

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

I am pleased to submit the 2016/17 Annual Report outlining the activities of the Manitoba Labour Board for the period April 1, 2016 to March 31, 2017.

During this reporting period, the Manitoba Labour Board successfully fulfilled its mandate and met its objectives. The Board continued to develop and implement initiatives designed to modernize Board practice and procedures. As a result of these initiatives, the Board has enhanced its capacity to provide efficient and expeditious resolution of disputes, made it easier for the public to access the Board's services, and reduced controllable expenditures.

The Board has continued to use mediation and case management to assist parties to narrow or resolve issues without the necessity of formal hearings. Through the efforts of Board Staff working with parties, a significant number of cases were resolved without a hearing. Indeed, approximately 75% of cases referred to mediation were resolved, in whole or in part, by Board staff. Mediated resolutions typically require the expenditure of less time and resources by the parties and the tribunal. As a result, mediation greatly contributes to the Board achieving its mandate of providing fair and efficient administration and adjudication of the extensive statutory responsibilities assigned to it.

The Board also continues to adjudicate a significant number of applications and appeals. A well-developed body of Board jurisprudence, available to the public on our website, interprets and explains the various legislative provisions that the Board is called upon to adjudicate. New regulatory timelines for scheduling hearings and issuing decisions, implemented in May of 2015, have resulted in a more expeditious process that provides for quicker resolution of matters for parties.

Through the effective use of mediation, case management, and adjudication, the Board achieved significant reductions in median processing times during the reporting period.

The Board has also continued to enhance its use of electronic communications in order to more effectively communicate with, and provide services to, the labour relations community. Since being launched in January of 2016, following extensive consultations with the community, the Board's new electronic communication practices were effectively enhanced and improved during this reporting period.

I would like to express my gratitude to the Vice-Chairpersons, Members and staff for their service. I am very grateful for their continuing guidance and expertise, and their dedication to the Board and its activities.

Colin S. Robinson  
Chairperson

**MESSAGE DU PRÉSIDENT  
DE LA  
COMMISSION DU TRAVAIL DU MANITOBA**

J'ai le plaisir de soumettre le rapport annuel 2016-2017 faisant état des activités de la Commission du travail du Manitoba du 1<sup>er</sup> avril 2016 au 31 mars 2017.

Au cours de cette période de déclaration, la Commission a respecté son mandat et a rempli ses objectifs. La Commission a continué d'élaborer et de mettre en œuvre des initiatives conçues pour moderniser ses pratiques et ses procédures. À la suite de ces initiatives, la Commission a amélioré sa capacité à régler des différends de manière efficace et rapide, a permis au public d'avoir un accès plus facile à ses services, et a réduit les dépenses facultatives.

La Commission a continué à utiliser la médiation et la gestion des cas pour aider les parties à cerner ou à résoudre les différends sans nécessairement passer par des audiences officielles. Grâce au travail du personnel de la Commission avec les parties, un nombre important de causes ont été résolues sans audience. En effet, environ 75 % des causes ayant fait l'objet de médiation ont été résolues, en totalité ou en partie, par le personnel de la Commission. Les causes résolues par la médiation exigent moins de temps et de ressources par les parties et le tribunal. Par conséquent, la médiation contribue grandement à l'atteinte du mandat de la Commission : administrer et régler les affaires qui lui sont confiées en vertu des lois.

La Commission continue également à arbitrer un nombre important de demandes et d'appels. Un corpus bien développé de jurisprudence de la Commission, accessible au public sur notre site Web, interprète et explique les diverses dispositions législatives pour lesquelles la Commission doit fournir des services d'arbitrage. De nouveaux échéanciers réglementaires pour fixer les dates d'audience et rendre les décisions, mis en place en mai 2015, ont accéléré le processus de résolution des affaires pour les parties.

Par l'usage efficace de la médiation, de la gestion de cas et de l'arbitrage, la Commission a pu réduire de manière importante les temps médians de processus de médiation au cours de la période de déclaration.

La Commission a aussi continué à améliorer son utilisation des communications électroniques pour communiquer de manière plus efficace avec les intervenants du secteur des relations du travail et leur fournir des services. Depuis qu'elles ont été lancées en janvier 2016 à la suite de vastes consultations auprès de la collectivité, les nouvelles pratiques de communication électronique ont été améliorées efficacement au cours de la présente période de déclaration.

Je tiens à remercier de leurs services les vice-présidents, les membres et le personnel. Je leur suis très reconnaissant de leur expertise et de leurs conseils ainsi que de leur dévouement envers la Commission et ses activités.

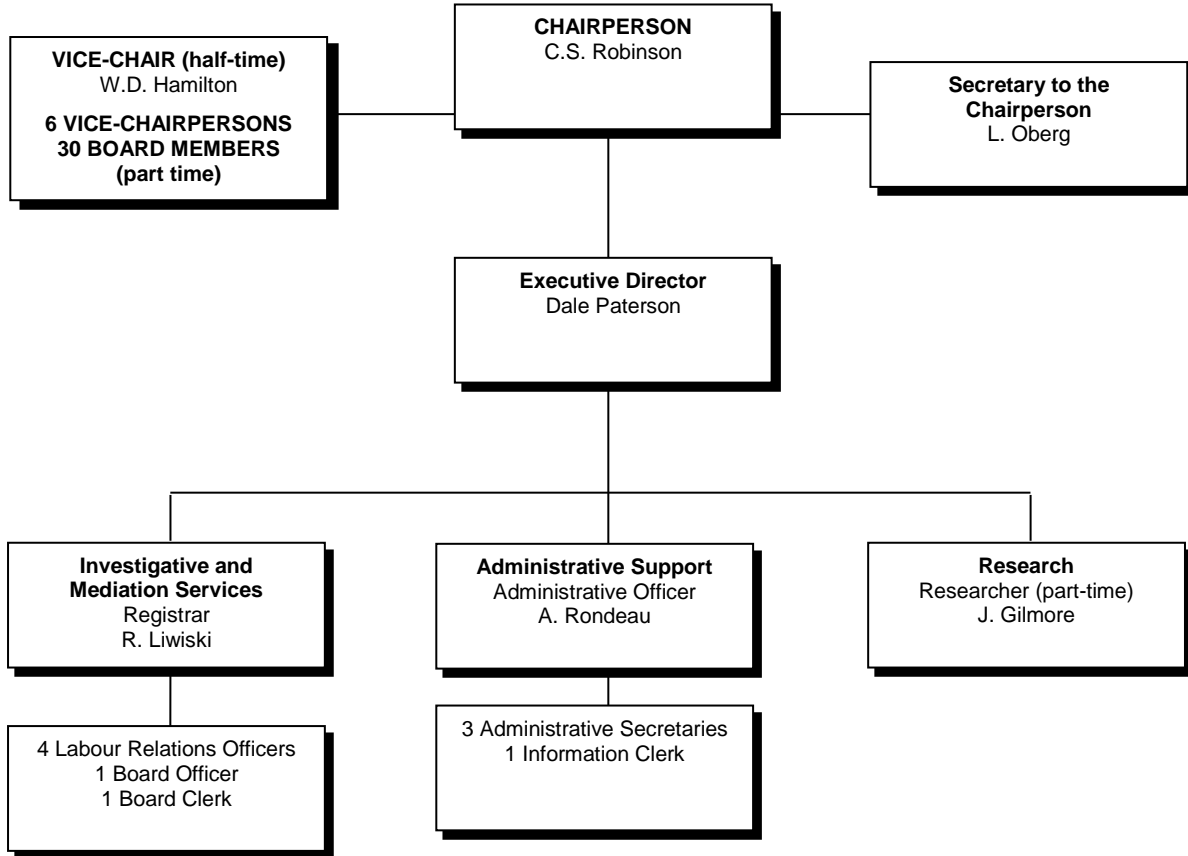
Le président,  
Colin S. Robinson

# Table of Contents

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<b>Minister's Letter of Transmittal</b>	1
<b>Chairperson's Letter of Transmittal</b>	5
<b>Message from the Chairperson – (French version follows)</b>	9
<b>Table of Contents</b>	11
<b>Organization Chart</b>	12
<b>Introduction</b>	
Report Structure	13
Vision and Mission	13
Objectives	13
Role	13
<b>Manitoba Labour Board Members</b>	15
<b>Operational Overview</b>	
Adjudication	23
Investigative and Mediation Services	23
Administrative Services	23
Research Services	23
Library Collection	24
Publications Issued	24
Website Contents	24
E-mail	24
Information Bulletins	25
<b>Sustainable Development</b>	25
<b>Financial Information</b>	25
<b>Performance Reporting</b>	
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
<b>Summaries of Significant Board Decisions</b>	
Under <i>The Labour Relations Act</i>	31
Under <i>The Employment Standards Code</i>	34
Under <i>The Workplace Safety and Health Act</i>	36
Under <i>The Public Interest Disclosure Act</i>	36
<b>Summaries of Significant Court Decisions</b>	37
<b>Statistical Tables</b>	39

**Manitoba Labour Board  
Organization Chart  
as of March 31, 2017**



# 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."

### Vision and Mission

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.

