Union agree that violence against Employees in the workplace is not acceptable and agree to work together towards elimination of the incidence and causal factors of violence.

To that end, the following shall apply:

a) Definition of Violence

Violence shall be defined as any incident in which an Employee is physically or verbally abused, or assaulted during the course of his/her employment.

b) Violence Policies and Procedures

In compliance with *The Occupational Health and Safety Act and Regulations*, the Employer(s) will ensure a policy is developed, in consultation with the Local of the Union and other Unions in the Regional Health Authority to address the prevention of violence, the management of violent situations and to work towards the elimination of the causal factors of violence and provide support to Employees who have faced violence.

The policies and procedures shall be part of the Employer(s)' health and safety policy and written copies shall be posted in a place accessible to all Employees.

The policy and procedures may include, but not be limited to:

i) The provision of available information regarding a client's previous, actual or potential violent behaviour;
ii) Incidents are investigated promptly, objectively and in a sensitive, confidential manner;
iii) Provision for the Joint Occupational Health and Safety Committees to review the effectiveness of anti-violence policies at the local level;
iv) Alternate options for care delivery are identified, considered and implemented;
v) Employees/Managers are provided with the education necessary for them to prevent violence, deal with it when it occurs, and know the procedure for reporting incidents. Education shall include:

- Causes of violence
- Recognition of warning signs
- Prevention of escalation
- Controlling and defusing aggressive situations; and
- Details of the Employer(s)' policies, measures and procedures to deal with violence and the availability of supportive counselling.

vi) Security procedures are in place to summon assistance;
vii) No Employee shall experience discrimination, coercion or intimidation for raising concerns about violence in the workplace;
viii) the Employer(s) and the Local of the Union recognize that, where preventative measures have failed to prevent violent incidents, counseling and support must be available to help victims recover from such incidents.

c) When an incident demonstrates that a client's behavior may constitute a risk to the safety of another client or staff member, a meeting shall be convened within twenty-four (24) hours, or as soon as possible thereafter, to consider and implement alternative options for care delivery to ensure the safety of the Employee(s) and other client(s). [Bolding in original]

SASKATCHEWAN EMPLOYMENT ACT – PART III

3-1(1) In this Part and in Part IV:

(l) "harassment" means any inappropriate conduct, comment, display, action or gesture by a person:

(i) that either:

(A) is based on race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry or place of origin; or

(B) subject to subsections (4) and (5), adversely affects the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated; and

(ii) that constitutes a threat to the health or safety of the worker;

(o) "occupational health and safety" means:

(i) the promotion and maintenance of the highest degree of physical, mental and social well-being of workers;

(ii) the prevention among workers of ill health caused by their working conditions;

(iii) the protection of workers in their employment from factors adverse to their health;

(iv) the placing and maintenance of workers in working environments that are adapted to their individual physiological and psychological conditions; and

(v) the promotion and maintenance of a working environment that is free of harassment;

(x) "practicable" means possible given current knowledge, technology and invention;

3-8 Every employer shall:

(a) ensure, insofar as is reasonably practicable, the health, safety and welfare at work of all of the employer's workers;

(b) consult and cooperate in a timely manner with any occupational health committee or the occupational health and safety representative at the place of employment for the purpose of resolving concerns on matters of health, safety and welfare at work;

(c) make a reasonable attempt to resolve, in a timely manner, concerns raised by an occupational health committee or occupational health and safety representative pursuant to clause (b);

(d) ensure, insofar as is reasonably practicable, that the employer's workers are not exposed to harassment with respect to any matter or circumstance arising out of the workers' employment;

(e) cooperate with any other person exercising a duty imposed by this Part or the regulations made pursuant to this Part;

(f) ensure that:

(i) the employer's workers are trained in all matters that are necessary to protect their health, safety and welfare; and

(ii) all work at the place of employment is sufficiently and competently supervised;

(g) if the employer is required to designate an occupational health and safety representative for a place of employment, ensure that written records of meetings with the occupational health and safety representative are kept and are readily available at the place of employment;

(h) ensure, insofar as is reasonably practicable, that the activities of the employer's workers at a place of employment do not negatively affect the health, safety or welfare at work of the employer, other workers or any self-employed person at the place of employment; and

(i) comply with this Part and the regulations made pursuant to this Part.

3-21(1) An employer operating at a prescribed place of employment where violent situations have occurred or may reasonably be expected to occur shall develop and implement a written policy statement and prevention plan to deal with potentially violent situations after consultation with:

(a) the occupational health committee;

(b) the occupational health and safety representative; or

(c) the workers, if there is no occupational health committee and no occupational health and safety representative.

(2) A policy statement and prevention plan required pursuant to subsection (1) must include any prescribed provisions.

Right to refuse dangerous work [Formerly Section 23 of *Occupational Health and Safety Act*]

3-31 A worker may refuse to perform any particular act or series of acts at a place of employment if the worker has reasonable grounds to believe that the act or series of acts is unusually dangerous to the worker's health or safety or the health or safety of any other person at the place of employment until:

(a) sufficient steps have been taken to satisfy the worker otherwise; or

(b) the occupational health committee has investigated the matter and advised the worker otherwise.

LOCAL AUTHORITIES FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Interpretation

23(1) Subject to subsections (1.1) and (2), "personal information" means personal information about an identifiable individual that is recorded in any form, and includes:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(c) information that relates to health care that has been received by the individual or to the health history of the individual;

(e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or
(ii) the disclosure of the name itself would reveal personal information about the individual.

(1.1) On and after the coming into force of subsections 4(3) and (6) of The Health Information Protection Act, with respect to a local authority that is a trustee as defined in that Act, "personal information" does not include information that constitutes personal health information as defined in that Act.

(2) **"Personal information"** does not include information that discloses:

(a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a local authority;

(b) the personal opinions or views of an individual employed by a local authority given in the course of employment, other than personal opinions or views with respect to another individual;

(c) financial or other details of a contract for personal services;

(d) details of a licence, permit or other similar discretionary benefit granted to an individual by a local authority;

(e) details of a discretionary benefit of a financial nature granted to an individual by a local authority;

(f) expenses incurred by an individual travelling at the expense of a local authority;

(g) the academic ranks or departmental designations of members of the faculties of the University of Saskatchewan or the University of Regina; or

(h) the degrees, certificates or diplomas received by individuals from the Saskatchewan Polytechnic, the University of Saskatchewan or the University of Regina.

(3) Notwithstanding clauses (2)(d) and (e), "personal information" includes information that:

(a) is supplied by an individual to support an application for a discretionary benefit; and

(b) is personal information within the meaning of subsection (1).

Disclosure of personal information

28(1) No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

(a) for the purpose for which the information was obtained or compiled by the local authority or for a use that is consistent with that purpose;

(n) for any purpose where, in the opinion of the head:

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure; or

(p) where the information is publicly available;

(s) as prescribed in the regulations.

LOCAL AUTHORITY FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY REGULATIONS

Other disclosure of personal information

10 For the purposes of clause 28(2)(s) of the Act, personal information may be disclosed:

(g) to any person where the information pertains to:

(i) the performance of any function or duty or the carrying out of any responsibility by an officer or employee of a local authority;

UNION ARGUMENT

The Union provided a written brief and oral argument. In its submission, the name tag policy was overly broad, unreasonable, and violated the Employer's legal obligations with respect to health and safety and privacy.

The Union argued that the new policy failed to meet the *KVP* tests and must be set aside. There are six criteria set out in *KVP* – the Union's arguments focussed on two of the criteria: 1) the policy or rule must not be inconsistent with the collective agreement; and 2) it must not be unreasonable.[6] In terms of the collective agreement, the Union noted that the collective agreement imports the provisions of the occupational health and safety sections in Part III of the *Saskatchewan Employment Act* and the province's *Local Authorities Freedom of Information and Protection of Privacy Act* (*LAFOIP*). In its submission, the name tag policy

[6]It was common ground that not all six criteria needed to be satisfied for the policy to be set aside.

violated these statutes, making the policy inconsistent with the collective agreement and unreasonable.

With respect to occupational health and safety, the Union drew attention to sections 3-8 and 3-21, the definition of “reasonably practicable” in section 3-1, and article 18.01 of the collective agreement. In its written brief the Union made the following argument (paragraphs 126 - 129):

> 126. Section 3 of the SEA requires employers to ensure, to the extent reasonably practicable, the health and safety of workers, including from harassment:
>
> **General duties of employer**
>
> **3-8** Every employer shall:
> a. ensure, insofar as is reasonably practicable, the health, safety and welfare at work of all of the employer's workers;
>
> d. ensure, insofar as is reasonably practicable, that the employer's workers are not exposed to harassment with respect to any matter or circumstance arising out of the workers' employment;
>
> 127. Section 3-1 of SEA defines "reasonably practicable" as "practicable unless the person on whom a duty is place can show that there is a gross disproportion between the benefit of the duty and the cost, in time, trouble and money, of the measures to secure the duty." The term "practicable" is given the meaning "possible given current knowledge, technology and invention." [emphasis in brief]
>
> 128. Thus, an Employer is required to take all possible measures to ensure the health, safety, and welfare at work, so long as the cost of that measure is not grossly disproportionate to the safety benefit for employees.
>
> 129. Section 3-21 of the SEA also requires employers, at prescribed workplaces where violent situations have or may reasonably be expected to occur, to implement a written policy and prevention plan with respect to workplace violence.

The Union further noted the Employer’s obligation under article 18.01 of the contract to eliminate “causal factors of violence”.

