

Case of the Month: Fighting Fire with Fire: Must You Arm Workers to Protect Them from Workplace Violence?



OHS laws require employers to take all 'reasonable' precautions to ensure health and safety. Such precautions include furnishing workers appropriate PPE. Most PPE is inherently passive and purely defensive in nature—hard hats, goggles, pads, etc. But if the hazard being guarded against is workplace violence, PPE may include guns. Does the duty to take reasonable precautions against violence mean employers must arm their workers? Here's how a new Nova Scotia Labour Board ruling handled that hot potato.

THE CASE

What Happened: After doing a workplace violence hazard assessment, an independent expert listed 51 things the Sheriffs Department could do to protect Sheriffs from violence. The Violence Prevention Plan the agency ultimately came up with incorporated most of the recommendations. But it declined the recommendation to issue firearms to Deputy Sheriffs performing prisoner transport and other high risk duties. The union cried foul, claiming that rejecting the recommendation was a violation of the agency's OHS duty to 'take every precaution reasonable in the circumstances' to protect the Sheriffs.

What the Board Decided: The Nova Scotia Labour Relations Board disagreed and tossed the union's appeal.

How the Board Justified Its Decision: First and foremost, the agency's Violence Prevention Plan was reasonable, even without the firearms, the Board reasoned. The Plan included other measures adequately addressing the violence risks cited in the assessment, including:

- Arming some Sheriffs with Tasers;
- Radio-tracking of vehicles transporting prisoners;
- High volume/high risk court facilities; and
- Portable access control measures for high risk court appearances.

The Board also noted the agency's strong justifications for not wanting to arm its Sheriffs:

- The evidence, including statistics from the hazard assessment, showed that there have been very few incidents of injury to or use of force by Sheriffs in Nova Scotia;
- Arming Sheriffs is not the norm across Canada (although a few provinces do it including BC, Alberta, Saskatchewan, Ontario and Qu bec); and
- Issuing firearms would represent 'an extreme and drastic change in the culture' for Sheriffs, some of whom may not be physically or psychologically able to deal with the situation.

[Rioux v Nova Scotia Government and General Employees Union](#), 2017 NSLB 93 (CanLII), July 20, 2017

TAKEAWAY

The question of whether issuing firearms is a reasonable measure for protecting against violence is relevant not only to law enforcement but private sector employers wrestling with workplace violence issues. Before *Rioux*, the leading ruling on

the issue was a 2007 case called *Re Parks Canada and Martin and Public Service Alliance of Canada* finding that arming national parks officers was a required reasonable measure. The union in *Rioux* tried to make hay with the *Parks Canada* case and the Board went to great pains to distinguish it from the situation with the Nova Scotia Sheriffs:

- Parks officers are much more likely than Sheriffs to come into contact with people who are armed;
- Unlike Sheriffs, parks officers carry a 'banger pistol' that looks like a gun on their belt which makes it look like they're armed;
- Parks officers' vulnerability is increased by specific risk factors including terrain, weather, lack of reliable power sources and telecommunications and relative lack of back-up; and
- Whereas the Sheriffs would have Tasers, a 'longarm, baton, shovel, stick or other weapon of opportunity' wouldn't give parks officers power to subdue a violent person.

The Bottom Line: The answer to the question of whether providing X, Y or Z PPE to protect a particular worker is ALWAYS the same: It depends. It depends on the risk, the effectiveness of the PPE and whether alternative measures would provide commensurate protection.

However, when the PPE involved is a weapon, it also depends on another crucial factor: public safety. A gun is an altogether different proposition from a hard hat and can be justified as a reasonable safety measure only in very limited and compelling circumstances.