

COURT FILE NO.: 06-DV-1188

DATE: 2007-01-02

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** BROCKVILLE PSYCHIATRIC HOSPITAL A DIVISION OF THE  
ROYAL OTTAWA HEALTH CARE GROUP and ONTARIO PUBLIC  
SERVICE EMPLOYEES UNION, LOCAL 439

**BEFORE:** The Honourable Associate Chief Justice Cunningham  
The Honourable Mr. Justice Lee K. Ferrier  
The Honourable Mr. Justice Alan C.R. Whitten

**COUNSEL:** Mary Josephine Loretto Gleason; Ogilvy Renault, for the Applicant  
Elizabeth Jean McIntyre; Cavalluzzo, Hayes, Shilton, McIntyre for the  
Respondent

**HEARD AT:** Ottawa, October 16, 2006

[1] The Royal Ottawa Health Care Group (ROHCG), which operates two psychiatric facilities; namely, the Royal Ottawa Hospital (ROH) and the Brockville Psychiatric Hospital (BPH), has applied for review of the supplemental decision of the majority of the Board of Arbitration of December 14, 2005 between BPH and OPSEU Local 439 (the Union) (the "Supplemental Award"). The Supplemental Award was to the effect that the Board of Arbitration ("the Board") had the jurisdiction to adjudicate the supplemental issue submitted to it by the Union, and accordingly to decide that ROHCG must pay for the pension and benefit coverage of long-term disability (LTD) recipients.

**I. ISSUES**

[2] Did the Board err in deciding that it had jurisdiction after its award of November 5, 2000 to make a supplemental award determining that as between the employer hospital and employees in receipt of LTD benefits, it was the responsibility of the hospital to pay for ongoing pension and benefit coverage? Assuming for the moment, that the Board had such jurisdiction, did it err in its finding as to the responsibility for the payments in question?

[3] At the outset, in order to determine whether the Board acted erroneously, a standard of review must be chosen to evaluate the finding of jurisdiction by the Board. The application of a standard of review is determined by the scope or nature of the legal doctrine, *functus officio*, and the context in which it was applied by the Board. If the jurisdictional finding is in error, the factual determination of responsibility for payment is vitiated. If the jurisdictional decision is deemed without error, the standard of review

(possibly different from that applied at the outset) is used to evaluate the responsibility for payment decision.

## II. FACTUAL BACKGROUND

[4] Until the wave of health care restructuring that took place in this province commencing in the 1990s, BPH and ROH were separately governed psychiatric hospitals. They were owned and operated by different entities: BPH was owned and operated by the Crown in Right of Ontario and ROH by ROHCG.

[5] On October 16, 2000, the governance and management of BPH were transferred to ROHCG, as directed by the Health Services Restructuring Commission. ROHCG planned to transfer various portions of the BPH services to other hospitals, leaving only the Forensic Treatment Unit and the Ministry of Public Safety and Security's St. Lawrence Valley Correctional and Treatment Centre, operating on the BPH premises.

[6] The employees of BPH (represented by OPSEU) and the Crown in Right of Ontario had previously entered into a collective agreement. On February 2, 2001, the Union was certified to represent some of the employees of BPH. On February 23, 2001, the union sent notice to bargain to ROHCG.

[7] After more than two years of bargaining with little success, the parties submitted all outstanding issues to a Board of Arbitration under the *Hospital Labour Disputes Arbitration Act*, R.S.O. 1990, c. H.14 (*HLDAA*). Hearings were held on April 15 and July 9, 2003, written submissions were received, and the Board met in executive session on nine occasions to draft its Award. The Board released its Award on November 5, 2004. In the preamble to the Award, the Board gave the context for its decision:

The Board has worked diligently through some nine executive meetings to fashion an award that balances the competing interests in a manner that preserves certain important benefits and entitlements for affected former Brockville Psychiatric Hospital employees to the extent possible while, at the same time, recognizing the fact of the merged entity and the need to put the collective bargaining relationship on a solid footing going forward into the broader hospital sector.

[8] One of the issues that the parties had submitted to arbitration was Short-Term Sick Leave and LTD. The relevant articles in the Award of Arbitrator Burkett (chair, for the majority) dealing with this issue read as follows:

### 2. Short-Term Sick Leave, Long-Term Disability

21. Sick leave/short term disability and long-term disability (full-time employees and regular part-time employees who have opted to continue).

