

**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 of April 1, 2021 to March 31, 2022.

During this reporting period, the Manitoba Labour Board successfully fulfilled its mandate and met its objectives. The challenge presented by the most significant public health crisis in our lifetimes has been unique and unprecedented. In the face of these conditions, the staff and members of the Board worked hard to not only maintain, but to enhance, the level of service which we provide to the community.

Challenges provide opportunities for organizations and individuals to learn and innovate. The pandemic required the Board to reimagine how it provided services and to continuously adapt to the evolving needs of the community. We developed new initiatives and processes and sought feedback from the community regarding the practical effects of those changes. Many of the innovations developed in response to the pandemic have proven to be so effective that they will continue to be utilized in a post-pandemic environment. In particular, the Board created processes for representation votes to be conducted electronically, expanded the use of case management conferences, and enhanced its use of video conference technology for the conduct of Board hearings. Individuals and organizations can now often participate in their matters before the Board from their homes or offices using simple technology.

I would like to thank the Board's leadership team for their outstanding work during this period. Vice-Chairperson Karine Pelletier, Ray MacIsaac (Registrar), and Anita Rondeau (Administrative Officer) worked tirelessly to ensure that the Board was able to discharge its many statutory responsibilities. They remained keenly aware that while providing uninterrupted service to the community, the health and safety of our staff and the individuals who we serve remained a critical priority. The dedication of these individuals and the staff of the Board was essential to our success.

Finally, I wish to thank the members of the Board for their thoughtful advice and continued service.

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 2021 au 31 mars 2022.

Au cours de cette période de déclaration, la Commission a respecté son mandat et a rempli ses objectifs. L'énorme défi que représente la plus importante crise de santé publique de notre époque est à la fois unique et sans précédent. Dans ces conditions, le personnel et les membres de la Commission ont travaillé sans relâche pour non seulement maintenir, mais aussi améliorer le niveau de service que nous offrons à la communauté.

Les difficultés offrent aux organismes et à leurs membres l'occasion d'apprendre et d'innover. La pandémie a obligé la Commission à repenser la manière dont elle fournissait ses services et à s'adapter constamment à l'évolution des besoins de la communauté. Nous avons mis en place de nouvelles initiatives et de nouveaux processus et avons demandé à la communauté de nous faire part de ses commentaires sur les effets pratiques de ces changements. Bon nombre des innovations mises au point en réponse à la pandémie se sont avérées si efficaces qu'elles continueront à être utilisées dans un contexte post-pandémique. En particulier, la Commission a créé des processus permettant la tenue de votes de représentation par voie électronique, a étendu le recours aux conférences de gestion des cas et a amélioré son utilisation de la technologie de la vidéoconférence pour la tenue des audiences de la Commission. Les organismes et les particuliers peuvent désormais prendre part aux audiences de la Commission depuis leur domicile ou leur bureau, à l'aide d'une technologie simple.

Je tiens à remercier l'équipe de direction de la Commission pour son travail remarquable au cours de cette période. La vice-présidente Karine Pelletier, Ray MacIsaac (registraire) et Anita Rondeau (agente administrative) ont travaillé sans répit pour que la Commission puisse s'acquitter de ses nombreuses responsabilités législatives. Ils étaient parfaitement conscients que, tout en assurant un service ininterrompu à la communauté, ils devaient veiller à la santé et à la sécurité du personnel de la Commission et des personnes que nous servons. Le dévouement de ces personnes et du personnel de la Commission a été essentiel à notre réussite.

Enfin, je souhaite remercier les membres de la Commission pour leurs conseils avisés et leur service continu.

