

**A MESSAGE FROM THE CHAIRPERSON
OF THE
MANITOBA LABOUR BOARD**

I am pleased to submit the Annual Report outlining the activities of the Manitoba Labour Board for the period April 1, 2020 to March 31, 2021.

During this reporting period, despite the immense challenges occasioned by the global pandemic, the Manitoba Labour Board successfully fulfilled its mandate and met its objectives.

In response to the evolving circumstances, the Board developed effective new practices and procedures, made strategic investments in new technology and training, and broadly consulted with stakeholders in the labour relations community. As a result of these initiatives, the Board successfully adapted thereby providing enhanced and, largely, uninterrupted service to the community. In consultation with the community, the Board repeatedly refined and adjusted its practices and procedures in order to resolve issues fairly and expeditiously while taking all reasonable measures to safeguard health and safety. This success could not have been achieved without the incredible contributions of the Board's staff combined with the cooperation and understanding of the community who continued to use the Board's services.

I also wish to acknowledge the retirement of two outstanding staff members, Ms. Charlene Jones and Ms. Ruth Liwiski. Ms. Jones worked for the Board for approximately 35 years, most recently in the role of Board Officer. She was an incredibly dedicated and hard-working employee whose vast knowledge of employment standards legislation was greatly appreciated by Board members. Ms. Liwiski was employed with the Province of Manitoba for nearly 45 years, the last 30 of which were spent with the Board. As Registrar of the Board since 2014, Ms. Liwiski used her extensive experience and ability to manage the Board's complex day-to-day activities while modernizing its processes. It was a great privilege to work with Ms. Jones and Ms. Liwiski. They both served with great distinction and have left a lasting legacy.

I am very proud that the Board continues to effectively meet its responsibilities during these challenging times. This success is due to the combined efforts of the Board's staff, its members, and the community. I wish to express my sincere appreciation to all of you.

Colin S. Robinson
Chairperson

MESSAGE DU PRÉSIDENT DE LA COMMISSION DU TRAVAIL DU MANITOBA

Je suis heureux de vous présenter le rapport annuel décrivant les activités de la Commission du travail du Manitoba pour la période allant du 1^{er} avril 2020 au 31 mars 2021.

Au cours de la période visée par le présent rapport, la Commission du travail du Manitoba a réussi, malgré les immenses difficultés posées par la pandémie, à remplir son mandat et à atteindre ses objectifs.

En réponse à une situation en rapide évolution, la Commission a mis au point de nouvelles pratiques et procédures efficaces, a réalisé des investissements stratégiques dans les nouvelles technologies et la formation et a largement consulté les intervenants du milieu des relations du travail. Grâce à ces initiatives, la Commission a réussi à s'adapter et à offrir au milieu des services améliorés et, en grande partie, ininterrompus. En consultation avec le milieu, la Commission a peaufiné et modifié maintes fois ses pratiques et procédures afin de résoudre rapidement et équitablement les enjeux qui se sont présentés tout en prenant toutes les mesures raisonnables pour préserver la santé et la sécurité de tous. Or, une telle réussite n'aurait pas été possible sans la prodigieuse contribution du personnel de la Commission pas plus que sans la collaboration et la compréhension du milieu qui a continué de faire appel aux services de la Commission.

Je tiens également à souligner le départ à la retraite de deux membres du personnel exceptionnels : M^{me} Charlene Jones et M^{me} Ruth Liwiski. M^{me} Jones a été au service de la Commission pendant environ 35 ans et avait été récemment nommée à titre de cadre de la Commission. Employée incroyablement dévouée et vaillante, elle représentait un vaste trésor de connaissances sur la législation relative aux normes d'emploi pour les membres de la Commission. M^{me} Liwiski a travaillé pendant près de 45 ans pour la province du Manitoba, dont les 30 dernières années au sein de la Commission. Nommée à titre de registraire de la Commission en 2014, elle a utilisé sa vaste expérience et ses grandes compétences pour gérer au quotidien les activités complexes de la Commission tout en modernisant ses processus. Ce fut un immense privilège de travailler aux côtés de M^{me} Jones et de M^{me} Liwiski. Ces dernières ont occupé leur poste avec beaucoup de distinction, et elles nous laissent un héritage durable.

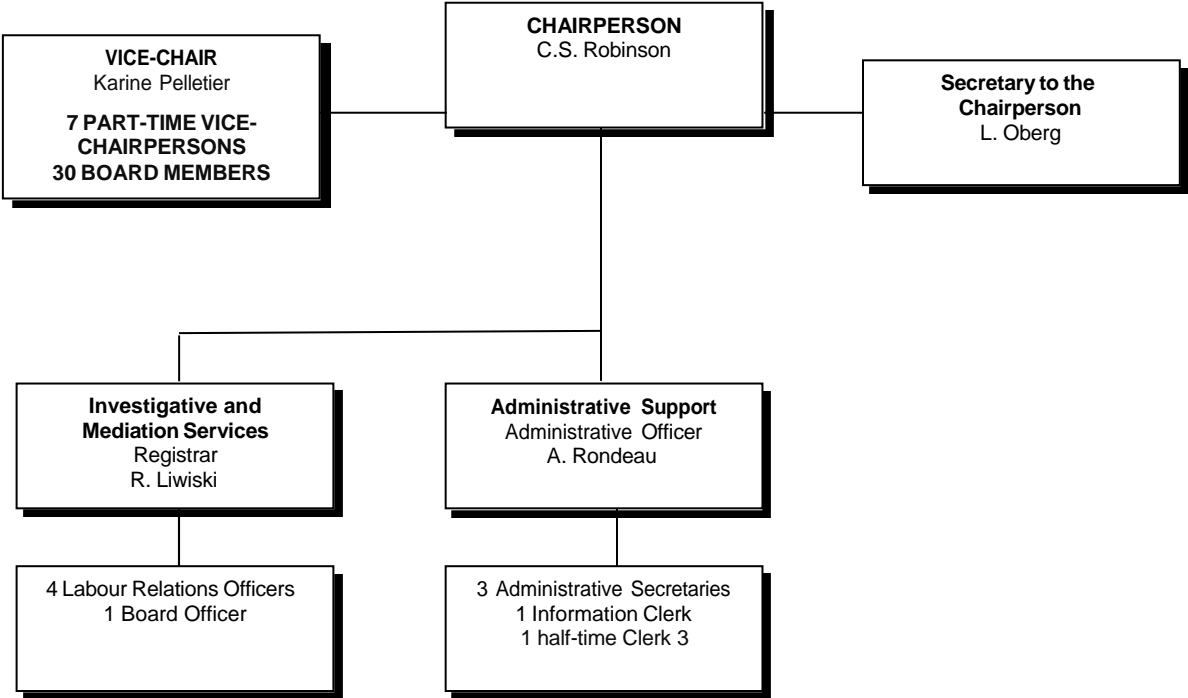
Je suis extrêmement fier que la Commission continue de remplir efficacement ses responsabilités en ces temps difficiles. Nous devons notre réussite aux efforts combinés du personnel de la Commission, de ses membres et du milieu. Je tiens à ce que vous sachiez tous que je vous en suis sincèrement reconnaissant.

Colin S. Robinson
Président

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**Manitoba Labour Board
Organization Chart**
April 1, 2020 - March 31, 2021



The Manitoba Labour Board

INTRODUCTION

Report Structure

The Manitoba Labour Board ("the Board") annual report is prepared pursuant to subsection 138(14) of *The Labour Relations Act*:

"The report shall contain an account of the activities and operations of the board, the full text or summary of significant board and judicial decisions related to the board's responsibilities under this and any other Act of the Legislature, and the full text of any guidelines or practice notes which the board issued during the fiscal year."

Values and Mission

As an independent and autonomous specialist tribunal, the Board's mission is to support the fair and equitable application of the labour and employment statutes under which it has jurisdiction. The values that guide the Board activities include impartiality, efficiency, timeliness and consistency. Through its activities, the Board aims to enhance the public's understanding of the statutory rights and responsibilities in the legislation. The Board is dedicated to providing mediation to parties in an effort to help them resolve their differences where possible, while providing fair and impartial adjudication when necessary.

Objectives

- to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and unions as the freely designated representatives of employees;
- to discharge its statutory responsibilities in an impartial, efficient, knowledgeable, timely, respectful and consistent manner;
- to encourage and facilitate the settlement of disputes through appropriate alternative dispute resolution mechanisms where possible while providing adjudication where necessary;
- to foster understanding of the rights, responsibilities and procedures set forth in the legislation under which it has responsibilities;
- to maintain current and effective rules, practices and procedures which are clear, accessible, fair and impartial.

Role

The Board is an independent and autonomous specialist tribunal responsible for the fair and efficient administration and adjudication of responsibilities assigned to it under *The Labour Relations Act* and any other Act of the Consolidated Statutes of Manitoba.

The majority of the applications are filed under *The Labour Relations Act* and *The Employment Standards Code* and *The Workplace Safety & Health Act*. The Board is also responsible for the administration and/or adjudication of matters arising under certain sections of the following Acts:

The Apprenticeship and Certification Act
The Construction Industry Wages Act
The Elections Act
The Essential Services Act (Government and Child and Family Services)
The Essential Services Act (Health Care)
The Pay Equity Act
The Public Interest Disclosure (Whistleblower Protection) Act
The Public Schools Act

The Remembrance Day Act
The Victims' Bill of Rights
The Worker Recruitment and Protection Act

The Labour Relations Act

The Board receives and processes applications regarding union certification, decertification, amended certificates, alleged unfair labour practices, expedited arbitration, first contracts, board rulings, duty of fair representation, successor rights, religious objectors and other applications pursuant to the *Act*.

The Employment Standards Code

The Board hears appeals referred to it by the Employment Standards Division regarding wages, statutory holiday pay, vacation pay and wages in lieu of notice, including provisions pursuant to *The Construction Industry Wages Act* and *The Remembrance Day Act*.

The Apprenticeship and Certification Act

The person named in a compliance order or required to pay an administrative penalty may appeal the matter to the Board within 14 days after receiving a notice under subsection 36(6) or 37(5) of the *Act*.

The Elections Act

A candidate, election officer, enumerator or an election volunteer for a candidate or a registered political party may file an application relating to requests for leave from employment under section 18 of the *Act*. An employer may apply to the Board to request an exemption from the requirement to grant a leave under section 18 of the *Act*, if the leave would be detrimental to the employer's operations. The Chairperson and the Chief Electoral Officer jointly agree upon and appoint an adjudicator to hear and decide the matter.