It was the Union’s position that “the evidence demonstrates that the addition of the last name to name tags creates an added risk to the health and safety CUPE Local 5111 members” (Union brief, paragraph 135). The Union argued that the evidence from employees and

managers showed that violence against employees by patients and their families was a significant risk factor in the health care setting. Ms. Hannah-Paulhus had testified that violent incidents were among the top three sources of injuries for health care employees. The testimony of Ms. D, Ms. K, and Ms. R highlighted specific incidents in which an employee had been threatened by words or deeds. In several other cases, knowledge of an employee's last name facilitated contact outside work. Employees changed their behaviour after some incidents, for example by covering their last name and removing their land line for the purpose of not being in the telephone directory. Indeed, the Union drew attention to the Employer's own safety guidelines (exhibit 60) which recommended removing a name tag in the face of a potentially dangerous situation.

Thus, the Union submitted, placing last names on name tags, by making it easier for patients and their families to target and find employees, resulted in a demonstrable increase in risk. Moreover, the Union argued, the evidence revealed that the Employer had not carried out a risk assessment before implementing the new policy, an omission that surprised even some of the Employer's own witnesses. In this context, the Union suggested that removing the last name from the name tags was a "reasonably practicable" step to enhance employee health and safety and reduce the risk of harassment. It would be imprudent, in the Union's submission, to wait for a serious incident before removing last names. The Union reasoned that "that once an individual with mal-intent learns an employees' full name, the danger which this creates cannot be undone by purely reactive policies on violence and harassment. While the likelihood of such a danger may be low, the severity is potentially critical" (Union brief, paragraph 154).

The Union recognized that patients are entitled to copies of their health records under the *Health Information Protection Act* and can usually find out caregiver last names from those

records. However, the Union pointed out that the information can be refused where there is a reasonable apprehension of danger from releasing it, the records would reveal multiple caregivers, and some caregivers are only required to use initials. In its view, there was a big difference in getting a name from a "name tag physically attached to a person" versus on a health chart "together with the names of other care providers, and apart from the employees' likeness" (Union brief, paragraph 149).

In support of its position that the name tag policy created a higher risk of harassment and violence, violating employee health and safety rights, the Union cited *Canada Border Services Agency v. Public Service Alliance of Canada* (2014) OHSTC 11, a decision of the Occupational Health and Safety Tribunal of Canada that addressed safety issues of adding last names to the name tags of border service officers.

The Union advanced the argument that the name tag policy violated *LAFOIP*, noting that regional health authorities are local authorities for purposes of that statute. It was the Union's position that a last name is properly considered personal information under *LAFOIP* because it is accompanied by a photo and it is physically attached to the employee. It argued that last names were gathered for employment purposes; that displaying them on name tags was inconsistent with the reason for their collection. According to the Union, the disclosure of last names violated section 28(2)(a) of *LAFOIP* because last names were being used for a different purpose than the one for which they were collected. In its written submission, the Union stated (paragraphs 173 & 174):

> 173. We submit that, the employees' names, as in *Bernard v. Canada* [2014] 1 SCR 227, are collected for the purposes of administering the employment relationship. There is a need for an Employer to be able to identify its employees for the purposes of administering that relationship.

> 174. However, there is no direct connection between the Employer's need to identify its employees for the purposes of the employment relationship, and the purpose of identifying that employee to a patient who is a third party, and outside that employment relationship. By requiring employees to wear name tags at all times, the name tag policy provides that the personal information of all employees be constantly disclosed to all persons who come into contact with them, and for an infinite number of possible purposes. This indiscriminate disclosure of personal information cannot be considered to comply with the *LAFOIP*.

The Union argued that even if the name tag policy did not violate *LAFOIP*, the policy still infringed on employee privacy and, absent sound justification for the policy, was an unreasonable exercise of management rights. In the Union's view, the name tag policy was akin to dress codes, such as "no beard" policies, that had impacts beyond the workplace. Because last names allowed patients and family members to find employees outside work, the name tag policy had an impact on employees outside the workplace. Under *KVP* rules, and arbitration and court decisions applying *KVP*, the onus was on the Employer to justify the rationale for the policy sufficient to outweigh the legitimate privacy concerns of employees. In the Union's submission, PNHR had failed to establish that the policy was proportional to the incursion on privacy (Union brief, paragraphs 184 & 185):

> 184. The Union submits that the Employer has not established any legitimate business interest in the inclusion of last names on name tags. While the Employer cited the Patient First Report and patient- and family-centred care as the rationale for the policy, the only mention of name tags in the entire report suggest the use of first names is sufficient to meet that goal. With another patient-centred care initiative, visiting hours, the Employer has not uniformly applied it across all facilities, making exceptions in the forensics unit at SHNB, further undermining the business interest in the use of last names on name tags.
>
> 185. The Employer also cited accountability as a rationale for the policy. The Union submits that one must consider the easy availability of alternative methods of identifying employees in this case which would equally satisfy the Employer's desire to keep employees accountable to patients. One such alternative might include having employees only display their first names, as was the past practice for many years at PNHR. The possibilities which would both satisfy the Employer's interests and the interests of the employees in protecting their privacy and health and safety are myriad, all of which should weigh heavily against the Employer policy.

In support of its position that privacy and health and safety considerations outweighed Employer legitimate business interests, regardless of any statutory obligations, the Union provided the following authorities: *Thrifty (Canada) Ltd. and Office and Professional Employees Union, Local 378*, [2001] B.C.C.A.A.A. No. 276, (Larson); *Kitchener-Waterloo Record and CEP Local 87M (Southern Ontario Newspaper Guild)*, [2006] O.L.A.A. No. 114, (Rose); *Dagg v. Canada (Minister of Finance)* [1997] 2 SCR 403; *Finning International Inc. and International Association of Machinists and Aerospace Workers, Local 99* (2004), 135 L.A.C. (4th) 335 (Smith); *Ontario and OPSEU* (2015) 253 L.A.C. (4th) 60 (Briggs); *Board of Education of the Saskatoon School Division No. 13,* OIPC Report LA - 2013-002, 2013, CanLII 71499; *Conseil des écoles catholiques de langue française du Centre-Est*, 2010 CanLII 37579 (ON IPC); *Rio Tinto Alcan Primary Metal (Kitimat/Kemano Operations British Columbia) and National Automobile, Aerospace Transportation and General Workers of Canada (CAW-Canada) Local, 2301*, [2011] B.C.C.A.A.A. No. 17 (Steeves); *City of Winnipeg and Winnipeg Police Association* (1986) 1 CLAS 93 (MacLean); *Department of Health,* Order No. PP-06-003, PEI IPC, 2006; and *Alberta Information and Privacy Commissioner v. UFCW Local 401* [2013] 3 SCR 733.

As a remedy, the Union asked that the Board to set aside the name tag policy, give notice to employees that have the choice to wear name tags with only their first name or their first and last names, and pay for the replacement of name tags of employees who chose to display only their first name.

EMPLOYER ARGUMENT

The Employer provided oral and written arguments. It submitted that its name tag policy was consistent with the collective bargaining agreement, did not violate privacy or health and safety legislation, and met a test of reasonableness under *KVP*. It argued that the evidence

demonstrated a sound rationale for insisting that employee identification to patients include last names and failed to establish an increased safety risk due to the new policy. With respect to *LAFOIP*, the Employer advanced the position that placing a last name on an employee name tag is not the kind of personal information that is protected by that legislation.

In terms of the rationale for the new policy, the Employer argued that the reasons for the policy were established through the evidence of several of its witnesses, Ms. Denis in particular. Senior management had exercised its legitimate discretion to decide that the goals of the Patient First Report could be met by enabling patients to identify staff by first and last names. The Employer summarized this evidence as follows in its written brief (paragraphs 9 - 12):

> 9. The decision to move to the display of both first and last names arose from the Employer's patient-first initiative, which responded to the recommendations put forth by the Patient First Review Commissioner, Tony Dagnone, in his October 2009 report "For Patient's Sake" ("the Dagnone Report") (Exhibit 51). The patient-first initiative places the focus on the patient experience of health care and seeks to elevate the interests of patients relative to those providing care.
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> 10. One of the Employer's responses to the recommendations in the Dagnone Report culminated in the Policy requiring employees to wear a name tag displaying their first and last name. It was conceived as an initiative recognizing the right of a patient to know and be able to identify who is part of their health care team. It was conceived as both a matter of patient trust and respect as well as patient security, in that a patient and their family should be able to easily identify who is entering their room, accessing their health records, and providing them with care and support services, and that they are authorized to do so. The inclusion of both first and last names was seen to elevate the standard to achieve a higher level of patient respect than what was currently in practice.
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> 11. The decision to revise the policy coincided with similar professional standards put forward by professional bodies governing some of the employees, including Registered Nurses and Licensed Practical Nurses, recommending that they introduce themselves to their patients using both their first and last name. Similarly, these professional bodies cited patient quality of care, trust, as well as pride in the profession as the reasons behind their recommendations.
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> 12. The Policy was reviewed by the Continuous Safety and Quality Improvement (CSQI) Committee during the year leading up to the roll out (Minutes at Exhibit 52). The CSQI Committee consists of four board members, all members of senior leadership (including the Director of Occupational Health and Safety), Quality of Care Coordinators (who receive complaints from patients and the public related to care), a Risk Management Auditor, and ad hoc members as required.

The Employer accepted that it had a legal duty arising both from the collective bargaining agreement and the *Employment Act* to ensure the health, safety, and welfare of employees "as is reasonably practicable". In determining whether management had met this duty, the Employer cited the analytical framework in *Toronto Police Association v. Toronto Police Services Board* (2012) OOHSAD No. 112 (OLRB), a case about displaying last names on police officer badges. Factors to be considered are: 1) context; 2) proof of harm; and 3) magnitude, frequency, and probability of harm.