### Objectives

- 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; and
- to support constructive and harmonious labour relations between employers, employees and unions.

### 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 (L10)* and *The Employment Standards Code (E110)*. 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 (A110)*  
*The Construction Industry Wages Act (C190)*  
*The Elections Act (E30)*  
*The Essential Services Act (Government and Child and Family Services) (E145)*  
*The Essential Services Act (Health Care) (E146)*  
*The Pay Equity Act (P13)*  
*The Public Interest Disclosure (Whistleblower Protection) Act (P217)*  
*The Public Schools Act (P250)*  
*The Remembrance Day Act (R80)*  
*The Victims' Bill of Rights (V55)*  
*The Worker Recruitment and Protection Act (W197)*  
*The Workplace Safety and Health Act (W210)*

***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 complaints 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*. Until the April 30, 2007 amendment to the *Code*, the Board also handled hours of work exemption requests and applications for exemption from the weekly day of rest.

***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 24.2 of the *Act*. An employer may apply to the chairperson of the Board to request an exemption from the requirement to grant a leave under section 24.2 of the *Act*, if the leave would be detrimental to the employer's operations.

***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***

Pursuant to section 28 of the *Act*, an employee or former employee who alleges that a reprisal has been taken against them may file a written complaint with the Board. If the Board determines that a reprisal has been taken against the complainant contrary to section 27, the Board may order one or more of the following measures to be taken:

- (a) permit the complainant to return to his or her duties;
- (b) reinstate the complainant or pay damages to the complainant, if the board considers that the trust relationship between the parties cannot be restored;
- (c) pay compensation to the complainant in an amount not greater than the remuneration that the board considers would, but for the reprisal, have been paid to the complainant;
- (d) pay an amount to the complainant equal to any expenses and any other financial losses that the complainant has incurred as a direct result of the reprisal;
- (e) cease an activity that constitutes the reprisal;
- (f) rectify a situation resulting from the reprisal;
- (g) do or refrain from doing anything in order to remedy any consequence of the reprisal.

***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's jurisdiction is triggered when a person affected by a director's order wishes to appeal an order of the director under any of these provisions. The Board hears the appeals 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 executive of the Manitoba Council of Administrative Tribunals and carries on an active practice as an interest and grievance arbitrator and mediator in Manitoba.

## Vice-Chairpersons

### **Kristin L. Gibson**

Appointed on a part-time basis in 2013, Kristin Gibson is a partner in the Winnipeg law firm Aikins, MacAulay & Thorvaldson 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. He practices law as a partner in the law firm of Thompson Dorfman Sweatman LLP with an emphasis on civil litigation, administrative law and labour arbitration as a chairperson. He was appointed a Queen's Counsel in December 1992, and inducted into the American College of Trial Lawyers in October 2004. He has been active as a chairperson in labour arbitration matters since 1997.

### **William (Bill) D. Hamilton**

After serving as a part-time vice-chairperson from 2002 to 2005, William Hamilton served as the full-time chairperson of the Board from November 1, 2005 to October 31, 2012. Effective November 1, 2012, he was appointed as a part-time vice-chairperson serving on a half-time basis. He holds a Bachelor of Arts degree from the University of Winnipeg and a Bachelor of Laws degree from the University of Manitoba. For many years, Mr. Hamilton has carried on, and continues to carry on, an active practice as an interest and grievance arbitrator/mediator in Manitoba.

### **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.

### **Michael D. Werier**

Appointed on a part-time basis in 2006, Michael Werier is a partner in 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 and chairperson of the Board of Directors of the Workers Compensation Board of Manitoba.

### **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.

### **Karine Pelletier**

Appointed on a part-time basis in 2016, Karine Pelletier holds a Bachelor of Arts degree from l'Université de Saint-Boniface, a Bachelor of Laws degree from l'Université d'Ottawa and a Masters of



Law from the University of Ottawa. She also serves as a panel member under The Vulnerable Persons Living with a Mental Disability Act. Ms. Pelletier practices law with the Winnipeg Regional Health Authority in the areas of administrative law and labour and employment.

### **Employer Representatives**

#### **Jim H. Baker, CPA CA**

Appointed in 2000, Jim Baker is president and chief executive officer of the Manitoba Hotel Association (MHA). Prior to his employment with the MHA, he was a partner in a chartered accountancy firm for 20 years. He is an executive member of the Hotel Association of Canada and past chairperson of the Manitoba Tourism Education Council. He was co-chairperson of the athletes' villages during the 1999 Pan Am Games and has been active as a community volunteer.

#### **Elizabeth M. (Betty) Black**

Appointed in 1985, Betty Black is a Fellow Certified Human Resource Professional (FCHRP) 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.

#### **Colleen Johnston**

Appointed in 1993, Colleen Johnston is the director, Total Rewards, Health and Wellness for Manitoba Liquor & Lotteries and the president of Integre Human Resource Consulting. She is a graduate of the University of Manitoba with a Bachelor of Education degree and is a Fellow, Certified Human Resource Professional (FCHRP). She is a past chair of the Human Resource Management Association of Manitoba (HRMAM), a founding director of the Canadian Council of Human Resource Associations and a former member of the Regulatory Review Committee of the Canada Labour Code in Ottawa. She has represented Canadian employers at the United Nations in Geneva and is currently chair of the Board of Directors of CAA Manitoba and a member of the Institute of Corporate Directors.

#### **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 vice-president of the Winnipeg Jazz Orchestra.

**Chris W. Lorenc, B.A., LL.B.**

Appointed in 2003, Chris Lorenc is president of the Manitoba Heavy Construction Association, president of the Western Canada Roadbuilders and Heavy Construction Association, founding board member of the Manitoba Construction Sector Council, chairperson of the Board of CentrePort Canada Inc, and member of the Blue Bomber Board of Directors and its Executive Committee. He has an extensive background in public policy writing related to trade, transportation, infrastructure, workplace safety and health. A lawyer by background, he graduated from the University of Manitoba with Bachelor of Arts and Bachelor of Laws degrees. He is a former Winnipeg city councillor having served for nine years between 1983 and 1992. During his tenure on council, he chaired a number of standing committees and held a variety of senior positions. He has also served and continues to serve on a number of boards of business, cultural, community and hospital organizations.

**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.

**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.

**Lloyd Schreyer**

Appointed in 2015, Lloyd Schreyer has had a lengthy career in human resources and labour relations. From 2000 until his retirement in 2014, he was secretary to the Compensation Committee of Cabinet, Government of Manitoba, where he was responsible for liaison with employers and unions in the Manitoba public sector regarding collective bargaining and labour relations. From 1978 to 2000, he was employed in human resources at the University of Manitoba, where he progressed to director of the department. He began his career in 1972 as a business agent with the Operating Engineers Union. He has served on the Manitoba Labour Management Review Committee, the Board of Directors of Manfor Ltd., Selkirk Mental Health Centre and Red River College. He is a graduate of the University 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 member

of the Manitoba Labour Management Review Committee and is a board member of the Children's Hospital Foundation of Manitoba.

**Denis E. Sutton**

Appointed in 1983, Denis Sutton has had extensive training in business administration and human resource management and has extensive experience in labour relations in both the private and public sectors. He has served as chairperson of the Industrial Relations Committee, Manitoba Branch of the Canadian Manufacturers Association, chairperson of the Western Grain Elevator Association Human Resource Committee, chairperson of the Conference Board of Canada, Council of Human Resource Executives (West) and is an active member of many labour relations committees and associations. He is presently employed as vice-president of Human Resources at Motor Coach Industries International.