The Essential Services Act

The Board receives and processes applications from unions for a variation of the number of employees who must work during a work stoppage in order to maintain essential services.

The Pay Equity Act

If parties fail to reach an agreement on an issue of pay equity, within the time frames stipulated in the *Act*, any party may refer the matter to the Board for adjudication.

The Public Interest Disclosure (Whistleblower Protection) Act

An employee or former employee who alleges that a reprisal has been taken against them, may make a written complaint to the Ombudsman (Auditor General) under section 27.1 of the *Act*. The Board deals with appeals under the legislation as new complaints and not as a review of the investigation, decision or recommendations of the Ombudsman or Auditor General respecting the alleged reprisal. If the Board determines that a reprisal has been taken against the complainant, it may make an order pursuant to section 28(3) of the *Act*.

The Public Schools Act

Certain provisions of *The Labour Relations Act* apply to teachers, principals, bargaining agents for units of teachers and school boards.

The Victims' Bill of Rights

Victims of crime may file applications with the Board relating to requests for time off work, without pay, to attend the trial of the person accused of committing the offence, for the purpose of testifying, presenting a victim impact statement or observing any sentencing of the accused person.

The Worker Recruitment and Protection Act

The director of the Employment Standards Division is empowered, on behalf of a foreign worker, a child performer or family member on behalf of a child performer, to issue orders to recover the amount of any prohibited recruitment fees or costs charged, directly or indirectly, by the employer or a person engaged in recruitment of the foreign worker or child performer and can also, by order, recover from an

employer any reduction in wages or recover any reduction/elimination of a benefit or other term or condition of employment where the reduction is made to cover the costs of recruitment, all of which is contrary to sections 15, 16 and 17 of the *Act*. The Board has jurisdiction to hear appeals when a person affected by a director's order wishes to appeal an order of the director under these provisions. The Board hears the appeals of orders pursuant to the provisions of *The Employment Standards Code*.

The Workplace Safety and Health Act

Any person directly affected by an order or decision of a safety and health officer may appeal the order or decision to the director of Workplace Safety & Health. The director may decide the matter or refer the matter to the Board for determination. Any person affected by an order or decision of the director of Workplace Safety & Health may also appeal to the Board to have the order or decision set aside or varied.

MANITOBA LABOUR BOARD MEMBERS

In the year under review, the Board consisted of the following members.

Chairperson

Colin S. Robinson

Appointed as chairperson in 2012, Colin Robinson previously served as the Board's full-time vice-chairperson since 2003. Mr. Robinson holds a Bachelor of Arts Honours degree from the University of Manitoba and a Bachelor of Laws degree from Osgoode Hall Law School. He was called to the Bar in Manitoba in 1995 and practiced primarily in the fields of labour and administrative law prior to being appointed to the Board. In addition, Mr. Robinson serves on the board of directors of the Canadian Council of Administrative Tribunals and is actively involved in the training programs conducted by the Manitoba Council of Administrative Tribunals. He also acts as an arbitrator and mediator.

Vice-Chairpersons

Kristin L. Gibson

Appointed on a part-time basis in 2013, Kristin Gibson is a partner in the Winnipeg law firm MLT Aikins LLP. She carries on practice as a labour and employment lawyer, and as a labour mediator and arbitrator.

A. Blair Graham, Q.C.

Appointed on a part-time basis in 2006, Blair Graham holds a Bachelor of Arts Degree and a Bachelor of Laws Degree from the University of Manitoba. Mr. Graham practiced law as a partner in the firm of Thompson Dorfman Sweatman LLP for over 30 years, with an emphasis on civil litigation, administrative law and arbitration as an arbitrator until June 30, 2021. He now practices independently, limiting his practice to arbitration and mediation in relation to both labour relations matters and all types of civil and commercial disputes. Mr. Graham was appointed as Queen's Counsel in December 1992 and was inducted as a Fellow in the American College of Trial Lawyers in October 2004. He has been selected by his peers on several occasions as one of the best lawyers in Canada in the area of Alternate Dispute Resolution. He has been active as a Chairperson in labour arbitration matters since 1997.

Dennis Harrison

Appointed on a part-time basis in 2018, Dennis Harrison is a graduate of Red River College with a Diploma in Business Administration. He retired in June of 2017 following 32 years of employment with the Province of Manitoba in the labour department: a board officer with the Manitoba Labour Board, conciliation officer with Conciliation and Mediation Services and the executive director of Conciliation and Mediation Services.

Diane E. Jones, Q.C.

Appointed on a part-time basis since 1985, Diane Jones holds a Bachelor of Arts Honours degree from the University of Winnipeg and a Bachelor of Laws degree from the University of Manitoba. She is currently active as a chairperson in arbitration matters.

David Lewis

Appointed on a part-time basis in 2020, David Lewis holds a diploma in Agriculture and a Bachelor of Laws degree from the University of Manitoba. He retired in May of 2019 following 32 years of practicing law; first in private practice, followed by 25 years as in-house counsel dealing exclusively in the field of labour relations. He is currently active as a chairperson in arbitration matters.

Karine Pelletier

Appointed on a part-time basis (.8) in 2016, Karine Pelletier holds a Bachelor of Arts from l'Université de Saint-Boniface, a Bachelor of Laws from L'Université d'Ottawa and a Masters of Law from the University of Ottawa. Ms. Pelletier serves as a panel member for the Manitoba Law Society Admission and Adjudication Hearing Panel. She also sits on the boards of the Plug In Institute ICA, l'Association des juristes d'expression française du Manitoba; and la société métisses historique. In 2019, she was appointed to the Manitoba Human Rights adjudication Panel. Before joining the Manitoba Labour Board,

Ms. Pelletier worked as in-house legal counsel and in private practice in the areas of administrative law, human rights law and labour and employment.

Michael D. Werier

Appointed on a part-time basis in 2006, Michael Werier is counsel to the Winnipeg law firm of D'Arcy & Deacon LLP. He carries on a practice as an arbitrator/mediator in Manitoba. He is currently chairperson of the Manitoba Labour Management Review Committee, chairperson of the Board of Directors of the Workers Compensation Board of Manitoba, Arbitrator under the Northern Flood Agreement, and Chief Adjudicator of the Manitoba Human Rights Adjudication Panel.

Gavin M. Wood

Appointed on a part-time basis in 2006, Gavin Wood holds a Bachelor of Laws degree from the University of Manitoba and a Masters of Laws degree from Columbia University in New York City. He is presently practicing as a sole practitioner under the firm name of Wood Orle Litigation Lawyers. He is currently active as a chairperson in arbitration matters.

Employer Representatives

James (Jim) H. Baker, CPA CA

Appointed in 2000, Jim Baker has served on several not for profit boards and government agencies during and following a career spanning partnership in a regional chartered accountancy firm; and as President and CEO of the Manitoba Hotel Association. He was co-chair of the Athletes Villages committee for the 1999 Pan Am games and has been on the mission staff at the Canada and Western Canada Games. Mr. Baker is also a past director of the Winnipeg Convention Centre. Most recently he was a term lecturer at Red River College on industrial relations and human resource management. He is currently the chair of the Minister's Advisory Council on Accessibility, which is charged with developing and recommending the standards required by the *Act*, and is past chair and current treasurer of The Friends of Elmwood Cemetery.

Elizabeth (Betty) M. Black

Appointed in 1985, Betty Black is a Fellow Certified Professional Human Resource Professional (FCPHR) and holds a certificate in Human Resource Management from the University of Manitoba. She has spent over 30 years in senior human resource management roles in the private and public sectors in both union and non-union environments in the areas of manufacturing, hospitality, financial services and consulting. She is a member and past president of the Human Resource Management Association of Manitoba and has instructed in the Human Resource Management Certificate program at the University of Manitoba. She has served in voluntary leadership roles with the YMCA-YWCA of Winnipeg, the United Way of Winnipeg and numerous other community organizations.

Christiane Y. Devlin

Appointed in 2002, Christiane Devlin has held senior management positions in human resources, integrating human resources within the business needs of companies in the transportation, communication and printing, agriculture, manufacturing, health care, and retail co-operatives. She is currently the manager, Human Resources with the Kleysen Group. Ms. Devlin is bilingual and her human resource management experience includes unionized and non-unionized workplaces. She also sits as a part-time commissioner at the Appeal Commission.

Tom Goodman

Appointed in 2013, Tom Goodman retired from Hudbay Minerals Inc. in June 2012 having served in a variety of senior executive roles for over 34 years both in Canada and internationally. These roles have included oversight and/or direct responsibility for human resources including labour relations for organizations of more than 1,500 employees in both union and non-union environments. He is a past director and past chairman of the Mining Association of Manitoba. He is a member of the Mining Minister's Mining Council, chairman of the Hudbay Environment Health and Safety Committee, and a director of the Technical Committee and the Audit Committee. He is a member of the Governing Council of the University College of the North. He was elected to the board of directors of Hudbay Minerals Inc. upon his retirement in June 2012.

Paul J. LaBossiere

Appointed in 1999, Paul LaBossiere retired from the position of president and CEO of P.M.L. Maintenance Ltd. He is past co-chairperson of the Employers Task Force on Workers Compensation, a past executive member of the Winnipeg Chamber of Commerce, past president, parliamentarian, and government affairs advisor of the Building Owners and Managers Association, a member of the Manitoba Employers Council and is a frequent international speaker on issues pertaining to the maintenance and service industries. He is a past member of the Board of Directors of the Building Services Contractors Association International (37 countries). He is the past board president of the Prairie Theatre Exchange (PTE) and a past trustee of the PTE Foundation Trust. His past affiliations include vice-chairperson and treasurer of the Winnipeg Chamber of Commerce and on the Advisory Committee for the Continuing Education Department at the University of Manitoba. He is a past trustee of Opimian Vineyard Trust and past vice-president of the Winnipeg Jazz Orchestra.

Jane MacKay

Appointed in 2020, Jane MacKay is currently chief human resources officer for the Winnipeg Regional Health Authority (WRHA). She has also held positions of executive director, human resources for Shared Health and chief human resources officer at Health Sciences Centre. Prior to working in healthcare, she held senior leadership roles in HR and Labour Relations in diverse industries of manufacturing, consumer packaged goods and oil and gas. She is a past member on the WCB Board of Directors, presently sits as a part-time appeal commissioner on the WCB Appeal Commission and holds a trustee appointment on the Healthcare Employee's Benefits Plan (HEBP) Board.