21.01. Part-time employees who elect to receive benefits under article 31.02 will receive prorated sick leave and long-term disability benefits based on the number of hours worked.

21.02. The Hospital will maintain the current long-term disability plan although the Hospital reserves the right to change insurers provided the coverage available to employees is in the aggregate no less favourable.

[9] The decision noted that the Board remained seized of the matter until such time as the parties executed a collective agreement.

[10] The Board was composed of the Chair (Arbitrator Burkett), a representative chosen by the Union and a representative chosen by the employer.

[11] In a letter dated March 24, 2005, the Union informed and asked for the "clarification" of the Board of an issue that had arisen during the parties' preparation of a collective agreement incorporating the Award. No collective agreement had yet been signed.

[12] The issue concerned the payment of continuing pension and benefit premiums for employees on LTD. ROHCG informed the Union that, as of January 1, 2005, employees of BPH would be responsible for these payments. The Union stated that it understood that the practice previously in place at BPH would be continued under the new agreement: namely, that the employer (ROHCG under the new agreement) would be responsible for the payment of pension and benefit amounts for employees on LTD.

[13] ROHCG responded to the Union's letter on April 15, 2005. ROHCG submitted that the practice in place at ROH had been that employees were to be responsible for payment of pension and benefit amounts while on LTD. Further, ROHCG stated that it understood that this state of affairs was to take effect for the employees at BPH as well. ROHCG argued that the Board did not have the jurisdiction to make the "substantive alteration" to the award as requested by the Union. ROHCG interpreted the LTD clauses of the Award as being irrelevant to the issue of benefit and pension payments for LTD employees. According to ROHCG, the pension and benefit payments for LTD employees was covered under the "Benefits" section of the award. The employer's proposal had been awarded on the Benefits issue. ROHCG submitted that article 17.03 had been inserted into the agreement long after employee responsibility for payment of pension and benefit premiums had been established as a practice.

[14] The Union replied to ROHCG's response letter to the Board on April 25, 2005. It reasserted its position that the Board was only being asked to clarify part of its award. Further, the Union submitted that the "current plan" referenced in article 21.02 of the Award referred to the collective agreement between BPH and the Crown, which continued under a Transfer of Governance Agreement signed between ROHCG and the Crown when ROHCG took over. The Union maintained that the practice under that

“current” agreement was that the employer was responsible for pension and benefit payments of LTD employees.

[15] Arbitrator Burkett for the majority of the Board addressed the dispute in writing on December 14, 2005. The purpose of this letter was to “clarify [the Board’s] award”. This supplemental award begins with a very brief analysis of the jurisdictional question raised by ROHCG in its letter of April 15, 2005:

An implementation issue has arisen out of our award with respect to Long Term Disability. We remained seized pending the signing of a collective agreement to deal with implementation issues. The parties have not yet entered into a collective agreement and the issue before us is clearly an implementation issue. We find, accordingly, that we do have jurisdiction to clarify our award so that the parties can finalize their collective agreement in accord with the provisions of the H.L.D.A.A. We do agree, however, that we do not have jurisdiction to amend or alter our award.

[16] After disposing of the jurisdiction issue, the Board made the following findings on what was included in the words “current long-term disability plan” in the original Award:

We have considered the written submissions of the parties against the backdrop of the following:

1. Article 21.02, as awarded, reflects the exact language proposed by the Employer.
2. The overriding position of the Employer was that all benefits should be as provided under the Royal Ottawa Hospital and OPSEU collective agreement.
3. The article 17.03 language from the ROH collective agreement was never proposed by the Employer, nor was there any discussion, submissions etc. with respect to the issue of employee payment for benefits while on LTD.

Having regard to the foregoing we hereby clarify our award as follows:

1. The awarded article 21.02 incorporates the specific features of the LTD plan then in effect at the Royal Ottawa Hospital as provided under the then existing Royal Ottawa Hospital and OPSEU collective agreement (i.e. definitions, waiting period, level of payment, duration of payment etc.)
2. The award does not include the current article 17.03 of the Royal Ottawa and OPSEU collective agreement nor by implication any language to the same effect.

[17] The ROHCG was thus precluded from requiring LTD employees to pay pension and benefit amounts.