Using this framework, the Employer submitted that the evidence did not support the Union's allegations about increased risks. The Employer recognized that health care employees always faced some risk, that it was impossible to guarantee 100% safety, and had introduced a variety of training programs to enable employees to handle risk situations more effectively. The Employer contended that the evidence did not show increased safety incidents attributable to placing last names on employee name tags in the three years that the new policy had been in place. The Employer suggested that the fact that safety guidelines were updated following the introduction of the new name tag policy could not be construed as an admission that the workplace had become more dangerous; rather, the purpose of the updated policies was to ease employee concerns. It was noted that the Union had alleged that the safety of several employees had been compromised (exhibit 15), but never responded to requests for the names of these employees to enable management to investigate.

The Employer pointed out that the perceived vulnerability of employees outside work had less to do with the name tag policy than with the fact that employees were often well known in their communities and they had unprotected social media profiles that disclosed personal information. As well, patients had a legal right to view their medical charts, giving them access

to the last names of care givers. In the Employer's submission, the evidence showed that employees could be found outside work whether or not they had their last names on their name tags. In the Employer's view, employees had made an unsupported leap in logic in believing that last names on their name tags had put them in harm's way beyond what would have been the case with first names only. If someone was determined to cause harm, they could discover an employee's last name even if only first names appeared on name tags. According to the Employer, the assessment of risk was an objective exercise and not based on an employee's unsupported subjective fears.

With respect to *LAFOIP*, the Employer took the position that first and last names on an employee's name tag is not private information that could only be disclosed with employee permission. In advancing this position, the Employer cited two decisions of the Saskatchewan Office of the Privacy Commission: *Kelsey Trail Regional Health Authority,* Report LA-2012-002 (OIPC) and *Regina Qu'Appelle Regional Health Authority,* Investigation Report LA-2012-002. As well, a decision from the Prince Edward Island Privacy Commission was cited: *Department of Health*, Order No. PP-06-003, 2006 CanLII39092 (PEIIPC). In its written brief, the Employer set out its analysis as follows (paragraphs 113 - 119):

> 113. In the *Kelsey Trail Report*, the OIPC also took up the question of whether a name constitutes personal information. In response to a patient's request for the names of the nurses on duty at Melfort Hospital on a particular date and time, in addition to refusing to release its nurses' names on the grounds of safety, the KTRHA also took the position that the names of its nurses constituted personal information which LAFOIP prevented KTRHA from disclosing.
>
> 114. In its analysis, OIPC reviewed the position taken by privacy commissions in Ontario, British Columbia, and Newfoundland and Labrador as well as the Supreme Court of Canada in *Dagg v Canada (Minister of Finance)*, [1997] 2 SCR 403 on whether the names of individual employees constituted personal information protected by privacy legislation. On the basis of this review and in light of section 23(2)(a) of *LAFOIP*, OIPC concluded that an employee's name alone was not considered personal information, nor if the name was revealed in association with general information about the employee's employment responsibilities or normal course performance of employment related duties.

To be protected, OIPC concluded, the employee's name must be revealed with additional information about the employee personally in the nature of an employment evaluation, disciplinary action, or circumstances of an employment leave or termination.

115. OIPC drew support from the SCC in *Dagg*, which ruled at paragraphs 6 and 95 that the name of an employee released with information relating to the employee's job description was exempt from the protection of privacy legislation, including the employee's position, function, responsibilities, qualifications, hours of work, and salary range.

116. This issue was also taken up by the OIPC in Investigation Report LA-2012-002 *Regina Qu'Appelle Regional Health Authority* ("*Regina Qu'Appelle Report*"). There, OIPC received a number of complaints from employees about the names and precise salaries published on the Regina Qu'Appelle Regional Health Authority ("RQRHA") website. OIPC similarly determined that the names released in association with the salary information were exempt from protection pursuant to section 23(2)(a) of LAFOIP.

117. It must be acknowledged that the specific issue of displaying first and last names on name tags was considered by the Prince Edward Island Information and Privacy Commission ("PEIIPC") in *Re: Prince Edward Island (Department of Health)*, 2006 CarswellPEI 63. The Department of Health had similarly instituted a policy requiring employees to wear a name tag that displayed their first and last name. Following the complaint, but before the PEIIPC completed their investigation, the Department of Health revised their policy to provide the option to employees to display their first name only. Ultimately, PEIIPC found that the Department of Health did not have sufficient evidence to prove that disclosure of full names was not an unreasonable invasion of privacy.

118. While on its face this case appears to be directly applicable to the case at hand, it is of limited assistance because the PEI *Freedom of Information and Protection of Privacy Act* ("*PEI FOIPP*") is structured significantly differently than *LAFOIP*, including a different definition of personal information, a different process for determining whether privacy rights have been infringed, and different legal tests governing the analysis as well as differing burdens of proof. Under PEI *FOIPP*, a name alone constitutes personal information. A public body may only release personal information if the disclosure would not be an "unreasonable invasion" of privacy. The PEI *FOIPP* sets out specific instances where disclosure is presumed to be an "unreasonable invasion". Where a presumption is not applicable, PEI *FOIPP* sets out a balancing test to determine whether disclosure would be justified, considering whether the disclosure is desirable for the purpose of subjecting the activities of the public body to public scrutiny and whether the disclosure is likely to promote public health and safety. The complainant need only prove that disclosure had occurred, whereas the public body bears the burden to prove that the disclosure is justified. On this basis, the Employer submits that the arbitration panel should not rely upon the conclusions on this issue reached by PEIIPC, but seek guidance instead from the decisions from our own jurisdiction.

119. In light of the decisions interpreting *LAFOIP* with respect to the issue of the disclosure of first and last names, the Employer submits that requiring employees to wear name tags with their first and last name during the course of performing their normal employment responsibilities does not constitute a breach of employee privacy rights. Therefore, the Employer submits that the Policy is not unreasonable on this basis.

Finally, the Employer noted the Supreme Court of Canada endorsed the *KVP* framework in *Irving Pulp & Paper Ltd. v. CEP Local 30*, 2013 SCC 34 and set out a balancing of interest test in cases where privacy rights must be balanced against legitimate business interests. The Employer argued that irrespective of any intrusion on employee privacy interests, the legitimate business interests of the Employer outweighed, on balance, any privacy interests.

The Employer disagreed that its name tag policy was in any way equivalent to the dress code cases cited by the Union, arguing that its policy engaged health care delivery and had nothing to do with appearance. In defending the rationale for its name tag policy, the Employer reiterated the importance of the Patient First report (referred to as the “Dagnone Report” based on the report’s author’s name). In its written brief, paragraph 124, the Employer emphasized:

> 124. To focus on the patient experience, the Dagnone Report at page 13 calls for informative care, recommending that patients are always informed about their health care and the factors affecting it, including what it refers to as the "5 W's" of their care: Who? What? When? Where? Why? In addition, the Dagnone report at page 14 calls for respectful care, recommending that "the relationship between patient, family and provider is a balanced, mutually respectful partnership, not an imbalanced power dynamic that favours the provider."

The Employer also drew attention to the policy of the Saskatchewan Registered Nurses Association which is to provide first and last name identification of RN’s to patients and the policy of the Saskatchewan Association of Licensed Practical Nurses which is to strongly encourage LPN’s to also provide both full and last names. The Employer pointed out that a number of the province’s health regions require first and last name identification of health care providers.

The Employer submitted that its legitimate business interests in the new name tag policy outweighed the concerns raised by the Union. It noted that no formal complaints had been

made to the provincial privacy commission. The Employer's reasoning is set out in its written brief (paragraphs 130 - 133):

> 130. The privacy interest of the employees identified by the Union is essentially a safety concern related to a perceived risk that employees will be harassed or stalked by patients if patients are able to identify additional information about the employees, such as the employee's phone number or address, as a result of the employee's full name being displayed on his or her name tag. Other than the safety concern, the employees are interested in avoiding the nuisance associated with fielding questions about family or relatives or responding to patient contact while off-duty.
>
> 131. The Employer submits that in light of the legitimate Policy interest that responds to the call for placing patients first and is supported by other organizations, and the fact that the Union has been unable to establish the privacy interest as one supported by privacy legislation or as a legitimate, substantiated risk to employee safety, the balancing exercise must rest in favor of the Employer.
>
> 132. Even if the arbitration panel finds that the employees' privacy concerns are legitimate and the Policy intrudes somewhat on employee privacy, the privacy interest does not rise to the level of the right that was at stake in *Irving* to justify curtailing the Employer's management rights. In other words, the benefit to patient service as a result of the Policy exceeds the potential detriment to employees as a result of having to wear their name tags.
>
> 133. Altogether, the Employer submits that the Union is unable to substantiate a claim that the Policy is a breach of employee privacy rights or is unreasonable on the basis of privacy concerns in light of its legitimate Policy interest.

Accordingly, the Employer asked that the grievance be dismissed.

UNION REPLY

The Union argued that arbitration was the most appropriate forum for resolving the privacy and safety issues raised in the case and that the decision of the Union to not file complaints in other forums, such as the Privacy Commission, could not in any way be construed as a lack of confidence in their position.

The Union cautioned against placing too much reliance on health and safety cases from other jurisdictions, arguing that Saskatchewan has unusually strong health and safety language in terms of employee protections. For example, a plain reading of Saskatchewan health and safety legislation indicates an assessment of risk did not prescribe frequency of unsafe

occurrences as a threshold for finding unsafe practices, unlike the approach under Ontario legislation. The health and safety focus in Saskatchewan, according to the Union, is on risk prevention rather than reacting to incidents after they occur. The Union pointed out that the Employer never conducted a risk assessment of the specific risk of the new policy – adding the last name exposes employees to risk outside the workplace.