Harvey Miller

Appointed in 2010, Harvey Miller is the past president of the Merit Contractors Association of Manitoba. He holds a Bachelor of Arts degree from the University of Manitoba and a Master of Arts degree in Psychology from the University of Victoria. He has extensive senior management experience in both public and not-for-profit agencies, including the Worker Advisor Office and the Workers Compensation Board of Manitoba. He has served on numerous volunteer boards, and is a past president of the Winnipeg Mental Health Association and the Manitoba Biathlon Association.

Yvette Milner

Appointed in 1996, Yvette Milner is president of Merit Contractors Association, an industry association providing services to open shop contractors in Manitoba. She also owns a consulting company specializing in assisting companies to manage injury and illness in the workplace. Ms. Milner's background is in human resources, safety and disability management. Active in the Manitoba business community, she is involved with the Manitoba Employers Council, and the Manitoba and Winnipeg Chambers of Commerce.

Rene Ouellette

Appointed in 2020, René Ouellette is currently the Vice President Human, Resources for Southern Health-Santé Sud and has experience in labour relations including collective bargaining, collective agreement interpretation, investigations and other labour relations matters. He was previously employed with the Province of Manitoba in various human resource roles and with the Manitoba Human Rights Commission. His educational background is from Brandon University and the University of Manitoba.

Jason Peterson (Resigned February 2021)

Appointed in 2018, Jason Peterson is employed by Federated Cooperatives Ltd. as a labour relations advisor and has held various management positions over his career. Previously he was managing director of the Hydro Projects Management Association for Keeyask and Keewatinohk.

Brian Peto

Appointed in 2011, Brian Peto has extensive senior human resource experience in the retail, manufacturing and financial services sectors. He has served on the board of directors of one of Canada's largest defined contribution pension plans. He is a graduate of the University of Winnipeg and Red River Community College. Mr. Peto is a former cabinet member of the United Way of Winnipeg and past president of the Human Resource Management Association of Manitoba.

Darcy Strutinsky

Appointed in 2008, Darcy Strutinsky concluded a lengthy career in senior healthcare human resource leadership positions in 2012. He now provides independent human resource, labour relations and respectful workplace consulting services to employers in the private and public sectors. He is a commissioner for the Manitoba Human Rights Commission and a board member of the Children's Hospital Foundation of Manitoba.

Andrea Thomson

Appointed in 2019, Andrea Thomson is a director of human resources and holds a Bachelor of Business Administration from Memorial University of Newfoundland. Ms. Thomson has been working in Human Resources for over 13 years and has extensive experience in labour/management relations, including collective bargaining negotiations, strategic planning, employment policy, health and safety and employment training. She has experience working in construction, manufacturing and non-profit industries and is a member of Client Advisory Council with Manitoba Blue Cross.

Peter Wightman

Appointed in 2013, Peter Wightman is the executive director of the Construction Labour Relations Association of Manitoba, a position he has held since 1996. Previously, he was Manitoba Health Organization's senior labour relations negotiator/consultant providing collective bargaining and other labour relations services to all of Manitoba's health care employers and prior to that was a senior labour relations officer at the corporate headquarters of the Canada Post Corporation in Ottawa. Mr. Wightman chairs the employer caucus of the Manitoba Labour Management Review Committee, is a founding member of the Government of Manitoba's ongoing *Construction Industry Wages Act* Review Committee, and chairs a Provincial Trade Advisory Committee for the Manitoba Apprenticeship Branch. Mr. Wightman is also chairman of eight Manitoba Construction Industry Pension and Health and Welfare Benefit Trust Funds and is a Canadian director on the International Foundation of Employee Benefit Plans board of directors. A graduate of Carleton University in Ottawa, he holds a Bachelor's degree in Economics and Law and has been engaged in the field of labour relations for over 25 years.

James (Jim) Witiuk

Appointed in 2004, Jim Witiuk is the former director of labour relations for Sobeys West Inc. with responsibility for labour relations matters in Manitoba, Saskatchewan and Ontario. He retired in 2016. He sits on a number of trustee health and welfare and pension plans as a management trustee and is a member of and sits on the Canadian Board of the International Foundation of Employee Benefit Plans. He is a past member of the Employment and Immigration Board of Referees. He serves on the Manitoba Labour Management Review Committee, serves on that group's Arbitration Advisory Sub-Committee and is an active member of the Manitoba Employers Council. Mr. Witiuk is also on the board of directors of MEBCO (Multi Employee Benefit Plan Council of Canada). He is a graduate of Carleton University in Ottawa.

Employee Representatives**George Bouchard**

Appointed in 2019, George Bouchard has been employed as a national servicing representative with the Canadian Union of Public Employees (CUPE) since 2010. Coming from the airline division of CUPE, he has the opportunity to service locals in all 5 of the union's sectors, primarily focusing on the negotiations, arbitrations and general grievance handling. He was previously a member of the Social Services Appeal Board of Manitoba.

Marie Buchan

Appointed in 2021, Marie Buchan is the secretary treasurer and director of operations for United Food and Commercial Workers Union, Local No. 832 (UFCW L832), in Winnipeg. UFCW L832 represents over 18,000 members of the private sector in over 130 different workplaces across the Province. As secretary treasurer, Ms. Buchan is responsible for all financial aspects of UFCW L832. As director of operations, she oversees all staff and overall operations of the locals, three offices and two training centres. She began her career with UFCW L832 in 2002. She came on staff as a relieve representative, becoming a permanent, full-time union representative in March 2003. In the same month, in addition to her

appointment as a L832 full-time union representative, she was elected to the executive board of the UFCW Canadian Council. Ms. Buchan has also been the Manitoba representative for the UFCW Canada Youth Committee and the UFCW Canada Women's Advisory Board. She was the local's director of servicing for four years before moving into the negotiation's department in 2012. After four years as a full-time negotiator and executive assistant to the president, Ms. Buchan moved into her current role as secretary treasurer and director of operations.

Ms. Buchan also represents UFCW L832 as a member of the Manitoba Federation of Labour Executive Council. She currently acts as a trustee for a variety of health and welfare benefit plans and is on the Manitoba Blue Cross board of directors.

Abstinencia (Abs) Diza

Appointed in 2015, Abs Diza has been employed with Workers United Canada Council since 2006, and is currently a regional union representative. Ms. Diza is also currently a vice-president of the Manitoba Federation of Labour.

Greg Flemming

Appointed in 2019, Greg Flemming is the executive director of the University of Manitoba Faculty Association, where he is active in grievance handling, collective bargaining, and the governance of the association. He received his Doctor of Philosophy from York University in 2015, where he was a tutor and member of the Canadian Union of Public Employees.

Dee Gillies

Appointed in 2019, Dee Gillies is an experienced organizer, negotiator, and employee representative in grievances and arbitrations. She served as the executive director of the Winnipeg Association of Public Service Officers (WAPSO) until her retirement in 2018. Prior to that she was an international representative for the International Federation of Professional and Technical Engineers (IFTPTE), and board member of the Telecommunications Employees Association of Manitoba (TEAM).

Sheila Gordon (Term expired December 31, 2020)

Appointed in 2013, Sheila Gordon has been employed with the Manitoba Government and General Employees' Union (MGEU) since 1991. As a staff representative, she worked with members to resolve issues, process grievances and negotiate collective agreements in a variety of different public sector workplaces. In 2009, she was appointed MGEU director of negotiations, responsible for negotiating the Government Employees' Master Agreement, and for supporting a team of staff representatives working with members of the Manitoba Civil Service. More recently, Ms. Gordon has assumed the position of director of negotiations, responsible for all negotiations undertaken by the union. Ms. Gordon's educational background includes a Bachelor of Social Work degree from the University of Manitoba and a Master of Social Work degree from Carleton University.

Bruce Harris

Appointed in 2019, Bruce Harris was the business manager and financial secretary treasurer of the International Association of Sheet Metal, Air, Rail, Transportation Workers (SMART) Local 511 Manitoba since 2005. Previously, Mr. Harris was the business representative and recording secretary of SMART Local 511 and a red seal sheet metal journeyman since 1981. He currently serves as a trustee on health & welfare and pension boards, as trustee/vice-president on several affiliated councils, and was a member of the Manitoba Apprenticeship and Certification Board. He was lead negotiator for the five divisions of SMART Local 511, actively involved in labour/management issues relations, arbitrations, organizing and activities concerning the needs of his members.

Tom Henderson

Appointed in 2016, Tom Henderson works at the Manitoba Nurses Union (MNU) as a labour relations officer with a specialty in workplace, safety and health, as well as working in labour relations, since 2002. Prior to working with the MNU, he was employed in the private sector within the aerospace industry and has held a number of leadership roles including local union president, bargaining committee chairperson, and local union discussion leader. As a labour relations officer, Mr. Henderson deals with grievance arbitrations, collective bargaining and the delivery of specific membership training needs as required. He is a certified health and safety professional and provides the MNU, and its leadership, with workplace

safety and health advice. He also handles files related to workplace safety and health with employers, where MNU represents nurses.

Janet Kehler

Appointed in 2018, Janet Kehler has both Bachelors of Arts and Social Work degrees and began her career in child protection, going on to serve as manager of Emergency Services for the Province of Manitoba. In 2006, she took on the role as staff representative with the Manitoba Government and General Employees' Union (MGEU), where she was responsible for negotiating collective agreements, bringing grievances forward, and other member services. She went on to manage a team of staff representatives before assuming her current position as the MGEU director of Member Services. As director, Ms. Kehler oversees various components of the service continuum, including several teams of staff representatives, the MGEU's resource centre, and its legal department.

Marc Lafond

Appointed in 2016, Marc Lafond has been employed as business manager and financial secretary of the International Union of Operating Engineers of Manitoba, Local 987 (IUOE) since 2011. Previous to his employment with the IUOE, he was the executive director of OETIM Inc. a crane, heavy equipment and safety training facility from 2006 - 2011, and was a Red Seal mobile crane operator for 1997 - 2006. He currently serves as a trustee on several pension and health and welfare boards and the Workers Compensation Board. He is a graduate of the University of Manitoba Labour Studies Program.

