

IN THE MATTER OF:

AN ARBITRATION

BETWEEN:

**HEALTH SCIENCES CENTRE NURSES WORKSITE 10,
of the MANITOBA NURSES UNION**
("the Union" or "MNU")

-and -

Shared Health
("the Employer" or "HSC"),

Sole Arbitrator: Kristin L. Gibson

Appearances:

Scott Tallon and Victoria Weir.....Legal counsel for Shared Health

Shannon Carson, Jeff Smorang, and Clair CerilliLegal counsel for
MNU

INTRODUCTION AND GENERAL COMMENTS

On June 28, 2023 the Union filed a policy grievance alleging that the Employer was failing to provide and maintain a safe workplace in violation of both the collective agreement and the Workplace Safety and Health Act and regulations. This grievance incorporated and advanced a number of concerns which had been raised by the Health Sciences Centre (“HSC”) Workplace Safety and Health Committee and which had resulted in three specific joint recommendations from that committee on May 17, 2023. It should be noted here that the Workplace Safety and Health Committee is multi-disciplinary and there are representatives on the employee side from a number of unions who have members working at HSC.

The three joint recommendations (“the Recommendations”) were to:

- 1) Immediately introduce a compliment (*sic*) of Institutional Safety Officers with the training and authority to provide assistance and intervention in situations that require enhanced safety measures for staff and patients;
- 2) Immediately take the necessary steps to secure/restrict access to all parking facilities, with a 24/7 Security presence including necessary and functional surveillance equipment to further monitor staff and patient safety...; and
- 3) Immediately implement a comprehensive Incident Investigation process as determined in the WPSH Act and Regulations with the intention of reviewing serious incidents for future injury reduction/prevention in the future.

The Employer’s response to the Recommendations is dated June 13, 2023. Summarized, the response to the three Recommendations was to defer to the Manitoba Department of Justice on the ISO licensing, to reiterate the existing process for Incident Investigation, and to articulate a detailed plan in response to the second Recommendation. The Employer’s response stated that safety in the parkades was “... a problem that we are actively working on with high priority”

and indicated that they were "... in the planning stage of resolving these issues on several fronts". The pieces of that plan were stated to include lighting upgrades in the parkades, adding camera surveillance and linking those cameras directly to the main security system, locking down the stairwells in the southern parkades, conducting a viability study for the addition of high speed roll up doors, and hiring additional manned security.

The arbitration hearing was largely focused on allegations that the Employer was failing to provide adequate security for nurses parking on the Health Sciences Centre Campus (the "Campus") - both in the form of effectively restricting physical access to staff parkades and by staffing those parkades with an effective security presence on a 24/7 basis. Importantly, those safety concerns extended to the routes through the Campus to and from the staff parkades, as well as to the quantity and quality of the security presence on Campus, and in particular at and around entrances to the hospital complex. The grievance further alleges that the Employer has failed to deliver on the creation and implementation of Institutional Safety Officers as made possible by the *Police Services Amendment Act* in 2021.

The Employer's position in response to the grievance and at the hearing was that they were in compliance with their legal obligations to provide a safe workplace. The Employer submitted that they had responded quickly in June of 2023 to provide 24/7 manned security at the 3 southern parkades which had an immediate impact, and further that they had already been in the process of implementing additional physical safety measures for the parkades, as well as working on the ISO program at the time of the Recommendations.

The policy grievance also contains a number of allegations respecting reporting and investigation both generally and in terms of providing timely information to the Union about incidents, accidents and dangerous occurrences. I was advised at the outset of the hearing that aside from one specific incident where a nurse was assaulted at a staff entrance the allegations around reporting were being

advanced before a different arbitration panel and would not be the focus of this hearing. The parties agreed that the hearing would be bifurcated and adjourned on the issue of abuse reporting.

The Union maintained its' position with respect to a specific incident on March 27, 2023 (the "JN Incident") where a nurse was assaulted accessing the staff only entrance at 707 McDermot Avenue . That nurse filed a Work Related Injury/Near Miss form, which was not at the time treated as a critical incident by the Employer, and therefore not referred to the Workplace Safety and Health Committee for investigation. It was not until Ms. Danilis inquired about the situation some 6 weeks later that the matter was referred to the Committee. Due to the delay in reporting to the Committee, their report into the JN Incident was not finalized until the middle of July, 2023. The Employer concedes that this incident ought to have been treated as a critical incident and characterizes it as an oversight. The Union seeks a declaration that the Employer did not comply with the Act and regulation in this respect.

The parties filed an Agreed Statement of Facts ("ASOF") and 83 agreed documents at the outset of the hearing. In addition, I heard evidence from eight witnesses on behalf of the Union and four witnesses called by the Employer. A number of additional documents were introduced through those witnesses. The parties cooperated to produce summaries of incidents reported in relation to incidents at the parkades occurring for the 2023 calendar year, which was very helpful in understanding the scope of the issues relating to the safety of staff and the security of their vehicles and other personal belongings.

Health Sciences Centre Campus

The Campus is roughly a rectangle bordered by Tecumseh Street on the west, Notre Dame Avenue on the south, Sherbrook Street on the east and William and Elgin Avenues on the north. The north aspect of the Campus ends at William

Avenue at the western corner but bumps up to include buildings which border on Elgin Avenue at the northeast corner. These are the Ambulatory Care Clinic and the new Winnipeg Women's Hospital. The Campus comprises some thirty seven acres and is not entirely under the control of Shared Health. The University of Manitoba occupies several large buildings towards the centre of the Campus, which are served by a dedicated parkade at the corner of Tecumseh Street and Bannatyne Avenue. Similarly, the Manitoba Clinic owns and occupies a medical building and associated parkade at the southeast corner of the Campus. CancerCare Manitoba is situated at the corner of McDermot Avenue and Olivia Street in the interior of the Campus and Canadian Blood Services is on the north side of William Avenue directly north of the HSC PsychHealth Centre. There is also a hotel owned by CanadInns, and a laboratory (Cadham Lab) on the south side of William Avenue slightly northeast of the PsychHealth Centre. A change had occurred shortly prior to the hearing dates such that HSC security was now taking responsibility for the Cadham Lab.

There are six parkades that fall under HSC jurisdiction on Campus. Two of these – a parkade close to Children's Hospital, and one serving the Women's Hospital, both of which are underground and entered from Sherbrook Street – are not at issue in this grievance. The remaining four parkades are above ground and currently do not have doors blocking entry at the vehicle entrance or exit ramps. Three of the four – Tecumseh Street, Emily Street, J Lot (located off of Emily Street about a block north of Notre Dame Avenue) are located in the southern portion of the Campus ("the southern parkades"). The fourth is the William Avenue Parkade, which as the name suggests is located on William Avenue. It is just north of the Adult Emergency Department on William. Tecumseh Street and J Lot are restricted to staff parking only. Emily Street and William parkades have both monthly parking, which is typically staff, and short-term parking which can be used by visitors, patients and others who have less regular business at the HSC.

With the exception of J Lot which has only one stairwell and no public elevator, each of the parkades have multiple stairwells as well as an elevator. Each of Tecumseh Street, Emily Street and J Lot are linked to the HSC Tunnel System which allows underground travel from the parkades to most areas of the main hospital complex. William Parkade is not linked to the Tunnel System but has its' own overpass between the parkade and the hospital. There are various other surface parking lots on the HSC campus as well as some on street parking available within the perimeter of the Campus.

There are a number of City of Winnipeg transit stops either on the Campus perimeter or slightly off Campus, for example several are located on the eastern side of Sherbrook adjacent to the Campus, and several more are just north of the Women's Hospital on either Elgin or Sherbrook. There are also a number of surface parking lots which are off Campus by varying amounts of distance which are utilized by HSC staff including Union members. These lots are not owned, operated or controlled by the Employer.