DECISION

There are three inter-related questions raised by the Union grievance challenging the PNHR's name tag policy: 1) does the policy violate Saskatchewan health and safety legislation or the health and safety provisions of the collective bargaining agreement (CBA); 2) does the policy violate Saskatchewan's *Local Authority Freedom of Information and Protection of Privacy* legislation (*LAFOIP*); and 3) even if there is no specific contractual or statutory violation, is the policy unreasonable under the *KVP* rules.

If the answer to any one of these questions is in the affirmative, then the grievance must be sustained and the policy set aside. A policy that is inconsistent with legislation or a CBA cannot remain in place until it complies with the law and/or the contract. Neither can a policy that fails a test of reasonableness under *KVP*.

Health and Safety

The CBA contains extensive provisions addressing occupational health and safety (OHS), harassment, and workplace violence.[7] The predecessor to the Saskatchewan OHS legislation, now contained in Part III of the *Saskatchewan Employment Act*, is referenced in

[7]Even in the absence of this express language, OHS legislation must be considered part of collective agreements: *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324* [2003] SCC 42.

various sections of these CBA provisions. Article 15.01(a) expressly incorporates the OHS legislation into the CBA.

Under article 15.01(a) of the CBA, the parties commit themselves to "promoting and improving rules and practices which will enhance the physiological, psychological and social well-being with respect to working conditions for all employees". In article 17.03, the parties recognize their shared responsibility to "promote a safe, abuse-free working environment". In article 18.01(b), the Employer undertakes to develop a policy "in consultation with the..... Union... to address the prevention of violence, the management of violent situations and to work towards the elimination of the causal factors of violence". The *Employment Act* places similar obligations on the parties. Section 3-1(1)(o)(i) defines occupational health and safety as "the promotion and maintenance of the highest degree of physical, mental, and social well-being of workers". Section 3-8(a) requires that every employer shall "ensure, insofar as practicable, the health, safety and welfare at work of all of the employer's workers". The word "practicable" is defined in section 3-1(1)(x) as "possible given current, technology and invention".

The Union's position is that requiring employees to have their last names on their name tags makes them less safe than would otherwise be the case. In the Union's submission, because the new policy decreased employee safety, the Employer had failed to meet its contractual and legislative health and safety obligations. The Employer, on the other hand, argued that there is no objective evidence that the new policy resulted in any decrease in employee safety.

An examination of these positions begins with a review of the evidence regarding workplace safety. The Board accepts the evidence of Ms. Hannah-Paulhus that violent incidents at work are among the three most frequent contributors to employee injury, although the injury

rate from all causes has been decreasing in the past several years. Thus, the possibility of violence being committed by patients or their families toward staff is more than a theoretical concern, notwithstanding a number of credible Employer policies and training programs to reduce risk. The testimony of several employees illustrated the reality of threats against health care staff. Ms. Black, Ms. R, Ms. K, and Ms. D described specific and disturbing incidents at work in which threats of serious physical harm had been made against them by patients and/or their families. In none of these cases was the actual threat carried out. In some, but not all, cases local managers were notified; it was not clear whether formal incident reports were completed in each case or whether senior regional management was made aware of the incidents.

The real question is not whether health care work carries some risk – it does, but whether the name tag policy increases the risk. There is no evidence, and it is difficult to imagine there would be such evidence, that risk at the workplace itself is related to whether an employee is wearing a name tag with a first name, a name tag with a first and last name, or no name tag at all. Any increased safety risk from the name tag policy must be based on: 1) the ability of patients or their families and friends to easily obtain the last name of staff; and 2) then using the last name to target employees outside the workplace.

With respect to obtaining last names, it is self evident that having a visible last name attached to an employee makes it easier for patients and families (and friends for that matter) to learn the identity of caregivers. In fact, that is the whole point of the policy – to enable patients to know the identity of their caregivers. The Board recognizes that there are other ways that the identity of the healthcare providers can be elicited. Under the *Health Information Protection Act* (*HIPA*), patients are entitled to request their medical records which normally will

list the names of various caregivers. Even without making a *HIPA* request, patients and family members may be able to simply look at medical charts available in the patient's hospital room to learn the names of the caregivers. In smaller communities, caregivers may be generally known to many residents. Also, as well illustrated during the hearing, a great deal of personal information about caregivers can be obtained from Facebook profiles using only first names and place of work.

While it may be true that other methods of obtaining the last names of caregivers are available, the Board is satisfied that placing the last name on employee name tags makes it much easier to identify caregivers compared to other methods. *HIPA* requests take time and might set off alarm bells in some cases. Active patient medical records can be kept out of easy reach and caregiver initials can be used. Facebook profiles can be restricted and identifying information removed. While ready identification of caregivers in small communities cannot be avoided, larger communities, where the majority of caregivers work, provide much more anonymity.

Does the fact that the name tag policy makes it easier to identify caregivers translate into increased risk? There was some evidence of employees being contacted by patients outside work. Ms. Blais testified that she was telephoned at home by a mental patient who, she assumed, obtained her last name from her name tag and then telephoned her listed home number. Ms. K was also telephoned at home, but in that case her name had been obtained from medical records, not her name tag. Neither of those incidents could be described as threatening. More serious incidents were reported by two witnesses. Ms. R testified that after an elderly patient died in the hospital, her son accused her of killing his mother. He looked at her name tag, repeated her first and last name, and said he wouldn't forget her face or name. A few

days later, a man was seen parked outside her home at night. Ms. R contacted police and after a review of photos the son was identified as a convicted sex offender. In Ms. K's case, a patient in the Saskatchewan Hospital Forensics Unit threatened during a tirade to find and kill her after his release. The patient had been convicted of murder and cannibalism. Ms. K was not wearing her name tag at the time and the patient was sent to another facility. Ms. K took two weeks leave following the incident.

While the evidence of actual contact by patients outside work is limited, it is logical to conclude that having last name on name tags would facilitate such contact. In most cases the contact, although unwelcome and inappropriate, would be unlikely to pose a safety risk – for example, a patient calling to ask about medications or just to talk to a caregiver viewed as sympathetic. In a small number of cases, the contact outside work would not be benign. It is reasonable to infer that the sense of fear engendered by the incident recounted by Ms. K would have been much higher if she had been wearing a name tag with her last name.

At the same time the Board is cognizant that the Union was able to offer very few examples of threatening incidents attributable to the new policy in the three years between the introduction of the name tag policy and the arbitration hearing, even accepting that some portion of employees did not come comply with the policy. Notwithstanding that the evidence of union witnesses was intended to be illustrative, not exhaustive, the Board infers that had there been other examples of serious incidents where easy last name identification led to increased staff risk outside the workplace, the Board would have heard that evidence. Consistent with the absence of evidence of incidents tied to last names, the Employer witnesses were unanimous that were not aware of any reported safety incidents that could be attributed to the new name tag policy.

Thus, the Board is left with the theoretical possibility of threatening incidents due to the new name tag policy, but very little evidence of actual incidents. Is the unrealized potential of a heightened safety risk due to the name tag policy sufficient to conclude that the Employer violated its contractual and statutory OHS obligations?

To help answer this question the Board was referred to two very relevant adjudication decisions that dealt with the introduction of name tag policies for Toronto police officers and Canadian Border Services officers. These cases came to opposite conclusions. In *Toronto Police*, the Ontario Labour Relations Board (OLRB) concluded that evidence did not establish that name tags with last names increased risk and therefore allowed the policy. In *Canadian Border Services*, the federal Occupational Health and Safety Tribunal determined that the risk associated with having last names on name tags had not been adequately evaluated or mitigated. It ordered that the policy not be implemented until a hazard assessment had been conducted and safety measures put in place to address any identifiable hazards.

In *Toronto Police*, the name tag policy was introduced following two high profile public inquiries critical of policing practices. These inquiries recommended that police officers should be required to wear name tags with their last names clearly visible for ready identification by the public. The issue was then addressed by provincial and local joint health and safety committees for police services, committees empowered to provide advice to the Ontario Minister of Labour. At the request of the Toronto Police Services Board (TPSB), the Toronto Police Chief provided a comprehensive report that addressed 13 questions posed by the TPSB including the experience in other police services using name tags with last names. Twenty-six police services were surveyed (half responded, but information from non-responders was elicited in other ways). Other professions were also canvassed.

The Police Chief's report concluded that "there is no objective evidence from the police agencies whose members are wearing name badges that demonstrates any enhanced level of risk.... Research did reveal instances of employee harassment within other professions that was attributed to the information displayed on the name badge" (paragraph 17 of OLRB decision). The report recommended that initially "name badges be introduced on a voluntary basis" to allow further assessment (paragraph 17). The Toronto Police Association (the union) described "the risk assessment performed by Chief Blair as objective" (paragraph 18). However, the TPSB did not accept the report's recommendation for voluntary name tags, instead making them mandatory. The Toronto Police Association then filed a complaint with the OLRB that the new policy contravened Ontario's health and safety legislation.

The OLRB dismissed the Police Association's complaint. It posed the central question as follows (paragraph 222):

> ..... I am prepared to accept that a name tag makes it quicker and easier to determine the name of an officer. Further, there was no serious dispute that with a name it is relatively easy to obtain personal information about most individuals by performing relatively simple searches on the internet. But that is not the issue. The issue is whether the name tag materially increases the probability that an individual will do an officer harm or materially increases the seriousness of the harm which an officer experiences if that probability is realized.