Diane Mark

Appointed in 2018, Diane Mark, prior to retirement in early 2020, worked for the Manitoba Government and General Employees' Union since 1989, where she held the manager, member services, position since 2015. Prior to the manager position, she was a senior staff representative. Ms. Mark has been involved in servicing, facilitating, grievance handling, collective bargaining as well as participated in arbitration hearings. Ms. Mark had represented members in every sector; Civil Service, Crown Corporations, healthcare and labour relations. In addition, Ms. Mark trained and mentored staff. In 1994, Ms. Mark graduated from the University of Manitoba Labour Program and in 2000 attended Queen's University Industrial Relations – Negotiation Skills, as well as NUPGE Leadership School in 2010.

Sandra Oakley

Appointed in 2020, Sandra Oakley was employed by the Canadian Union of Public Employees (CUPE) from 1982 to 2013. She dealt with negotiations, grievances, arbitrations, mediations and other labour relations issues during her employment with CUPE and was regional director from 2002 to 2013. She is a graduate of the University of Manitoba and the Labour College of Canada. She is a member of the Winnipeg Poverty Reduction Council (WPRC) and a member of the Canadian Federation of Nonprofit Networks.

Rik A. Panciera

Appointed in 2011, Rik Panciera was employed as a national staff representative for the Canadian Union of Public Employees where he served for the past 24 years. As a staff representative, Mr. Panciera dealt with daily grievance and labour/management issues, as well as negotiated collective agreements.

Tony Sproule

Appointed in 2018, Tony Sproule is currently employed as an international representative with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) since 2006. As the area supervisor of staff representatives, he deals primarily with grievance arbitration matters, collective bargaining, organizing, member education and facilitating of the USW constitution within the Province of Manitoba.

Roland Stankevicius

Appointed in 2020, Mr. Stankevicius has served as the general secretary of The Manitoba Teachers' Society ("MTS) since January 2019. Prior to that he worked as a teacher welfare staff officer for MTS and more recently as the assistant general secretary for MTS. These past 10 years. Mr. Stankevicius has been a public school teacher since 1986 and has served in many capacities as his union's representative in various committees, including workplace safety and health and disability benefits plan committees. Mr. Stankevicius's practice includes extensive collective bargaining experience for his local teacher union and

other provincial teacher local affiliates. He has earned his Bachelor of Commerce (Hons.) degree from the University of Manitoba and his Bachelor of Education degree from the University of Alberta.

Sonia Taylor (Term expired in April 2020)

Appointed in 2005, Sonia Taylor has been employed since 1991 as a union representative with the United Food and Commercial Workers Union, Local No. 832. She is actively involved in grievance handling, negotiations, arbitrations and organizing.

Glenn Tomchak

Appointed in 2015, Glenn Tomchak has held positions in International Association of Machinists and Aerospace Workers, Local 1953 executive since 1984; including six years as chief steward and 19 years as president, dealing with grievance arbitration matters, collective bargaining and shop issues. In March 2015, he was elected as the directing business representative for District 181. Mr. Tomchak has worked at Motor Coach Industries for over 30 years.

OPERATIONAL OVERVIEW

Adjudication

During 2020/21, the Board was comprised of a full-time chairperson, a vice-chairperson, seven part-time vice-chairpersons and 30 board members with an equal number of employer and employee representatives. The chairperson is the presiding officer of the Board pursuant to the provisions of *The Labour Relations Act*. Part-time vice-chairpersons and board members are appointed by Order in Council and are paid in accordance with the number of meetings and hearings held throughout the year. The Board does not retain legal counsel on staff; legal services are provided through Legal Services Branch of Manitoba Justice.

Investigative and Mediation Services

Investigative and mediation services is comprised of the registrar and five board officers. The registrar, who reports to the chairperson, is the official responsible for the supervision of the day-to-day investigative and mediation activities of the Board. The primary responsibility of the registrar is the development and execution of the administrative workload as it relates to the various *Acts* under which the Board derives its adjudicative powers. The registrar, in conjunction with the chairperson and board members, is involved in the establishment of Board practice and policy. The registrar, together with the board officers, communicates with all parties and with the public regarding Board policies, procedures and jurisprudence.

Reporting to the registrar are four labour relations board officers who are responsible for dealing with various cases and conducting investigations pertaining to the applications filed with the Board, under the legislation. They are appointed to act as Board representatives to attempt to resolve issues between parties, reducing the need for hearings. They act as returning officers in Board conducted representation votes, attend hearings and assist the registrar in the processing of various applications. They assist parties in concluding a first or subsequent collective agreement and they act as mediators during the dispute resolution process. Also reporting to the registrar is a board officer, primarily responsible for processing all referrals from the director of the Employment Standards Division and who is involved in mediation efforts in an attempt to resolve the issues.

Administrative Services

Administrative services is comprised of the administrative officer and administrative support staff. Reporting to the chairperson, the administrative officer is responsible for the day-to-day administrative support of the Board, fiscal control and accountability of operational expenditures and the development and monitoring of office systems and procedures.

Library Collection

Copies of these documents can be viewed by the public in the Board's office or made available in accordance with the fee schedule.

- Arbitration awards
- Collective agreements
- Certificates
- Unions' constitution & by-laws
- Written Reasons for Decision and Substantive Orders

Publications Issued

Manitoba Labour Board Annual Report - a publication disclosing the Board's staffing and membership as well as highlights of significant Board and court decisions and statistics of the various matters dealt with during the reporting period.

The Board distributes full-text copies of Written Reasons for Decision and Substantive Orders to various publishers, including CanLii, for selection and reprinting in their publications or on their websites.

Website Contents

<http://www.gov.mb.ca/labour/labbrd>

*link to French version available

- Board Members* (list and biographies)
- Forms*
- "Guide to *The Labour Relations Act*"* (explanations in lay persons' terms of the various provisions of the *Act* and the role of the Board)
- Preparing for Your Hearing*
- Information Bulletins* (listing and full text)
- Manitoba Labour Board's Arbitrators List* (list of arbitrators maintained pursuant to section 117(2) of *The Labour Relations Act*)
- Written Reasons for Decision and Substantive Orders (full text, English only, from January 2007 to present, with key word search capability)
- *The Labour Relations Act* and other statutes under which the Board has jurisdiction*
- Regulations* (including the *Manitoba Labour Board Rules of Procedure*)
- Library
- Publications* (list and links for convenient access, including previous annual reports)

E-mail (General Enquiry)

MLB@gov.mb.ca

E-mail (Case Related)

MLBRegistrar@gov.mb.ca

E-mail service is available for general enquiries and requests for information.

If you wish to file an application, contact:

Manitoba Labour Board
Suite 500, 5th Floor - 175 Hargrave Street
Winnipeg, Manitoba, Canada R3C 3R8
Telephone: 204-945-2089 Fax: 204-945-1296

Information Bulletins

The Board produces information bulletins regarding its practice and procedure. The following is a list of the current information bulletins.

1. Review and Reconsideration
2. *Manitoba Labour Board Rules of Procedure* – Regulation 184/87 R - Rule 28 (Part V – Rules of Board Practice)
3. The Certification Process
4. Financial Disclosure
5. Fee Schedule
6. Arbitrators List
7. Filing of Collective Agreements
8. Process for the Settlement of a First Collective Agreement
9. Objections on Applications for Certification
10. *The Employment Standards Code* - Appeal Hearings
11. Reduction of Deposits on Referrals to the Manitoba Labour Board under *The Employment Standards Code*
12. Exemption to Requests for Leave under *The Elections Act*
13. Extension of Time to File Documentation, Notice of Hearing and Request for Adjournment
14. Bargaining Agent's Duty of Fair Representation
15. Disclosure of Personal Information
16. Appointment of Arbitrators
17. Grievance Arbitration/*The Labour Relations Act*
18. *The Employment Standards Code* – Appeal Hearings – Administrative Penalties
19. Appointment of Conciliators and Grievance Mediation

The information bulletins are available on the Board's website at <http://www.gov.mb.ca/labour/labbrd/bulletin.html>. Copies of the information bulletins may be requested from the Board by calling 204-945-2089 or by emailing the Board at MLB@gov.mb.ca.

SUSTAINABLE DEVELOPMENT

The Manitoba Labour Board is committed to ensuring that its activities conform to the principles of sustainable development. The Board promoted sustainable development through various activities including recycling, paper management, use of environmentally preferable products and duplex copying.

FINANCIAL INFORMATION

Expenditures by Sub-Appropriation	Actual 2020/21 (\$000s)	FTE's	Estimate 2020/21 \$(000s)	Variance Over/(Under) \$(000s)	Expl. No.
Total Salaries	1,353	14.50	1,411	(58)	
Total Other Expenditures	134		190	(56)	
Total Expenditures	1,487	14.50	1,601	(114)	

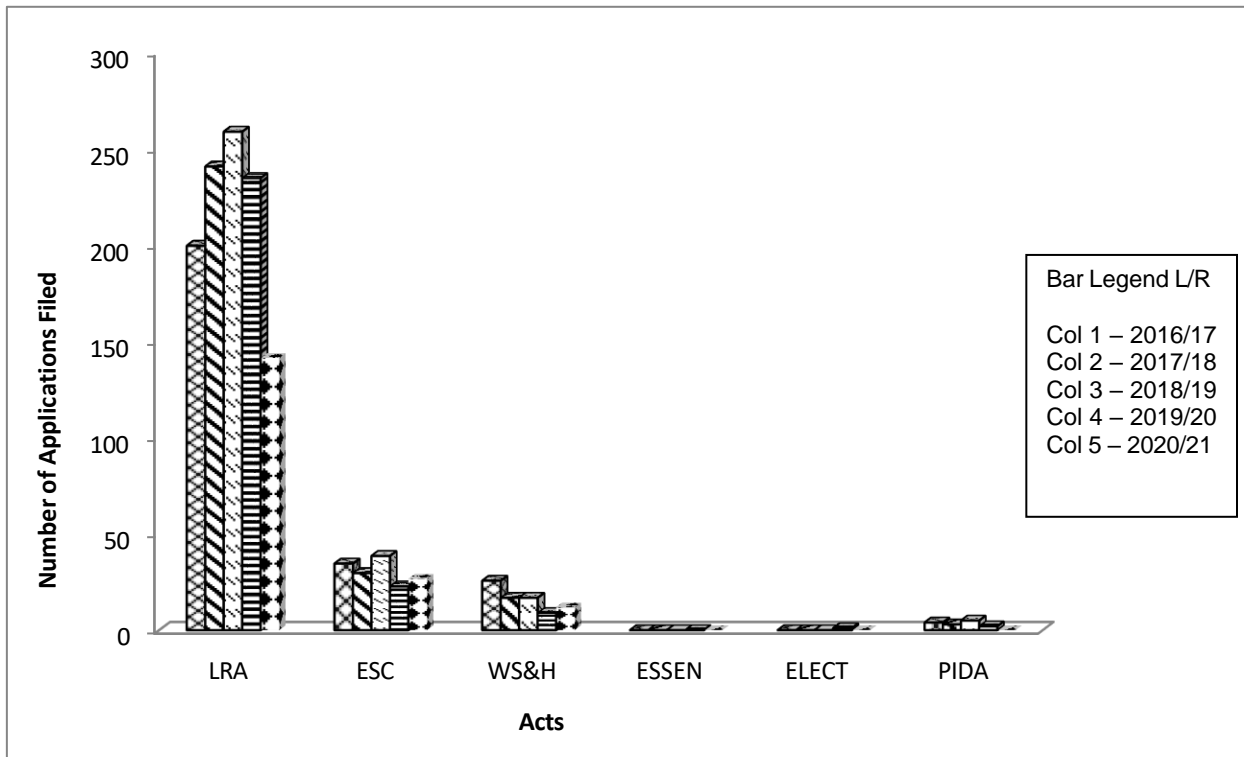
PERFORMANCE REPORTING

Summary of Performance

The Manitoba Labour Board adjudicated disputes referred to it under various provincial statutes. The Board conducted formal hearings and encouraged the settlement of disputes through mediation. During the 2020/21 fiscal year, issues before the Board were resolved or narrowed in over 81.8 percent of cases where a board representative conducted mediation.