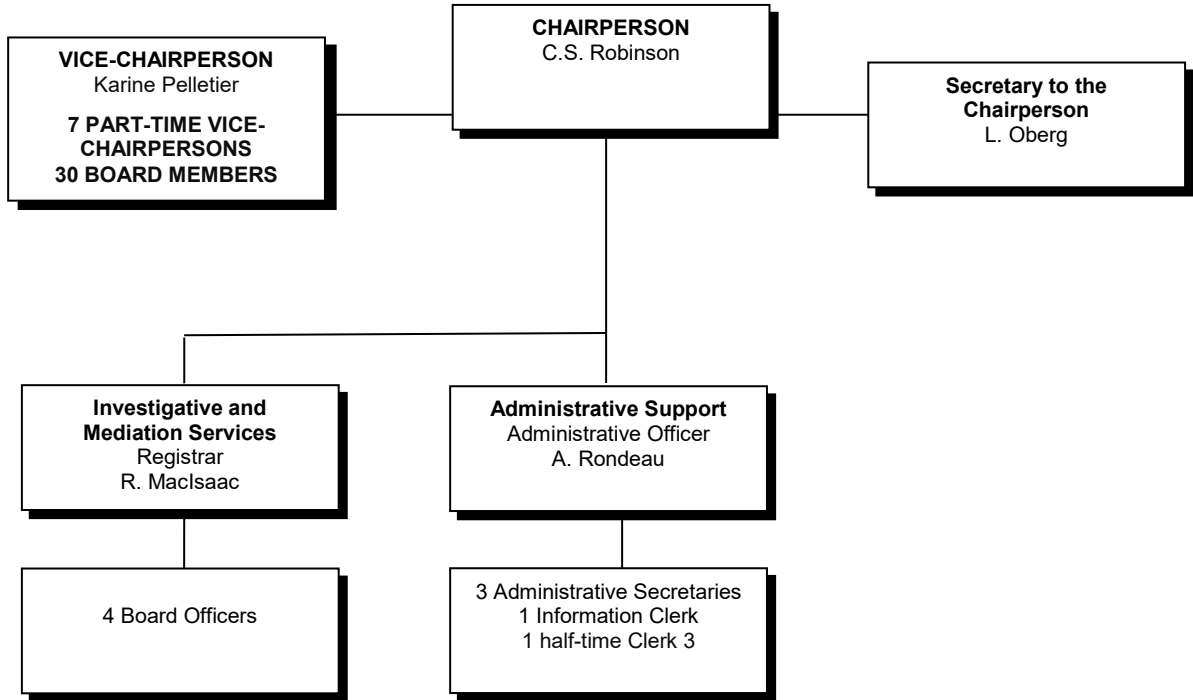
Colin S. Robinson
Président

Table of Contents

Minister’s Letter of Transmittal	1
Chairperson’s Letter of Transmittal	5
Message from the Chairperson – (French version follows)	9
Table of Contents	11
Organization Chart	12
Introduction	13
Report Structure	13
Values and Mission	13
Objectives	13
Role	13
Manitoba Labour Board Members	16
Operational Overview	23
Adjudication	23
Investigative and Mediation Services	23
Administrative Services	23
Library Collection	24
Publications Issued	24
Website Contents	24
E-mail	24
Information Bulletins	24
Sustainable Development	25
Financial Information	25
Performance Reporting	26
Summary of Performance	26
Program Performance Measurements	27
Ten Year Trends	28
Key Statistics in the Reporting Period – (French version follows)	30
Ongoing Activities and Strategic Priorities – (French version follows)	30
Summaries of Significant Board Decisions	31
Under <i>The Labour Relations Act</i>	31
Under <i>The Employment Standards Code</i>	34
Under <i>The Workplace Safety & Health Act</i>	37
Statistical Tables	33

Manitoba Labour Board

Organization Chart April 1, 2021 - March 31, 2022



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 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.

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*.

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, K.C.

Appointed on a part-time basis in 2006, Blair Graham holds 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. 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, K.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, an LL.B from l'Université d'Ottawa and a LL.M 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 historique métises. In 2019, she was appointed to the Manitoba Human Rights Adjudication Panel. Before joining the Manitoba Labour Board, Ms. Pelletier worked in private practice and as in-house legal counsel in the areas of administrative law, human rights and labour and employment. Ms. Pelletier is bilingual in French and English.

Michael D. Werier, K.C.

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**

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. He was a term lecturer at Red River College on industrial relations and human resource management, 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.

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.

Christopher (Chris) W. Lorenc

Chris Lorenc is a lawyer by background and was re-appointed in 2022 (employer representative on the Manitoba Labour Board [2008-2018]). Mr. Lorenc has been president of the Manitoba Heavy Construction Association (MHCA) since 1991, and president of the Western Canada Roadbuilders & Heavy Construction Association since 1995. In these roles he is active with the Canadian Construction Association (CCA) and serves on several of its standing committees

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 (Term Expired December 31, 2021)

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.

René 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.

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 also a Commissioner for the Manitoba Human Rights Commission.

Denis E. Sutton

Denis Sutton was first appointed in 1983 with his latest term expiring on December 31, 2018, having served on the Board for 35 consecutive years. Denis has been reappointed in 2022. He has extensive background and education in business administration and human resources management, with broad experience in labour relations, and as chief spokesperson on behalf of the employer, both in the private and public sectors. He is presently employed as vice-president Labour & Employee Relations with NFI Group.

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 has recently been appointed as the first Chairman of the Manitoba Apprenticeship's Construction Sector Committee. Mr. Wightman is also Chairman of four Manitoba Construction Industry Pension and five 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 35 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 is a past member of the Employment and Immigration Board of Referees as well as the Labour Management Review Committee. 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 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. 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 role as director of operations. As Director of Operations, she oversaw all staff and overall operations of the locals 3 offices & 2 training centres in the Province. In June of 2021, Ms. Buchan was elected by acclamation to the role of Secretary Treasurer.

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 an officer of the Manitoba Federation of Labour Executive Council.

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).

Bruce Harris (Term Expired December 31, 2021)

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.

Nancy Kerr

Nancy Kerr was appointed to the Manitoba Labour Board in 2022. Prior to retiring, Nancy served The Manitoba Teachers' Society as a staff officer in the Teacher Welfare Department from 2002 to 2018, including four years as the Winnipeg Teachers' Association Business Agent. She has extensive experience in collective bargaining, grievance handling, maternity/parental leaves, and international programs. Prior to becoming a staff officer, she taught high school chemistry and physics for 13 years, during which time she was heavily involved in her local teacher association. She has a Bachelor of Science (4 yr.) from the University of Winnipeg, and a Bachelor of Education and Post Baccalaureate Certificate in Education from the University of Manitoba.

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 2020, worked for the Manitoba Government and General Employees' Union where she held the manager, member services position. Prior to the manager position she was a senior staff representative. Ms. Mark had 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. Ms. Mark graduated from the University of Manitoba Labour Program and attended Queen's University Industrial Relations – Negotiation Skills, as well as NUPGE Leadership School.

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.

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 to the Board in 2020, Mr. Stankevicius served as the General Secretary of The Manitoba Teachers' Society (MTS) retiring in August 2020. Prior to that he worked as a Teacher Welfare Staff Officer for MTS and more recently as the Assistant General Secretary for MTS. 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.

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 2021/22, the Board was comprised of a full-time chairperson, a full-time 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 four 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 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

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*)
- Manitoba Labour Board's List of Conciliators and Grievance Mediators
- 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 2021/22 (\$000s)	FTE's	Estimate 2021/22 \$(000s)	Variance Over/(Under) \$(000s)	Expl. No.
Total Salaries	1,303	14.50	1,295	8	
Total Other Expenditures	156		190	(34)	
Total Expenditures	1,459	14.50	1,485	(26)	