It characterized an employer's legal obligation as taking "every precaution which is reasonable in the circumstances" and noted that "an employer is not required to guarantee a worker's health and safety against all possible or conceivable risks, no matter how remote" (paragraph 33).

The OLRB reviewed detailed evidence of safety incidents and the way in which the public could obtain the name of officers absent name tags. The decision observed that public disclosure of names is part of the performance of duties inherent in the delivery of police

services. The OLRB reasoned (paragraph 101):

> On the evidence before me, however, I conclude that quite apart from name tags there are a number of ways in which the names of police officers become known to members of the public. This includes the disclosure of their names by officers themselves during the course of their duties, notably the community policing activities described above. It also includes responses to inquiries based on knowing the badge number of the officer. Uniformed officers are required to wear their badge numbers at all times. The badge number also appears on the various policing documents described above. The name of the officer can thus be obtained even if it does not otherwise appear on the document or the officer's signature is illegible.

The OLRB further noted that organized crime syndicates and sophisticated gangs were adept at obtaining the names and home addresses of police officers and that the presence or absence of name tags was irrelevant (paragraph 274). The OLRB decision accepted that officers were vulnerable and discussed the extensive training police officers received on how to mitigate risk. For example, officers were advised not to wear their uniforms when travelling between work and home and to use the police department as their home address when registering personal motor vehicles.

After reviewing the evidence in detail, the OLRB concluded (paragraphs 274 & 281):

> Section 25(2)(h) of the [*Occupational Safety and Health*] *Act* requires an employer to take every precaution reasonable in the circumstances for the protection of a worker. In assessing whether TPSB's requirement that the uniformed members of the TPS wear name tags breaches this obligation, consideration must be given to the particular circumstances of the TPS. Those circumstances include the fact that policing is an inherently dangerous profession and that during the course of their duties police officers' names can and do become known to members of the public in a myriad of ways quite apart from name tags.
>
> Policing is an inherently risky profession. Some of those risks relate to police officers being identified. The TPS has adopted a number of risk reduction strategies designed to mitigate that risk. Some residual risk remains. The residual risk relates to events of uncertain occurrence with uncertain outcomes, only some of which are harmful, the average frequency of which, based on past experience, is fortunately very low. The evidence does not establish that the wearing of name tags has been related to any material increase in that risk.

There are implications that may be drawn from *Toronto Police* with respect to the current case. In both cases, through badge numbers for police officers and *HIPA* for health

care providers, the public has a right to access employee names. More important, like the police case, the evidence in the current case has not established that wearing name tags by PNHR employees has been related to a material increase in risk for PNHR caregivers since the name tag policy was introduced.

At the same time, there are important differences between the two cases. Unlike police work, health care work is not an inherently risky profession. While there is some risk, people do not become health care providers with the knowledge and expectation that they are entering a dangerous profession. There is no extensive training provided to health care workers about maintaining personal anonymity away from work. Obtaining names in the absence of name tags is restricted to patients and is a less direct process than simply calling a police station and providing a badge number. It is unlikely that there are criminal organizations tracking health care workers using sophisticated internet searches and other means. Thus, without the name tag policy, it would relatively easy for most health care providers to protect their personal identity, something much less true of police services. It is also noteworthy that the public inquiries that led to police name tag policy expressly recommended identification of officers through last names on name tags. The report that led to the PNHR policy, “Patient First”, made no such express recommendation.

Finally, the extensive risk assessment by the chief of police and the safety and health consultation that preceded the introduction of the name tag policy for Toronto police officer contrasts with what occurred in the PNHR. The evidence established that there was no consultation with the Union prior to the announcement of the PNHR name tag policy. This was a very “top-down” process driven by the region’s board. There was no evidence of a risk assessment prior to the introduction of the policy. There was some examination of practices in

other health regions, a review of the policies of professional associations of licensed practical nurses and registered nurses, and some on-line searches that produced little information. Most discussions at the Continuing Safety and Quality Improvement Committee, which had no union members, focussed on implementation, with very little consideration of safety issues except with respect to two mental health facilities. Senior managers who testified agreed that no formal risk assessment had been carried out, notwithstanding that the Health & Safety director assumed that one would have been conducted.

Although no risk assessment was conducted, new safety guidelines were developed by senior management soon after the name tag policy was introduced after queries were received from local managers. The guidelines included sections on how to respond to unwanted personal contact at home or elsewhere outside the workplace and the online website address (URL) to a Saskatchewan Union of Nurses article on social media privacy settings (exhibit 60).

The issue of risk assessment and strategies to ameliorate any new risk introduced by name tag policies was the focus of the *Border Services* case. This case arose after the Canadian Border Services introduced a policy requiring border service officers (BSO) to wear name tags showing with their last name. A number of BSO's refused to comply on the ground that the new policy placed them in danger. Federal OHS officers were called to investigate and in each case concluded that "the wearing of a name tag did not present a danger to employees" (paragraph 10). At the same time, several of the investigative officers concluded that the employer had "failed to conduct a Hazard Identification and Assessment prior to the implementation" of the new policy and directed the employer to halt the program until such an assessment was completed and appropriate action taken. A hazard assessment was then undertaken by Canadian Border Services but the assessment and the proposed preventative

measures were found deficient by the OHS officers. This resulted in an appeal to the OHS Tribunal by Canadian Border Services.

The Tribunal dismissed the appeal, upholding the directive of the OHS officers. In the Tribunal's view, the name tag policy created an entirely new risk that the Canadian Border Services had failed to adequately assess and adopt measures to mitigate identified risks. The heart of its reasoning is set out in paragraphs 77 - 80 of its decision, relevant portions of which are set out below:

> ..... The evidence presented at the hearing elaborated on the nature of the hazard associated with the wearing of a name tag, as compared to the former numeric badge identifier. What is of concern here is not so much the potential for violence/harassment while the BSO is at work, in the performance of his/her duties. The evidence is clear that the name tag does not in itself increase the risk of assault or other violent conduct from disgruntled travellers on BSOs while they are on duty. The employer has in place many policies and measures, that I have set out at length in the appellant's submissions, which provide for a secure work environment and protection for BSOs. The "new" hazard created by the name tag is rather that the family name now pinned or "velcroed" to the BSO's uniform allows a person who may be angered by the BSO's enforcement action, to quickly and surreptitiously obtain, with the assistance of modern technology and the Internet, his/her personal information such as residential phone number or home address, with criminal intentions against the BSO and/or his family. That is the hazard directly resulting from the name tag, over and above the risk, in more general terms, of being harassed or assaulted by a disgruntled client. Hence, personal identification of the BSO by his/her name tag renders them more vulnerable to the occurrence of those situations. As the employer itself assessed it, the potential or likelihood for such a hazard to materialize may be low, however the severity may be critical. A few examples were referred to in evidence .....
>
> These examples may seem anecdotal, but they aptly illustrate in my view the nature of the "new" hazard directly resulting from the requirement to wear name tags. The employer points out that it was possible to obtain the name of a BSO before the introduction of the policy and in that sense nothing has really changed. The employer also presented evidence that BSOs' names appear in publications of the union. In my view, the name tag changes that context. Where it was always possible to obtain the name of a BSO through processes such as access to information requests, or court or quasi-judicial documents, those processes take time, allowing for a "cooling off" period after the action which may have triggered the aggressive reaction, and in addition, the originator of the request had to identify himself/herself. ..... the concern of employees, beyond the existing possibility of being subject to harassment or assault that existed before the name tag was introduced, is in relation to the "impulsive disgruntled traveller" who is now, with the combination of the family name, currently available communication technology, the Internet and social media, able to have quick access, in complete anonymity, to personal information of a BSO, with possible criminal intentions in mind. In other words, I believe that the name tag

> has created a different kind of hazard in the work environment, which subsection 19.5(1) of the COHSR [*Canadian Occupational Health and Safety Regulations*] requires the employer to address and which, in my view, it has failed to do.
>
> The employer has cited a number of existing policies, procedures and measures that it already has in place that are designed to prevent injury caused by violent behaviour, stalking or harassment, and that it has characterized as preventive measures. It is not necessary to go into a detailed analysis of those policies which, as recognized by all, do provide an important framework of protection for employees. However, I agree with the respondent that the character of those policies, procedures and measures is essentially reactive in nature, in that they are triggered by the occurrence of an event. The measures and policies in question all pre-date the introduction of the name tags. They simply do not address the specific risk identified with the wearing of name tags, as I have described it above. Of course, they have a preventive dimension in that they are aimed at preventing that an incident re-occurs or escalates, but in my opinion, they do not eliminate the hazard or reduce the likelihood of the hazard occurring in the first place. While the potential for a BSO to be stalked, harassed or assaulted may be low, these situations are not mere speculation and the hazard must be addressed by taking preventive measures, as required by subsection 19.5(1) of the COHSR. Accordingly, the question at issue here is not the sufficiency of preventive measures taken by the employer in accordance with subsection 19.5(1) of the COHSR, but .... the absence of such measures.
>
> It is appropriate to stress that the obligation prescribed by subsection 19.5(1) of the COHSR directly derives from the fundamental objective of the *Code* which is to prevent work-related accidents or injuries from occurring. ..... (emphasis in original).

The tribunal directed the employer to develop measures to address the hazards created by its name tag policy, noting that the parties were in the best position to identify the kinds of measures that will address the hazard "in a way relevant and meaningful to them" and suggested that in this endeavour that might seek the advice of subject matter experts and federal OHS officers (paragraph 86). The Tribunal referenced a number of authorities in its decision, including *Toronto Police*.