### III. THE STATUTORY FRAMEWORK

[18] The *HLDAA* applies to hospital employees to whom the *Labour Relations Act, 1995*, S.O. 1995, c.1 Sch. A (*LRA*) applies, their trade unions (if any), and their employers (s.2 (1)). The *LRA* applies except as modified by the *HLDAA* (s.2 (2)). As such, the parties are required to bargain in good faith.

[19] The *HLDAA* sets out a process and (in R.R.O. 1990, Reg. 639) a procedure for interest arbitration of bargaining disputes within the hospital sector. Sections 5 and 6 set out how an arbitrator or Board of Arbitration is appointed and the settling of disputes arising from this process. The special circumstances of this sector and the need for separate complimentary legislation is evident in that s.11(1) prohibits employees from striking and employers from locking employees out.

[20] The *Public Sector Dispute Resolution Act*, S.O. 1997, c.21, Sch. A (*PSDRA*) (most of which has been repealed) applies to arbitrations conducted pursuant to the *HLDAA*. That statute requires (at s.2(2)) that arbitrators acting under the authority of the *PSDRA* consider the enumerated purposes of the *PSDRA* contained in s.1 when making decisions:

S.1...

1. To ensure the expeditious resolution of disputes during collective bargaining.
2. To encourage the settlement of disputes through negotiation.
3. To encourage best practices that ensure the delivery of quality and effective public services that are affordable for taxpayers.

[21] The *HLDAA* provides that the powers of the board (in addition to those bestowed upon labour arbitrators under the *LRA*) are set out in s.8(3):

In an arbitration to which this section applies, the board may, in addition to the powers conferred upon a board of arbitration by this Act, (a) make a decision on matters of common dispute between all of the parties; and (b) refer matters of particular dispute to the parties concerned for further bargaining.

[22] S.9 places duties on arbitrators:

#### **Duty of Board**

9.1 The board of arbitration shall examine into and decide on matters that are in dispute and any other matters that appear to the board necessary to be decided in order to conclude a collective agreement between the parties, but the board shall not decide any matters that come within the jurisdiction of the Ontario Labour Relations Board.

**Criteria**

(1.1) In making a decision or award, the board of arbitration shall take into consideration all factors it considers relevant, including the following criteria:

1. The employer's ability to pay in light of its fiscal situation.
2. The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased.
3. The economic situation in Ontario and in the municipality where the hospital is located.
4. A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
5. The employer's ability to attract and retain qualified employees.

**Board to Remain Seized of Matters**

(2) The board of arbitration shall remain seized of and may deal with all matters in dispute between the parties until a collective agreement is in effect between the parties.

[23] S. 10 outlines the consequences of an arbitral award for the parties:

**Execution of Agreement**

(5) Within five days of the date of the decision of the board of arbitration or such longer period as may be agreed upon in writing by the parties, the parties shall prepare and execute a document giving effect to the decision of the board and any agreement of the parties, and the document thereupon constitutes a collective agreement.

**Preparation of Agreement by Board**

(6) If the parties fail to prepare and execute a document in the form of a collective agreement giving effect to the decision of the board and any agreement of the parties within the period mentioned in subsection (5), the parties or either of them shall notify the chair of the board in writing forthwith, and the board shall prepare a document in the form of a collective agreement giving effect to the decision of the board and any agreement of the parties and submit the document to the parties for execution.

[24] Finally, s.7 reads as follows:

Appointment or proceedings of board not subject to review

7. Where a person has been appointed as a single arbitrator or the three members have been appointed to a board of arbitration, it shall be presumed conclusively that the board has been established in accordance

with this Act and no application shall be made, taken or heard for judicial review or to question the establishment of the board or the appointment of the member or members, or to review, prohibit or restrain any of its proceedings.

#### IV. ANALYSIS

##### Standard of Review

[25] The Supreme Court has set out a framework to be used by the courts when reviewing the exercise of powers by statutory decision-makers. The “pragmatic and functional” approach was developed in *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048 and was definitively established in *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982. Courts are to use the pragmatic and functional approach in every review of a decision of an administrative body: *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226 at 237-238.

[26] In *Dr. Q., supra* the Supreme Court described the application of the test at page 238:

In the pragmatic and functional approach, the standard of review is determined by considering four contextual factors – the presence or absence of a privative clause or statutory right of appeal; the expertise of the tribunal relative to that of the reviewing court on the issue in question; the purposes of the legislation and the provision in particular; and, the nature of the question – law, fact or mixed law and fact. The factors may overlap. The overall aim is to discern legislative intent, keeping in mind the constitutional role of the courts in maintaining the rule of law.