**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.

**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**

### **L. Lea Baturin**

Appointed in 2007, Lea Baturin was employed as a national representative with the Communications, Energy and Paperworkers Union of Canada (CEP - now Unifor) for over 18 years, dealing primarily with grievance arbitration matters, collective bargaining and steward education in the industrial sectors of telecommunications, broadcasting and manufacturing. Her educational background includes a Bachelor of Arts degree and a Bachelor of Laws degree from the University of Manitoba. Ms. Baturin received her call to the Manitoba Bar in 1981 and worked as a lawyer at Legal Aid Manitoba and at Myers Weinberg LLP before joining CEP as staff. During her employment as a union representative, she was a member of the Manitoba Federation of Labour (MFL) and the MFL Women's Committee. Ms. Baturin retired from her position with the union in 2014.

### **Beatrice Bruske**

Appointed in 2007, Beatrice Bruske has been employed since 1993 as a union representative/negotiator for the United Food and Commercial Workers Union, Local No. 832 (UFCW, Local 832). She has worked as a servicing representative dealing with grievances, negotiations and arbitrations. She worked as a full-time negotiator from 2004 to 2011. Currently, she is the secretary treasurer of her local and in this capacity is involved in the administration of the local and continues to negotiate collective agreements. She also represents the UFCW Local 832 on the Manitoba Federation of Labour Executive Council (MFL) and is the co-chair of the MFL Women's Committee. She is a trustee on a number of health and welfare benefit plans. She graduated from the University of Manitoba with an Arts degree in Labour Studies.

### **Bill Comstock**

Appointed in 2013, Bill Comstock worked in a number of human resource positions early in his career. He had been employed by the Manitoba Government and General Employees' Union for 29 years, retiring in 2006 as director of Negotiating Services. In 2014, he retired from the Winnipeg Association of Public Service Officers where he had been providing labour relations services on a part-time basis. Mr. Comstock was a founding member of Manitoba Special Olympics. He was a member of the Manitoba Labour Management Review Committee and serves on the board of St. Amant.

### **Abs Diza**

Appointed in 2015, Abs Diza has been employed as a staff union representative for Workers United Canada Council since June 2006. She is actively involved in collective bargaining, grievance handling and guiding members with their health benefits. Mrs. Diza is also currently a vice-president of the Manitoba Federation of Labour.

### **Sheila Gordon**

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.

### **Tom Henderson**

Appointed in 2016, Tom Henderson is employed by the Manitoba Nurses Union (MNU) as a workplace safety and health officer, 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, he deals with grievance arbitration, 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 and also handles files related to workplace safety and health with employers where MNU represents nurses.

He sits on the Provincial Violence Prevention in Healthcare Steering Committee and co-chairs the Joint Employer/Manitoba Council of Healthcare Unions Workplace Safety and Health Committee.

#### **Marc Lafond**

Appointed in 2016, Mr. Lafond has been employed as business manager and financial secretary of the International Union of Operating Engineers of Manitoba, Local 987 since 2011. Previous to his employment with the Operating Engineers 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 Manitoba Apprenticeship and Certification Board. He is a graduate of the University of Manitoba Labour Studies program.

#### **Maureen Morrison**

Appointed in 1983, Maureen Morrison worked for the Canadian Union of Public Employees (CUPE) for many years, first as a servicing representative and then as equality representative. Her work was primarily in the areas of pay and employment equity, harassment and discrimination, accommodation issues, and other human rights concerns.

#### **James Murphy**

Appointed in 1999, James Murphy was the Canadian director of the International Union of Operating Engineers (IUOE) from August 2011 until he retired in January 2015. From 1985 to 1987, he was the training coordinator for Local 901 and was a business representative for the local from 1987 through 1995. In 1995, he was elected as the business manager of IUOE Local 987. He held that position until his appointment as Canadian director. Prior to 1985, he was a certified crane operator and had been an active member of the IUOE since the late 1960s. He was the past president of the Allied Hydro Council of Manitoba and the Manitoba Building and Construction Trades Council.

#### **Shelley A. Neel**

Appointed in 2014, Shelley Neel worked as a staff representative for the Manitoba Government and General Employees' Union from 2002 until her retirement in January 2015. She was actively involved in member education, collective bargaining, grievance handling and other activities related to the needs of the membership. Previously, Ms. Neel worked for a rural health authority and the Workers Compensation Board.

#### **Sandra R.M. Oakley**

Appointed in 2008, Sandra Oakley was employed by the Canadian Union of Public Employees (CUPE) from 1981 to 2013. She worked as a national servicing representative, dealing with negotiations, grievance arbitrations and other labour relations issues, and as an assistant managing director in the Organizing and Servicing Department of CUPE at its national office in Ottawa. She was the regional director for CUPE in Manitoba from October 2002 to March 2013. She is a graduate of the University of Manitoba and the Labour College of Canada. She serves on the Children's Rehabilitation Foundation Board of Directors and on the United Way of Winnipeg's Board of Trustees and was the chairperson of the United Way of Winnipeg's 2014 Campaign. Ms. Oakley is the chairperson of the Board of Directors of the Community Unemployed Help Centre (CUHC) and co-chair of the Manitoba Federation of Non-profit Organizations.

#### **Rik A. Panciera**

Appointed in 2011, Rik Panciera is currently employed as a national staff representative for the Canadian Union of Public Employees where he has served for the past 19 years. As a staff representative, he deals with daily grievance and labour/management issues, as well as negotiates collective agreements. Mr. Panciera also represents his peers as a regional vice-president for the Canadian Staff Union. In 2015, Mr. Panciera was appointed to the executive council of the College of Pharmacists of Manitoba.

#### **Bobbi Taillefer**

Appointed in 2014, Bobbi Taillefer is the general secretary of the Manitoba Teachers' Society (MTS). Prior to assuming that role, she held positions of assistant general secretary, staff labour representative and bargainer for teachers across the province. Prior to joining MTS, Ms. Taillefer was

a high school teacher and principal in Winnipeg. Her educational background includes a Masters in Educational Administration and, undergraduate degrees and certificates in human resources, economics, political sciences and law. Ms. Taillefer is bilingual in French and English.

**Sonia E. Taylor**

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 2016/17, the Board was comprised of a full-time chairperson, one half-time vice-chairperson, six 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 Civil Legal Services of Manitoba Justice.

### **Investigative and Mediation Services**

Investigative and mediation services is comprised of the registrar, four labour relations officers, one board officer and one board clerk. The registrar, who reports to the executive director who in turn 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 executive director and the registrar, in conjunction with the chairperson and board members, are 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 varying statutes. They can be appointed to act as Board representatives in an endeavour to effect settlement between parties, reducing the need for costly hearings. The board officers act as returning officers in Board conducted representation votes, attend hearings and assist the registrar in the processing of various applications. They also play a conciliatory role when assisting 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. The board clerk is primarily responsible for the processing of expedited arbitration referrals, and maintaining the Board’s library of collective agreements and union constitution and by-laws files. Both the board officer and board clerk also attend Board hearings.

### **Administrative Services**

The staff of the administrative services and the staff of investigative and mediation services work closely to ensure the expeditious processing of applications. Administrative services is comprised of the administrative officer and five administrative support staff. Reporting to the executive director, 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 to ensure departmental and government policies are implemented.

Reporting to the administrative officer are four administrative secretaries responsible for the processing of documentation. Also reporting to the administrative officer is the information clerk who is responsible for the case management system and files and responds to information requests from legal counsel, educators and the labour community for name searches, collective agreements and certificates.

### **Research Services**

Reporting to the executive director, the researcher is responsible for providing reports, statistical data, and jurisprudence from other provincial jurisdictions and undertaking other research projects as required by the Board. The researcher summarizes and indexes Written Reasons for Decision and Substantive Orders issued by the Board.

## 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.
- Index of Written Reasons for Decision - a publication containing indexes of Written Reasons for Decision and Substantive Orders categorized by topic and employer. Decisions issued under *The Labour Relations Act* are also indexed by section of the *Act*. Until March 31, 2013, this publication had been available on a subscription basis. In June 2014, free access to the Index was made available on the Board's website.