The *Canadian Border Services* decision is applicable to the current case. Following its reasoning, the PNHR name tag policy introduces a new risk – the easy identification of caregivers by those who might harbour animosity towards the caregiver. While the targeting caregivers beyond the workplace may be very rare, the consequences may be serious. The Board is satisfied that this new risk was not systematically assessed prior to the introduction of

the new name tag policy, unlike the assessment carried out in the case of Toronto police before the policy was enacted there. The fact that the mission statement of the Saskatchewan Registered Nurses Association specifies first and last name introductions for its members (exhibit 58) and the Saskatchewan Association of Licensed Practical Nurses encourage, but do not require, LPNs to introduce themselves with last names (exhibit 59) is not a substitute for a risk assessment. No evidence was provided as to whether these professional organizations carried out risk assessments on last name identification, the extent to which last name identification is enforced for RNs, and the kind of safety protocols in place. The same can be said with respect to the Saskatchewan health regions that currently mandate last names.

The Board recognizes that the PNHR introduced new safety guidelines shortly after the new policy was announced and these guidelines did suggest responses to unwanted contact outside work and referenced an article on how to enhance privacy outside the workplace. However, given the absence of a formal risk assessment to identify new safety challenges that might specifically arise from the name tag policy, it is difficult to ascertain the degree to which these safety guidelines effectively mitigate any new risks that might be identified. Further, simple reference to an article through a website is not the same as concrete specific safeguard protocols.

In adopting the approach taken in *Canadian Border Services*, the Board accepts that Saskatchewan OHS legislation and federal OHS legislation contain different provisions. Nevertheless, they share the core underlying objective of promoting workplace safety. The OHS sections of the *Employment Act* place a positive obligation on employers to promote as far as practicable “the highest degree of physical, mental, and social well being of workers” (section 3-1(1)(o)(i)). Under the CBA, this Employer is required to address the “prevention of violence” in

consultation with the Union (article 18.01(b)). It is the Board's conclusion that the new name tag policy does not meet these obligations. It does not promote the highest degree of physical, mental, and social well being of workers because it was introduced without consultation and, in the absence of a formal risk assessment and safety protocols that can be tied to that assessment, does not address the prevention of violence against workers.

Accordingly, the Board concludes that the new name tag policy does not comply with the occupational health and safety provisions of the *Saskatchewan Employment Act* and does not meet the requirements of the collective bargaining agreement. Until such time as the name tag policy is brought into compliance with the OHS provisions of the contract and the law, in particular through a formal risk assessment and adequate preventative measures to mitigate risk tied to the risk assessment findings, the new name tag policy must be suspended.[8]

Privacy

The parties agreed that PNHR was a local authority that fell under *LAFOIP*. The Union argued that an employee's last name was personal information collected for purposes of administering the employment relationship but was used for a different purpose when affixed without employee permission to a name tag with a photo. In the Union's submission this violated section 28(2)(a) of *LAFOIP* which prohibits the collection of personal information for one purpose and then using it without permission for a different purpose. The Employer disagreed. It argued that a person's name on a visible ID, even with a photo, is not the kind of personal information protected by *LAFOIP.* The parties provided several cases in support of

[8] As will become clear in the next sections, OHS compliance in itself will not salvage to the name tag policy as the Board also has concluded, for reasons set out below, that the policy also violates privacy legislation and is contrary to *KVP* principles.

their respective positions. Our analysis will begin with the relevant cases cited by the Union and Employer.

Saskatoon Board of Education, a 2013 decision of the Saskatchewan Office of the Information and Privacy Commissioner (OIPC), was cited by the Union. In that case, the Saskatoon school board wished to use teacher photographs for its intranet and internet systems. A successful privacy complaint was filed by the union under *LAFOIP*. In its decision, the OIPC ruled that photographs with names constituted personal information under section 23(1)(k)(i) of the statute noting that "photographs of individuals are personal in nature. As such, photographs of identifiable employees plus their names, in the circumstances, qualify as personal information...." (paragraph 13).

The OIPC then considered the purpose for which the photos had originally been collected and whether the proposed use was consistent with that purpose. It identified two purposes for collecting staff photos; to use in school yearbooks and to post staff photos at the school entrance. After reviewing the meaning of "consistent use" from privacy decisions in other jurisdictions, the OPIC determined that internet and intranet posting of the photos was not consistent with the purpose for which the photos were originally collected. It commented that "there appears to be a disconnect between the stated purpose of collecting the photographs and the stated purpose of use of the photographs with the e-mail system" (paragraph 39).

The OIPC next turned its attention to whether disclosure of the personal information, namely employee photos, could be justified under a long list of exemptions set out in section 28(2) of *LAFOIP* as well as section 10 of the *Regulations*. It had requested clarification from the school board for its authority to use the photos for purposes different from those for which the photos had been collected. The school board responded that the purpose was to "enable

school staff to identify the individual they are dealing with" (paragraph 48). The OIPC rejected this explanation as meeting the requirements of section 28. The OIPC also considered and rejected the proposition that because the employees had voluntarily provided their photos, this represented implied consent for the new use. On these grounds the OIPC upheld the complaint and ordered that the use of the photographs in the email system be suspended.

The Union also brought to the Board's attention the Supreme Court of Canada's decision in *Bernard*. In that case, the Court considered whether disclosing an employee's name and address to a bargaining agent violated the privacy right of a bargaining unit employee. The Court ruled that no breach of privacy rights had occurred because the personal information was disclosed for a purpose consistent with the purpose for which it was obtained, administration of the employment relationship. The Court assessed the meaning of the term "a use consistent with that purpose" as set out in the governing statute. The Court reasoned (paragraph 31):

> A use need not be identical to the purpose for which information was obtained in order to fall under s. 8(2)(a) of the Privacy Act; it must only be consistent with that purpose. As the Federal Court of Appeal held, there need only be a sufficiently direct connection between the purpose and the proposed use, such that an employee would reasonably expect that the information could be used in the manner proposed.

In the Union's submission, the use of last names on employee name tags was not a use consistent with the employment administration purposes for which it was collected.

We now turn to the cases cited by the Employer. *Kelsey Trail* arose from an application for the disclosure of the names of registered nurses on duty at a Saskatchewan hospital at a particular time and date. The regional health authority rejected the request on several grounds, citing the possibility of harm to staff if the names were released and fear of the applicant

expressed by some employees[9]. The applicant had been acquitted in a criminal trial for allegedly stalking health care givers and possibly suffered from mental illness. The OIPC ruled that the applicant was entitled to the requested information, rejecting the regional health authority's contention that the information would endanger the employees. Much of the analysis focussed on the alleged danger of releasing the names in the particular circumstances of that case and is of limited application to the current case.

More relevant to the current case is the OIPC 's analysis of whether the names of employees would qualify as personal information pursuant to section 23(1) of *LAFOIP*. The commissioner considered privacy commission decisions from other provinces, court decisions, and its own previous rulings to conclude that the "names of the nurses and the shifts they worked [on a specific date] would not be personal information pursuant to section 23(1)(b)" (paragraph 26). The analysis then turned to section 23(1)(k) and reached the following conclusions (paragraphs 27 - 33):

> [27] Finally, KTRHA originally argued also that the information in the record is personal information pursuant to section 23(1)(k) of LA FOIP. It does not appear that releasing the name alone of the nurses in question would reveal personal information about them.
>
> [28] However, section 23(1)(k)(i) states that a name that "appears with other personal information that relates to the individual" would be personal information. It appears that the employee number of the nurses are also listed.
>
> [29] Section 23(1)(d) states that "any identifying number, symbol or other particular assigned to the individual" constitutes personal information.
>
> [30] Furthermore, in my Report F-2005-001, I found that an employee number, when linked with a name also constitutes the individual's personal information.
>
> [31] It appears that the record does contain some of the nurses' personal information; however it can easily be severed for the purposes of complying with the Applicant's request which would be in keeping with section 8 of LA FOIP.

[9] It is noteworthy that the health authority was criticized by the OIPC for disclosing the name of the applicant to staff and directed the authority not to do so in future.

[32] Section 8 of LA FOIP states the following in this regard:

> 8 Where a record contains information to which an applicant is refused access, the head shall give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.

[33] Therefore, in releasing the five names of the nurses on shift at the responsive time in question, KTRHA would not be disclosing personal information.

Based on *Kelsey Trail*, the Employer took the position that employee names on a work name tag would not be considered personal information under *LAFOIP*.

The second OIPC case relied on by the Employer was *Regina Qu'Appelle*. In that case, employees filed a privacy complaint after the region published on the internet the names and salaries of employees earning more than $50,000 per year. The OIPC ruled that the publication of the names and salaries was not prohibited by *LAFOIP.* While the commissioner found that names and salaries would be personal information under section 23(1), the legislation contained an express exemption for the disclosure of salary information under section 23(2). The OIPC ruled as follows (paragraphs 61 - 63):

> [61] The information in this case includes the name of the employee and their annual salary. This could qualify as personal information under section 23(1)(b) or (j) as "information relating to financial transactions in which the individual has been involved" (section 23(1)(b)) or even "employment history" (s. 23(1)(b)) or "information that describes an individual's finances... financial history or activities" (s. 23(1)(j)).
>
> [62] Notwithstanding section 23(1), I must next consider whether section 23(2) applies. If it does, what might otherwise appear to qualify as "personal information" is carved out of subsection 23(1) and is not considered as "personal information".
>
> [63] Subsection 23(2)(a) provides that personal information does not include information that discloses "the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a local authority." In this case, it appears to be common ground that the information of concern to the Complainants constitutes "salary". Section 23(2)(a) therefore applies. In the result, the information in question is not "personal information" and the limitations in LA FOIP on when and how personal information can be disclosed have no application.