The number of applications filed with the Manitoba Labour Board during the past 5 years (for the period April 1 to March 31) is indicated in the chart below.

**Manitoba Labour Board
Number of Applications Filed**



*Types of Applications	
LRA	Labour Relations Act - 142
ESC	Employment Standards Code - 27
WS&H	Workplace Safety and Health Act - 12
ESSEN	Essential Services Act - 0
ELECT	Elections Act - 0
PIDA	Public Interest Disclosure Act - 0

Detailed statistical tables can be found beginning on page 33 of this report.

Program Performance Measurements

During the past reporting year, the Board continued its initiative to measure service activities and client responsiveness.

Program Performance Measurements

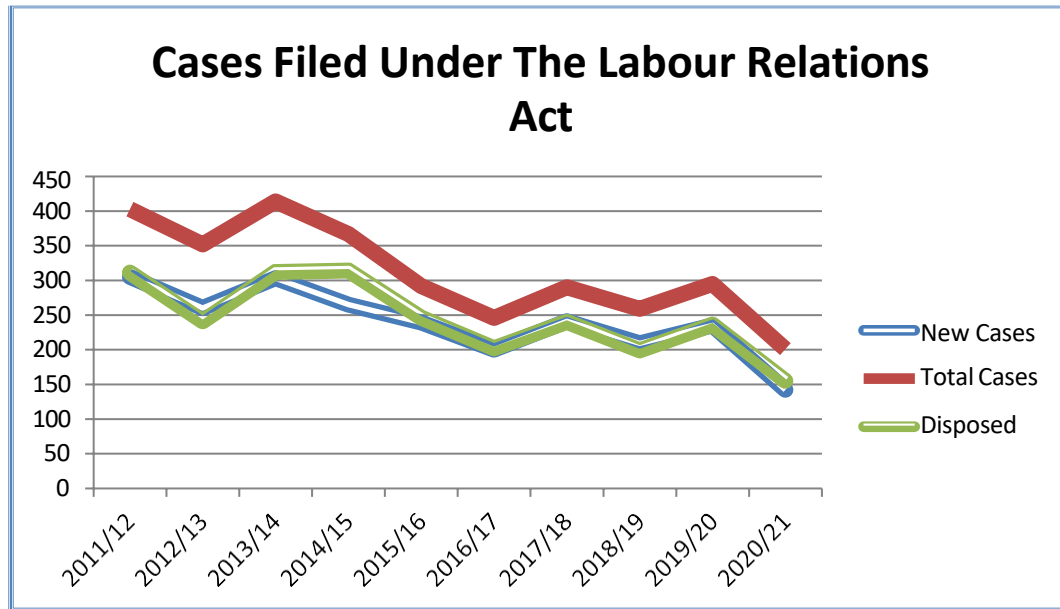
April 1 - March 31

Indicator	Actual 2019/20	Actual 2020/21
Percentage of Cases disposed of	77%	72%
Number of hearing dates scheduled	231	284
Percentage of hearings that proceeded	24%	18%
Number of Case Management Conferences		70
Number of Conciliators appointed		4
Number of votes conducted	37	17
Median processing time (calendar days):		
<i>The Labour Relations Act</i>	53	68
* <i>The Workplace Safety and Health Act</i>	159	145.5
<i>The Essential Services Act</i>	N/A	N/A
<i>The Elections Act</i>	107	N/A
<i>The Employment Standards Code</i>	114	155
* <i>The Public Interest Disclosure (Whistleblower Protection) Act</i>	93.5	N/A

"N/A" - No applications processed in reporting period

*Note: Given the small number of application/appeals dealt with under these statutes, the medial processing time may not necessarily be indicative of the typical time the Board has worked on these cases.

Ten Year Trends

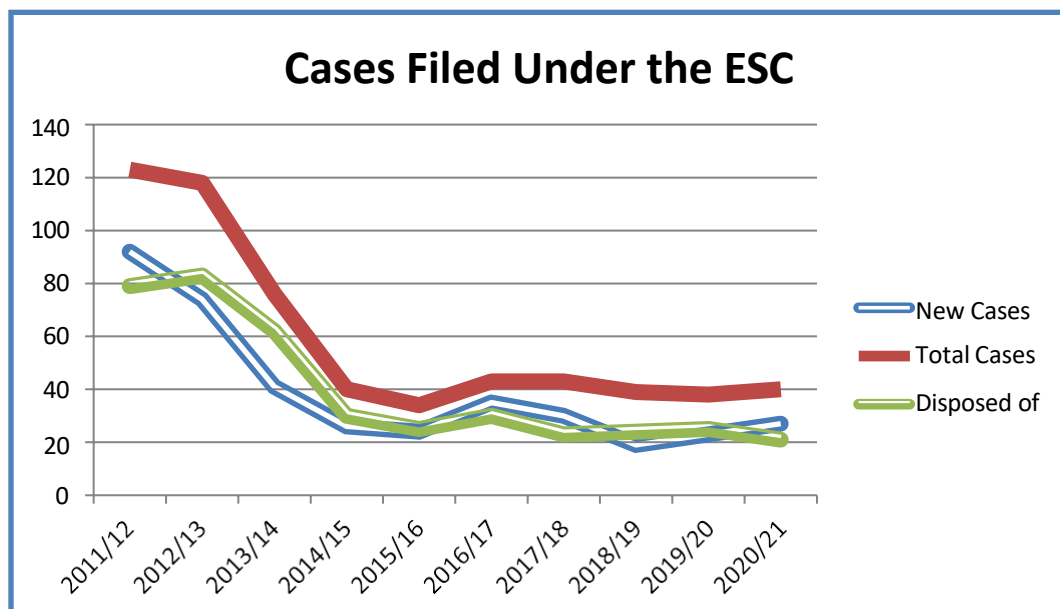


2020/2021 Totals	
New Cases:	142
Total Cases:	201
Disposed:	155

The ten-year trend in the number of new cases filed under *The Labour Relations Act* ranges from the minimum of 142 applications filed in 2020/21 to a maximum of 305 filed in 2011/12. The average number of applications filed each year is 239.9 files.

On average, the Board disposed of 234.7 cases per year which were filed under *The Labour Relations Act*.

	Min	Max	Avg
Cases Filed	142	305	239.9
Total Cases	201	414	311.9
Disposed	155	314	245.6

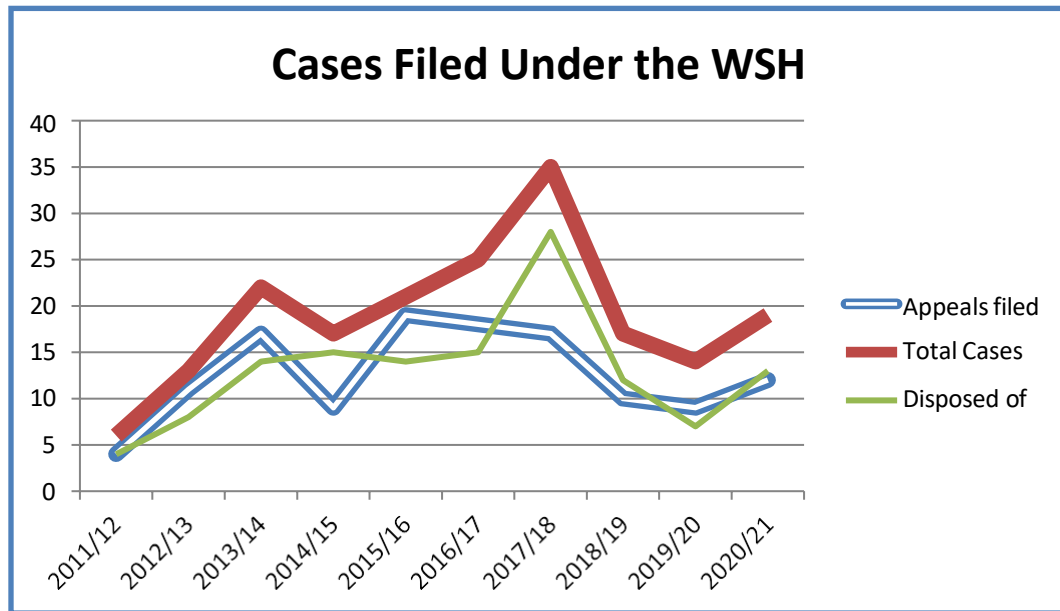


2020/2021 Totals	
New Cases:	27
Total Cases:	40
Disposed:	21

The ten-year trend in the number of new cases filed under *The Employment Standards Code* ranges from the minimum of 19 applications filed in 2018/19 to a maximum of 92 filed in 2011/12. The average number of applications filed each year is 39.1 files.

On average, the Board disposed of 12 cases per year which were filed under *The Employment Standards Code*.

	Min	Max	Avg
New Cases	19	92	39.1
Total Cases	34	123	59.4
Disposed of	23	83	40.2



The ten-year trend in the number of new cases filed under *The Workplace Safety and Health Act* ranges from the minimum of 4 application filed in 2011/12 to a maximum of 19 filed in 2015/16. The average number of applications filed each year is 12.6 files.