Institutional Safety Officers

The Police Services Act was amended in 2019 to allow post-secondary education institutions and health care facilities to establish and staff a new position of Institutional Safety Officer ("ISO") upon proclamation. Both the amendments to the Act and the *Institutional Safety Officers Regulations* came into effect on October 15, 2021. ISOs must be licensed and trained security guards but receive additional training and certification which support somewhat enhanced powers of arrest and detention. ISOs are also permitted by this legislation to carry and use batons and aerosol weapons such as what is commonly known as pepper spray.

While the HSC employs a number of security staff, and also contracts with an outside provider for additional security personnel it did not employ any security

staff designed as ISOs at the time the grievance was filed nor at the time the arbitration hearing proceeded in January and February of 2024.

Security Staffing on Campus

The Security complement at HSC currently includes two categories of security guard. The first category is entitled "Security Guards for Access Control" ("SGAC") whose role is specified as being to "observe, deter and report". Such individuals are posted at entrances to the hospital facilities and are provided by Garda Security Services ("Garda") which is an outside contractor. In addition, in June of 2023 HSC contracted for additional SGACs to be stationed around the clock at the three southern parkades. There are two SGACs at each of Tecumseh and Emily lots and one at J Lot. The SGACs are not expected to actively intervene in a situation requiring a security presence but rather to contact HSC security for assistance.

The second category of security guard are those employed by HSC who are referred to as Qualified Persons ("QP"s). The QP designation reflects their ability to take custody of mental health patients from law enforcement and to deal with individuals in mental health crisis. The QP has additional training in non-violent crisis intervention, de-escalation of situations and in protecting staff and patients. QP's carry handcuffs and can arrest and detain in circumstances where they witness an offence taking place, however that detention is subject to reasonable time frames and is done in anticipation of the arrival of Winnipeg Police Services. There are currently fifteen QPs on duty around the clock. Of these three are dedicated to Mental Health Custody Transfer, three are stationed in Adult and Children's emergency, and three are stationed at the PsychHealth Centre and the Crisis Response Centre (which are in close physical proximity to each other and deal with persons experiencing mental health issues in various degrees of acuity). There are an additional five QPs who are assigned to what is identified as "mobile" placements in various parts of the HSC facility. With the exception of

the assignment called “South Sector Mobile” none of these mobile placements have any significant exterior assignment. It should be noted that the QPs assigned to the PsychHealth Building are also expected to monitor the exterior of that building.

There is also a vehicular parking patrol of the outdoor parkades and lots on Campus. This is also a 24/7 presence and involves two vehicles each containing a single guard. These vehicular patrols are known as “Xray” 1 and 2, were in place prior to June of 2023, and are expected to provide the initial response to issues in the parkades. The Xray patrol cars also provide rides to HSC staff who contact security for an escort to their vehicle parked on Campus. It was somewhat unclear in the evidence as to whether the Xray patrols were manned by SGACs or employed security guards. My conclusion from reviewing the reports is that the Xray patrols are currently manned by SGACs who have more seniority and experience with the Campus security program than those newly stationed in the southern parkades in June of 2023.

There are two security supervisors present at all times – one employed by HSC and the second provided by Garda to supervise the Garda SGACs. In addition, there are two monitoring rooms which monitor security cameras on Campus, one in the Thorlakson building and one in the PsychHealth Centre. There are a total of three monitoring room operators, two in Thorlakson and one at PsychHealth. Calls to HSC security are answered in the Thorlakson monitoring room and dispatches are made from there if necessary.

THE LEGAL FRAMEWORK

There is no disagreement about the legal requirement to ensure a safe workplace – both parties recognize the critical importance of keeping employees safe, and the Employer did not dispute that the workplace includes the Campus exterior and employees’ ability to make their way safely from and to their vehicles parked

on Campus. This obligation is set out in the Workplace Safety and Health Act¹ (the "Act") and regulations. It is important to recognize, particularly in the quickly evolving reality of today's workplace, that the obligation is both broad in scope and nuanced in application. "Health" is defined in the Act as "the condition of being sound in mind, body and spirit". Section 2(2) articulates the purposes of the Act as including the promotion and maintenance of the "highest degree of mental, physical and social well-being..." of workers. The general statement of the duty created by the Act is to either eliminate, or failing that to control, any risks to the health or safety of workers to the extent which is reasonably practical.

The Workplace Safety and Health Regulation² requires employers in the health care field such as HSC to have a violence prevention policy which is developed in consultation with the joint WPSH committees. Exhibit 69 is the Shared Health Violence Prevention Program for Health Care Workers which is applicable to all Shared Health staff. There was agreement that this Program is applicable to nurses employed at Health Sciences Centre. The Program contains a broad definition of violence which specifically includes acts of aggression regardless of the intent, verbal or written threats, and vandalism of personal property.

The collective agreement between Shared Health Employers Organization (which includes the HSC) and the Manitoba Nurses Union which is in effect from April 1, 2017 to March 31, 2024 provides at article 7A02 the following:

In accordance with the Workplace Safety and Health Act, the Employer agrees to make reasonable and proper provisions for the maintenance of a high standard of health and safety in the workplace and will provide safety and personal protective equipment where required and install safety devices where necessary.

Ms. Carson submitted on behalf of the Union that article 7A02 imposed a higher standard on the Employer than that created by the Act. I do not agree given the wording of the article, however I do agree that the Act and the Violence

¹ C.C.S.M. c.W210

² M.R. 217/2006

Prevention Program provide an appropriately rigorous level of protection for employees which is echoed in the collective agreement.

One of the themes of the Union's submissions was the concept of prevention as part of the safety obligation carried by employers. At paragraph 61 of *Toronto (City) and C.U.P.E. Local 79 (Charles)* ³ the arbitrator stated: "An employer will generally be in breach of the Act (and any collective agreement provision like the one in issue here) through a failure to take reasonable precautions to make the workplace safe, regardless of whether an employee suffered harm as a direct result of such failure." In the *Charles* case it was determined that the employer had failed to take reasonable steps to provide a safe environment when a shooting occurred in its' parking lot which resulted in injury to staff. The evidence showed that requests had been made repeatedly to the City of Toronto for increased security measures, which had been largely ignored until after the shootings took place. The case of *U.F.C.W. Local 175 v. Farmer*⁴ was also cited by the Union for the principle that "... precautions that appear reasonable should be taken". No issue was taken with this principle by the Employer, and indeed several of the authorities provided by the Employer also made this point.

Both parties provided me with *Radke v. Ontario Provincial Police*⁵ which discusses the application of workplace safety requirements, which are largely fact and context driven, and includes conclusions that primary considerations include the magnitude and frequency of risks encountered. At paragraph 29 of *Radke* the following is stated:

... the assessment of whether a proposed precaution is reasonable has considered its cost and its impact on the efficiency of the employer's operations... and its effectiveness in protecting employees for the identified hazard. ... Simply put, a precaution that does not achieve its goal is not a reasonable one.

³ 2014 CarswellOnt 1127

⁴ 2020 CarswellOnt 19306

⁵ 2017 CarswellOnt 13669

I was provided with several cases⁶ by the Employer dealing with the issue of weapons and protective gear being issued to individuals enforcing provincial regulatory legislation who were required to do much of that work in the field under unpredictable circumstances. In both of these decisions OPSEU took the position that the risk present in the workplace of injury from confrontations with third party individuals required the employer to provide enhanced protection to their members. These decisions addressed the issue of risk from these types of confrontations in the case of individuals who enforce laws but are not police officers. They were also provided in support of the Employer's position that it would not be appropriate for me to order that ISOs be issued with either batons or aerosol weapons.

