Labour and Employment Board

Annual Report
2019–2020

New Nouveau Brunswick

Labour and Employment Board
Annual Report 2019-2020
April 1, 2019 – March 31, 2020

Province of New Brunswick

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ISBN 978-1-4605-2532-6 (bilingual printed version)
ISBN 978-1-4605-2533-3 (online English PDF)
ISBN 978-1-4605-2534-0 (online French PDF)

ISSN 1206-2715 (bilingual printed version)

12957 | 2019.11 | Printed in Brunswick

Transmittal letters

To the Honourable Brenda Murphy
Lieutenant-Governor of New Brunswick

May it please your Honour:

It is my privilege to submit the annual report of the Labour and Employment Board, for the fiscal year April 1, 2019 to March 31, 2020.

Respectfully submitted,.

Honourable Trevor A. Holder
Minister of Post-Secondary Education, Training and Labour

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Sir:

I have the honour to submit the 25th Annual Report of the Labour and Employment Board for the period of April 1, 2019 to March 31, 2020 as required by Section 15 of the *Labour and Employment Board Act*, Chapter L-0.01, R.S.N.B.

Respectfully submitted,

George P.L. Filliter, Q.C.
Chairperson

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Introduction

The following general comments are intended to provide the reader an understanding of the role and responsibilities of the Labour and Employment Board.

This Board was created through the proclamation of the *Labour and Employment Board Act*, Chapter L-0.01, R.S.N.B. in November 1994. It represents the merger of four former tribunals, each of which was responsible for the administration of a specific act. Consequently, the Labour and Employment Board performs the duties and functions required under the *Industrial Relations Act*; the *Public Service Labour Relations Act*; the *Employment Standards Act* and the *Pension Benefits Act*, and since 1996, may act as a Board of Inquiry under the *Human Rights Act*. Since December 2001, the Board is responsible for the administration of the *Fisheries Bargaining Act*, and in July 2008, the Board was given responsibility over a complaints procedure in the *Public Interest Disclosure Act*. Since May 2009, the Board is also responsible for the administration of the *Essential Services in Nursing Homes Act*, and since April 2010, it is responsible for appointing arbitrators pursuant to the *Pay Equity Act*, 2009.

The membership of the Labour and Employment Board typically consists of a full-time chairperson; several part-time vice-chairpersons; and members equally representative of employees and employers. To determine the various applications/complaints filed under the above statutes, the Board conducts numerous formal hearings at its offices in Fredericton as well as other centers throughout the province. At the discretion of the chairperson, these hearings are conducted either by the chairperson or a vice-chairperson sitting alone, or by a panel of three persons consisting of the chairperson or a vice-chairperson along with one member representative of employees and one member representative of employers.

The *Industrial Relations Act* sets out the right of an employee in the private sector to become a member of a trade union and to participate in its legal activities without fear of retaliation from an employer. The Board has the power to certify a trade union as the exclusive bargaining agent for a defined group of employees of a particular employer and may order a representation vote among the employees to determine whether a majority wish to be represented by the trade union. Following certification, both the trade union and the employer have a legal responsibility to meet and to begin bargaining in good faith for the conclusion of a collective agreement which sets out the terms and conditions of employment for that defined group of employees for a specified period.

Generally, therefore, the Board will entertain applications for: certification or decertification and in either instance, the Board may order a representation vote to determine the wishes of the majority of the employees; the effect of a sale of a business on the relationship between the new employer and the trade union; the determination of work jurisdiction disputes between two trade unions, particularly in the construction industry; complaints of unfair practice where one party alleges another party has acted contrary to the act, often leading the Board to order the immediate cessation of the violation and the reinstatement of employee(s) to their former position with no loss of wages should the Board determine that a suspension, dismissal and/or layoff is a result of an anti-union sentiment by the employer.

The board has similar responsibilities under the *Public Service Labour Relations Act* which affects all government employees employed in government departments, schools, hospital corporations and crown corporations. In addition to these functions, the Board oversees and determines, if required, the level of essential services which must be maintained by the employees in a particular bargaining unit in the event of strike action for the health, safety or security of the public. The Board is responsible for the appointments of neutral third parties, such as conciliation officers, to assist the parties in concluding a collective agreement. Excluding crown corporations, there are currently 25 collective agreements affecting more than 40,000 employees in the New Brunswick public sector.