On average, the Board disposed of 13 cases per year which were filed under *The Workplace Safety and Health Act*.

	Min	Max	Avg
New Cases	4	19	12.6
Total Cases	6	35	18.9
Disposed of	4	28	13

Key Statistics in the Reporting Period

- 260 cases before the Board (pending from previous period plus new applications);
- 189 (73 percent) of the cases before the Board were disposed of/closed;
- 79 applications scheduled for hearing;
- 52 hearing dates proceeded;
- Board conducted 17 votes; and
- Issued 42 Written Reasons for Decision or Substantive Orders.

Ongoing Activities and Strategic Priorities

- Review and evaluate the organizational structure;
- Develop succession plan for key positions;
- Promote learning plans for staff;
- Conduct bi-annual seminar for vice-chairpersons and Board members;
- Strengthen the capacity to perform mediation;
- Increase use of alternative dispute resolution techniques to effect successful dispute resolutions without the need for formal hearings;
- Improve practices and procedures to increase efficiencies;
- Modernize communications;
- Maintain information available on the website for ready access by the labour relations community, legal practitioners, educators and the public;
- Maintain accountability for allocated budget;
- Explore options for creating efficiencies and reducing costs.

Statistiques importantes pendant la période de référence

- 260 cas ont été portés devant la Commission (demandes en instance depuis l'exercice précédent et nouvelles demandes).
- 73 % des cas portés devant la Commission (189) ont été réglés ou classés.
- Une date d'audience a été fixée pour 79 demandes.
- La Commission a tenu 52 audiences.
- La Commission a tenu 17 votes.
- La Commission a rendu 42 motifs écrits de décision ou ordonnances importantes.

Activités en cours et priorités stratégiques

- Révision et évaluation de la structure organisationnelle.
- Élaboration d'un plan de relève pour des postes de premier plan.
- Promotion de plans d'apprentissage à l'intention du personnel.
- Tenue de séminaires semestriels pour les vice-présidents et les membres de la Commission.
- Renforcement de la capacité d'effectuer la médiation.
- Augmentation de l'utilisation d'autres modes de règlement des différends afin de permettre le règlement de différends sans avoir recours à des audiences officielles.
- Amélioration des pratiques et des procédures et augmentation de l'efficacité.
- Modernisation des communications.
- Diffusion de davantage de renseignements sur le site Web afin qu'ils soient facilement accessibles aux intervenants du secteur des relations du travail, aux professionnels du droit, aux éducateurs et au public.
- Respect de l'obligation redditionnelle pour le budget alloué.
- Exploration des possibilités pour créer des économies et réduire les coûts.

SUMMARIES OF SIGNIFICANT BOARD DECISIONS

Under The Labour Relations Act

NORTH-WEST REGIONAL LIBRARY -and- Canadian Union of Public Employees, Local 851

Case 70/20/LRA

April 24, 2020

CHANGE OF CONDITIONS – STATUTORY FREEZE – SECTION 10(1) ALLOWS REASONABLE CHANGES AMID PANDEMIC – On March 3, 2020 Respondent filed application for certification and a representation vote was conducted March 12, 2020 and a separate hearing was to be held to hear evidence on the issue of a claimed managerial exclusion of two classifications. On April 7, 2020, the Applicant filed application seeking a Change of Conditions pursuant to Section 10(1) of The Labour Relations Act (the “Act”) requesting Board’s consent to lay off employees in light of COVID-19 pandemic – March 17, 2020, both library branches were closed as a result of the pandemic and on April 1, 2020, non-essential businesses were ordered to close – employees were not required to attend work but continued to be paid - Union opposed the Application on four grounds namely 1) there is no shortage of work as employees could be “engaged in alternative service delivery” 2) composition of the bargaining unit for purposes of the vote not yet resolved 3) a lay-off would prevent the Union from meeting with new members 4) a lay-off including the Head Librarian may prejudice evidence related to composition of bargaining unit - Board concluded that “Section 10(1) is sufficiently malleable to enable an employer to respond to and “react to changing business situations in its customary fashion in the management of its enterprise”” and found “Applicant has demonstrated that it is responding to the pandemic in a reasonable manner, and in a way that would not be construed as penalizing employees for applying for certification” – no labour relations purpose served by continuing to pay employees who are not performing any work – Board consents to Application.

MISERICORDIA HEALTH CENTRE -and- Manitoba Nurses Union -and- D.G.

Case No. 247/19/LRA

April 24, 2020

DUTY OF FAIR REPRESENTATION – PRIMA FACIE CASE - Third Application by Applicant against Union regarding its representation of her with respect to certain workplace issues and grievances - Applicant claims Union failed to take reasonable care in representing her by accepting a settlement it negotiated on her behalf despite HEB Manitoba subsequently indicating intention to clawback a substantial portion of the settlement amount – Reasonable care standard contained in clause (a) of section 20 of *The Labour Relations Act* – Clause only applies in case of dismissal. Applicant has not been dismissed therefore clause (a) of section 20 does not apply – Application does not contain any facts which, even if true, would constitute arbitrary, discriminatory or bad faith conduct by the Respondent – Application fails to establish a *prima facie* case, even if more onerous standard of reasonable care was applicable – Oral hearing not required - Application dismissed.

SETTLEMENT AGREEMENT - Respondent Union accepted Settlement Agreement on Applicant’s behalf despite HEB Manitoba subsequently indicating intention to clawback a substantial portion of settlement amount – Applicant was represented by counsel during the negotiation of the Agreement - Respondent made significant attempts to convince HEB Manitoba to reconsider its position with respect to clawback - Applicant delayed, limited and withdrew waivers required for Union to discuss matter with HEB Manitoba – Respondent sought legal opinion as to whether it should accept Agreement despite intended clawbacks – Applicant refused to sign Agreement – Respondent sought second legal opinion – Respondent advised Applicant of intent to sign, anticipation that Employer would also sign, and that Agreement would remain in limbo if Applicant did not sign – Applicant refused to sign - Application fails to establish a *prima facie* case - Application dismissed.

WINPLUS INTERNATIONAL IMMIGRATION AND EDUCATION SERVICE CENTRE INC. and B.T. -and- L.R.

Case No. 3/19/LRA

July 2, 2020

UNFAIR LABOUR PRACTICE –Applicant claimed that her employment was suspended and that she was subsequently terminated as a result of filing complaints with the Employment Standards Division. Applicant claimed that the decisions to suspend and terminate her were acts of reprisal and discrimination by the Respondents, contrary to the provisions of the sections 133(1)(b) and 133(1)(c) of the *Code* and sections 7(d), 7(h), and 17 (b) of *The Labour Relations Act*. Respondents submitted that its actions were motivated exclusively by legitimate concerns regarding the Applicant’s conduct. Board determined that the decisions to suspend and terminate the Applicant were motivated, at least in part, by her having filed complaints and exercising her rights under the *Code* and that the Respondents thereby violated the *Code* and the *Act*. Board ordered compensation for lost wages and for negative impact on the Applicant’s health. Board determined that the Applicant took reasonable steps to mitigate her damages – Application allowed.

ST. BONIFACE GENERAL HOSPITAL -and- United Food and Commercial Workers Union, Local No. 832 -and- R.C.A.

Case No. 29/20/LRA

July 17, 2019

VEXATIOUS CONDUCT – TEST - Applicant filed a second application following a request for review and reconsideration of her first application with the Board relating to a alleged violation of section 20 of *The Labour Relations Act* - Board again found the Application without merit - no *prima facie* case because the Respondent was not representing the rights of the Applicant under any collective agreement during the period referred to in her application – Respondent requests the Board order Applicant to pay costs and refrain from filing further applications against the Respondent in relation to her previous employer – Board lacks jurisdiction to award costs, but has statutory authority to conclude that a person is engaging in vexatious conduct if they: a) commence a proceeding to determine an issue which has already been determined by the Board; b) commence a proceeding that cannot possibly succeed, or if no reasonable person can reasonably expect to obtain relief as a result; c) commence a proceeding for an improper purpose, including the harassment and oppression of other parties or for purposes other than the assertion of legitimate rights; d) repeat and supplement facts and arguments raised in earlier proceedings; or e) engage in conduct before the Board which is unreasonable – Board found application to be frivolous and vexatious and an attempt to harass the Respondent and the Employer – Pursuant to subsection 140(8) of the *Act*, “where, in the opinion of the board, a request, application or complaint is without merit or beyond the jurisdiction of the board, it may dismiss the request, application or complaint at any time” – Board may dismiss any subsequent application deemed vexatious without requiring a response from a respondent – Application dismissed.

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 832 – and – R.C.A.

Case No. 30/20/LRA

July 17, 2020

VEXATIOUS CONDUCT – TEST - VEXATIOUS APPLICATION DISMISSAL –Applicant filed an with the Board seeking remedy for an alleged unfair labour practice contrary to section 8 of *The Labour Relations Act* - Board found the Application without merit - no *prima facie* case that the Respondent acted in a manner prohibited by that section - Board held the allegations were mere conjecture and unsupported by factual foundation - Respondent requests the Board order Applicant to pay costs and refrain from filing further applications against the Respondent in relation to her previous employer – Board lacks jurisdiction to award costs against unsuccessful applicant – Board has statutory authority to conclude that a person is engaging in vexatious conduct if they: a) commence a proceeding to determine an issue which has already been determined by the Board; b) commence a proceeding that cannot possibly succeed, or if no reasonable person can reasonably expect to obtain relief as a result; c) commence a proceeding for an improper purpose, including the harassment and oppression of other parties or for purposes other than the assertion o legitimate rights; d) repeat and supplement facts and arguments raised in earlier proceedings; or c) engage in conduct before the Board which is unreasonable – Board found application to be frivolous and

vexatious and an attempt to harass the Respondent and the Employer – Pursuant to subsection 140(8) of the Act, “where, in the opinion of the board, a request, application or complaint is without merit or beyond the jurisdiction of the board, it may dismiss the request, application or complaint at any time” – Board may dismiss any subsequent application deemed vexatious without requiring a response from a respondent Application dismissed.