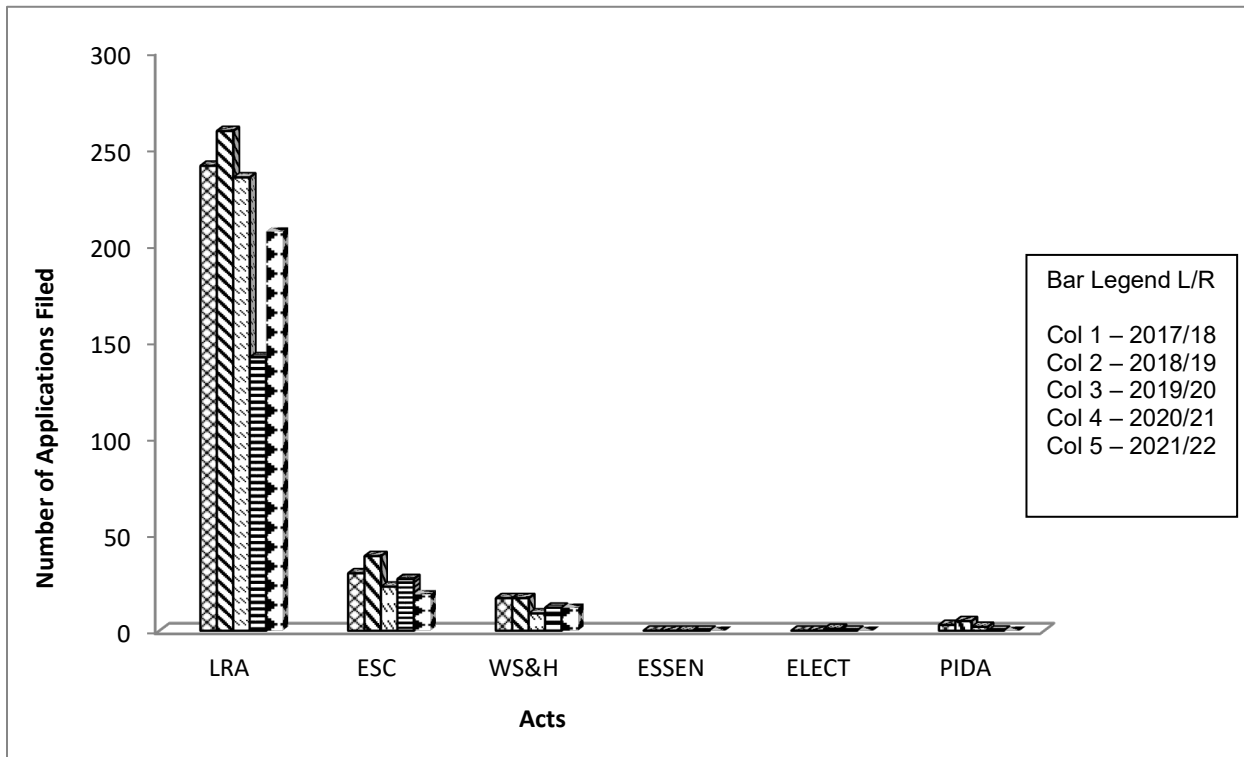
PERFORMANCE REPORTING

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 2021/22 fiscal year, issues before the Board were resolved or narrowed in over 71.6 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 - 208
ESC	Employment Standards Code - 19
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 37 of this report.

Program Performance Measurements

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

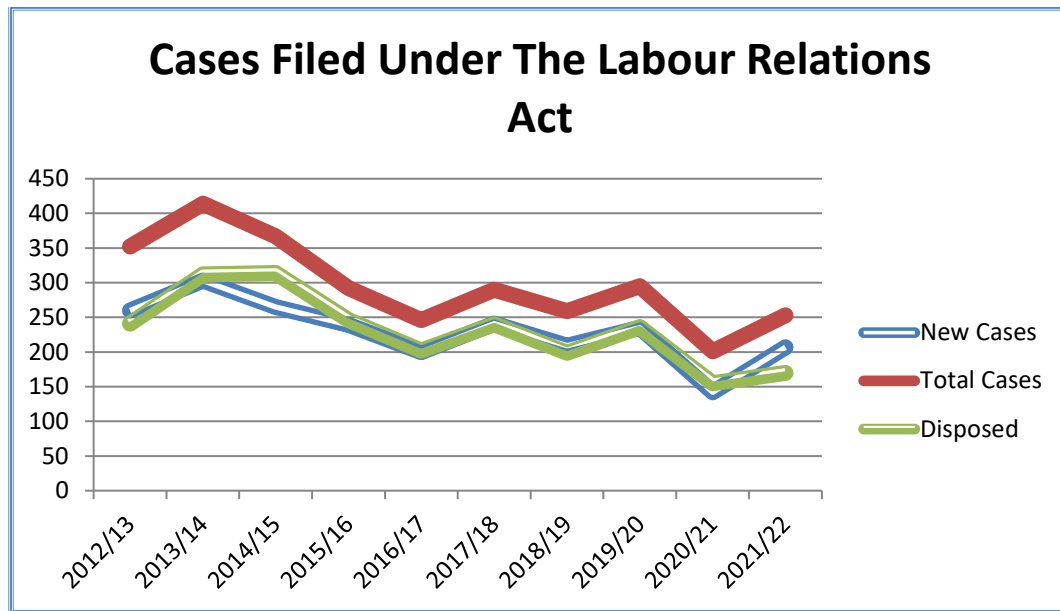
Program Performance Measurements

April 1 - March 31

Indicator	Actual 2020/21	Actual 2021/22
Percentage of Cases disposed of	72%	68%
Number of hearing dates scheduled	284	234
Percentage of hearings that proceeded	18%	32%
Number of Case Management Conferences	70	47
Number of Conciliators appointed	4	8
Number of votes conducted	17	22
Median processing time (calendar days):		
<i>The Labour Relations Act</i>	68	57
<i>The Employment Standards Code</i>	155	213
<i>*The Workplace Safety and Health Act</i>	145.5	130