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 and Conciliation & Mediation Services)
- 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)
- Index of Written Reasons (English only)
- *The Labour Relations Act* and other statutes under which the Board has jurisdiction\*
- Regulations\* (including *The Manitoba Labour Board Rules of Procedure*)
- Library\* (hours)
- Publications\* (list and links for convenient access, including previous annual reports)
- Contact Us\* (information and links to the Government of Manitoba Home Page, other Department of Labour and Immigration divisions, LexisNexis Quicklaw and Statutory Publications)

## E-mail (General Enquiry)

[MLB@gov.mb.ca](mailto:MLB@gov.mb.ca)

## E-mail (Case Related)

[MLBRegistrar@gov.mb.ca](mailto: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, 5<sup>th</sup> 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 Board did not issue any new or amend any existing information bulletins during the reporting period. 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/Labour Relations Act
18. The Employment Standards Code – Appeal Hearings – Administrative Penalties

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](mailto:MLB@gov.mb.ca).

## SUSTAINABLE DEVELOPMENT

The Board strives to achieve the goals set out in the Sustainable Development Action Plan. In compliance with *The Sustainable Development Act*, 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

<b>Expenditures by Sub-Appropriation</b>	<b>Actual 2016/17 (\$000s)</b>	<b>FTE's</b>	<b>Estimate 2016/17 \$(000s)</b>	<b>Variance Over/(Under) \$(000s)</b>	<b>Expl. No.</b>
Total Salaries	1,346	16.50	1,527	(181)	
Total Other Expenditures	169		200	(31)	
<b>Total Expenditures</b>	<b>1,515</b>	<b>16.50</b>	<b>1,727</b>	<b>(212)</b>	

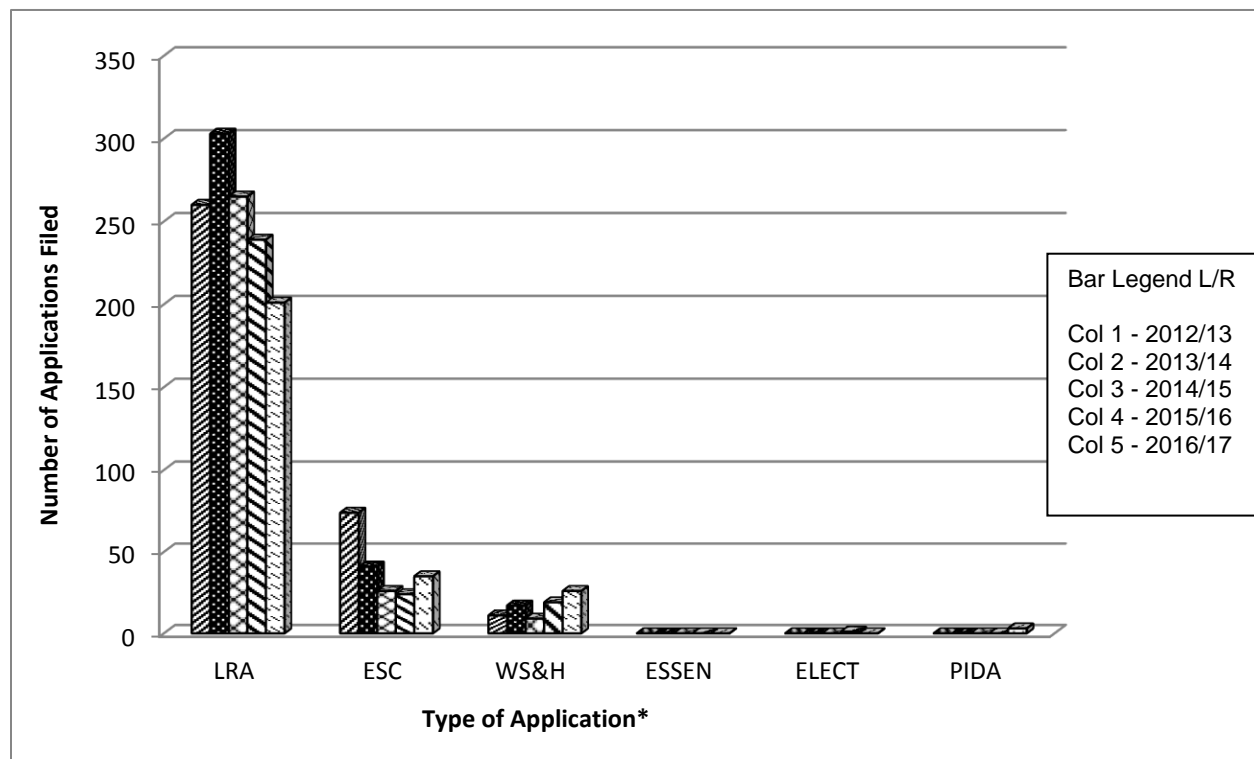
# PERFORMANCE REPORTING

## Summary of Performance

The Manitoba Labour Board adjudicated disputes referred to it under various provincial statutes and its decisions established policy, procedures and precedent and provided for a sounder, more harmonious labour relations environment. The Board conducted formal hearings; however, a significant portion of the Board's workload was administrative in nature. When possible, the Board encouraged the settlement of disputes in an informal manner by appointing a board representative to mediate outstanding issues and complaints. During the 2016/17 fiscal year, issues before the Board were resolved or narrowed in 75 percent of cases where a representative was formally appointed or assisted the parties informally through the dispute mediation process. This represents an increase of 0% from the previous fiscal year. In addition, the Board monitored its internal processes to improve efficiencies and expedite processing of applications or referrals.

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
ESC	Employment Standards Code
WS&H	Workplace Safety and Health Act
ESSEN	Essential Services Act
ELECT	Elections Act
PIDA	Public Interest Disclosure Act

Detailed statistical tables can be found beginning on page 39 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

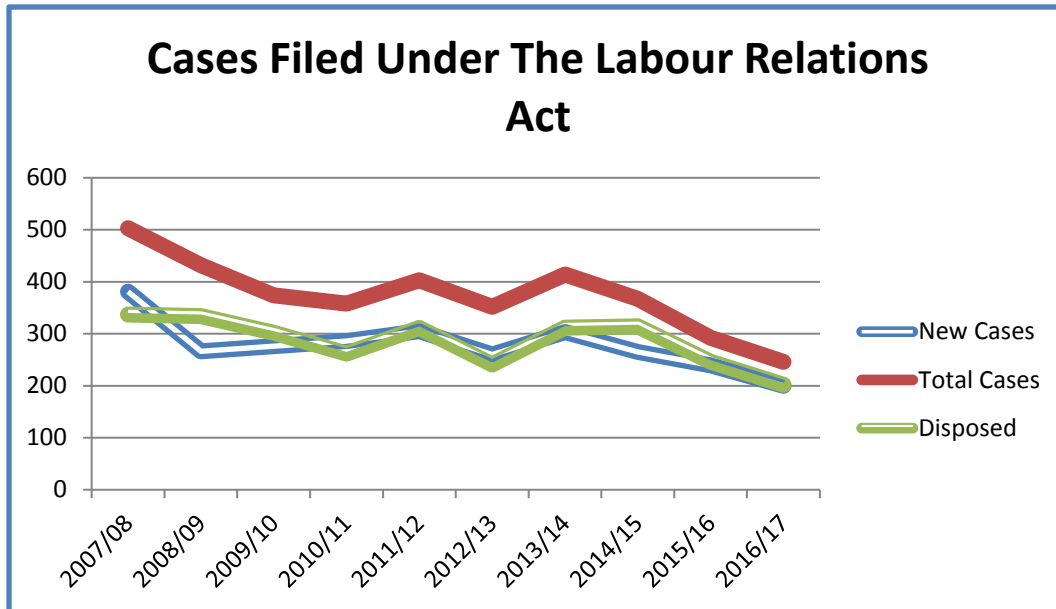
April 1 - March 31

Indicator	Actual 2015/16	Actual 2016/17
Percentage of Cases disposed of	83%	75%
Number of hearing dates scheduled	247	228
Percentage of hearings that proceeded	31%	28%
Number of votes conducted	14	14
Median processing time (calendar days):		
<i>The Labour Relations Act</i>	45	33
<i>The Workplace Safety and Health Act<sup>1</sup></i>	75	52
<i>The Essential Services Act</i>	N/A	N/A
<i>The Elections Act</i>	10	N/A
<i>The Employment Standards Code</i>	110	105
<i>The Public Interest Disclosure Act</i>	N/A	50

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

<sup>1</sup> - The median processing time for applications filed under *The Workplace Safety and Health Act* was based on the processing of 14 cases in 2015/16 and 8 cases in 2016/17. The processing times are not necessarily indicative of the normal median processing times of the Board.