Thus, the OIPC concluded that publishing the salaries and names of employees was not a violation of *LAFOIP.*

Regina Qu'Apelle then considered whether there are privacy interests that arise from the *Charter of Rights and Freedoms* or under common law. Part of the analysis was devoted to the issue of mitigating risk of prejudice to employees from the publication of their salary. The OIPC raised the issue in the following way (paragraph 89):

> I assume that the motivation for publishing salary information of employees of public bodies is to ensure that Saskatchewan citizens who pay for those services and salaries can better hold their public bodies accountable. The fundamental question raised by this investigation is whether that goal can be achieved in ways that do not expose employees of RQRHA to risks of identity theft, data profiling by criminals and miscreants, and misuse by persons who not only do not live in our province but who have no legitimate need to know the precise salary that a health care employee in Regina, Saskatchewan earned last year. If there are technical steps that can reasonably be taken to minimize the risk of abuse and harm to individual employees on what basis should our public bodies be allowed to ignore those technical steps or refuse to implement them?

Following a review of risk mitigation steps, the Commissioner strongly recommended that the region immediately adopt protocols to "mitigate the risk to individual employees" (paragraph 112). In the Employer's submission, *Regina Qu'Appelle* demonstrated that even salary information along with individual names did not run afoul of *LAFOIP*, leading to an inference that last names on name tags were less intrusive of privacy and therefore not restricted under the legislation.

Both sides cited *PEI*, a privacy commission decision in Prince Edward Island that directly addressed name tags for health care workers. In citing *PEI,* the Employer argued that differences between the PEI and Saskatchewan privacy legislation render the findings of the case distinguishable.

In *PEI*, a health region introduced a new policy requiring employees to have their first and last names on their name tag, prompting a complaint under the province's privacy

legislation. After the complaint was filed, the health authority revised its policy to allow employees the choice of having both names or only first names on their name tag. For public policy purposes, the PEI privacy commission decided to issue a decision even though the employer had made its name tag policy voluntary.

Under PEI's governing statute, "'personal information' means recorded information about an identifiable individual, including the individual's name" (page 7). Thus, both parties in that case agreed that full names qualified as personal information. The statute allows for the disclosure of personal information "if the disclosure would not be an unreasonable invasion of a third party's personal privacy" taking into account the desirability for public scrutiny or the promotion of public health and safety. The privacy commission interpreted the statute to require a balancing of interests between the impact of the privacy intrusion and the public interest benefits if information was disclosed. After reviewing decisions from other provinces, the PEI privacy commission concluded that, based on the evidence before it, employee privacy interests outweighed the public policy benefits. Part of these privacy interests included the health and safety of healthcare staff. Its reasoning is set out in the following excerpts from pages 11 and 12 of the decision:

> Based on the above statements, combined with the fact that nursing personnel in the Public Body's emergency care and psychiatric facilities wear name tags with first name only, it is clear that within the Public Body and within the nursing profession safety and security override the necessity of full names on the name tags of nursing personnel. I am mindful of the Public Body's desire to enable the public to properly identify its nursing employees, however, the Public Body has provided me with no evidence whatsoever that the first-name-only policy in these other two employment venues has caused any problems with such accountability to the public. On this basis, I reject the section 15(5)(b) argument as well.
>
> The Public Body states it also considered that personal information is available to the public by way of the Government Services telephone directory and that the name of the Complainant was provided solely in her professional capacity. I note that there is an immediate personal risk which arises as a result of having a threatening individual know the nurse's full name, combined with a full description of said nurse. I compare that

> circumstance with the full name provided in the telephone directory and find that, while there is still personal information available to those who wish to find it, it does not pose the same immediate threat.

The commission also rejected a submission that use of last names was necessary for the management of personnel, a permissible exemption under the governing statute (pages 13 & 14):

> The Public Body states that its disclosure of the Complainant's name relates to its maintenance of a highly qualified, competent and accountable workforce. As noted above, however, I conclude that the Public Body can carry out its function of managing and administering nursing personnel in long-term care facilities by requiring only the first name and professional designation of nursing personnel on their name tags. The decision of whether to have her full name on her name tag should be one made by the Complainant herself.
>
> I wish to point out that the complainant is also identifiable by her name tag which discloses her first name only. In these circumstances, a first name would be considered personal information of the Complainant. However, staff do need to be identified in some way in order to properly perform their duties and satisfy their employer's and their profession's needs of accountability. Such a disclosure would satisfy section 37(1)(a.1) of the FOIPP Act, as the scales of subsection 15(5) would be tipped in the Public Body's favour.
>
> I wish to make one final note before moving on to the Order. The RNABC document also stated that, "If the concern is related to the care provided by a specific nurse or group of nurses, the client then has a right to know the full name of the nurse or nurses." In addition, the Public Body points out that if it were to receive a request for an employee's first and last name, the request would be considered and all relevant issues would be explored. Decisions would be made on a case by case basis and would be in compliance with the FOIPP Act. The findings which I have made in this Order do not prevent this type of decision being made by the Public Body, including the decision to disclose an employee's full name where it is warranted. Making such a decision on a case by case basis is much different from a policy requiring full names on all employees' name tags.

Finally, as part of its decision, the PEI privacy commission noted that had the name tag included a photograph "there would have been a presumption of an unreasonable invasion of privacy , as the photograph would constitute recorded information of an identifiable individual" (page 9). Since the name tag in question did not contain a photograph, only a professional designation, the commission did not make a specific ruling on the impact of the employee's photo on the name tag. It seems clear from the comments in the decision that had the name

tag included a photo the privacy commission would have found the privacy intrusion greater, raising the threshold needed to establish that the public interest justified the intrusion. At the same time, the Board accepts the Employer's point that the legislative framework in *PEI* is distinguishable from the Saskatchewan legislation, reducing its applicability to the current case.

Having considered these authorities and the evidence before the Board, it is our conclusion that the PNHR's name tag policy violates *LAFOIP*. Section 23(1)(k) of *LAFOIP* defines personal information to include "the name of the individual where it appears with other personal information that relates to that individual". In *Saskatoon Board of Education,* the OIPC ruled that the combination of a name and a photograph constituted personal information in circumstances where names and photos were to be placed on the internet. In the current case, employees are required to wear name tags with a photograph and their first and last names. Following the decision in *Saskatoon Board of Education* and noting the unambiguous statutory language of section 23(1)(k) it is difficult to see how a name tag affixed to a person could not be properly characterized as "personal information" under Saskatchewan privacy law. Indeed, the Board would come to this conclusion even if the name tags lacked a photo. In reality, the photo is redundant. Patients, their families, and other members of the public will immediately be able to discern the first and last name of the employee and what that employee looks like. The "other personal information that relates to that individual" is the physical person to whom the name tag is attached. It includes the person's face, gender, colour, race, height, and overall physical appearance.

The current case is distinguishable from *Kelsey Trail* and *Regina Qu'Appelle.* In *Kelsey Trail*, in response to a request for the names of healthcare workers at work on a certain shift, the OIPC ruled that employee names alone would not constitute personal information under

Saskatchewan legislation (unlike the legislation in PEI where the name alone is considered personal information). The OIPC concluded in particular that "it does not appear that releasing the name alone .... would reveal personal information about them" (paragraph 27). The health authority was ordered to disclose the names to the complainant but to sever employee numbers from the disclosure. In the current case, it is impossible to separate the name tag from the other personal information, as was done in *Kelsey Trail*, if the name tag is affixed to the employee.

In *Regina Qu'Appelle*, a privacy complaint was filed after the regional health authority published on the internet the names and salaries of employees earning more than $50,000. The OIPC considered the names and salaries to constitute personal information under several provisions of section 23(1). However, salary information was expressly exempted as personal information under section 23(2)(a) of *LAFOIP,* leading to a conclusion that there was no prohibition against the disclosure of employee names and salaries. By contrast, there is no similar exemption in section 23(2) for name tags or their equivalent (nor was such an argument advanced by the Employer).

In the Board's opinion, neither *Kelsey Trail* nor *Regina Qu'Appelle* lead to the outcome urged by the Employer. We are satisfied that an employee ID with a first and last name when worn by the employee at work and clearly visible to patients and other non-employees constitutes personal information under section 23(1)(k)(i) of *LAFOIP.*

Having reached this conclusion, we turn to section 28(1) and 28(2) that expressly allow the disclosure of personal information in certain situations. Section 28(1) permits disclosure where consent is provided. There is no evidence that PNHR employees were asked to consent to the disclosure of their last name on their name tags nor did the Employer argue that such consent was solicited. The evidence made it clear that employees were ordered to wear the

new name tags under the potential threat of discipline for non-compliance. This does not constitute employee consent for disclosure.

Section 22(2)(a) allows local authorities to disclose personal information for the "purpose for which it was obtained... or for a use consistent with that purpose". It is self-evident that employee last names are collected for employment related purposes; it would be impossible to carry out the routine administration of the employment relationship without last names. There was no evidence presented that the last names were collected for use on name tags for the purpose of providing patients and families with ready identification of health care providers or that employees were advised of such a purpose. Nor can it be said that the disclosure was consistent with the purpose for which it was collected. As set out in *Bernard*, a consistent use means "such that an employee would reasonably expect that the information could be used in the manner proposed" (paragraph 31). There was no evidence that employees expected that their last names would appear on names tags that they were required to wear; the evidence was to the contrary.