*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

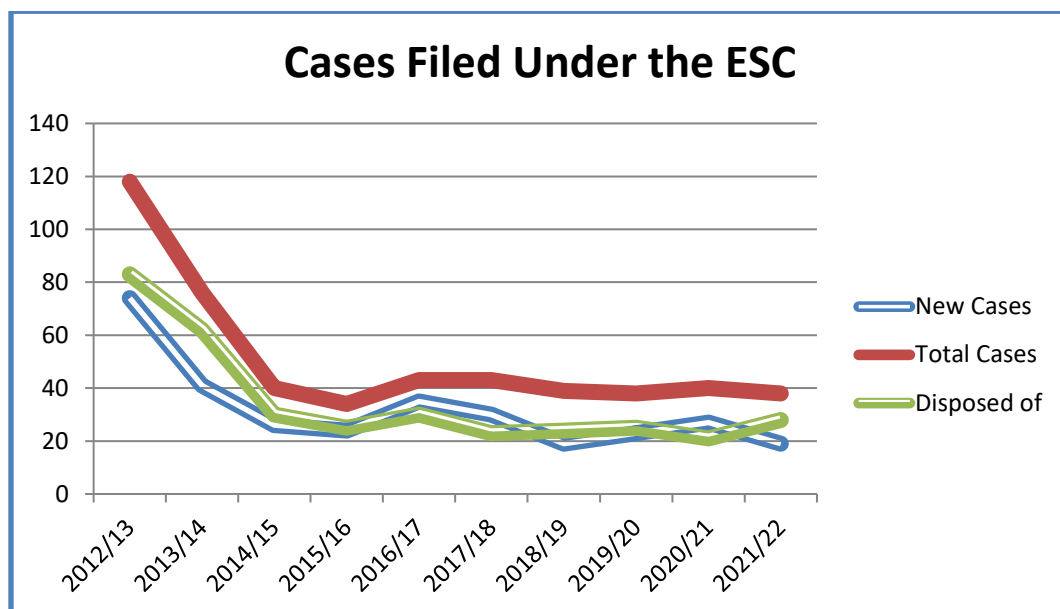


2021/2022 Totals	
New Cases:	208
Total Cases:	253
Disposed:	170

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 303 filed in 2013/14. The average number of applications filed each year is 230.1 files.

On average, the Board disposed of 231.5 cases per year which were filed under *The Labour Relations Act*.

	Min	Max	Avg
Cases Filed	142	303	230.1
Total Cases	201	414	296.9
Disposed	155	314	231.5

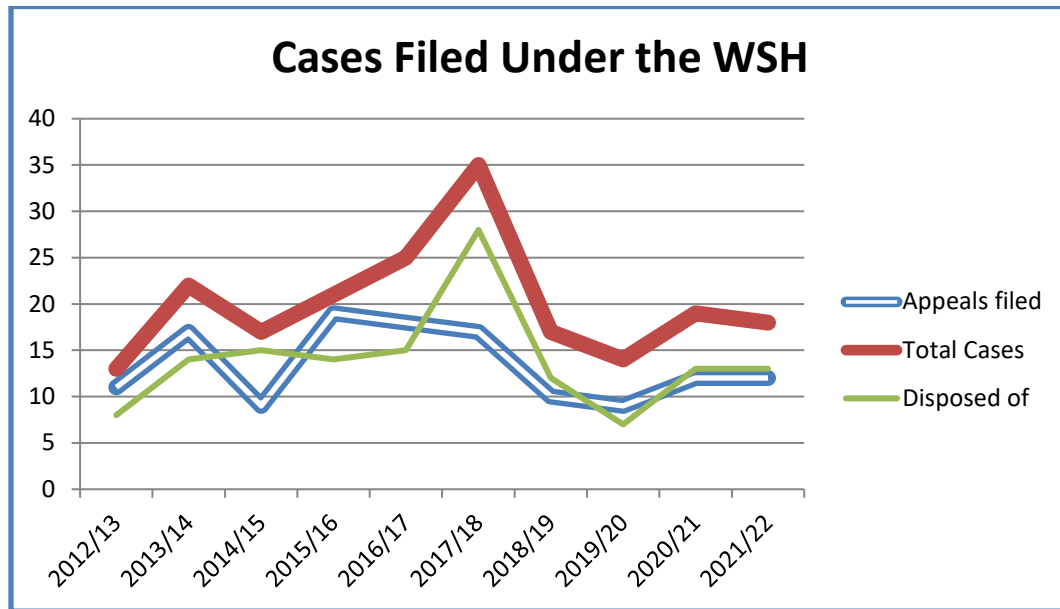


2021/2022 Totals	
New Cases:	19
Total Cases:	38
Disposed:	28

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 2021/22 to a maximum of 74 filed in 2012/13. The average number of applications filed each year is 31.8 files.

On average, the Board disposed of 35.1 cases per year which were filed under *The Employment Standards Code*.

	Min	Max	Avg
New Cases	19	74	31.8
Total Cases	34	118	50.9
Disposed of	21	83	35.1



The ten-year trend in the number of new cases filed under *The Workplace Safety and Health Act* ranges from the minimum of 9 applications filed in 2019/20 to a maximum of 26 filed in 2016/17. The average number of applications filed each year is 14.2 files.

On average, the Board disposed of 13.9 cases per year which were filed under *The Workplace Safety and Health Act*.

	Min	Max	Avg
New Cases	9	26	14.2
Total Cases	13	35	20.9
Disposed of	7	28	13.9

Key Statistics in the Reporting Period

- 310 cases before the Board (pending from previous period plus new applications);
- 211 (68 percent) of the cases before the Board were disposed of/closed;
- 99 applications scheduled for hearing;
- 74 hearing dates proceeded;
- Board conducted 22 votes; and
- Issued 58 Written Reasons for Decision or Substantive Orders.

Ongoing Activities and Strategic Priorities

- Review and evaluate the organizational structure;
- Develop succession and recruitment plan for key positions;
- Promote learning plans for staff;
- 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

- 310 cas ont été portés devant la Commission (demandes en instance depuis l'exercice précédent et nouvelles demandes).
- 68% des cas portés devant la Commission (211) ont été réglés ou classés.
- Une date d'audience a été fixée pour 99 demandes.
- La Commission a tenu 74 audiences.
- La Commission a tenu 22 votes.
- La Commission a rendu 58 motifs écrits de décision ou ordonnances importantes.

Activités en cours et priorités stratégiques

- Révision et évaluation de la structure organisationnelle.
- Développer un plan de succession et de recrutement pour les postes clés.
- Promotion de plans d'apprentissage à l'intention du personnel.
- 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*

CITY OF WINNIPEG -and- CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL NO. 500 -and- V.S.H

Case No. 254/18/LRA

September 28, 2021

DUTY OF FAIR REPRESENTATION – UNDUE DELAY – Applicant alleged that Respondent breached its duty of fair representation by failing to present information, make appropriate inquiries, act with the appropriate degree of assertiveness or inform the Employer about related medical information – Applicant claims Respondent acted in bad faith and provided incorrect legal advice and failed to discharge its duty to inquire – Respondent contends undue delay of 21 months on the part of the Applicant in filing Application – Applicant awaiting decision of the Manitoba Human Rights Commission before filing was not satisfactory explanation – Board determined delay in filing was extreme – Applicant possessed all information required to prepare and file a timely Application alleging a violation of Respondent’s duty of fair representation – Even if Application was timely, Applicant failed to prove the Respondent breached its duty of fair representation – Application dismissed – Substantive Order.