[27] A reviewing court, having balanced these four contextual factors, then assigns one of three standards of review: correctness (when the analysis suggests little or no deference); patent unreasonableness (when a great deal of deference is suggested); or reasonableness (when the analysis suggests a standard of deference somewhere in the middle): *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247.

[28] The parties in this case have offered different interpretations of the correct standard of review. The applicant asserts that the issue is whether or not the Board exceeded its jurisdiction by deciding a matter with respect to which it was *functus officio*. As a question of law, the applicant submits, the issue of the Board’s jurisdiction is not within the core of its expertise, and thus the standard of review on this issue ought to be correctness.

[29] The respondent suggests that a standard of patent unreasonableness applies. The presence of a true privative clause in the *HLDA* suggests a high level of deference. The *HLDA* is a statute aimed at establishing a binding arbitration process in the hospital sector, requiring a more flexible application of the doctrine of *functus officio* and more deference to a Board on review. Courts have consistently showed deference to labour arbitrators and recognized their particular expertise in interpreting collective agreements;

the respondent points to expertise as the most important factor in the analysis. With respect to the nature of the question, the respondent recognizes that less deference may be appropriate with regard to the Board's decision that it was not *functus officio*. After that, the Board's task was to determine its own manifest intent and whether or not that was expressed in its original Award, to which a patent unreasonableness standard is said to apply.

#### **The Presence or Absence of a Privative Clause**

[30] S.7 of the *HLDAA* mandates that "no application be made, taken or heard for judicial review...to review, prohibit or restrain any of [the Board's] proceedings. The presence of this strict privative clause suggests a legislative intention to shield arbitration Board Awards from review. Therefore, this factor in the analysis suggests a certain degree of deference. However, the Supreme Court has repeatedly stated that this factor is not solely dispositive of the standard of review, and that all of the factors must be considered in context: *Dr. Q., supra*; *Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.*, [2001] 2 S.C.R. 100 at 115.

#### **The Purpose of the Legislation**

[31] The *HLDAA* is clearly legislation aimed at providing a system of dispute resolution for the hospital sector. Health care employees and employers face unique challenges and obstacles in bargaining and so the legislature has created processes and procedures in an attempt to address those unique needs.

[32] Section 9.1 is particularly important. The Board is duty-bound to examine and decide on any matters (whether in dispute between the parties or not) that are necessary to decide in order to affect a collective agreement between the parties. In s.10(6), the Board is empowered to craft the agreement to be executed by the parties. The *HLDAA* bestows upon Boards of Arbitration considerable powers in order to ensure the conclusion of collective agreements between employers and employees (or employee groups) in the hospital sector. The Board's considerable power to craft an agreement and decide on disputed or undisputed matters between the parties suggests a degree of deference.

#### **Expertise**

[33] Several Supreme Court decisions suggest that expertise is the most important factor in the pragmatic and functional analysis: *Mattel, supra* at 115; *Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.* [1997] 1 S.C.R. 748 at 773.

[34] Courts should only give deference to a Board when the issue is within the Board's expertise as intended by the legislature, rather than within the court's expertise. In *Pushpanathan, supra*, the Supreme Court suggested that in analysing expertise, a court should consider the expertise of the tribunal, the court's expertise relative to that of the tribunal, and the nature of the specific issue before the tribunal relative to its expertise.

[35] The Board's expertise as intended is well set out in the statute. The *HLDAA*-mandated duties and responsibilities require that arbitrators have specialized knowledge

in the field generally. Specifically, *HLDA*-appointed arbitrators can be seen to have some expertise in dealing with the *IILDA* itself.

[36] However, the specific question of whether or not the Board could finish off its statutory duty with a supplemental award is one that required the Board to consider the common law as it applied to the statute. This inquiry into its own jurisdiction was judicial in nature. These requirements are located squarely within the expertise of the courts, and therefore this factor suggests a more exacting standard of review ought to apply.

#### **Nature of the Question**

[37] *Functus Officio* is a legal concept. However, the fact that the question in the case may involve the interpretation and application of a legal principle is not determinative as to the proper degree of deference. If the nature of the question required a highly fact-specific application of a legal principle, that application may suggest more deference.