The *Martin* case involved a group grievance from Agricultural Investigators who had previously been designated as Conservation Officers and in that role were equipped with both side arms and pepper spray. When it was decided to downgrade them from Conservation Officer status they were required to turn in their weapons and were left only with body armor and collapsible batons. In dismissing the grievances, Arbitrator Dissanyake determined that the level of risk was not as portrayed by the Union as the investigators had a number of options, including disengagement, if circumstances became heated. As such, he found that the employer had met the obligation in both the legislation and the collective agreement to take reasonable precautions to ensure the safety of its' investigators.

The *Tomlinson* case, also a decision from Arbitrator Dissanyake, provided a list of relevant factors to be considered when assessing the balance between the level of risk present in a workplace and whether the precautions provided by the employer are reasonable at paragraph 269:

⁶ OPSEU and Ontario Ministry of Natural Resources (*Martin*), 2019 CarswellOnt 14742; and OPSEU and Ontario Ministry of the Environment (*Tomlinson et al.*), 2020 CarswellOnt 3381

- (a) The fact that there have been few or no incidents of injury, assault etc. by itself, does not establish that existing precautions are reasonable;
- (b) The test is objective. An employee's subjective feelings about the risk or danger by itself is not sufficient. Such feelings must be reasonable and must be grounded on demonstrable and objective facts. ...
- (c) The employer is not required to guarantee employee safety against every possible risk... The likelihood of the risk arising is relevant.
- (d) The frequency with which the risk could arise is relevant.
- (e) The magnitude or seriousness of the impact of the risk on employee safety is relevant.
- (f) The financial cost of the safety precautions sought and its impact on the operational efficiency of the work to be done must be balance against the likelihood of the risk arising and the magnitude and seriousness of the result in the event the risk arises.
- (g) There has to be a link between the risk that exists, and the safety precaution sought. That is, there must be evidence that the precaution sought would eliminate or at least mitigate the risk in question. ...
- (i) Whether or not a particular safety precaution improves the existing level of safety is by itself irrelevant. Employees are not entitled to optimum or the best safety precautions. The test is whether existing safety precautions meet the threshold of reasonableness mandated by the collective agreement and the Act.
- (j) There may be more than one way of addressing a particular safety risk. Depending on the particular circumstances, rather than providing a safety tool or device, a risk may reasonably be addressed by other means, such as ... changing the way work is done.

The *Tomlinson* decision also makes the point that it is the totality of the employer's response that must be considered in determining whether precautions that have been employed are reasonable.

Some of the remedies sought by the Union in this case are in the nature of compliance orders, which they argue is necessary to ensure that the Employer follows through on the required improvements. I was provided with *U.F.C.W. Local 401 v. Westfair Foods Ltd*⁷ in this regard. At paragraphs 202 and 203 of the *Westfair*

⁷ 2009 CarswellAlta 2293

Foods decision, the arbitrator discussed what considerations go into a decision to issue a compliance order as opposed to declaratory relief.

In exercising the power to issue "compliance" orders, arbitrators have not granted compliance orders in circumstances here the employer's breach was an isolated one, where there was no prior history, and where there was no wilful disregard of the Union's rights and integrity: *Chinook Regional Health Authority v. U.N.A.*, [2001] A.G.A.A. No. 91, para 16; *Toronto & C.U.P.E.* (2002), 110 L.A.C. (4 th) 129, 142.

Arbitrators need to consider, on the facts of the particular case, whether a simple declaration will be adequate or whether it will give rise to future problems of enforcement, whether the offending party has shown an intention to ignore the terms of the collective agreement, and the likelihood of future violations.

THE EVIDENCE

Ultimately there was little disagreement on the evidence I heard, both because much of it was contained in the agreed facts and documents, and because neither party challenged much of the evidence led by the other party. Generally speaking the evidence led by the Union was supplemental to the agreed facts and documents, and in support of their main position, which was that the Campus was not safe for their members and that the Employer had not done enough to address that situation. The evidence led by the Employer was intended to, and did, provide detail of what efforts the Employer had been and was making in this regard and what safety measures were available to staff on Campus.

The eight witnesses called by the Union included their President, Lana Penner, their representative on the Employer's WPSH committee, Lydia Danilis, and six other individuals who had personally experienced either vandalism to their vehicles, confrontation by aggressive individuals, or both while traversing the Campus and adjacent streets. Ms. Danilis also testified to her own experiences on Campus. All of the individuals who testified also spoke to the common experience of coming across used needles and other drug related debris, and of witnessing gatherings of individuals using drugs and/or drinking alcohol in various

areas on Campus. Unfortunately, it was also common experience to come across “camps” or arrangements that had been made by individuals living outdoors around Campus and in particular adjacent to the parkades.

Ms. Penner sent out an email blast to MNU Local 10 membership on April 13, 2023 stating that there had recently been reports of members feeling at risk when going to their cars both on and off Campus. The email blast reminded the membership where to report such incidents and provided some reminders about keeping safe. Although it did not expressly solicit responses, a significant number of responses from nurses about vandalism and aggressive behaviour in the spring and summer of 2023 went to the Union as a result. Ms. Penner forwarded a number of these emails to the Employer – both to Ms. Parsons in her security role and to the Chief Nursing Officer at HSC. Exhibits 100 – 116 contain such emails and in some cases Ms. Parsons' response to same.

A more targeted email blast was sent out by MNU Local 10 in mid to late October of 2023 (Exhibit 111), which specifically asked for emails documenting occurrences in HSC parkades, or while outdoors at or near the Campus which made nurses feel unsafe. The types of occurrences sought were vandalism of vehicles, physical or verbal threats or assaults, the observation of drug or alcohol use, loitering or the arranging of living encampments. These reports were requested in support of this grievance and arbitration. The targeted blast in October also received a large number of responses.

In the interests of time and efficiency at the hearing the Union sought to have these emails from their members accepted into evidence as proof of the truth of their contents, despite the fact that those members were not called as witnesses. Mr. Tallon on behalf of the Employer objected to the admission of these emails on the basis that the content was prejudicial and he was unable to cross examine the authors of the reports. Ms. Carson pointed out that none of the representative witnesses who testified to their experiences were challenged on whether those experiences had occurred, and that the parties had reached agreement on

most of the incidents reflected in the security reports which are summarized at Exhibits 20 and 21.

At the hearing I directed that unredacted versions of the emails at Exhibit 119 (which were the responses to the October email blast) be provided to myself and to Mr. Tallon, and agreed to admit the documents subject to making a determination as to what weight would be accorded to them. I have reviewed all of the emails and have made some general observations on their content, which includes the fact that a not insignificant number are historic, and a larger number of them relate to incidents which have happened off Campus. There are also some reports which are not firsthand ie "I was told about... etc.". While I have no reason to doubt the sincerity of those individuals who came forward with historic incidents (in the years prior to 2023 or undated), even if accepted as true they cannot be relied upon to establish a safety risk in 2023. I will comment further on the issue of reports of off Campus incidents, however again even if accepted as true they do not speak directly to the issue of safety on Campus. Those reports which are themselves based on hearsay ie not firsthand, I have disregarded.

For the balance of the reports at Exhibits 100 – 116 and 119, ultimately the safety concerns on Campus were not seriously the subject of dispute by the Employer. As mentioned by Ms. Carson the parties cooperated on a long list of incidents which occurred during the calendar year of 2023 and which had been the subject of reports to HSC security. Paragraphs 30 – 33 of the ASOF confirm the agreement of the parties on the topic of the numbers of instances of theft, vandalism and removal of unwanted persons from parkades for 2023. Exhibits 20 and 21 are tables summarizing incident reports for all of 2023 and they contain narrative information corroborative of the types of complaints testified to by the representative witnesses and contained in the emails received by the Union.