FAIRFIELD INN AND SUITES BY MARRIOTT WINNIPEG -and- WORKERS UNITED CANADA COUNCIL

Case Nos. 196/19/LRA and 214-19-LRA

January 05, 2021

CANCELLATION OF CERTIFICATION – Applicant filed an application seeking cancellation of certification – Union objected to the application and contested voluntariness of the petitions – Union contended Applicant had not met the onus required to prove petitions had been signed voluntarily – Applicant argued that previous Board decision in *Integrated Messaging* should no longer be regarded as governing law with respect to decertification petitions – Applicant further argued that the petitions had been signed voluntarily – Board concluded that *Integrated Messaging* was correctly decided and remains the law in Manitoba – Board held it is reasonable to impose upon an applicant a requirement that any signatures obtained on petitions for decertification application be shown to be a voluntary expression of the employees’ wishes – Board found that none of the evidence detracted from the voluntariness of the petitions – Board ordered counting of the ballots – Application for decertification granted.

UNFAIR LABOUR PRACTICE – Union alleged that Employer had committed a number of unfair labour practices and sought for the Application for decertification to be rejected as a result – Allegation that eviction of union organizer from its hotel constituted an unfair labour practice for interfering with the union’s representation and potentially impacting the vote – Allegation upheld by the Board – Allegation that Employer allowed a letter from the Union to one of its members regarding her immediate removal from the bargaining committee and from her position as shop steward to remain posted in the workplace for seven days was dismissed by the Board – Board also concluded the Employer did not interfere when a bargaining unit member circulated a letter to fellow employees that was critical of the union the day before the vote – Board further concluded that Union’s allegation alleging there was preferential treatment by the Employer of the Applicant and that the Employer was aware of and had facilitated the decertification activities was unsupported – Unfair Labour Practice was partially founded.

REMEDIES – Board concluded that a clear majority of employees signed petitions in respect of the cancellation of certification and that nothing in the evidence in the proceedings, either in relation to the Decertification Application or the Unfair Labour Practice Application detracted from the voluntariness of the Petitions – Board determined eviction warranted a moderate remedial response and declared that the Employer interfered with the representation of the employees in the bargaining unit in breach of subsection 6(1) – Employer to pay Union \$1,000 in respect of the unfair labour practice, cease any activity which would constitute an unfair labour practice and post a Notice of the Board’s Decision.

**CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL NO. 204 -and- Debbie Boissonneault, President
CUPE 204 -and- B.R.**

Case No. 37/20/LRA

February 9, 2022

UNFAIR LABOUR PRACTICE – SECTION 7 THE LABOUR RELATIONS ACT – PRIMA FACIE CASE – BURDEN OF PROOF - ADMISSIBILITY OF LATE EVIDENCE - TERM EMPLOYMENT – Employee filed unfair labour practice application pursuant to section 7 of the Labour Relations Act, claiming employment terminated because she filed a respectful workplace complaint and Human Rights complaint – In written submissions, Employee claimed that she was terminated for raising issues with Workplace Safety and Health – Sections 7(d), 7(f), 7(g) and 7(h) of the Labour Relations Act require Applicant to have exercised a right in a proceeding under any Act of the Legislature or Parliament – Employer argued that term not extended due to concerns about work performance – Employer denied knowledge of Human Rights Complaint and health concerns – Applicant did not make reasonable accommodation request to Employer – No evidence that Employer had any knowledge of any complaint made to Workplace Safety and Health or to Human Rights before decision made not to renew term – Held: Additional evidence may be admitted on discretionary basis – Board admitted limited additional at the end of the hearing, but refused to admit other evidence sought to be admitted to support that Employer was aware of any workplace safety and health matters – Board did not admit because no evidence did not have a bearing on the results of the case and the Respondents' witnesses did not have a chance to be questioned on said evidence – Evidence not admissible - Board concluded that Employee was a term employee – Board determined that refusal to extend term unrelated to improper considerations – Applicant has not met burden of proof that an action she took pursuant to section 7 (a) to (h) is linked to Employer's decision not to renew term – Application dismissed.

UNFAIR LABOUR PRACTICE – SECTION 7 OF THE LABOUR RELATIONS ACT – RESPECTFUL WORKPLACE COMPLAINT - Employee filed unfair labour practice application pursuant to section 7 of the Labour Relations Act, claiming employment terminated because she filed a respectful workplace complaint –Employer hired external investigator and claimed to have fully considered the respectful workplace complaint – Employer argued that decision not to extend term unrelated to respectful workplace process – Internal respectful workplace complaint is not an exercise of a right contemplated by section 7 – Application dismissed.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 2085 -and- T.D.

Case No. 163/20/LRA

February 2, 2022

UNFAIR LABOUR PRACTICE – DUTY OF FAIR REPRESENTATION – Applicant alleges Respondent blocked him from being dispatched from its hiring hall after making clear his support for the unsuccessful candidate in the most recent union election campaign – Applicant and two witnesses testified and submitted evidence – At conclusion of Applicant's evidence, Respondent opted not to call evidence – Respondent submitted that evidence was not credible and failed to establish a *prima facie* violation of the *Labour Relations Act* – Application dismissed – Substantive Order.

PUBLIC SERVICE ALLIANCE OF CANADA -and- CANADIAN UNION OF LABOUR EMPLOYEES -and- G.M.

Case No. 43/21/LRA

June 10, 2021

DUTY OF FAIR REPRESENTATION – Prima Facie – Applicant alleged that Respondent failed in its duty of fair representation by refusing to advance a grievance on their behalf relating to an internal workplace investigation – Respondent submitted Board does not have jurisdiction to address complaints under the *Canadian Human Rights Act* – Applicant was named respondent to allegation of personal harassment in the office, leading to internal investigation by Employer – Respondent encouraged Applicant to participate in investigation and advised that it offered support and representation, but Applicant declined offer of representation – During investigation, Applicant was presented with notes from supervisor, to which they were unaware – Applicant submitted that notes not kept in personnel file contrary to the collective agreement – Applicant drafted grievance and presented to Respondent – Respondent advised it was not

clear from information provided that there was a sufficiently compelling reason to file grievance prior to conclusion of investigation – Applicant did not agree, suggesting that the employer’s conduct constituted harassment in contravention of the *Canadian Human Rights Act* – Respondent sought for investigation to conclude before determining whether any action should result – Applicant also alleges racial discrimination and systemic racism – Board outlined that Applicant did not particularize claim sufficient to suggest that there was any violation of the Canadian Human Rights Act – Board determined Application did not disclose *prima facie* violation – Application dismissed – Substantive Order.