With the *Essential Services in Nursing Homes Act*, the Board administers an essential services scheme similar to that outlined in the *Public Service Labour Relations Act*, but which applies to unionized private sector nursing home employees, excluding registered nurses.

The Board has a differing role under the *Employment Standards Act* and the *Pension Benefits Act*. Whereas applications and/or complaints arising under the *Industrial Relations Act* and the *Public Service Labour Relations Act* are filed directly with the board for processing, inquiry and ultimately, determination, the Board will hear referrals arising from administrative decisions made by the director or the superintendent under the *Employment Standards Act* and the *Pension Benefits Act*, respectively. The Board has the discretion to affirm, vary or substitute the earlier administrative decision of the Director of Employment Standards. The *Employment Standards Act* provides for minimum standards applicable to employment relationships in the province, such as minimum and overtime wage rates, vacation pay, paid public holiday, maternity leave, child care leave, etc. Under the *Pension Benefits Act*, where a party has appealed a decision of the Superintendent to the Financial and Consumer Services Tribunal, the tribunal may refer to the Board a question of law or of mixed fact and law involving labour or employment law. The Board's determination of that question becomes part of the tribunal's decision.

The *Human Rights Act* is administered by the New Brunswick Human Rights Commission which investigates and conciliates formal complaints of alleged discrimination because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, family status, sexual orientation, sex, gender identity or expression, social condition, political belief or activity. If a settlement cannot be negotiated, the Human Rights Commission can refer complaints to the Labour and Employment Board for it to act as a Board of Inquiry, hold formal hearings and render a decision.

The *Public Interest Disclosure Act* is generally administered by the Ombud. However, where an employee or former employee alleges that a reprisal has been taken against him or her relating to a disclosure under the *Public Interest Disclosure Act*, such complaint is filed with the Board, who may appoint an adjudicator to deal with the complaint.

Under the *Pay Equity Act, 2009*, the Board is responsible for appointing arbitrators, upon application, to deal with matters in dispute relating to the implementation of pay equity in the public sector.

With the exception of the *Public Interest Disclosure Act* and the *Pay Equity Act, 2009*, each of the statutes for which the Board has jurisdiction provides that all decisions of the Board are final and binding on the parties affected. The courts have generally held that they should defer to the decisions of administrative boards except where boards exceed their jurisdiction, make an unreasonable decision or fail to apply the principles of natural justice or procedural fairness.

Mission Statement

The mission of the Board arises out of the nine statutes which provide the basis for its jurisdiction :

- Administer the *Industrial Relations Act*, the *Public Service Labour Relations Act*, the *Fisheries Bargaining Act* and the *Essential Services in Nursing Homes Act* by holding formal hearings on the various applications/complaints filed and rendering written decisions.

- Administer fairly and impartially the referral processes in relation to decisions made by the administrators of the *Employment Standards Act* and the *Pension Benefits Act* by holding formal hearings and rendering written decisions.

- Act as a Board of Inquiry arising from a complaint filed under the *Human Rights Act* when such complaint is referred to the Board for determination through a formal hearing process.

- Administer the process relating to complaints of reprisals made pursuant to the *Public Interest Disclosure Act* and appoint adjudicators where appropriate to hold hearings and render written decisions.

- Appoint arbitrators, pursuant to the *Pay Equity Act, 2009*, to deal with matters in dispute relating to the implementation of pay equity in the public sector.

- Enhance collective bargaining and constructive employer-employee relations, reduce conflict and facilitate labour-management cooperation and the fair resolution of disputes.

Message from the Chairperson

It is a pleasure for me to submit the 25th annual report of the Labour and Employment Board for the period of April 1, 2019 to March 31, 2020.

The Labour and Employment Board is established by virtue of the *Labour and Employment Board Act* and is mandated legislative authority to administer and adjudicate matters under the *Industrial Relations Act*, the *Public Service Labour Relations Act*, the *Employment Standards Act*, the *Pension Benefits Act*, the *Human Rights Act*, the *Fisheries Bargaining Act*, and the *Essential Services in Nursing Homes Act*. The Board also exercises a complaint administration and adjudicative appointment jurisdiction under the *Public Interest Disclosure Act*, and an arbitral appointment jurisdiction under the *Pay Equity Act, 2009*.