It is true that the emails at Exhibits 110 – 116 and 119 do not directly match up to those agreed incidents in all cases, however the pattern of what was being encountered by employees on Campus in and around the parkades was well

established by the evidence as a whole. Accordingly, I have decided to give some weight to the first hand email reports which reflect incidents dated in 2023 which are reported to have happened on Campus.

The Employer's witnesses spoke to the practical steps being taken that were reflected in the Employer's response to the Recommendations, as those responses evolved throughout the balance of 2023 from both an operational and a security perspective. I heard from Cameron Robertson, Director of Maintenance Services, Jim Lavoie, Director, Commercial Services, Marc Saindon, Director of Security Services at HSC, and Linda Parsons, Coordinator Investigations and Staff Development. On November 17, 2023 the Employer provided a status update to the Union on the various upgrades to the parkades and the security presence as at that time. That update was communicated in the form of a Power Point presentation which was included in the ASOF at Exhibit 19. While it was not an agreed fact that the information provided in Exhibit 19 was true, the Employer's witnesses spoke to all of the topics covered in the presentation. Mr. Robertson testified that he had been part of creating Exhibit 19 and that it was reflective of the work which had been done to that point in time.

As stated above there was little disagreement on the evidence itself, although certainly the parties disagreed on what flowed from that evidence as will be discussed below. This congruity on the evidence allows me to make findings on the issues by topic, which follow.

THE SOUTHERN PARKADES

As set out in the introduction, there are three parkades in the southwest quadrant of the Campus which are primarily, but not exclusively, used by HSC staff for parking. These are Tecumseh, Emily and J Lot. At the time the Recommendations were made on May 17, 2023 none of these lots had a manned security presence other than the Xray patrols which the evidence showed occurred approximately

every two hours for each lot. The Xray patrol also would and continues to attend if called to an incident in a parkade. Additionally, as at May 17, 2023 none of the elevator lobbies or stairwells in the three southern lots were locked. As will be discussed later the Tunnel System on the Campus has entrances adjacent to or at each of these three lots which can be accessed from the parkades as well as from the hospital buildings. Each of the three southern lots have only single arm entry and exit gates and could easily be accessed by persons on foot or on bicycles. While there was camera surveillance in these parkades as will be further discussed below, those cameras were not monitored by HSC security and it was common ground between witnesses for both parties that cameras unfortunately do not provide a material deterrent effect to misconduct or crime.

It was agreed that during the months of 2023 leading up to the Recommendations the number and severity of 'break, enter and vandalism' reports had sharply increased in the three southern parkades. Paragraph 30 of the ASOF reproduced statistics to support this fact, which had been gathered by the Employer from its' security reports. In April and May of 2023 the instances of vehicle vandalism and theft increased between three and fourfold from the prior months. I heard evidence from Union members about some of the more egregious instances of vandalism which involved breaking of multiple windows and perpetrators bleeding profusely in the interior of the vehicle. I also heard evidence about repeat vandalism and theft targeting the same vehicle. In addition, a number of the Union witnesses described their experiences in the parkade stairwells and lobbies with individuals who were 'camping', using drugs and/or alcohol, leaving biohazardous garbage and waste, and using those areas to relieve themselves.

Both the ASOF and the evidence of Mr. Saindon confirmed that shortly after the Recommendations were received by the Employer Garda was contacted to provide manned security for all three of the southern parkades. This consists of 24/7 coverage by SGAC, which came into place approximately mid-June of

2023. At Tecumseh there are two guards stationed at the first floor parking booth who are to monitor foot traffic into the parkade, with one of those guards also assigned to hourly foot patrols of two nearby surface lots on Campus. At Emily parkade there are also two SGACs, one stationed at the first floor parking booth to monitor foot traffic and the other in a vehicle performing patrols of the parkade and checking stairwells. J Lot has one SGAC who monitors foot traffic coming into the parkade while stationed in a vehicle on the first floor, and who is to patrol the balance of the lot once per hour. In addition, the Xray patrols referenced above have continued, although the presence of 24/7 security in the parkades have enabled the Xray patrols to spend more time patrolling the exterior lots and streets within the Campus perimeters.

In the Employer's response to the Recommendations it is stated that "As of June 6th, Tecumseh Parkade and J Lot have been locked to card access only. ... The employer is in the process of implementing the same system at the Emily Parkade, a special card reader is required that is currently on backorder. In the meantime Facility Maintenance is preparing the conduit and the wiring." The evidence from Mr. Robertson was that planning to lock down stairwells and elevators in the southern parkades had started in 2022, and that at least J Lot was limited to card access only as of June of 2023. It appears that by the hearing of this matter all three of these parkades had been fully locked down such that only those with cards (or in the case of the Emily Lot a valid parking ticket) could access either stairwells or elevator lobbies.

The Employer's response to the Recommendations also committed to improvements in the lighting in most if not all of its' parkades on Campus. Mr. Robertson confirmed in his evidence that by the time of the hearing lighting upgrades had been completed in the Emily parkade and included brighter lighting for the parking areas, stairwells and elevator lobbies. Also, pole lighting on the roof and exterior lighting in and around the parkade had been installed on that parkade. Lighting upgrades in the Tecumseh parkade were underway

but not complete and will include pole lighting on the roof. Lighting upgrades have also been completed in J Lot and some of the surface lots. I was advised that in the case of pole lighting – which requires large poles similar to street lights – a crane was necessary which could not be safely deployed until later in the spring.

Not mentioned in the response to the Recommendations was the installation in the summer and fall of 2023 of what was described as “robust sheet metal decorative fencing” on the main floor and in one case also the second level of all of the outdoor parkades. This sheet metal fencing replaced chain link fencing, which had been subject to vandalism for the purposes of entering the parkades undetected. Jim Lavoie, the Director of Commercial Services for Shared Health and HSC, testified about the rationale for the installation of this fencing, and confirmed that since installation it had not been breached.

The statistics in paragraph 30 of the ASOF supported the evidence from the Employer’s witnesses that incidents of theft and vandalism in the three southern parkades had declined drastically since the implementation of all of the above measures.

THE WILLIAM PARKADE

There was no dispute in the evidence that the William Parkade had not received the same degree of security improvement as the three southern parkades by the time of the hearing. The improvements at William are limited to installation of the sheet metal fencing on the lower level as well as similar lighting upgrades to those at Tecumseh and Emily. The lighting improvements were 85% complete at William at the time of the hearing. At present the stairwells and elevator lobbies are not secured although at certain times of day access to the overpass between the parkade and the hospital is restricted. There has been no manned security placed at William, simply the continuation of pre-existing Xray patrols. The reasons

for this seemed to be a view that because the William parkade is situated closer to the busy areas of the hospital (both Adult and Children's Emergency, as well as the Women's Hospital) and there is more traffic, it is less prone to theft, vandalism and loitering. Mr. Lavoie also expressed concern over the overall condition of the William parkade and whether it made sense to invest in more capital projects on the existing structure.

MNU suggested that one of the impacts of enhancing the security in the three southern parkades was to in effect 'move the problem' to the William parkade. In cross examination both Marc Saindon and Linda Parsons agreed with this suggestion, and Ms. Parsons stated that people have migrated to the William parkade since the southern parkades have been locked down. Both Mr. Saindon and Ms. Parsons, who are security experts and have significant law enforcement experience, recommend that access be locked down in the William parkade going forward, and further that there should be manned security there similar to the other outdoor parkades. This has apparently already been discussed internally at the Employer, but has not been proceeded with as of the date of the hearing.