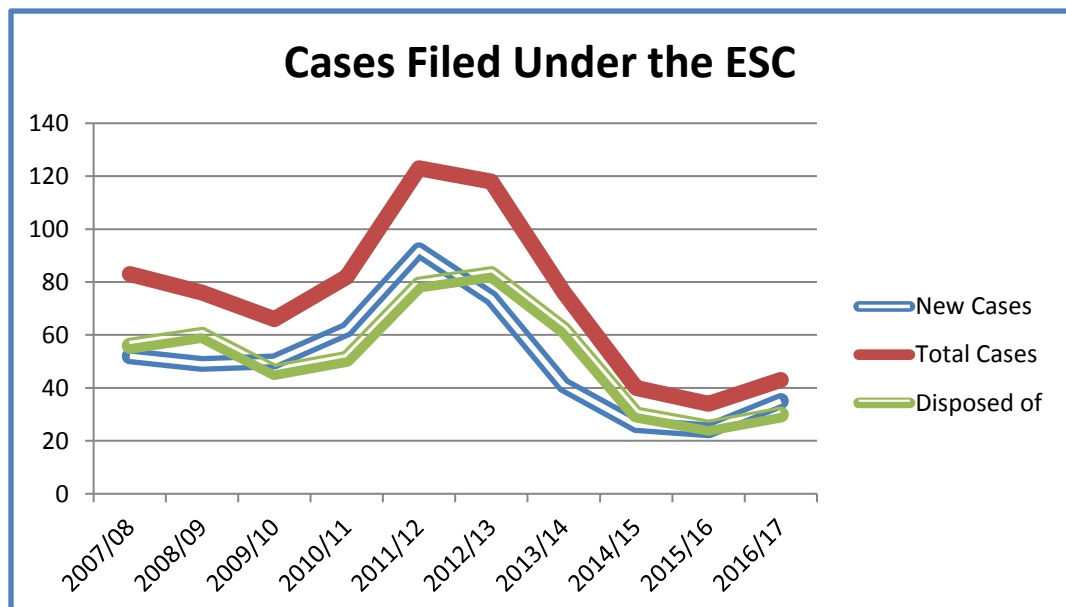
## Ten Year Trends



The ten-year trend in the number of new cases filed under *The Labour Relations Act* ranges from the minimum of 200 applications filed in 2016/17 to a maximum of 381 filed in 2007/08. The average number of applications filed each year is 278 files.

On average, the Board disposed of 286 cases per year which were filed under *The Labour Relations Act*.

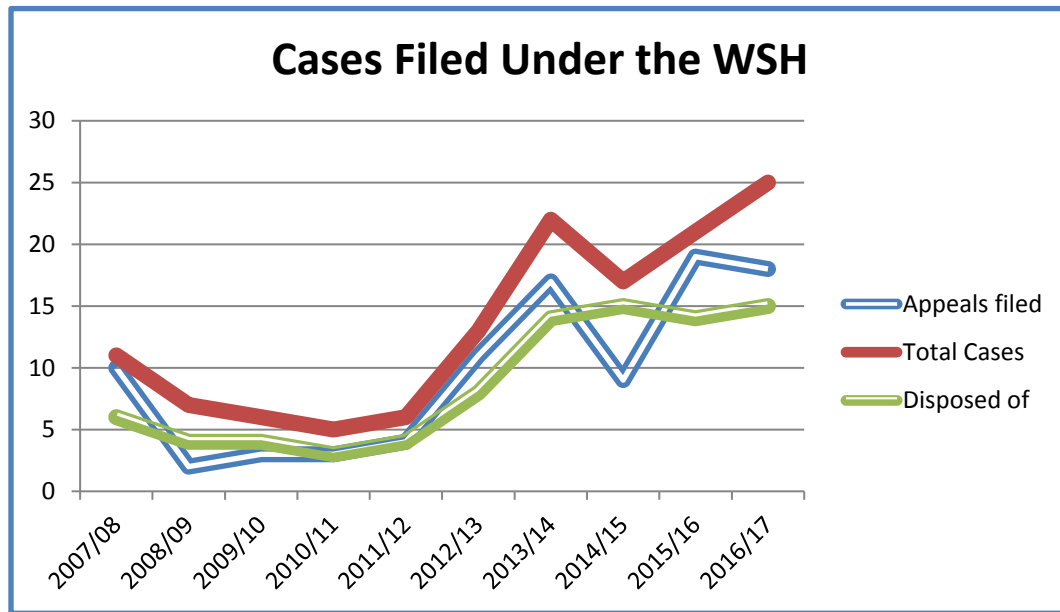
	Min	Max	Avg
Cases Filed	200	381	278
Total Cases	246	503	374
Disposed	202	337	286



The ten-year trend in the number of new cases filed under *The Employment Standards Code* ranges from the minimum of 24 applications filed in 2015/16 to a maximum of 92 filed in 2011/12. The average number of applications filed each year is 50 files.

On average, the Board disposed of 52 cases per year which were filed under *The Employment Standards Code*.

	Min	Max	Avg
New Cases	24	92	50
Total Cases	34	123	75
Disposed of	25	83	52



The ten-year trend in the number of new cases filed under *The Workplace Safety and Health Act* ranges from the minimum of 2 application filed in 2008/09 to a maximum of 19 filed in 2015/16. The average number of applications filed each year is 10 files.

On average, the Board disposed of 8 cases per year which were filed under *The Workplace Safety and Health Act*.

	Min	Max	Avg
New Cases	2	19	10
Total Cases	5	25	13
Disposed of	3	15	9

## **Key Statistics in the Reporting Period**

- 326 cases before the Board (pending from previous period plus new applications);
- 246 (75 percent) of the cases before the Board were disposed of/closed;
- 99 applications scheduled for hearing;
- 63 hearing dates proceeded;
- Board conducted 14 votes; and
- Issued 55 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;
- Expand 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**

- 326 cas ont été portés devant la Commission (demandes en instance depuis l'exercice précédent et nouvelles demandes).
- 75 % des cas portés devant la Commission (246) ont été réglés ou classés.
- Une date d'audience a été fixée pour 99 demandes.
- La Commission a tenu 63 audiences.
- La Commission a tenu 14 votes.
- La Commission a rendu 55 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

The full text of the Written Reasons and the Substantive Orders issued since January 2007 are available on the Board's website (<http://www.gov.mb.ca/labour/labbrd/decision/index.html>) or from the Board's office, upon payment of the applicable processing fee.

### ***Under The Labour Relations Act***

#### **N.M. - and - The University of Manitoba Faculty Association - and - The University of Manitoba**

Case No. 211/09/LRA

July 9, 2016

**DUTY OF FAIR REPRESENTATION** - Employee alleged Union failed in its duty of fair representation when it failed to seek judicial review of an arbitration award.

**PRACTICE AND PROCEDURE** - Board issued order dismissing Employee's motion to disqualify counsel who represented Union and Applicant at arbitration.

**DUTY OF FAIR REPRESENTATION – JUDICIAL REVIEW** - Board found that Employee failed to establish that Union breached its duty to take reasonable care when it decided not to undertake judicial review of the award. Board's focus under the *Act* must be on whether Union took reasonable care. Test is not whether counsel, in providing a legal opinion, addressed every nuance of a case or could have addressed a particular issue more completely or adequately. The test is "reasonableness" and the review opinion more than meets that standards. – Application dismissed – Substantive Order.