The total number of matters filed with the Board during this fiscal year was 212, up from the previous year. Many of these matters were resolved with the assistance of the executive staff, with the oversight of the Board. Those that were not so resolved were scheduled for determination by the Board, resulting in 59 days of hearing.

During the year the Board disposed of a total of 76 matters. In so doing, there were 22 written decisions released by the Board.

Under the *Public Service Labour Relations Act*, where the Board, in addition to its adjudicative function, is charged with authority for collective bargaining, designations, deadlocks, strikes and lockouts, the Board entertained a number of requests, including eight appointments of a Conciliation Officer; four appointments of a Conciliation Board, and one Declaration of Deadlock.

The decision as to whether or not to appoint a panel rests in the office of the Chairperson and various criteria are considered. However, in any matter in which a party specifically requests that it be heard by a tripartite panel, the Board will normally accede to the request. There were no matters heard by a tripartite panel in this fiscal year.

The board in all cases seeks to ensure that the use of its pre-hearing resolution and case management processes are maximized, hearing days are kept to a minimum, hearings are conducted in a balanced and efficient manner, and decisions are issued in a timely way.

As Chair, I continue to teach on a part-time basis at UNB Law School, and remain active speaking at various national conferences.

In closing, I want to take this opportunity to express my continuing appreciation to all members of the Board, as well as our administrative and professional staff, for their dedication and service.

George P.L. Filliter, Q.C.

Chairperson

Composition of the Labour and Employment Board

Chairperson – George P.L. Filliter, Q.C.
Alternate Chairperson – Geoffrey L. Bladon

Vice-Chairpersons
Brian D. Bruce, Q.C. (Fredericton)
Annie Daneault (Grand Falls)
John McEvoy, Q.C. (Fredericton)
Robert D. Breen, Q.C. (Fredericton)
Elizabeth MacPherson (Grand Barachois)
J. Kitty Maurey (Fredericton)
Marylène Pilote, Q.C. (Edmundston)

Members representing employer interests
Stephen Beatteay (Saint John)
Gloria Clark (Saint John)
Gerald Cluney (Moncton)
William Dixon (Moncton)
Jean-Guy Lirette (Shediac)*
Marco Gagnon (Grand Falls)