[38] In order to analyze the nature of the Board's decision that it retained jurisdiction to deal with the matter (in effect, that it was not *functus*) an examination of the doctrine of *functus officio* and its application in this context is necessary.

[39] *Functus Officio* operates to stop decision-makers from reopening judgments after they have been formalized. The rationale is that there should be finality in proceedings.

[40] The Supreme Court of Canada in *Chandler v. Alberta Association of Architects* [1989] 2 S.C.R. 848 recognized that the doctrine of *functus officio* applies to administrative decision-makers. The traditional exceptions to the doctrine's application to judgments were 1) when a slip had been made in drafting the judgment or 2) where the court had erred in expressing its manifest intention: *Chandler, supra* at 860. Justice Sopinka found that in the administrative context, a statute could also authorize a decision-maker to reopen a decision:

I am of the opinion that [the doctrine of *functus officio*'s] application must be more flexible and less formalistic in respect to the decisions of administrative tribunals which are subject to appeal only on a point of law.

Accordingly, the principle should not be strictly applied where there are indications in the enabling statute that a decision can be reopened in order to enable the tribunal to discharge the function committed to it by enabling legislation...

Furthermore, if the tribunal has failed to dispose of an issue which is fairly raised by the proceedings and of which the tribunal is empowered by its enabling statute to dispose, it ought to be allowed to complete its statutory task (861-862).

[41] In this case, the Board correctly determined that it would not retain jurisdiction to amend or alter its original Award in a supplementary award. However, the nature of the

application of the doctrine, properly interpreted, impacts upon the standard of review. The analysis becomes focussed on considering how much deference should be afforded the Board on its decision as to whether its supplemental award would be a (permitted) clarification or exercise of statutory power to complete the task, or an (forbidden) amendment or alteration of the original Award.

[42] The Respondent offers the Nova Scotia Court of Appeal's decision in *Capital District Health Authority v. Nova Scotia Government and General Employees Union* (2006) 246 N.S.R. (2d) 104, [2006] N.S.J. No. 281 as a case where a labour arbitrator's decision involving *functus officio* was found to be reviewable under a reasonableness standard. In that case, the Court of Appeal held that a board's determination of whether a supplemental award would correctly express its manifest intent was a question of fact and law located toward the factual side of the spectrum. It is important to note that the Court (at para. 34) concluded that a standard of correctness applied to any errors of "legal principle" made by the board.

[43] After determining the "broad legal principles of *functus officio*", the board in *Capital District, supra* was left to examine the wording of its own initial award with respect to the issue in order to determine its own manifest intent, and whether its supplemental award "was to give effect to that manifest intent" (para. 46). This was a highly fact-driven inquiry into the board's own determination of its intent.

[44] The nature of the question here, beyond the general legal principles, is quite different. Here the Board characterized its retained jurisdiction as allowing it to operate "to clarify our award so that the parties can finalize their collective agreement in accord with the provisions of the *H.L.D.A.A.*" The Board was not attempting to clarify its manifest intention. The Board's assertion of jurisdiction closely matches the *Chandler* jurisdiction "to finish its statutory task". The decision was based, therefore, on the Board's interpretation of the interplay of the doctrine of *functus officio* and its governing statute. The Board was not implementing its manifest intention by clarifying a specific section of the original Award (as was the board in *Capital District*), but rather it was attempting to comply with its statutory duty to finish the job of crafting the terms of a collective agreement between the parties. The less factual and highly legal nature of this question suggests a more scrutinizing standard of review.

#### **Conclusion on Standard of Review**

[45] The standard of review of the Board's decision to make a supplemental Award in this case must be reviewed under the probing standard of correctness. Beyond the Board's interpretation of the legal principle of *functus officio* and exceptions to its application in the arbitration context, the Board also had to be correct as to whether or not a supplemental award would finish off its statutory duty, rather than amend or alter its original Award.

[46] If the Board was correct in its application of the legal principles and its interpretation of them in conjunction with its statute, then the substantive decision reached by the Board that the original Award included no language to the effect that employees were required

to pay ongoing pension and benefit premiums while on LTD is reviewable under a standard of patent unreasonableness.