CAMERA SURVEILLANCE SYSTEM

As set out above the Employer has two monitoring rooms on Campus where staff monitor feeds from a large number of security cameras which exist throughout the HSC facilities. As this grievance is not about security within the hospital buildings *per se* I did not hear much evidence about the camera system other than as it pertained to the parkades and exterior of the campus. I did hear some evidence about the Employer's plan to upgrade its' entire camera surveillance system to allow for better coverage and easier identification of threats and intruders. Specifically in relation to the parkades, the Employer's response to the Recommendations included an undertaking to install cameras at the entrances which will be able to distinguish between vehicular and foot traffic and in the

case of foot traffic trigger an alarm in the monitor room. The evidence I heard was somewhat unclear on this particular piece of the Employer's plans but what I gleaned from the testimony of Mr. Robertson was that while there had been additional surveillance cameras placed at the vehicle entrances and exterior of the three southern parkades these are not of the type able to distinguish between the types of images presented. These new cameras are linked to the HSC monitor rooms to my understanding.

Mr. Robertson talked about the larger surveillance project which is hoped to include cameras which incorporate artificial intelligence to help the monitor room employees identify problem areas or individuals. It appears that this project is anticipated to be facility wide and not just limited to the parkades, and as well that it has not yet reached the tendering stage. Mr. Robertson fairly stated that the necessary upgrades to cameras, including those in the parkades, will "take quite some time". When asked for an estimate of timing he stated that for Tecumseh it would be the fall of 2024, and for Emily the spring of 2025.

The ASOF confirms at paragraphs 38 – 43 that prior to the Recommendations there was a camera surveillance system in place at all four of the parkades at issue in this grievance. This system is comprised of eighty security cameras which are located by stairwells but which were not linked directly to the HSC main security system – meaning they were not being monitored by the staff in either of the monitoring rooms. Of those eighty cameras it was an agreed fact that twenty-seven of them were nonfunctional as at the beginning of December of 2023. Alarming, the verbal evidence from several of the Employer's witnesses suggested that a number of the nonfunctional cameras were those covering panic buttons which exist in the parkades. That said, Linda Parsons' evidence was that currently the cameras covering the panic buttons in the parkades were both functional and monitored by HSC security. It appears that this improvement occurred at some point in the fall of 2023.

There are also cameras and panic buttons in the Tunnel System, both of which are monitored by HSC security and have been historically. The uncontradicted evidence from the Employer's witnesses was that the cameras in the Tunnel System are functional.

EXTERIOR AREAS OF THE CAMPUS INCLUDING ENTRANCES TO HSC BUILDINGS AND ROUTES TO PARKING

Given the evolution in the security measures at the parkades since the time the grievance was filed, it is not surprising that one of the focusses of the Union's case became the exterior areas of the campus. I heard evidence from a number of nurses about encounters on Campus with individuals who were consuming drugs and/or alcohol, who were suffering from mental health crises, or who were loitering in a threatening manner, which included direct approaches to staff. I also received evidence through the ASOF of a physical assault on a nurse attempting to enter a staff entrance to HSC on March 27, 2023 which resulted in injury to the nurse – the JN incident as earlier referenced. That nurse suffered a variety of physical and non-physical injuries and remains on Workers' Compensation as at the dates of this hearing, which is almost a year later.

The ASOF at paragraphs 22 – 25 contains a summary of Winnipeg Police Services crime rate data for an area that roughly corresponds to the Campus. This crime tool reports statistics on property crime, violent crime and crime involving drugs. The area which includes the HSC Campus currently has the third highest rate of both violent crime and overall crime in the City of Winnipeg.

The evidence was not in dispute that with the exception of a security guard who has the "south sector mobile" patrol route there is currently no regular visible security foot patrol on Campus. The outdoor portion of the south sector patrol includes the exterior of the buildings south of McDermot where there is no access through the Tunnel System. In addition, as noted above respecting increased

parkade security, one of the SGACs posted at Tecumseh is to regularly patrol the adjacent surface lots which are directly to the north and west of the Tecumseh parkade.

There are various options available to HSC staff who feel unsafe when making their way across Campus to their vehicles or potentially a bus stop. Two of these can be characterized as “self-help” – being suggestions from the Employer to walk in groups and be vigilant when walking, as well as to carry Employer supplied personal alarms. The personal alarms emit a loud noise when triggered, both to deter an approach or attack, and to attract the attention of security or those who might otherwise assist. There is no dispute that the personal alarms are not capable of being monitored and it is self-evident that if there is no one in the vicinity to assist, and the deterrent effect is insufficient, they will not prevent or mitigate an attack. The Union’s position on the self-help options was essentially that it is not appropriate to shift the responsibility for staying safe to the employees in this fashion, and that the frequency and content of the security bulletins was condescending, as individuals were already taking their own precautions.

The other two options are making use of the Tunnel System, or engaging the Employer’s “Safe Walk” program. I will deal first with the Safe Walk program. Despite the name, it seems that the majority of escorts are in fact by vehicle as opposed to an accompanied walk. I heard that the Xray patrol vehicles – of which there are two on patrol at all times – would typically be asked by security in the monitoring room to pick up a staff member and drive them to their vehicle or bus stop, *if* that destination was within the borders of the Campus. Staff are required to contact security to request a ride or other escort, and it was common ground that there would be some delay before the escort arrived to collect the staff member although the parties disagreed on the length and reasonableness of that delay.

There was agreement that in theory this is a good program, and has the potential to enhance safety on the Campus. The Employer submitted that the Safe Walk

program as it currently stands is sufficient, while the Union strongly argued that it is under resourced and therefore under-utilized. Exhibit 140 created by the Employer provides statistics of the number of safe escorts provided and confirms that very few employees (a maximum of three per day from a workplace where hundreds of individuals work on various shifts around the clock) actually use the program currently. Evidence from a number of union witnesses was to the effect that it would take 20-30 minutes for an escort to arrive, which was longer than they felt was reasonable after working a full shift. I do not disagree that this is a long period to wait at the end of a shift, but regardless of the actual length of time involved the statistics speak for themselves as staff are not using the program to a material degree.

The other concern voiced by the Union was that escorts would be refused if the destination was off the Campus. As noted above, there are a number of surface parking lots which are used by MNU members which are off campus by varying distances. There are also bus stops which are not technically on Campus but which are adjacent to it on Sherbrook, Notre Dame, and William, all of which are used by HSC staff including nurses. There was discussion in both evidence and argument about the possibility that the escort could proceed to the edge of the Campus with the employee continuing the remainder of the way by themselves. It was agreed by the Employer's witnesses that there was no reason this could not happen, even within the current directive that escorts are to be on Campus only. It was also evident from the Union witnesses as well as from the communications to employees about the Safe Walk program, that this partial escort possibility was not well known or communicated.

The Tunnel System is the second important piece of the Employer's security response for its' employees. It is clear from the evidence – including a map of the Tunnel System provided at Exhibit 7 - that it is possible to move from each of the parkades except the William parkade to work areas within the hospital, as well as through most of the Campus area, using the underground tunnels. There is a

tunnel from the main hospital to the PsychHealth Centre and the Mental Health Crisis Response Centre, as well as one to the Canadian Blood Services Building which is on the north side of William Avenue directly west of the William parkade.

It is my understanding from the evidence as a whole that since the locking down of access into the stairwells and elevator lobbies in the three southern parkades there is limited access to the Tunnel System from the parkade end of those tunnels. There are turnstiles as well at the parkade ends although the point was made that someone who was nimble and/or determined could go over the turnstiles. There are a reasonable number of access points to the Tunnel System from the hospital building ends of that system. It was not in dispute that if an individual gained access to the hospital buildings – which could happen in a number of ways - the Tunnel System could be freely accessed from the hospital end. It is however worth noting that access to the hospital buildings has been significantly reduced since the onset of Covid-19, and that all access points have some security presence.

The Tunnel System is equipped with both panic buttons and working cameras which are connected to the monitor room. With the exception of one of the union witnesses who described a close encounter with an individual apparently using drugs in one of the washrooms in the Tunnel System I did not hear or receive any direct evidence of concerns with the tunnels. There was also an incident described by a witness of a patient waiting to be triaged in the emergency ward leaving the ward through the tunnels and ending up in one of the parkades brandishing a piece of broken glass as a weapon.