ST. JAMES ASSINIBOIA SCHOOL DIVISION -and- Canadian Union of Public Employees, Local 744

Case No. 73/20/LRA

August 7, 2020

BOARD DETERMINATION - COLLECTIVE BARGAINING - LACHES - ABANDONMENT - Applicant filed for Board declaration that employees, whom for many years Union failed to assert representation rights, be included in bargaining unit and Employer to commence remitting union dues - Respondent submits Application be dismissed on preliminary basis, pursuant to legal doctrines of laches and abandonment - Applicant failed to seek inclusion of classifications in bargaining unit for over fifty years - Applicant submits failure to include may have been inadvertent error or oversight, needs to be corrected - Board accepts position of Respondent, that Applicant has never asserted its representational rights - Union may be found to have abandoned right to represent employees in a bargaining unit because of historical inaction - Board agrees employees entitled to rights set forth in Section 5 of *The Labour Relations Act*, however in context of previous inaction, Applicant should file for Certification or attempt to negotiate inclusion of employees in bargaining unit during collective bargaining – Application dismissed.

BOEING CANADA OPERATIONS LTD. WINNIPEG DIVISION -and- UNIFOR and its Local 2169 and F.V. -and- T.C., on behalf of a group of NC Trim & Drill Operators

Case No. 14/20/LRA

August 18, 2020

PRIMA FACIE CASE - STANDARD OF CARE – Respondent Union filed policy grievance regarding job grade and classification - Legal counsel advised Union that it is unlikely that an arbitrator would upgrade the classification – Union decided to settle with the Employer instead of proceeding to arbitration – Applicant filed on behalf of himself and other employees, alleging that the Union had failed to represent them - Board applied section 20 (b) because no employee was terminated – Onus on Applicant to demonstrate that bargaining agent acted in a manner that is arbitrary, discriminatory or in bad faith – Board confirmed that a Union can rely on legal advice to decide not to proceed to arbitration - Union investigated, turned its mind to the relevant issues and made a decision based on legal advice - The fact that the Applicant does not agree with the decision does not constitute a violation of section 20 of the *Act* - Application dismissed.

WINNIPEG SCHOOL DIVISION -and- The Winnipeg Teachers’ Association of the Manitoba Teachers’ Society

Case No. 71/19/LRA

October 29, 2020

UNFAIR LABOUR PRACTICE - COLLECTIVE BARGAINING - DUTY TO BARGAIN IN GOOD FAITH -

Applicant filed Application seeking remedies for alleged unfair labour practices contrary to sections 26, 61 and 63 of *The Labour Relations Act* – Respondent Association submitted that Board should consider deferring portion of Application seeking to interpret *The Public Schools Act* (the “PSA”) to an arbitrator pursuant to subsection 140(7) of the *Act* – Board determined that prior to initiating interest arbitration pursuant to section 100 of the *PSA*, the parties would file written submissions to address whether there is an obligation to bargain in good faith to the point of impasse – Section 100 of the *PSA* does not refer to statutory requirements of section 62 of the *Act* “to bargain collectively in good faith with one another” and “to make every reasonable effort to conclude a collective agreement” – Section 98(1) of the *PSA* further states that “if a provision of this Act conflicts or is inconsistent with *The Labour Relations Act*, the provision of this Act prevails” – Sections 100, 110 and 111 of the *PSA* embody the “historic compromise” in exchange for the prohibition on the right to strike, teachers have access to interest arbitration as the ultimate means of resolving bargaining disputes – Board determined parties are not obligated to bargain to the point of impasse before initiating interest arbitration proceedings under the *PSA* – Interim Order.

FOX INSULATION INC. AND M.H. INSULATION INC. -and- Heat & Frost Insulators & Allied Workers, Local 99

Case No. 18/20/LRA
November 12, 2020

BOARD DETERMINATION - SUCCESSORSHIP - COMMON EMPLOYER - Union filed for Board declaration that Respondents carry on associated or related activities or businesses under common control and director and are one employer for purposes of the *Act* - Respondent denies any common control or direction so as to engage subsection 59 of the *Act* – Respondent filed motion to dismiss - Virtual Hearing held for oral submissions on motion to dismiss – Respondent contend two separate legal entities which operate independently from one another and deny common control or direction - Board concludes Applicant failed to establish a *prima facie* case – Failure to disclose a valid labour relations purpose for a common employer declaration – Not entitled to relief sought – Application dismissed.

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 832 – and – WINNIPEG SCHOOL DIVISION

Case No. 171/20/LRA
November 25, 2020

BARGAINING – DUTY TO BARGAIN IN GOOD FAITH - Applicant filed application for settlement of a subsequent collective agreement pursuant to section 87.1(1) of *The Labour Relations Act* – Applicant noted it had also filed an Application alleging the Respondent had committed unfair labour practices by bargaining in bad faith – Respondent filed Reply alleging the Applicant was bargaining in bad faith – Board conducted hearing – Board satisfied that Respondent failed to establish a *prima facie* case that Applicant failed to bargain in good faith – Applicant’s Unfair Labour Practice Application to be determined separately – Applicant to end strike – Collective Agreement to be settled by arbitrator or Board - Application allowed.

SUBSEQUENT COLLECTIVE AGREEMENT - Board conducted hearing concluding that the Applicant was bargaining in good faith and the parties were unlikely to conclude a collective agreement within thirty days if they continue to bargain - Parties disputed term of a subsequent collective agreement settled by Board - When the Board must settle terms of a subsequent collective agreement more than six months following expiry of previous agreement, term of agreement commences on the date following expiry of previous agreement and continues for six months from the date of settlement – Application allowed.

CITY OF WINNIPEG -and- AMALGAMATED TRANSIT UNION, LOCAL 1505

Case No. 90/19/LRA and 136/19/LRA
January 8, 2021

UNFAIR LABOUR PRACTICE – Application seeking remedy for alleged unfair labour practices, pursuant to sections 5(3), 6(1), 17(b)(ii) and 14.1 of the *Labour Relations Act* – Board determined that Case No. 90/19/LRA and 136/19/LRA would be heard together, with the evidence applied *mutatis mutandis* – Issues that remained outstanding at the hearing were whether the Applicant’s job action constituted protected strike activity under the *Act*, and whether the Respondent committed unfair labour practices by warning employees that they could face disciplinary action for failing to comply with the responsibilities set forth in the Bus Operator’s Manual in relation to fare payment - Applicant argued that when the Respondent threatened disciplinary action and possible job consequence prior to the declared job action, it committed an unfair labour practice – Employer argued that the job action was not legitimate strike activity and that there are limits on the types of job duties that may be withdrawn under the guise of a strike – Board considered statutory definition of “strike” in the *Act* - Board satisfied that the Applicant’s job action constituted protected strike activity under the *Act* and, further, that the Respondent committed unfair labour practices when it threatened employees with discipline for engaging in the job action – Application allowed.

STELLA'S CAFÉ AND BAKERY -and- UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 832

Case No. 177/20/LRA

March 9, 2021

SUBSEQUENT COLLECTIVE AGREEMENT – PENDING BUSINESS CLOSURE – Union applied to Board to resolve a subsequent Collective Agreement– Board issued Order No. 1688 terminating legal strike and reinstating employees pursuant to subsection 87(5) of the Act - Board found no allegations of bargaining in bad faith and both parties made reasonable efforts to conclude a collective agreement with assistance of a conciliator without success - As a result of the COVID-19 pandemic, Employer closed its operations temporarily, then reduced operations to take out service, then ultimately shut down again as a result of health orders in place as of November 10, 2020 - In January 2021 Board was advised restaurant to close permanently by February 14, 2021 - At the time there were five outstanding issues in the Collective Agreement – Board found no labour relations purpose in inquiring further into disputed provisions – Board decided that, excepting the changes which the parties had agreed to, all terms and conditions as they existed in the expired Collective Agreement are incorporated in the Subsequent Collective Agreement – Application dismissed.

Under The Employment Standards Code

GEE TEE HOLDINGS INC. -and- D.V.

Case No. 58/20/ESC

October 26, 2020

WAGES – VERBAL AGREEMENT – OVERTIME – Employee appealed Employment Standards Division decision, claiming to be owed overtime and vacation wages - Employer denied that Employee was entitled to overtime, as his salary was based on a 50 hour work week – Board found evidence shows parties agreed that salary was in exchange for up to 50 hours per week of work– Hourly rate is over minimum wage – Board determined that Employees, including those paid a salary, are entitled to payment for overtime and vacation pay in accordance with the *Employment Standards Code* unless an exemption in subsection 2(4) applies and unless Employers and Employees agree on a salary that includes a specific amount of overtime - Appeal dismissed.

BURDEN OF PROOF – Employee did not satisfy burden of proof as he did not bring discrepancy between pay statement and his understanding of agreement to the attention of the Employer; did not claim overtime or vacation pay; and did not submit time sheets during his employ – Employee admitted he did not always record hours accurately and was unable to provide a reasonable explanation for same – Employee also failed to provide evidence he had permission to work more than 50 hours per week– Employee failed to establish he is owed additional overtime wages, vacation wages, holiday pay or any other amount- Appeal dismissed.

COOPERATIVE CHALET ST. NORBERT LTEE - and – T.X.

Case No. 105/20/ESC

January 8, 2021

WAGES – DAMAGES – Employee appealed Employment Standards Division dismissing claim for unpaid wages and vacation — Employee's Appeal sought vacation wages, overtime, and additional severance pay – At the hearing, Employee additionally sought general holiday pay, damages and costs – Notice period defined in Employee Handbook does not create “double compensation” entitlement in addition to statutory minimum – Board accepts Employee is owed three hours banked time – Banked hours not owed at overtime wage rate as do not exceed minimum standards – Board declined to award costs pursuant to section 125(5) of *The Employment Standards Code* as elements required were not present – Appellant does not have recourse to penalties under section 140(1) or 141 of the *Code* - Employee entitled to unused accrued vacation, banked hours at regular wage rate, and hours at overtime wage rate for hours worked on a general holiday – Appeal allowed, in part.

Under The Workplace Safety and Health Act

AURORA RECOVERY CENTRE -and- Director, Workplace Safety and Health

Case No. 109/19/WSH

December 4, 2020

PRIMA FACIE NEXUS – DISCRIMINATORY ACTION – Appellant filed an appeal of a decision of the Director Workplace Safety and Health that dismissed a discriminatory action complaint filed by the Appellant against the Employer pursuant to section 42(1) of *The Workplace Safety and Health Act* - Appellant alleged she made a verbal complaint of workplace harassment to the owner of the Employer and was subsequently terminated - Board was satisfied the Appellant raised issues relating to workplace conditions and thereby engaged rights under *WSHA* - Board held that a worker must establish a nexus or linkage between the protected activity and the discriminatory action in order to establish a *prima facie* case - Board determined that the Appellant failed to articulate a *prima facie* nexus between having raised a workplace related concern and the Employer's decision to terminate – Appeal dismissed.