[47] The full privative clause and the statutory purpose factors (as already discussed) suggest a significant degree of deference. The final two contextual factors change under this issue, however. The specific question of who was required to pay was contextual and factual in nature, suggesting considerable deference. Finally, the consideration of questions of fact involving labour relations between two parties attempting to complete a collective agreement is squarely within the mandate and expertise of labour arbitrators appointed under the *HLDAA*. Clearly, all of the factors suggest that the legislature intended these types of decisions to be made by Arbitrators and given a high degree of deference by courts. There is no reason to review the substantive decision unless it was patently unreasonable.

#### **Was the Board's Decision to Release a Supplemental Award Correct?**

[48] As Justice Sopinka ruled in *Chandler, supra*, when a statute suggests that an administrative body is able to re-enter after a decision has been made to settle issues between the parties, *functus officio* should be less rigidly applied. The *HLDAA* clearly includes such indications. The Board has the statutory duty to examine and determine any matter, not just those in dispute, that it determines is necessary in order for the parties to enter into a collective agreement. The Board also remains seized of a matter until a collective agreement is signed and may "deal with all matters in dispute between the parties until a collective agreement is in effect between the parties."

[49] The Board's decision to examine and decide upon the issue of which party would be responsible for the payment of ongoing benefit and pension premiums for LTD employees was correct. The Board, in issuing a supplemental award, correctly decided that it had jurisdiction to examine the issue. This jurisdiction was grounded in its statute but also in the common law on the exceptions to the application of the doctrine of *functus officio*. The Board correctly decided that it was not *functus officio* and that in deciding the issue between the parties, it would not be exceeding its jurisdiction, but rather completing the duties set out for it by its statute.

[50] What the Board did was clarify the application of its award to an issue that had arisen between the parties before the completion of a collective agreement; the Board did not amend or alter its original Award. The Union asked the arbitrator to consider an issue that had arisen while the parties were attempting to complete a collective agreement. ROHCG made submissions in response. The positions of the parties were clear and the Board decided that it was required by statute to deal with the issue that had arisen between the parties. That decision was correct in its interpretation of the *HLDAA* and does not offend the common law on the doctrine of *functus officio*.

#### **Was the Substantive Decision Patently Unreasonable?**

[51] Since the Board was correct in asserting jurisdiction to make a supplemental award on the issue of benefit and pension premium payment for LTD employees, the only issue remaining is whether the resulting decision itself was patently unreasonable.

[52] The Board's decision was not patently unreasonable. The statute gives the Board broad powers to decide issues between the parties. Both parties made clear their positions and requested remedies to the Board. The Board considered the relationship between the parties, their written submissions, the factual backdrop leading up to the original Award, and the original Award itself. The Board clearly understood the issue between the parties and set out the criteria and context upon which its decision was based.

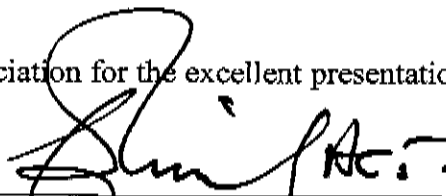
[53] Furthermore, the Board's supplemental award protected and honoured the stated objectives of the original Award: pursuing compatibility with the ROH proposals in the context of the merger of services, while also attempting to protect the superior conditions of enjoyment enjoyed by the transferred employees.

[54] The manner in which the Board considered the matter and rendered its decision cannot be said to have led to a result that was irrational or totally devoid of reason. In fact, it was supported by a rational analysis of the facts and context. The decision was not patently unreasonable.

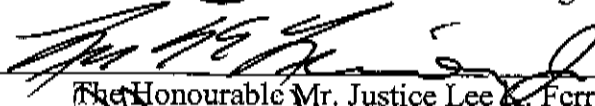
#### V. RESULT

[55] Brockville Psychiatric Hospital A Division of The Royal Ottawa Health Care Group's application for judicial review of the Board of Arbitration's supplementary award dated December 14, 2005 is dismissed.

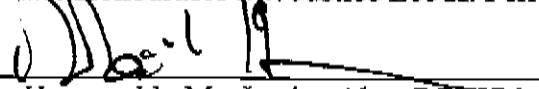
[56] In closing, the court wishes to express its appreciation for the excellent presentations of counsel.



The Honourable Associate Chief Justice Cunningham



The Honourable Mr. Justice Lee L. Ferrier



The Honourable Mr. Justice Alan C.R. Whitten

Released: January 2nd, 2007