MANITOBA HYDRO -and- INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 2034

Case No. 70/21/LRA
August 4, 2021

SETTLEMENT SUBSEQUENT COLLECTIVE AGREEMENT – Applicant filed an application for settlement of subsequent collective agreement pursuant to subsection 87.1(1) – Board issued an interim order terminating the strike and advised it would proceed to settle the terms and conditions of a collective agreement between the parties – With the exception of general wage increases and a special payment agreement reached on all provisions in advance of the hearing – Board accepted all provisions agreed upon by the parties without amendment – Board imposed general wages increases and a special COVID payment – In accordance with subsection 87.3(5) and 87.3(5.1) of the Act the term of the collective agreement imposed was January 1, 2019 to February 4, 2022.

CONCORDIA HOSPITAL -and- MANITOBA ASSOCIATION OF HEALTH CARE PROFESSIONALS - and- T.S.L.

Case No. 82/21/LRA
July 23, 2021

DUTY OF FAIR REPRESENTATION - TIMELINESS – UNDUE DELAY - RES JUDICATA – VEXATIOUS LITIGANT – Applicant filed several Applications over past several years, repeating same allegations – Applicant filed further Application alleging unfair labour practices contrary to section 20 of the Act – Board directed parties to address preliminary issues of whether Application was unduly delayed and whether issues raised were *res judicata* – Board concluded principle of *res judicata* applied and also that Application was unduly delayed – Board considered basis for concluding a person is a vexatious litigant and determined that Applicant engaged in each and every example of vexatious conduct – Board may elect to dismiss any further Applications without requiring Replies filed – Application dismissed – Substantive Order.

CONCORDIA HOSPITAL –and- MANITOBA ASSOCIATION OF HEALTH CARE PROFESSIONALS – and- T.S.L.

Case No.66/22/LRA
March 10, 2022

DUTY OF FAIR REPRESENTATION – TIMELINESS – UNDUE DELAY – RES JUDICATA – VEXATIOUS LITIGANT – MATTERS WITHOUT MERIT – In earlier Case No. 82/21/LRA, the Board declared Applicant a vexatious litigant and determined that it may elect to dismiss further Applications without requiring Replies filed – Board concludes that Respondent and Employer not provided with notice and not required to file Replies – Application vexatious – Application dismissed – Substantive Order.

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL NO. 1630 -and- ROLLING RIVER SCHOOL DIVISION

Case No. 1/22/LRA
January 31, 2022

BARGAINING – COLLECTIVE AGREEMENTS - DUTY TO BARGAIN IN GOOD FAITH - Union Application requesting Board settle terms of subsequent collective agreement – Employer alleged Union failed to bargain in good faith - Employer previously filed separate Application alleging Union committed unfair labour practices - Board not satisfied there was bad faith bargaining to the extent required in a section 87.1 Application – Order not intended to provide assessment of merits of Employer’s Unfair Labour Practice

Application - Parties unlikely to conclude collective agreement within 30 days – collective agreement to be settled by arbitrator or the Board – Application allowed – Substantive Order.

Under *The Employment Standards Code*

NIKAN AWASISAK AGENCY INC. -and- S.G.

Case No. 24/20/ESC

April 15, 2021

PROTECTED LEAVE – Employee claimed to have been terminated while on a protected leave and without cause – Employer denied Employee was on a protected leave at the time of their termination – Employer contended that decision to terminate made in advance of leave and for just cause, and that Employee had simply accessed sick leave and not a protected leave for serious illness or injury – Board considered onus lies with Employee to establish they were terminated while on protected leave for serious injury or illness. Board found that there was no evidence outlined in the generic medical note provided that would suggest the Employee was seeking to access a protected leave as outlined at Section 59.10 of the *Code* - Board did not find that Employer was deficient in not inquiring further into the requested leave – Appeal dismissed.

JUST CAUSE/PROBATION – Employer alleged that the Employee was on probation after receiving a disciplinary demotion - Board found that term “probationary employee” is not contained in the *Code* and not grounds for an exception to providing notice as mandated in subsection 61(1) - Employer contended there were significant performance concerns raised throughout employment - Board found that despite multiple letters outlining issues with performance, the Employer did not provide any plan to address the performance concerns outlined or specific ways to improve - Board determined that Employer had not met onus to establish that it had just cause to terminate the employment of the Employee within the meaning of subsection 62(1)(h) of the *Code* - Employee entitled to two weeks wages in lieu of notice – Appeal allowed. the medical notes provided by the Employee were neither “evidence 37 reasonable in the circumstances”, nor did they demonstrate that the Employee was required to be off as a result of a “serious injury or illness” - Employee argued that the medical documentation was sufficient to ground a claim for serious injury or illness - Board considered that Manitoba legislation requires an employee to provide “evidence reasonable in the circumstances” to verify that the employee is expected to be incapable of working for at least two weeks due to a serious illness or injury – Board determined there is a discernible legislative intent to impose an obligation on employees to do more than to simply provide a generic medical note that outlines a period of leave required – Board not satisfied that Employee was on a protected leave for serious injury or illness and accordingly entitled to protections as outlined at Section 59.10 of the *Code* – Appeal dismissed for failing to establish a prima facie case.

ACTION FLOORING DESIGN CENTER LTD. -and- F.D.