#### **Winnipeg Dodge Chrysler Ltd. - and - United Steelworkers, Local 9074 - and - N.W.**

Case No. 132/15/LRA

April 7, 2016

**DECERTIFICATION** – Individual letters of support - Onus is on the applicant to establish that any petition or individual letters filed in support of a Decertification Application represents voluntary wishes of its signatories. To satisfy this onus, the Board requires cogent evidence regarding origination, preparation and circulation of a petition or other documentation in support of application, which, in the present case, consisted on individual letters of support. No evidence of direct involvement by the Employer in the origination, circulation or discussion of copies of individual letters of support or, more generally, the decertification drive.

**DECERTIFICATION – FAMILY RELATIONSHIP** – Applicant was second cousin of General Manager. If circulator of a petition or individual letters in support of an application for decertification would be reasonably perceived as closely associated with management and/or that the average employee would be concerned that management would come to know whether they supported decertification application or not, the evidence in support of the application will not be accepted as a voluntary expression of employee wishes. Familial relationship known to some in the workplace but was not common knowledge to other employees. Average employee would not perceive Applicant as being management or associated with management. Board concluded that Applicant's involvement did not impact employee perceptions or suggest the Employer was involved with, promoted or supported the decertification.

**DECERTIFICATION** – Circulation of Individual Letters of Support in workplace - Soliciting support for a decertification in the workplace during working hours is closely scrutinized because it may raise questions about the voluntariness of that support. Applicant and another employee had brief conversations with employees in workplace that largely occurred during lunches or breaks. Conversations not held in presence of management and would not lead a reasonable employee to conclude that the effort to decertify was endorsed or supported by management. Voluntariness of support for the Application not affected.

**DECERTIFICATION** – Errors in supporting material - Perfection is not the standard required and minor defects in supporting documentation should not result in automatic dismissal. Defects cured by evidence of witnesses called in support of the Application – Interim Substantive Order.

**United Steelworkers, Local 9074 - and - N.W., E.T. - and - Winnipeg Dodge Chrysler Ltd.**

Case No. 154/15/LRA

April 7, 2016

**UNFAIR LABOUR PRACTICE** - Union alleged that Employer, N.W. and E.T. attempted to coerce and intimidate employees in an attempt to dissuade them from supporting the Union and to encourage them to support an attempt to decertify the Union due in part to a familial relationship between the two individual Respondents. Evidence does not support contention that N.W. was picked to lead decertification drive because of familial relationship, that N.W. made a point of advising employees of familial relationship, or that Respondents attempted to exploit the familial relationship to coerce or intimidate employees as alleged. Employer did not facilitate a transfer of the Applicant into the bargaining unit in order for him to file an application for decertification or to attempt to coerce employees.

**UNFAIR LABOUR PRACTICE** – No evidence that decertification drive known to, supported, or condoned by Employer. Decertification efforts did not cause any disruption in the workplace. Employer did not transfer employee into a position in the bargaining unit in order to facilitate support for a decertification application was not supported by the evidence - Dismissed – Substantive Order.

**United Steelworkers, Local 9074 - and - HCN-Revera Lessee (Waverley/Rosewood) LP by its General Partner HCN-Revera Lessee (Waverley/Rosewood) GP INC., S.Q., E.O. AND T.S.**

Case No. 294/15/LRA

April 26, 2016

**UNFAIR LABOUR PRACTICE – EVIDENCE – ADMISSIBILITY OF AUDIO RECORDING** - Application filed seeking remedy for Alleged Unfair Labour Practices - audio recording relied upon in support of allegations - Recording device, as brought to workplace by employee, captured numerous conversations between identified and unidentified persons without knowledge of parties to conversations - Respondent raised a preliminary issue with respect to admissibility of recording. Applicant alleged recording contains relevant evidence in support of position. Board determined that surreptitious recordings and transcripts created from recording - inadmissible - references to audio recordings in Application struck – Interim Substantive Order.

**Workers United Canada - and - L.R - and - Freed & Freed International Ltd.**

Case No. 56/16/LRA

August 12, 2016

**UNFAIR LABOUR PRACTICE** – Deferral to Arbitration - Employee, a shop steward, terminated after sending an unsigned letter to customer of employer which made disparaging remarks about senior official of employer and made allegations that employer engaged in labelling practices that were contrary to statute. Applicants alleged that termination contrary to section 7 of Labour Relations Act. In addition, union referred the grievance to arbitration, utilizing expedited arbitration provisions contained in the Act. Board concluded that core dispute raised in the application could be adequately determined under collective agreement by arbitrator who was appointed to hear the grievance and dismissed application under section 140(7) of the Act – Substantive Order.



**S.T. - and - Canadian Union of Public Employees, Local 500 - and - City of Winnipeg**

Case No. 110/16/LRA

September 23, 2016

**DUTY OF FAIR REPRESENTATION – FORMER EMPLOYEE** – Former employee filed an application alleging Union failed in its duty of fair representation when it denied her request to proceed to arbitration with her grievance. In August of 2015 a Memorandum of Agreement was entered into between the Union and Employer that agreed to correct the pay for all those “currently employed” that were impacted. Applicant subsequently learned of the agreement and contacted the Union, who filed a grievance on her behalf. Employer denied the grievance on the grounds that it was untimely and because Applicant was no longer an employee and therefore not entitled to payment pursuant to the terms of the Memorandum of Agreement. Union informed the Applicant that it did not believe grievance would be successful at arbitration, and the Local Executive confirmed decision not to advance the grievance following an appeal by the Applicant.

Board dismissed the application and held that entering into an agreement with respect to pay issues that did not provide entitlement or compensation for individuals who were no longer employed by the Employer did not constitute a *prima facie* violation of section 20 of the *Act* in this circumstance. Dismissed – Substantive Order.

**IATSE, Local 63 - and - Prairie Theatre Exchange**

Case No. 125/16/LRA

January 26, 2017

**BARGAINING UNIT** - Amendment and Merger of Certificates - Union filed a request that Board exercise its powers under subsection 143(3) and 142(5)(h) of the *Act* to merge two certificates into one bargaining unit. Applicant represents two groups of “stagehand” employees of the Respondent under two certificates. Applicant submitted that two individual certificates and two collective agreements create a fragmented situation and unnecessarily complicate labour relations matters. Applicant further submitted that amalgamating would make good labour relations sense and would be more in keeping with the object of the *Act*. Respondent submitted that there is no labour relations purpose served by merging and that the status quo has been effective in providing harmonious labour relations. Board held that the party attempting to alter status quo must present compelling reasons to show that consolidation is appropriate and that evidence of a significant and material change in circumstances will ordinarily be required in order to sustain a conclusion that Board should permit a consolidation. Further, Board must be satisfied that consolidated bargaining unit is appropriate for collective bargaining. Board was not satisfied that requested consolidation would enhance labour relations stability without creating labour relations problems for parties. Evidence indicated that efficient collective bargaining had resulted in multiple renewals of each of the collective agreements without strike or lockout. There had not been any grievances filed and there was no evidence of any significant and material change. Application dismissed – Substantive Order.

**International Brotherhood of Electrical Workers, Local 2034 - and - Construction Labour Relations Association of Manitoba**

Case No. 196/16/LRA

October 20, 2016

**FIRST CONTRACT - JURISDICTION** - Union filed an Application to settle provisions of a first collective agreement pursuant to subsection 87(1) of the *Act*. CLRAM raised a preliminary issue asserting that the Board did not have jurisdiction to settle the provisions of the first collective agreement as the Union either is a party to a collective agreement, or is not the “bargaining agent” within the meaning of the *Act*. The Union and the CLRAM are parties to a settlement agreement that voluntarily recognized the Union as having the bargaining rights for the group of employees at issue. Board determined that the Union does not have the right to bring the Application. Either there is a currently binding collective agreement in place, or the Union does not meet definition of “bargaining agent” as set forth in the *Act* as it is neither a certified bargaining agent, nor a “union that has entered into a collective agreement with the Employer”. The Union has not met the requirements to file an application under section 87. - Application dismissed – Substantive Order.

**Canadian Union of Public Employees, Local 5318 - and - Local 4588 - and - Pembina Trails School Division**

Case Nos. 219/16/LRA, 220/16/LRA  
December 22, 2016

**CARVE OUT, FRAGMENTATION** – Board issued Certificate for a bargaining unit consisting of custodial, maintenance, trades and transportation employees. In 2016, another local filed an application for certification seeking to represent custodial employees; and the original union filed an application seeking amendment to remove custodial employees from that certificate.