Mr. Saindon's opinion was that using the Tunnel System was the safest way to get to the parkades and is to be preferred over walking outside through the Campus if an employee is concerned about their safety travelling outside. It should be noted as well that in an email blast to MNU Local 10 members in April of 2023 (Exhibit 100) members were urged to use the Tunnel System for safety.

ROLL DOWN DOORS

One of the security measures being discussed between the parties is the installation of high speed roll up and down doors at the entrances to the outdoor parkades. MNU is strongly of the view that such doors should be ordered forthwith and installed as soon as possible, as the doors will impede entrance on foot even as a "piggyback" to vehicle entry.

The Employer has ordered such a door for J Lot and is currently proceeding with the preparations for the installation of the door once it arrives, which is anticipated to be in April. The approach being taken, as explained by Mr. Lavoie, is to test the effectiveness of the first door as well as any potential traffic or other problems created before committing to additional doors for the other parkades. He also testified that it would make sense to proceed with a door for the Tecumseh lot next, as it has a lane leading up to the entrance and would be less likely to create traffic issues.

The Employer's response to the Recommendations included comments about doing a viability study on the possibility of roll down doors, as well as consulting with the City of Winnipeg about possible traffic issues. In his evidence Mr. Lavoie stated that the trial with using the door at J Lot was the viability study. Mr. Lavoie identified the quotes which had been received for doors on Tecumseh and Emily lots, and confirmed that considerable lead time was required between placing an order and the door being delivered. In the case of the door for J Lot that was more than six months.

All of the employers' witnesses who spoke to this issue were of the view that even with the roll down doors in place there would be a continuing need for some manned security in the southern parkades, particularly at busy times of access to and egress from the parkades. However, that security presence could be reduced from what is presently in place. Mr. Lavoie expressed the view that it would ultimately be more cost effective to have roll down doors installed than to continue with the level of manned security that is now deployed at the parkades.

MANNED SECURITY AND ISOS

The current security complement at HSC is described above in the introductory comments. As noted in that section of this award none of the current security complement carry an ISO designation. The Recommendations specifically include the “immediate introduction” of ISOs to the security team. It is not in dispute that the legislative authority to proceed with the establishment of ISO positions at HSC came into effect in the fall of 2021. The progress towards the establishment of ISO positions at HSC has been slower than at some of the other institutions which have implemented the designation, but in fairness there are a number of steps required including negotiating an Operating Agreement with the provincial government, coordinating training requirements and reaching agreement with the relevant union to add the position to their scope of representation.

The evidence I received at the hearing from Ms. Parsons and Mr. Saindon confirmed that postings have gone out for forty ISO positions and over two hundred applications were received in response. As at the end of February of 2024 eighty three of the current HSC security staff had applied. The ISOs once hired must receive further training in addition to their security guard designations prior to being able to work in that the ISO role. This training is anticipated to commence in the late spring of this year, with completion dates forecast for June or July of 2024.

As mentioned in the introduction an ISO has slightly enhanced powers of arrest and detention over those of a regular security guard at HSC. These enhanced powers include the ability to detain individuals under the Intoxicated Persons Detention Act, which may be of some assistance going forward. They do not have the power of arrest or detention of a police officer, and similarly to what currently takes place when an offence occurs on HSC property they can detain if the offence was directly witnessed but must contact the Winnipeg Police Service to attend and take individuals into custody. More notably, at least from

the Union's perspective, ISOs can be authorized by their employer to carry and use batons and/or aerosol weapons such as pepper spray.

The evidence from Mr. Saindon on behalf of the Employer was that no decision had been made as at the time of the hearing about whether the ISOs once trained and deployed would carry either type of weapon. He agreed that the ISO's employed by the University of Manitoba – who work on the University properties contained within the perimeter of the Campus – do carry batons. He expressed reservations about the effectiveness of a baton as a weapon but conceded that it can have a deterrent effect when carried by a police or peace officer. Mr. Saindon was of the view that aerosol weapons would not be appropriate in a hospital setting if used indoors given the requirements for a sanitary environment and the potential for contamination of such a spray or gel. Mr. Saindon conceded however, that if used outdoors an aerosol weapon would be less of a contamination concern depending on proximity of use to a hospital entrance, for example.

Both Mr. Saindon and Ms. Parsons made it clear that the current planning is for the new ISO positions to replace existing QP positions, and that the hiring of the ISOs would not increase the overall complement of security staff employed by the HSC. Mr. Saindon also confirmed in cross examination that there was no plan to deploy ISO's to do exterior Campus patrols. It appears that the placement of security presence within the hospital and Campus would not significantly vary from the current situation, rather the ISO's would be stationed at the more problematic interior areas such as the Adult Emergency Department.

It is critical to note that both Mr. Saindon and Ms. Parsons were clear in their evidence that the security department is under-resourced given the escalation in criminal activity on Campus as a whole. Both also agreed in cross examination that it would be helpful to have additional exterior patrol capacity.

DECISION

While there was agreement on the legal principals and the Employer's obligation to provide a safe workplace to the extent that is reasonably practicable, there was disagreement on the magnitude of the risk presented by the situation at the parkades and the exterior of Campus as at the time of the hearing. The Employer did not take issue with the existence of risk in the exterior parkades but rather submitted that the totality of the precautions in place at the date of the hearing met the requirement in the Act and the collective agreement. The Employer did argue that the magnitude of the risk proven in relation to the exterior of Campus was not sufficient to require any remedial orders.

While I agree with the cited principles that the objective level of risk must be proven by the Union, in applying the factors in *Tomlinson* to the exterior of the Campus I am satisfied that there is a reasonable likelihood of serious risk of injury to Union members traversing the Campus given the evidence that was provided. The JN Incident – which was an assault that occurred at an employee entrance in a well-travelled part of the Campus at the beginning of a day shift on March 27, 2023 – was an agreed fact. Additionally, paragraph 35 of the ASOF documents a sexual assault to an employee taking a walk during her lunch hour which took place on Tecumseh Street within the Campus perimeters on August 14, 2023. All of the union's witnesses related direct experiences of threatening behavior encountered outside on Campus. The security reports that were provided by agreement between the parties document aggressive behavior towards security personnel on Campus, as well as the presence of individuals who are intoxicated by drugs and/or alcohol and in some cases carrying weapons.

It must also not be forgotten that the genesis of this grievance was *joint recommendations* by both the employee and employer representatives of the Workplace Safety and Health Committee at HSC and which were based on the following reasons:

Due to the increase in violent behavior, and the associated risks from this behavior, there is a requirement that for the following increased and enhanced safety measures... (which)... are required both within the facility and campus, and in the associated parking areas for staff under the care and control of HSC.⁸

No doubt, as submitted by Mr. Tallon on behalf of the Employer, there are many individuals who are unhoused or otherwise in distressing personal circumstances who are present on Campus and who do not present a threat. I appreciate that there is a balance which must be found between keeping employees safe on Campus, and not profiling or otherwise discriminating against people on the basis of their perceived social status. Mr. Tallon is correct that the fact the Campus is located within an area with the third highest crime rate in the City is not a situation created by the Employer, and that complex social issues are present. However, the reality is that the magnitude of harm which could result from an assault on an employee is significant and the risk of that continuing to happen is realistic.

The next question is therefore whether the totality of the measures taken by the Employer as at the date of the hearing in relation to both the outdoor parkades and the exterior of Campus meet the legal test of being reasonable precautions in all of the circumstances. Overall, applying the legal framework to the evidence which I heard on the various topics, while I think that the Employer has taken a number of steps to address safety on Campus, it is my view that the required standards have only been partially met. As with the evidence, it is easiest to set out my reasoning on the specific issues by topic.