Case No. 37/21/ESC

February 25, 2022

INDEPENDENT CONTRACTOR – WAGES – OVERTIME WAGES – VACATION WAGES – Claim for wages, overtime wages and vacation wages dismissed by Employment Standards – Appellant appealed dismissal order, alleging they were entitled to wages as an employee of the company – Employer argued Appellant was never employed by the Respondent; but rather was hired by and working for an installer who sold and had access to Respondent’s suppliers on their premises – After installer ended association with Respondent, the Appellant and Respondent entered into agreement whereby compensation to be paid as commissions on all completed and fully paid job/sales – Appellant denied signing contract, submitting he was an employee of the Respondent; and working exclusively for and taking direction from them – Board considered the terms of the contract and determined that it was more supportive of an employment relationship, as described that Appellant was to devote full-time efforts to representing the business, dealing exclusively with Respondent’s customers and performing duties described in agreement – Board did not agree with Appellant calculations, but ordered unpaid wages - Appeal allowed – Substantive Order.

EMERSON GOLF COURSE (2016) INC. -and- R.T.

Case No. 51/21/ESC

November 2, 2021

PAYMENT OF OVERTIME WAGES EXEMPTION – EMPLOYEES WHO PERFORM MANAGEMENT FUNCTIONS PRIMARILY – ONUS OF PROOF – OVERTIME REPORTED BIWEEKLY – EMPLOYER SHORT OF STAFF TO COVER OPERATION – Employee appealed Employment Standards Order that determined she was not entitled to overtime wages on the basis she performed management functions primarily – Onus is on party seeking to rely on management exemption – Employer did not provide evidence to support finding that R.T. had direct or indirect responsibility for the employment of employees or had independent authority over key decisions at the golf course – Employment contract sets out 50 hour work week – Paid Employee same amount whether she worked 40 hours weekly or 50 hours weekly in the busy summer period – Board found contract is for 40 hours weekly at straight time and 10 hours over and above 40 hours at overtime rate – Employee provided biweekly timesheets reporting overtime Employee regularly asked for help – Employer told her to limit hours but did not take steps to provide adequate coverage – Held: Employee did not perform management functions primarily and is owed overtime wages and statutory holiday pay – Awarded \$11,495.17, less deductions.

EMERSON GOLF COURSE (2016) INC. –and- C.F.

Case No. 52/21/ESC

November 2, 2021

PAYMENT OF OVERTIME WAGES EXEMPTION – EMPLOYEES WHO PERFORM MANAGEMENT FUNCTIONS PRIMARILY – ONUS OF PROOF – OVERTIME NOT AUTHORIZED – Employee appealed Employment Standards Order that determined he was not entitled to overtime wages on the basis he performed management functions primarily – Onus is on party seeking to rely on management exemption – Employer did not provide evidence to support finding that C.F. had direct or indirect responsibility for the employment of employees or had independent authority over key decisions at the golf course – Employment contract outlines salary for 50 hour work week – Employee did not sign contract said he verbally agreed to 40 hour work week and was a grounds keeper not management – Under Employment Standards Regulation, landscapers do not draw overtime until they reach 50 weekly hours – Employee did not raise issue of overtime with Employer until after employment ended – Employer said overtime was not necessary – Held: Employee did not perform management functions primarily and is not owed overtime wages but is entitled to statutory holiday pay – Awarded \$628.60, less deductions.

2764815 Manitoba Ltd. t/a SOUTHGLEN MOTORS -and- T.M.

Case No. 67/21/ESC

October 13, 2021

EMPLOYMENT STANDARDS CODE – EMPLOYEE APPEAL – WAGES IN LIEU OF NOTICE – LAY OFF WHEN NO SHORTAGE OF WORK – Employee appealed dismissal of his claim for 6 weeks’ wages in lieu of notice arguing that he was not laid off but that his employment was terminated on July 27, 2020 without notice, following a heated discussion with Employer – Employer stated on Record of Employment that the Employee was laid off due to a “shortage of work” but admitted he hired a less expensive painter to fill in while Employee on vacation as they had a lot of work for painters which were hard to find and he was “looking for something more reasonable” – The Employer presented a lay off notice which was dated July 23, 2020, 4 days before the date the Employee was to return to work from vacation – The Employee said he never received this letter at any point and he would have worked out his notice if he had been given the option – The Employer opted not to call a witness who could have corroborated the date the lay off letter was given – Evidence supports finding that Employer did not lay off the Employee but terminated his employment – Held: Employee entitled to 6 weeks’ pay in lieu of notice – Appeal allowed.

204 HOLDINGS LTD. t/a HOUSTON PROPERTIES - and - S.R.
2525845 MANITOBA LTD. t/a HOUSTON PROPERTIES - and - S.R.
SHEREFF HOLDINGS t/a HOUSTON PROPERTIES - and - S.R.

Case No. 91/21/ESC
December 17, 2021

WAGES – PROTECTED LEAVE – PUBLIC HEALTH EMERGENCY LEAVE – COVID-19 – Employment Standards Branch dismissed Employee’s claim alleging violation of Public Health Emergency Leave pursuant to section 59.12 of *The Employment Standards Code* – Employee appeal alleged employment terminated while on protected leave – Failed to establish *prima facie* case – No evidence Employee requested leave, protected or otherwise – Board does not accept Employee resigned employment – Appeal dismissed – Substantive Order.

TOP DOG COURIER INC. -and- D.M. -and- DIRECTOR, EMPLOYMENT STANDARDS BRANCH

Case No. 104/21/ESC
April 20, 2022

Interim Order - December 13, 2021

EMPLOYMENT STANDARDS CODE – PRACTICE AND PROCEDURE – JURISDICTION – PRELIMINARY ISSUE – Employer argued business falls within Federal jurisdiction – Attorney General of Manitoba as Intervenor and the Director of Employment Standards Branch presented case law on the constitutional presumption that labour relations generally fall within the exclusive jurisdiction of provinces, with federal jurisdiction being the exception – Evidence is that the company’s shipping operations are rooted and performed primarily in the Province of Manitoba with a little over 10% constituting extra-provincial transportation services, primarily to northern Ontario – Employer obtains licences and permits temporarily, on an as-needed basis – Held that business is a general courier business – Absent evidence to show that extra-provincial operations are sufficiently regular and continuous to support finding that nature of the business is extra-provincial not intra-provincial transport, presumption in favour of provincial jurisdiction is not ousted – Employer’s motion is denied.