DYNAMIC MACHINE CORPORATION -and- T.R. -and- Director, Workplace Safety and Health

Case No. 103/20/WSH

March 5, 2021

DISCRIMINATORY ACTION – Appeal to the Board of a decision from Workplace Safety and Health – Employee claimed that his employment was terminated after he raised issues of harassment in the workplace – Employee sought to be reinstated with full back pay, or, in the alternative, to be compensated for losses up to hearing date - Employer denied discriminating against Employee, stating termination was a result of an economic downturn due to Covid-19 pandemic and for other reasons unrelated to his raising health and safety concerns - Board found that Employee established a *prima facie* case of discrimination by “giving information about workplace conditions affecting...safety, health or welfare” and he established a *prima facie* nexus between his raising concerns in the workplace and termination of his employment as there was a temporal proximity between the two events – onus shifted to Employer to rebut the complaint - Board found Employee met onus of proof but Employer did not due to gaps in Employer's evidence - they had other reasons to terminate and found their decision to terminate Employee was at least partly influenced by Employee exercising rights under the *WSHA* – Appeal allowed.

DUTY TO MITIGATE and ONUS OF PROOF– Employer met onus of demonstrating Employee could have procured other employment in that there were positions available for which Employee could have applied for and that he could have been successful in those efforts if he had applied – Employee admitted he stopped job search in spring of 2020 - Board found Employee failed to take sufficient steps to find other comparable employment after termination and therefore did not mitigate his loss- compensation adjusted accordingly- Board ordered payment to Employee \$13,797.00, less deductions for loss of wages – Appeal allowed.

BRAKE MOBILE WASH -and- T.Z. -and- Director, Workplace Safety and Health

Case No. 133/20/WSH

March 10, 2021

WORKPLACE SAFETY AND HEALTH - DISCRIMINATORY ACTION - Appeal by Employee of Director's decision dismissing discriminatory action complaint filed against the Employer - Employee claimed that he was terminated because he raised safety concerns in April, May/June and October 2019, regarding harassment and violence in the workplace including reporting concerns about nearly being hit by vehicles operated by the Employers' client - Employer claimed that he was terminated after a confrontation with the client's Employee(s) on January 30, 2022, having been previously directed not to communicate with them - Board finds no reasonable and timely nexus between the Appellant having reported his concerns and his termination - Board further determined that even if such a nexus existed it is nevertheless satisfied that the Employer has discharged the onus to prove that the decision to take the discriminatory action was not at all influenced by the Appellant having engaged in protected activity under subsection 42(1) of the Act - Appeal dismissed.

STATISTICAL TABLES

TABLE 1
STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT*
(April 1, 2020 – March 31, 2021)

Type of Application	Cases Carried Over	Cases Filed	Total	Disposition of Cases					Number of Cases Disposed	Number of Cases Pending
				Granted	Dismissed	Withdrawn	Did Not Proceed	Declined to Take Action		
Certification	5	19	24	10	3	8	0	0	21	3
Revocation	2	3	5	3	0	0	0	0	3	2
Amended Certificate	3	6	9	9	0	0	0	0	9	0
Unfair Labour Practice	18	17	35	3	1	18	0	0	22	13
Board Ruling	3	7	10	3	1	2	0	0	6	4
Review and Reconsideration	0	7	7	0	4	1	0	0	5	2
Successor Rights	3	4	7	4	1	2	0	0	7	0
Termination of Bargaining Rights	0	2	2	1	1	0	0	0	2	0
Changes in Work Conditions (Sec.10(1)) ¹	0	1	1	1	0	0	0	0	1	0
Changes in Work Conditions (Sec. 10(3)) ²	0	2	2	2	0	0	0	0	2	0
Duty of Fair Representation (Sec. 20)	15	17	32	0	18	2	0	0	20	12
Speed Up Decision (Sec. 125(4))	0	0	0	0	0	0	0	0	0	0
Access Agreement (Sec. 22)	0	0	0	0	0	0	0	0	0	0
Ratification Vote Complaint (Sec. 69, 70)	0	0	0	0	0	0	0	0	0	0
Minister Requires Ratification Vote (Sec. 72.1)	0	0	0	0	0	0	0	0	0	0
Religious Objector (Sec. 76(3))	1	1	2	2	0	0	0	0	2	0
First Collective Agreement (Sec. 87(1))	1	5	6	2	0	3	0	0	5	1
Subsequent agreement (Sec. 87.1(1))	0	2	2	2	0	0	0	0	2	0
Appoint Arbitrator (Sec. 115(5))	0	6	6	3	0	3	0	0	6	0
Extension of Time Limit (Sec. 130(10.1))	0	0	0	0	0	0	0	0	0	0
Disclosure of Union Information (Sec. 132.1)	0	1	1	0	1	0	0	0	1	0
Request to Appoint a Conciliator	0	5	5	4	0	1	0	0	5	0
Request to Appoint a Grievance Mediator										
Employer Request for Investigation (Sec. 53.2)	0	1	1	1	0	0	0	0	1	0
Referral for Expedited Arbitration ³	8	36	44	-	-	-	-	-	35	9
Totals	59	142	201	50	30	40	0	0	155	46

1. When an Application for Certification is filed with the Board, changes in conditions of employment cannot be made without the Board's consent until the Application is disposed of.
2. Within the first 90 days following certification of a union as a bargaining agent, strikes and lockouts are prohibited, and changes in conditions of employment cannot be made without the consent of the bargaining agent. Applications under this section are for an extension of this period of up to 90 days.
3. See Table 3 for a breakdown of statistics relating to applications for referral for expedited arbitration.

TABLE 2
STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REPRESENTATION VOTES
(April 1, 2020 – March 31, 2021)

TYPE OF APPLICATION INVOLVING VOTE	Number of Votes Conducted	Number of Employees Affected by Votes	Applications GRANTED After Vote	Applications DISMISSED After Vote	Applications Withdrawn After Vote	Outcome Pending
Certification	14	210	8	1	5	0
Revocation	2	130	2	0	0	0
Displacement	1	18	0	0	1	0
Termination of Bargaining Rights	0	0	0	0	0	0

TABLE 3
STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REFERRALS FOR EXPEDITED ARBITRATION
(April 1, 2020 – March 31, 2021)

Cases Carried Over	Referrals Filed	TOTAL	Cases Where Mediator Appointed	Disposition of Cases					Cases Disposed	Cases Pending
				Settled by Mediation	Settled by Parties	Arbitration Award Issued	Declined to Take Action	Withdrawn		
8	36	44	5 ¹	6	5	4	0	20	35	9

1. - The count of mediators appointed relates to the files opened during the fiscal year. In cases where two or more applications were consolidated, the mediation is counted as one appointment.

TABLE 4
STATISTICS RELATING TO THE ADMINISTRATION OF *THE EMPLOYMENT STANDARDS CODE*
(April 1, 2020 – March 31, 2021)

Cases Carried Over	Number of Appeals Filed	TOTAL	Orders Issued by the Board	Appeals Withdrawn	Number of Appeals Disposed of	Number of Cases Pending
13	27	40	6	15	21	19

TABLE 5
STATISTICS RELATING TO THE ADMINISTRATION OF *THE WORKPLACE SAFETY AND HEALTH ACT*
(April 1, 2020 – March 31, 2021)

Cases Carried Over	Number of Appeals Filed	TOTAL	Decisions/Orders Issued by the Board	Appeals Withdrawn	Number of Cases Disposed	Number of Cases Pending
7	12	19	4	9	13	6

TABLE 6
STATISTICS RELATING TO THE ADMINISTRATION OF *THE ESSENTIAL SERVICES ACT*
(April 1, 2020 – March 31, 2021)

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed of	Number of Cases Pending
0	0	0	0	0	0	0

TABLE 7
STATISTICS RELATING TO THE ADMINISTRATION OF *THE ELECTIONS ACT*
(April 1, 2020 – March 31, 2021)

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed of	Number of Cases Pending
0	0	0	0	0	0	0

TABLE 8
STATISTICS RELATING TO THE ADMINISTRATION OF *THE PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION) ACT*
(April 1, 2020 – March 31, 2021)

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed of	Number of Cases Pending
0	0	0	0	0	0	0

TABLE 9
STATISTICS RELATING TO BOARD HEARINGS
(April 1, 2020 – March 31, 2021)

During the reporting period, 79 matters were scheduled to be heard. ¹	Scheduled Hearing Dates	Hearing Dates that Proceeded	Percentage of Proceeded to Scheduled
Number of hearing dates ²	284	52	18%

- 1 A "matter" may deal with one or more applications. For example, a matter could involve one application for unfair labour practice or a matter could involve an unfair labour practice and a related application for certification.
- 2 A hearing can be either a full or half day.

TABLE 10
FIRST AGREEMENT LEGISLATION REVIEW OF CASES FILED
(April 1, 2020 – March 31, 2021)

Union	Employer	Date of Application	Outcome of Application	Status as at March 31
<u>Pending from Previous Reporting Period</u>				
International Union of Operating Engineers, Local 2085	Crown Pipeline	January 28, 2020	Imposed	Closed
<u>New Applications from Current Reporting Period</u>				
Manitoba Government and General Employees' Union	Emergency essentials o/a Patient Transport Services of Manitoba	May 26, 2020	Withdrawn	Closed
Canadian Union of Public Employees	St. Boniface Diocesan High School	June 19, 2020	Withdrawn	Closed
United Food and Commercial Workers' Union	Group NB	September 25, 2020	Withdrawn	Closed
Amalgamated Transit Union	AB Transit	November 3, 2020	Imposed	Closed
General Teamsters	Peterbilt Manitoba	March 20, 2021	Withdrawn	Pending

TABLE 11
SUBSEQUENT AGREEMENT LEGISLATION REVIEW OF CASES FILED
(April 1, 2020 – March 31, 2021)

Union	Employer	Date of Application	Outcome of Application	Status as at March 31
<u>Pending from Previous Reporting Period</u>				
Nil				
<u>New Applications from Current Reporting Period</u>				
United Food and Commercial Workers' Union, Local No. 832	Winnipeg School Division	November 9, 2020	Imposed	Closed
United Food and Commercial Workers' Union, Local No. 832	Stellas Café and Bakery	November 24, 2020	Imposed	Closed