Board found no compelling evidence that status quo has not worked or that there is a pressing and substantial reason to fragment current bargaining unit. Evidence indicates custodians and bus drivers have coexisted in the bargaining unit for many years and productive collective bargaining with Employer has resulted – Applications dismissed – Substantive Order.

**Under The Employment Standards Code**

**Dr. Bacily Medical Corporation - and - E.C.**

Case No. 222/15/ESC  
April 13, 2016

**NOTICE – DISCHARGE** – Just Cause - Resignation – Employer appealed Order to pay two weeks' wages in lieu of notice on basis it had just cause to terminate Employee's employment without notice or wages in lieu of notice in accordance with Section 62(1)(h) of *The Employment Standards Code* - Employer asserted Employee deliberately breached policy with respect to transfer of patient files – Employee made judgement call in stressful situation to avoid unpleasant scene in doctor's office and provided patient file to employee from other clinic to accommodate patient's wishes – Employee intended to retrieve patient file from other clinic, but forgot - When confronted by Employer, Employee retrieved file from other clinic - When Employee returned to office with file, Employer berated her and prevented her from leaving clinic – Employee informed Employer that she was resigning and provided two weeks' notice – Subsequent actions of Employer effectively prevented Employee from returning to work – Board found that Employee's actions were concerning, but termination of Employee was excessive and disproportionate response to misconduct which had occurred – Employer did not satisfy Board that Employee was terminated for just cause - Employee entitled to two weeks' wages in lieu of notice – Appeal dismissed – Substantive Order.

**Sagkeeng Child and Family Services Inc. - and - O.T.**

Case No. 73/16/ESC  
July 28, 2016

**JUST CAUSE** – Employer appealed Order to pay four weeks' wages in lieu of notice on the basis that it had "just cause" to terminate Employee's employment without notice or wages in lieu of notice, in accordance with section 62(1)(h) of *The Employment Standards Code* – Employer argued that the Employee was on a probationary period at time of dismissal and that, in any event, the falsification of information and culminating incident was sufficient to warrant termination without just cause – Board did not agree that Employee was a probationary employee – Board not satisfied that Employee provided sufficient time to implement remedial action imposed by Employer regarding her performance – Board also not prepared to accept that there was any falsification, as the Employee had not been provided opportunity to explain the discrepancy – Board did not accept that her conduct warranted termination - Board considered the Employee's conduct to have been a momentary and emotional aberration, which did not give rise to a finding of wilful misconduct or insubordination – Board determined Employer not exempt from notice requirements under section 61(1)(h) of the *Code* – Appeal allowed – Substantive Order.

**Dauphin Consumers Cooperative - and - Q.C.**

Case No. 89/16/ESC

August 2, 2016

**JUST CAUSE** - Employee failed to deposit money provided by customer for delivered goods prior to being confronted with the discrepancy by employer. Employee maintained that he intended to bring the cash to the store following his vacation which was scheduled to commence the day after money was received - Employee said he placed the cash from customer in his freezer for safe keeping with intention of properly depositing it upon his return from vacation, but forgot. Employer relied upon Clause (h) of subsection 62(1) of the Code to deny wages in lieu of notice and that it had "just cause" to terminate employment. Board found that employee's failure to follow procedure and the manner in which the employee handled cash constituted serious misconduct and that termination was a proportional response - Employee's employment was terminated for just cause and he was not entitled to notice of termination, or pay in lieu - Appeal dismissed - Substantive Order.

**Steinbach East End Garage Ltd. - and - N.E.**

Case No. 91/16/ESC

September 23, 2016

**JUST CAUSE** - Employee appealed Dismissal Order on the basis that he did not act in a manner that constituted misconduct or otherwise fell within exceptions to notice in section 62(1)(h) of *The Employment Standards Code* and was entitled to wages in lieu of notice - Board not satisfied Employee's behaviour constituted misconduct - Evidence of Employee not contradicted in any meaningful way - Board determined that previous warnings demonstrated that there were issues with Employee's performance, but Employer's evidence fell short of the standard required for a determination of "just cause" under the Code - Board determined Employer not exempt from notice requirements under section 61(1)(h) of the Code - Appeal allowed - Substantive Order.

**National Meat Sales - and - E. M.**

Case No. 120/16/ESC

December 20, 2016

**JUST CAUSE** - Employee made insolent remark to employer - Given nature and extent of employee's behavior, and surrounding contextual circumstances, employer did not meet the onus to establish that it had just cause to terminate employment within the meaning of subsection 62(1)(h) of the Code. Conduct of employee was not so egregious that summary dismissal was warranted - Appeal dismissed - Substantive Order.

**Quality Mobile Truck and Trailer Repair - and - E.Q.**

Case No. 177/16/ESC

December 22, 2016

**JUST CAUSE** - Employee terminated for disrespectful, insubordinate and insolent conduct - Workplace marked by argumentative behaviour and use of foul language, but that did not excuse employee's profanity-laced open challenge to employer's authority. Employer met onus to establish that it had just cause to terminate employment of employee within the meaning of subsection 62(1)(h) of the Code. Conduct of the employee in this case was so egregious as to be incompatible with a continuation of the employment agreement. Appeal dismissed - Substantive Order.

## **Under *The Workplace Safety and Health Act***

### **E.J - and - BBE Hydro Constructors LP - and - Director, Workplace Safety and Health**

Case No. 146/15/WSH

November 3, 2016

**JURISDICTION** - Appellant appealed dismissal of his discriminatory action complaint by a Workplace Safety and Health Officer. Appellant alleged that Employer issued a 4-day suspension because he raised certain safety and health concerns with both his employer and workplace safety and health. Director raised a preliminary issue that pursuant to a recent Court of Queens Bench decision neither the Director, nor the Board had jurisdiction to entertain the complaint. Director was of the view that the matter fell under exclusive jurisdiction of a labour arbitrator. Board determined that the jurisdiction is “overlapping” in nature, and therefore the Director and the Board had jurisdiction to determine the matter. Further the Board rejected the position that the discriminatory action provisions of *The Workplace Safety and Health Act* can never apply to a worker/complainant who may be covered by a collective agreement.

Board determined that sole decision maker was not aware of Appellant’s workplace safety and health concerns at the time discipline was issued. Board concluded that Employer had met its onus that decision to suspend Appellant was not influenced by the Appellant having raised safety and health concerns. Board noted that suspension was still subject to arbitral scrutiny germane to the issue of whether Employer had “just cause or not” for imposing discipline. – Appeal dismissed – Substantive Order.

### **S.C. - and - S.A.M. Management Inc. - and - Director, Workplace Safety & Health**

Case No. 218/15/WSH

March 29, 2016

**DISCRIMINATORY ACTION** – Employee alleged termination due to not operating emergency generator; felt unsafe; training not provided - Employee appealed Director WSH Decision dismissing discriminatory action complaint - Employee raised preliminary issue during hearing that matter be referred back to WSH for further investigation - Director WSH position is appeal to Board is a de novo hearing - Board satisfied it does not have jurisdiction to issue such an Order. Based on evidence heard Board satisfied substantial credible evidence presented as to a *bona fide* basis for Employer to terminate Employee; decision to end employment relationship was not a result of non-testing of generator - Board not satisfied Employee met initial onus to establish a nexus between termination and conduct as falling within section 42(1)(e) of *The Workplace Safety and Health Act*. – Appeal dismissed – Substantive Order.

## **Under *The Public Interest Disclosure Act***

### **Middlechurch Home of Winnipeg - and - T.Q.**

Case No. 80/16/PIDA

September 14, 2016

**THE PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION) ACT - EMPLOYEE – REPRISALS** – Applicant alleged that reprisals occurred from management and staff following good faith disclosure to Manitoba Ombudsman. Applicant submitted that individuals deduced that she had made a disclosure and colluded to discredit her nursing practices during an investigation by the College of Licensed Practical Nurses of Manitoba (CLPNM) following her termination. Board held that Applicant was not an “employee” as that term is defined in *PIDA* at time she provided information to Ombudsman, that alleged actions of staff do not fall within the meaning of “reprisal” as that term is defined in *PIDA* and that Applicant unduly delayed in filing the application. As a result, the Board dismissed the Application pursuant to subsections 140(8) and 30(2) of the *LRA*. – Application dismissed – Substantive Order.