Section 28(2)(n) allows the disclosure of personal information where "the public interest in disclosure clearly outweighs any invasion of privacy that could result from disclosure". Further, section 10(g)(i) of the *LAFOIP Regulations*, engaged through section 28(2)(s), expressly permits the disclosure of personal information where the "information pertains to the performance of any function or duty or the carrying out of any responsibility by an officer or employee of a local authority". It was not specifically argued that the employee name tag policy, even if it disclosed personal information, fell under either of these sections. Such an argument would lead to an analysis similar to that carried out in *PEI* in which the privacy tribunal weighed the necessity of the policy for the functioning of the health care facility against the personal

privacy intrusion. In other words, can it be said that the name tag policy is of sufficient public interest to trump privacy considerations or pertains to the performance, duties, or responsibilities of healthcare providers? This question will be left to the *KVP* analysis in the next section of the arbitration award. For now, it is sufficient for the Board to note that, similar to the analysis in *PEI*, we do not find the evidence provided to justify the name tag policy sufficient to allow for the disclosure of the personal information under section 23(2)(n) or to trigger disclosure under section 10(g)(i).

To summarize, it is the Board's conclusion that the name tags worn by employees are personal information. This personal information does not fall under of any of the statutory exemptions or permitted grounds for disclosure and was gathered for a purpose different than the one for which it is now being used. As such, the name tag policy violates *LAFOIP*.

KVP Analysis

The Union challenged the name tag policy based on the principles enunciated in the 1965 *KVP* arbitration decision. It should be noted that the *KVP* tests, while long applied in the arbitration arena, were recently explicitly endorsed by the Supreme Court of Canada in *Irving.* The *KVP* tests applicable with respect to the name tag policy are: 1) the policy must not be inconsistent with the collective agreement; and 2) the policy must not be unreasonable.

The Board needs to spend little time on the first test because of our findings in the previous two sections regarding OHS and privacy. It is accepted that collective bargaining agreements are to be interpreted as if they contained the employment legislation of the jurisdiction in which the CBA operates. Thus, the contract between PNHR and CUPE must be interpreted as if it contained the *Employment Act, Division III* dealing with occupational health and safety and those sections of *LAFOIP* applicable to employment. For reasons set out in the

previous two sections, the Board found that the name tag policy was not in compliance with Saskatchewan OHS legislation by inadequately promoting health and safety and violated *LAFOIP* by disclosing without permission employee personal information collected for other purposes. It follows therefore that the name tag policy is inconsistent with the terms of the CBA.

The second *KVP* test, reasonableness, lies at the heart of the grievance. If the Board has been wrong about the statutory OHS and privacy violations of the name tag policy, the policy is still subject to a test of reasonableness. Put simply, a policy or rule might not violate any statute but still may be found to be an unreasonable exercise of management rights (see, for example, *Thrifty* and *Kitchener-Waterloo Record*). The Board will undertake the following analysis as if we had not already found any statutory violations.

The question posed under *KVP* is whether on balance the policy is a reasonable one. In *Irving*, the Supreme Court of Canada described this exercise as a balancing of interests approach. The balancing must occur between the employer's reason or justification for the policy and the negative impact on the employee. In *Irving,* the union had challenged the employer's random alcohol testing policy. The original arbitration board that heard the case had posed the balancing test as follows: "Was the benefit to the employer from the random alcohol testing policy in this dangerous workplace proportional to the harm to employee privacy" (*Irving*, paragraph 43). The Court accepted this statement of the balancing test.

In the current case, the issues are different from *Irving* and the balancing test can be restated as follows: Is the benefit to the employer from the name tag policy proportional to any harm to employees?

We begin by looking at harm claimed by the employees as a result of the name tag policy. Much of this evidence has already been reviewed in the previous sections. Employees

claimed that the loss of privacy due to the disclosure of their last names on their name tags created a sense of vulnerability away from work. From the employees' perspective, revealing their last name made it easier for patients and family members to find them outside the workplace. Not only might this allow patients to intrude on their personal time, through phone calls for instance, it made them less safe if someone was intent on threatening or actually doing harm. The concern was sufficient for a significant proportion of employees to disobey the name tag policy despite the threat of discipline.

While the Board agreed that the name tag policy made it easier to find employees outside the workplace should someone be so inclined, the Board recognized that there was no evidence of actual physical harm that could in any way be attributed to the name tag policy in the three years since its introduction. The Board was concerned, however, that the degree of actual risk was difficult to determine given the absence of a systematic risk assessment carried out by the Employer.

In short, on the employee side of the balancing equation, the Board finds a loss of some privacy due to the disclosure of last names and a sense of increased vulnerability away from work. There was no evidence of actual physical harm due to the policy. Overall, the degree of harm to employees engendered by the policy is relatively low, but the absence of a risk assessment makes it difficult to determine the actual degree of safety risk.

We now turn to the benefit to the Employer of the name tag policy. The Employer justified the name tag policy on the fundamental right of patients to know who was providing their care. It is unlikely that this philosophy is new, but it crystalized for senior PNHR management with the release of the Patient First report in October 2009 (exhibit 51). Senior management interpreted the report to mean that placing patients first meant that PNHR

employees should be identifiable to patients and family members by their first and last names. The name tag policy followed.

The difficulty the Board has with the genesis of the policy is that the report upon which it is based does not recommend the use of first and last names by caregivers or even draw a linkage between patient-centred health care delivery and the last name identification of caregivers. Nowhere in the report is there even a suggestion that it is important that patients know the last names of the employees providing their care. In fact, the only example in the report in which name tags are identified provides a positive example in which explicit reference is made to name tags with only first names. In contrast, the public reports from which the name tag policy evolved in *Toronto Police* specifically recommended last names on police ID's. There is no such recommendation in the Patient First report nor was the Employer able to point to a senior government policy pronouncement, let alone legislation, that called for mandatory last name identification of caregivers in the routine course of their work.

That said, the Board recognizes that even in the absence of a specific report, senior managers can exercise their discretion to adopt policies that, in their professional experience, can advance the interests of their organization. Putting aside that the Patient First report does not expressly recommend last names, the Board needs to assess whether sound reasons were advanced for the name tag policy. Several Employer witnesses testified with conviction that patients should know the full name of their caregivers. While the Board respects the opinion of these senior managers, their opinions remained simply that – their opinions. Other than indicating that some professional groups, registered nurses in particular, emphasized last name identification and that some smaller Saskatchewan health regions also required that employees wear last names, there was no other evidence to support the opinion that having last names

was important for the provision of quality care or the satisfaction of patients. While in no way disrespecting the opinions of the senior managers, they were unable to offer any objective evidence to support the proposition that making it easy for patients and family members to know the full name of the caregivers improved the delivery of health care or the patient experience. In short, the Employer has provided very weak justification for the adoption of its name tag policy.

The Board's conclusion in this regard is similar to the findings in *Winnipeg Police*, a 1986 arbitration award that adopted a *KVP* analysis to address the adoption of a name tag policy for Winnipeg police officers. Arbitrator MacLean noted that "the City presented evidence that the rule was introduced on the assumption that members of the public would feel more comfortable dealing with police officers they could address by name; that the name tags would personalize such interaction and the public would be less apprehensive when dealing with the police" (paragraph 19). He then found that "the City has not shown, in any substantial way, that the wearing of name tags would improve its public image or improve the interaction between the public and police" (paragraph 21). The arbitrator ruled that the risk from wearing name tags, while not great, outweighed any unsubstantiated benefits, concluding that the name tag policy was unreasonable. A similar analysis was carried out in *PEI* and the tribunal rejected the name tag policy because the employer had failed to provide satisfactory evidence for its necessity.

The Board reaches the same conclusion in the current case. Weighing the interests of the Employer against those of the employees, the Board concludes that on balance the potential harm to employees, even though not large, outweighs the unsubstantiated benefit to the Employer. The policy has intruded on employee privacy by forcing the disclosure of their last name to patients and family members without their permission, creating unease about their

vulnerability outside the workplace. While the harm from the policy may not be substantial, the Employer has failed to provide convincing evidence in support of the policy's benefits. Accordingly, it is the Board's conclusion that the policy fails a test of reasonableness under *KVP* and must be set aside.

On the same analysis, the Board also finds that the Employer has failed to establish that the public interest in the name tag policy outweighs the privacy intrusion pursuant to section 23(2)(n)(i) of *LAFOIP* or that the disclosure of last names pertains to the performance of the duties and responsibility of employees under section 10(g)(i) of the *LAFOIP Regulations*.

AWARD

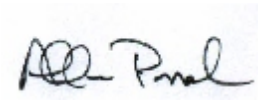
The grievance is sustained on all three grounds advanced by the Union. The Board has concluded that: 1) the name tag policy fails to comply with the occupational health and safety provisions found in Division III of the *Saskatchewan Employment Act* principally because of the absence of a proper risk assessment and the implementation of appropriate safeguards that might be required on the basis of a risk assessment ; 2) the name tag policy violates the provisions of the *Local Authorities Freedom of Information and Protection of Privacy Act* because it discloses personal information that was collected for other purposes without permission of employees; and 3) the name tag policy is inconsistent with the collective bargaining and is unreasonable.

As a remedy, the Employer is directed to rescind its policy requiring employees to wear name tags bearing their first and last names. New name tags bearing first names, a photo, and job title should be issued at the Employer's cost. The Board will retain jurisdiction should any questions arise with this decision or the remedy imposed.

Dated in Saskatoon on December 11, 2015.

Mr. Huculak, nominee of the Union, concurs with the award.

Mr. Soanes, nominee of the Employer, dissents from the majority decision.



Allen Ponak

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