THE SOUTHERN PARKADES

It is my opinion that with all of the improvements made to safety measures in the Southern parkades, as set out above in the evidence, they currently meet the standard required in both the legislation and the collective agreement. It is true that some of the lighting upgrades were still pending, but I have no reason to

⁸ Exhibit 4

believe that those will not be completed as soon as the weather allows that to occur. I was asked by MNU to make an order compelling the Employer to order and install roll down doors on Emily and Tecumseh parkades, however I think with the 24/7 security presence in these parkades in addition to the lock downs of stairwells and elevator lobbies, as well as the improvements to fencing, lighting and camera coverage, the standard of providing reasonable protection has been met.

The evidence from Mr. Lavoie was that the roll down doors were ultimately more economical than continuing to staff at the current level of security indefinitely, which suggests that assuming the roll down door is successfully installed in J Lot the other two parkades will end up similarly equipped. However, as I think the measures which have been taken respecting the three southern parkades since the Recommendations were made in June of 2023 are collectively reasonable, that is a decision which is the Employer's to make going forward.

I was also asked to opine on the timeliness of the Employer's responses, both in relation to the parkades and in general. While I understand the Union's frustration with the slow progress from 2022 forward, and I think that both the Recommendations and the grievance provided an impetus to the Employer to accelerate the efforts, I also recognize that capital improvements such as have already been made and are in motion for the future cannot be done overnight. The evidence from the Employer's operations witnesses was clear that the work required to accomplish the locking down of the three southern parkades was considerable, and had started well in advance of the Recommendations in May of 2023.

Mr. Lavoie's evidence, supported by the documentation filed, was that he had already been seeking quotes on high speed roll down doors prior to the Recommendations. Exhibits 36 – 39 are dated May 17, 2023 which is the same day as the Recommendations were issued, however the quotes were requested

several weeks in advance of May 17th. The evidence also suggested that high speed roll down doors were being considered in 2022 by the Employer.

It is further apparent from the internal email traffic within the Employer's security department in June of 2023 after the Recommendations were received by the Employer that it was recognized additional steps needed to be taken quickly to secure the southern parkades given the sharp uptick in reported incidents, and that the most impactful step would be to have 24/7 manned security. That manned security was up and running within several weeks and the statistics demonstrate that it had a significant impact in reducing theft and vandalism in the parkades virtually immediately.

THE WILLIAM PARKADE

The evidence was ultimately clear that the success in securing the Southern parkades moved the problems of theft, vandalism and loitering to the William parkade. The Employer's inhouse security experts agreed with the suggestion from the Union that those successful measures – locking of stairwells and elevator lobbies and a 24/7 manned security presence – should be implemented at the William parkade going forward.

It is my opinion that neither the legislative nor the collective agreement requirements to provide a safe workplace were met as of the date of the hearing in respect of the William parkade. The fencing and lighting initiatives are no doubt of some assistance but on their own do not constitute a sufficient reasonable response to the risk which exists for staff using the William parkade. Further, although the Xray patrols seem to be working hard to address the problem based on the reports that are in evidence, they are not present in the William parkade all of the time and have many other demands on their time.

EXTERIOR AREAS OF THE CAMPUS INCLUDING ENTRANCES TO HSC BUILDINGS AND ROUTES TO PARKING

It is clear to me that more needs to be done to secure the exterior of the Campus - including the entrances to the hospital and related buildings - in order for the required safety standards to be met. This is likely true regardless of how the Safe Escort program is addressed by the Employer, as I think that is only one piece of the puzzle. I agree with Mr. Tallon that the Tunnel System is an important part of the solution and that the Employer has made reasonable efforts to monitor the tunnels, provide support (panic buttons, monitored cameras) for persons using the tunnels, and that the securing of the parkade entrances to the tunnels has been an appropriate response. However, many employees travel through the exterior of parts of the Campus daily to and from destinations which are not served by the Tunnel System – for example bus stops, off campus parking, being dropped off at work instead of parking, and it was not in dispute that some destinations would require a detour if the tunnels were to be used.

It is my opinion that the current situation on Campus, which includes minimal outside security patrols either by vehicle or on foot does not meet the requirements for providing a safe workplace. It seems obvious from the evidence that some form of more robust exterior security patrol will be necessary to meet these requirements. Given the dynamic nature of what is taking place at HSC – including the securing of parkades and the potential redeployment of security as a result, and the hiring, training and deployment of ISOs – I decline to make a specific order as to *how* exterior security should be improved. HSC already employs security experts who have recognized a number of the issues identified in this ruling and whom I think should continue to be consulted in planning security improvements.

The issues arising from individuals crowding around the entrances to the hospital and several other buildings on Campus – including Cadham Labs – were testified to by a number of witnesses called by the Union. It seems to me that the

entrances are clearly part of what should be patrolled on a regular basis by HSC security, or by Garda if that is determined to be the more practical approach. No one should have to run a gauntlet of threatening and/or intimidating behaviour when attempting to access their workplace. The JN Incident illustrates that even at controlled staff only entrances problems can arise from persons attempting to rob staff or gain entrance by piggybacking on a staff member's entry.

There was no dispute that Safe Walk or Safe Escort program is a good concept, and if available and utilized keeps employees safe as they proceed to their vehicles or bus stops. There was no indication in the evidence that this program would be available to pick an employee up at their parking spot at the beginning of their shifts, which is another aspect of the concerns raised. Indeed, given the evidence of unpredictable availability it is unsurprising that employees would not want to rely on this method of getting to their workstations on time to start work.

The fact that the Xray patrol vehicles are currently being used to provide the Safe Escort creates two related problems, in my opinion. The first is that being available to provide escort, and providing escorts, takes away from the availability and response time for security patrols on campus and in the parkades. The second problem is the flip side of the first – their other duties can prevent the Xray patrols from a timely response to an escort request, which in turn leads to under-utilization by staff. The evidence from the Employer's security experts was that the security force is already markedly under-resourced. It is obvious to me that having the X-ray patrols do Safe Escort work is not an efficient use of security personnel.

The Union suggested that the Employer consider implementing a shuttle service which could be manned by drivers, which would create known stops for employees to wait, likely in the company of other employees, and allow staff to be safe travelling both to and from their vehicles or bus stops. The Serious Incident Report eventually generated from the JN Incident contains a similar recommendation. This seems like a sensible suggestion, and while the Employer

is ultimately in charge of what category of personnel (SGAC or driver) was assigned to a shuttle, is one that should be seriously considered. In final argument Mr. Tallon took the position that it would be reasonable for the parties to continue to talk about the Safe Escort program in an effort to improve it.

Several of the more serious incidents that were the subject of testimony occurred off Campus while those individuals were parking or parked in areas not controlled by the Employer. While their experiences were very disturbing there is a limit to the Employer's obligation either under the Collective Agreement or the Act to provide a safe workplace. The Employer did not dispute that the exterior of the Campus was part of the workplace, however that workplace ends where the Employer is no longer in control of the environment. The Recommendations themselves are limited to "... parking areas under the care and control of HSC". It is difficult, and likely beyond my jurisdiction in hearing this grievance, to make an order respecting facilities beyond the Campus and not controlled by the Employer.

CAMERA SURVEILLANCE SYSTEM

The Union was critical of the slow pace with which the Employer was proceeding to upgrade the surveillance system, and asked for orders with respect to replacement of additional cameras in the parkades. It was however common ground in the evidence that cameras do not have a realistic deterrent effect, particularly on individuals whose judgment is impaired by substance use or otherwise. Given the findings I have made with respect to the collective impact of the security improvements in the southern parkades I do not think an order respecting the upgrading of cameras in advance of the overall upgrade project is necessary **except** to the extent that upgrades and additional cameras should be implemented at the William parkade to bring it to a similar level of surveillance as currently exists in the southern parkades. The evidence was not clear on what had been done to date in this respect at the William parkade.