## SUMMARIES OF SIGNIFICANT COURT DECISIONS

### Concordia Hospital; Manitoba Association of Health Care Professionals - and - Lydia Bartel-Zobarich

Court of Queen's Bench

MLB Case Nos. 176/14/LRA and 215/15/LRA

Docket Nos. CI 15-01-98811

Heard by Justice Chartier

June 23, 2016

The Employee (the Applicant) sought judicial review of Board's decision to dismiss the applicant's complaint that the Union committed an unfair labour practice by not fulfilling its duty of fair representation and the Board's decision to dismiss the applicant's application for review and reconsideration of the Board's original decision. The Union submitted that the decision was reasonable as the applicant signed a settlement, still relied on it but was seeking to effectively rewrite it to receive the ability to buy back the pension which was not part of its terms.

**Held:** The standard of review of a decision of the Board involving a breach of duty of fair representation is reasonableness. Justice Chartier found that both of the Board's decisions were reasonable. The Board considered the evidence on the issue before it and based on that evidence was entitled to find that the applicant had failed to meet her onus that the Union breach section 20 of **The Labour Relations Act**. In arriving at its decision, the Board also stated the relevant principals related to section 20. Justice Chartier was unable to find a reviewable error in the Board's analysis of the facts on which it relied to arrive at the conclusions which it drew. Absent any reviewable error, the court could not intervene in the Board's decisions. The application for judicial review was dismissed.

### Manitoba Labour Board; Manitoba Government and General Employees Union; Southern Health - Sante Sud and South Eastman Health/Sante Sude-Est Inc.; and Prairie Mountain Health - and - Manitoba Association of Health Care Professionals

Court of Queen's Bench

MLB Case Nos. 161/12/LRA and 190/12/LRA

Docket Nos. CI 13-01-85551 and CI 13-01-85552

Heard by Justice McCawley

July 28, 2016

The Manitoba Government and General Employees Union filed a motion that the application filed by the Manitoba Association of Health Care Professionals (MAHCP) seeking judicial review of a representation vote ordered by the Manitoba Labour Board be dismissed for delay

**Held:** The issue was the length of the delay between January 3, 2014 and June 12, 2015, a period of 17 months. The position of the MAHCP was that it continued to pursue its applications for judicial review with alacrity and there was never any intention to abandon them. Furthermore, it was argued that the Board's failure to provide a complete Record until May 27, 2015 (and until December 9, 2015 when a missing page was provided shortly before the hearing) prevented them from moving ahead earlier. The evidence disclosed that even if the MAHCP was not provided with a copy of the letter as it maintained, it clearly was aware of it and referred to it four times in injunctive proceedings on July 21, 2012, including in the brief filed by the MAHCP. Furthermore, the Board's assertion that it was oblivious to a problem with respect to the completeness of the Records filed by them was uncontradicted and raised the obvious question of why no effort was made to bring this to the attention of the Board sooner. The motions to dismiss the applications of the MAHCP for delay were granted.



## **STATISTICAL TABLES**

**TABLE 1**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT***  
**(April 1, 2016 – March 31, 2017)**

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	1	24	25	15	2	2	0	0	19	6
Revocation	1	7	8	5	1	2	0	0	8	0
Amended Certificate	7	8	15	13	2	0	0	0	15	0
Unfair Labour Practice	12	25	37	1	7	15	0	0	23	14
Board Ruling	4	9	13	4	1	4	0	0	9	4
Review and Reconsideration	2	2	4	0	3	0	0	0	3	1
Successor Rights	0	1	1	1	0	0	0	0	1	0
Termination of Bargaining Rights	0	1	1	1	0	0	0	0	1	0
Changes in Work Conditions (Sec.10(1)) <sup>1</sup>	0	0	0	0	0	0	0	0	0	0
Changes in Work Conditions (Sec. 10(3)) <sup>2</sup>	1	3	4	3	0	1	0	0	4	0
Duty of Fair Representation (Sec. 20)	8	18	26	0	11	6	0	0	17	9
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	4	5	5	0	0	0	0	5	0
First Collective Agreement (Sec. 87(1))	0	5	5	1	1	3	0	0	5	0
Subsequent agreement (Sec. 87.1(1))	0	0	0	0	0	0	0	0	0	0
Appoint Arbitrator (Sec. 115(5))	1	9	10	6	0	3	0	0	9	1
Extension of Time Limit (Sec. 130(10.1)) <sup>3</sup>	0	1	1	0	0	1	0	0	1	0
Disclosure of Union Information (Sec. 132.1)	0	0	0	0	0	0	0	0	0	0
Referral for Expedited Arbitration <sup>4</sup>	8	83	91	-	-	-	-	-	83	8
<b>Totals</b>	<b>46</b>	<b>200</b>	<b>246</b>	<b>55</b>	<b>28</b>	<b>37</b>	<b>0</b>	<b>0</b>	<b>203</b>	<b>43</b>

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, 2016 – March 31, 2017)**

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	Vote Conducted but not counted
Certification	14	263	10	2	2	0	5
Revocation	2	45	2	0	0	0	0
Intermingling	0	0	0	0	0	0	0
Termination of Bargaining Rights	1	9	1	0	0	0	0

**TABLE 3**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REFERRALS FOR EXPEDITED ARBITRATION**  
**(April 1, 2016 – March 31, 2017)**

Cases Carried Over	Referrals Filed	TOTAL	Cases Where Mediator Appointed	Disposition of Cases						Cases Pending
				Settled by Mediation	Settled by Parties	Arbitration Award Issued	Declined to Take Action	Withdrawn	Cases Disposed	
8	83	91	10 <sup>1</sup>	19	16	4	4	30	83	8

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, 2016 – March 31, 2017)**

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
8	35	43	18	12	0	30	13

**TABLE 5**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE WORKPLACE SAFETY AND HEALTH ACT***  
**(April 1, 2016 – March 31, 2017)**

Cases Carried Over	Number of Applications Filed	TOTAL	Decisions/Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed	Number of Cases Pending
7	26	33	7	8	15	18

**TABLE 6**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE ESSENTIAL SERVICES ACT***  
**(April 1, 2016 – March 31, 2017)**

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
0	0	0	0	0	0	0	0

**TABLE 7**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE ELECTIONS ACT***  
**(April 1, 2016 – March 31, 2017)**

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
0	0	0	0	0	0	0	0

**TABLE 8**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION) ACT***  
**(April 1, 2016 – March 31, 2017)**

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
0	4	4	3	1	0	4	0

**TABLE 9**  
**STATISTICS RELATING TO BOARD HEARINGS**  
**(April 1, 2016 – March 31, 2017)**

During the reporting period, 228 matters were scheduled to be heard involving 99 applications. <sup>1</sup>	Scheduled Hearing Dates	Hearing Dates that Proceeded	Percentage of Proceeded to Scheduled
Number of hearing dates <sup>2</sup>	228	63	28%

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, 2016 – March 31, 2017)**

Union	Employer	Date of Application	Outcome of Application	Status as at March 31
<b><u>Pending from Previous Reporting Period</u></b>				
Nil				
<b><u>New Applications from Current Reporting Period</u></b>				
Workers United Canada Council	Clarion Hotel and Suites (4147880 Canada t/a)	April 14, 2016	Withdrawn	
International Brotherhood of Electrical Workers, Local 2034	Construction Labour Relations Association of Manitoba	October 4, 2016	Dismissed	
Rainbow Resource Centre	Canadian Union of Public Employees, Local 2348	November 11, 2016	Withdrawn	
University of Winnipeg	Public Service Alliance of Canada	November 25, 2016	Granted	Expiry January 26, 2018
B and L Homes for Children	United Food and Commercial Workers International Union, Local 832	January 25, 2017	Withdrawn	

**TABLE 11**  
**SUBSEQUENT AGREEMENT LEGISLATION REVIEW OF CASES FILED**  
**(April 1, 2016 – March 31, 2017)**

Union	Employer	Date of Application	Outcome of Application	Status as at March 31
<b><u>Pending from Previous Reporting Period</u></b>				
Nil				
<b><u>New Applications from Current Reporting Period</u></b>				
Nil				