Substantive Dismissal Order - April 20, 2022

EMPLOYMENT STANDARDS CODE – EMPLOYER APPEAL – NOTICE – PROBATIONARY PERIOD – Employer argued Employee was on probation when fired and not entitled to notice – Employer claims Employee worked fewer than 30 “working days” – Counsel for the Director of the Employment Standards Branch said the “30 day” probationary period set out in the Employment Standards Code should be interpreted liberally as “calendar days” as the Code is remedial legislation that seeks to secure minimum labour standards, recognizing an inherent imbalance in negotiating power between and employer and an Employee – Board determined that probationary period set out in the Code is 30 calendar days – Employee was not on probation when fired.

EMPLOYMENT STANDARDS EMPLOYER APPEAL – WAGES IN LIEU OF NOTICE – STANDARD OF PROOF OF JUST CAUSE – Employer argued Employee fired for just cause so notice not required – Employer bears onus to prove there was “serious misconduct or substantial incompetence” as to warrant termination from employment for just cause – Held: Employer did not establish there was serious misconduct or substantial incompetence on part of the Employee such that it had just cause to terminate employment – Appeal dismissed.

Under The Workplace Safety and Health Act

INKSTER PARK MILLWORK -and- Director, Workplace Safety and Health

Case No. 106/20/WSH

October 29, 2021

IMPROVEMENT ORDER APPEAL – INTERIM STAY – Appellant appealed a decision of the Director confirming the issuance of improvement orders with respect to safeguards on two distinct machines operated in their workplace – Appellant requested a stay of the Improvement Orders in the interim – Interim stay was granted – At hearing Appellant submitted there may be more effective ways to protect workers than mechanical safeguards in certain situation – Director maintained the Improvement Orders were properly issued – Director submitted that a proper risk assessment in accordance with CSA standard was required – Director further submitted it was open to the Board varying the Improvement Orders to require that risk assessments be conducted – Board allowed the appeal in part and exercised its jurisdiction under subsection 39(6) of the Act to vary the Improvement Orders.

STATISTICAL TABLES

TABLE 1
STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT*
(April 1, 2021 – March 31, 2022)

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	3	21	24	15	1	2	0	0	18	6
Revocation	2	4	6	5	1	0	0	0	6	0
Amended Certificate	1	17	18	13	0	1	0	1	15	3
Unfair Labour Practice	13	11	24	1	3	10	0	1	15	9
Board Ruling	3	0	3	2	0	1	0	0	3	0
Review and Reconsideration	2	11	13	1	8	1	0	0	10	3
Termination of Bargaining Rights	0	1	1	1	0	0	0	0	1	0
Changes in Work Conditions (Sec. 10(3)) ¹	0	4	4	3	0	0	0	0	3	1
Duty of Fair Representation (Sec. 20)	12	73	85	0	22	7	0	0	29	56
Religious Objector (Sec. 76(3))	0	4	4	3	0	0	1	0	4	0
First Collective Agreement (Sec. 87(1))	1	1	2	0	0	2	0	0	2	0
Subsequent agreement (Sec. 87.1(1))	0	3	3	2	0	0	0	0	2	1
Appoint Arbitrator (Sec. 115(5))	0	9	9	1	0	8	0	0	9	0
Request to Appoint a Conciliator	0	10	10	8	0	2	0	0	10	0
Referral for Expedited Arbitration ²	9	39	48	-	-	-	-	-	43	5
Totals	46	208	254	55	35	34	1	2	170	84

1. 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.
2. 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, 2021 – March 31, 2022)

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	18	1,402	17	1	0	0
Revocation	2	388	1	1	0	0
Displacement	0	0	0	0	0	0
Termination of Bargaining Rights	2	12	1	0	0	0

**TABLE 3
STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REFERRALS FOR EXPEDITED ARBITRATION
(April 1, 2021 – March 31, 2022)**

Cases Carried Over	Referrals Filed	TOTAL	Cases Where Mediator Appointed	Disposition of Cases						
				Settled by Mediation	Settled by Parties	Arbitration Award Issued	Declined to Take Action	Withdrawn	Cases Disposed	Cases Pending
9	39	48	1 ¹	1	19	2	0	21	43	5

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, 2021 – March 31, 2022)**

Cases Carried Over	Number of Appeals Filed	TOTAL	Orders Issued by the Board	Appeals Withdrawn	Number of Appeals Disposed of	Number of Cases Pending
19	19	38	14	14	28	10

**TABLE 5
STATISTICS RELATING TO THE ADMINISTRATION OF *THE WORKPLACE SAFETY AND HEALTH ACT*
(April 1, 2021 – March 31, 2022)**

Cases Carried Over	Number of Appeals Filed	TOTAL	Decisions/Orders Issued by the Board	Appeals Withdrawn	Number of Cases Disposed	Number of Cases Pending
6	12	18	6	7	13	5

**TABLE 6
STATISTICS RELATING TO BOARD HEARINGS
(April 1, 2021 – March 31, 2022)**

During the reporting period, 99 matters were scheduled to be heard. ¹	Scheduled Hearing Dates	Hearing Dates that Proceeded	Percentage of Proceeded to Scheduled
Number of hearing dates ²	234	74	32%
Number of Case Management Conferences	48	47	98%

- 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 7
FIRST AGREEMENT LEGISLATION REVIEW OF CASES FILED
(April 1, 2021 – March 31, 2022)

Union	Employer	Date of Application	Outcome of Application	Status as at March 31
<u>Pending from Previous Reporting Period</u>				
General Teamsters	Peterbuilt Manitoba	March 20, 2021	Withdrawn	Closed
<u>New Applications from Current Reporting Period</u>				
Manitoba Government and General Employees' Union	Municipality of Westlake Gladstone	June 23, 2021	Withdrawn	Closed

TABLE 8
Subsequent AGREEMENT LEGISLATION REVIEW OF CASES FILED
(April 1, 2021 – March 31, 2022)

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>				
International Brotherhood of Electrical Workers	Manitoba Hydro	May 10, 2021	Imposed	Closed
Canadian Union of Public Employees	Manitoba Interfaith Immigration Council	June 30, 2021	Imposed	Closed
Canadian Union of Public Employees	Rolling River SD	January 4, 2022	Imposed	Pending