MANNED SECURITY AND ISOs

The evidence showed that the ISO program at HSC was well underway at the time of the hearing. While there seems little doubt that the ISO process had moved slowly from 2021 to the present, with the pandemic still causing disruption in the health care system it is perhaps not surprising that this program was not top priority prior to 2023. It is also true that the current Qualified Persons program at HSC has been the focus of ongoing internal training, in particular around de-escalation and dealing with persons in crisis, which is to be commended. It is apparent from a review of the current staffing chart that thought has been put into where and during what hours QPs are stationed either to support SGACs or as a stand-alone. Along with this reality, it was evident from the testimony of Mr. Saindon that he was not convinced the ISO designation would make a material difference in and of itself to the overall security response at HSC. I think this view was more a reflection of his confidence in the existing employed security officers and their training than it was a criticism of the ISO program, but it may also have played a part in the slow roll out of the ISO program.

The Union asks for an order that the ISO's be issued with batons and aerosol weapons, a decision which had not been made by the Employer at the time of the hearing. The only witness who talked about the efficacy of these weapons was Mr. Saindon, and as noted above he was not convinced that either batons or aerosol weapons would materially improve the impact that the deployment of ISOs would have on safety. Mr. Saindon agreed with the suggestion that the University of Manitoba ISOs have batons, and I was asked to take judicial notice of the fact that the new Winnipeg Transit Security force is similarly equipped. If I was to do that, I would also take judicial notice of the fact that the reported primary approach of the Transit Security force, similar to that of HSC QPs, is non-violent crisis intervention. There was no disagreement that using force is a last resort and that part of the mandate of ISO's is to provide assistance to anyone in

distress, including those who are intoxicated, in mental health crisis, or otherwise acting out.

The evidence was that the University of Manitoba ISOs deployed on the University portions within Campus are carrying at least batons. However, there was no evidence about the efficacy of same other than Mr. Saindon's experience which was elicited on cross examination. Similarly, even if I was to recognize that the Transit Security force is equipped with batons I have no evidence of the impact of being so equipped. Having no evidence other than that from Mr. Saindon on the issue of the efficacy of such weapons, I do not have a basis for making an order in that respect, and I decline to do so.

The real issue as I see it is the overall security complement and the fact that the new ISO designations will simply be an increased level of training for what is likely to be largely the existing employed security force. I take Mr. Saindon's point that moving to ISO designations with the same complement is unlikely to create a material change in the security response. Similarly, moving to ISO designations without changing the deployment of employed security is unlikely to have much impact on the exterior safety risks.

The Union has requested a number of specific orders in relation to the safety risks which they submit remain unreasonable:

- 1) A declaration that the Employer's response to the committee's recommendations was not compliant with WPSH 41.1(3) because there was no timeline provided;
- 2) A declaration that there have been unreasonable delays in completing what was promised for the 3 southern parkades including the lighting upgrades, repairing or installing upgrades cameras and monitoring the parkades, the AI camera system and the viability study on the roll down gates;
- 3) A declaration that there remains an unacceptable risk in all of the parkades which is evidenced by the extent of ongoing removals, as well as ongoing vandalism in the parkades, and the William parkade in particular;

- 4) An order requiring stairwell and lobby lock downs as well as security and cameras to reflect the same level of upgrade at William parkade as for the other 3 parkades.
- 5) A broad order that the employer take all reasonably practicable measures to eliminate or reduce as much as practicable that risk. That the employer advise within 30 days what their intention is in this regard, and a retention of jurisdiction as to the adequacy of the response;
- 6) An order that high speed roll down gates be installed in all 4 parkades;
- 7) An order that lighting upgrades be completed in all 4 parkades;
- 8) An order that non-functional cameras be repaired or replaced in all parkades;
- 9) An order that all parkade cameras be properly monitored by the HSC security system;
- 10) An order that all of the above be completed forthwith, and that the Employer provide timelines for completing this work on an expedited basis;
- 11) A declaration that there is a risk to safety and health posed by the exterior of Campus;
- 12) An order that the employer take all reasonably practicable steps to eliminate or reduce that risk and provide a plan for doing so within 30 days;
- 13) An order that there be assignment of security guards in both the parkades and on the exterior of Campus, preferably ISOs;
- 14) An order that the Employer take the necessary steps to improve the Safe Walk program, where it is accessible within 10 minutes of the call and that it be extended to reasonable areas off Campus.
- 15) An order that the Employer implement the ISO's forthwith;
- 16) An order that the ISO's be utilized to the levels necessary to eliminate or reduce the risk in parkades and exterior;
- 17) An order that the ISOs be equipped with the full complement of weapons – or alternatively to reserve jurisdiction on this point until the Employer makes a decision on this topic.

It will be evident from my comments about the topics above that I am not prepared, other than in the case of the William parkade, to issue specific orders to the Employer as in part requested above. The test for compliance orders as set out in *U.F.C.W. Local 401*⁹ requires a finding of an intention to disregard the terms of the collective agreement, and/or a likelihood based on history and

⁹ Supra note 7.

evidence that a more general order will be disregarded. I do not see any evidence of disregard on the part of the Employer in this case. The Union's submissions in this respect were primarily based on the view that the length of delay associated with a number of the precautionary measures both retrospectively and prospectively led to a conclusion that the safety of employees was not being prioritized, unless and until external pressure was applied, such as through this grievance. While there is no doubt that the capital improvements to the parkades took more time than anyone would have liked, it is also true that those improvements were planned and in some cases started in the fall of 2022. The Employer was looking at the feasibility of high speed roll up doors in late 2022 and early 2023.

Certainly the ISO program has not proceeded as quickly as with other institutions, however the evidence was to the effect that the selection and training of 40 ISO's was underway and would be complete at least by the summer of 2024. Overall, the approach of the Employer's operational and security Directors who testified was that they wanted employees to be safe, and by and large they were in agreement that more needed to happen both with the William parkade and security patrols on the exterior of Campus. I did not perceive intransigence on the part of the Employer such that significant specific compliance orders were required.

I am prepared to order that:

- 1) There remains an unacceptable level of risk to the safety of employees presented by the William Parkade in the state it existed at the time of the hearing;
- 2) The Employer is to implement the same level of safety measures at the William Parkade as currently exist at the Emily and Tecumseh parkades – which includes 24/7 manned security, lockdowns of stairwell(s) and elevator lobbies, completion of improved lighting, installation of additional

monitored security cameras on the exterior and the lanes of access and egress, to the extent that has not already occurred, and repair or replacement of disabled security cameras which are intended to cover panic button stations. The installation of 24/7 manned security is to occur forthwith. The balance of the improvements must be done within a reasonable time frame taking into account the need to repair, replace or install the required infrastructure and hardware;

- 3) There is an unacceptable level of risk to employees travelling through the exterior areas of Campus that are under the care and control of the Employer, which risk is not sufficiently mitigated by the employee 'self-help' instructions, the existence of the Tunnel System or the present operation of the Safe Escort program;
- 4) The Employer is to create a safety and security Plan for the exterior areas of Campus which will take all reasonably practicable steps to reduce the risk to employees to acceptable levels. This Plan shall be prepared within thirty (30) days of this order and shall include re-consideration of the anticipated optimal deployment of the new ISO positions once training is complete;
- 5) The Employer failed in its obligation under the Act to recognize the JN Incident as a critical incident and ought to have treated it as such when it was filed;
- 6) I will remain seized in relation to the Orders at items 2 and 4 above.

Dated at Winnipeg, this 9th day of April, 2024.



KRISTIN L. GIBSON, SOLE ARBITRATOR