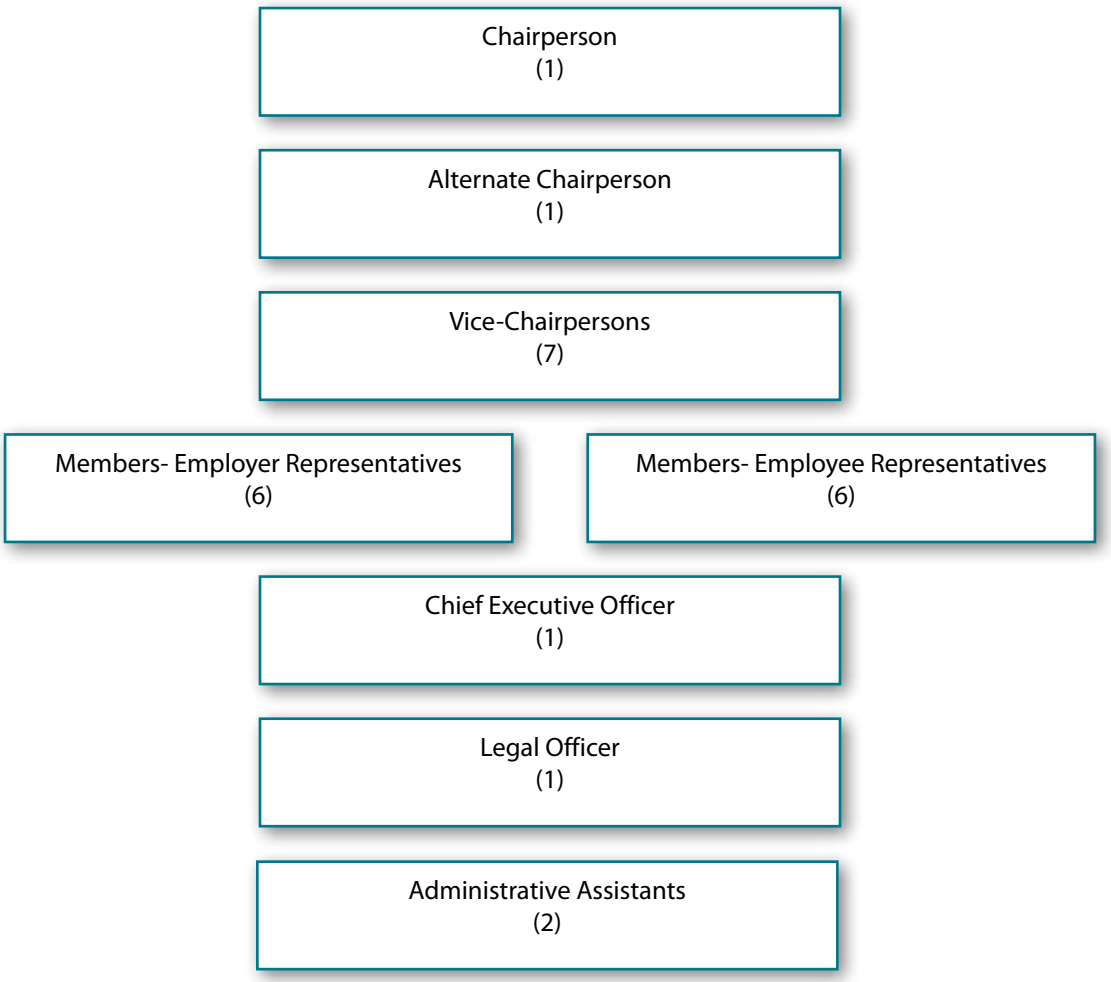
Members representing employee interests
Debbie Gray (Quispamsis)
Richard MacMillan (St. Stephen)
Jacqueline Bergeron-Bridges (Eel River Crossing)
Gary Ritchie (Fredericton)
Marie-Ange Losier (Beresford)
Pamela Guitard (Point-La-Nim)

Chief Executive Officer – Lise Landry
Legal Officer – Isabelle Bélanger-Brown

Administrative staff
Andrea Mazerolle
Debbie Allain

* This member's term expired on April 26, 2019 and no appointment/reappointment has yet been made.

Organizational Chart



Administration

The membership of the Board ordinarily consists of a full-time chairperson, several part-time vice-chairpersons and a number of Board members equally representative of employees and employers. All members are appointed to the Board by Order-in-Council for a fixed term, ordinarily five years for the chairperson and three years for vice-chairpersons and members representative of employers and employees. Vice-chairpersons and board members are paid in accordance with the number of meetings/hearings that each participates in throughout the year. The current per diem rates are $286.20 for vice-chairpersons and $115 for Board members.

The chief executive officer, with the assistance of a legal officer and two administrative assistants, is responsible for the day to day operation of the Board office, including overseeing legislative processes. There are more than 50 types of applications/complaints that may be filed with the Board. Matters must be processed within the principles of procedural fairness and natural justice. In addition, all matters must be processed within the time limit identified in the applicable legislation and its regulations, and these time limits vary considerably depending on the urgency of the application or complaint. For example, an application in the public sector alleging illegal strike activity by employees or illegal lockout by an employer must be heard and determined by the Board within 24 to 48 hours. Alternatively, an application for a declaration that a trade union is the successor to a former trade union may take up to two months to complete.

All matters not otherwise resolved must be determined by a formal hearing. The chairperson, in his discretion, may assign a matter to be heard by the chairperson or a vice-chairperson sitting alone, or by a panel of three persons consisting of the chairperson or vice-chairperson along with one member representative of employees and one member representative of employers.

Additionally, the board's processes provide for the scheduling of a pre-hearing conference. This procedure is intended to facilitate complex cases and/or multiple parties involved in a matter by succinctly outlining for the parties the issues involved in the case scheduled for hearing. It will often involve the disclosure of documents to be introduced at the hearing, the intended list of witnesses, and the settlement of procedural issues, all of which might otherwise delay the hearing. Where appropriate, it may also involve efforts to resolve the underlying dispute. A pre-hearing conference will be presided by the chairperson or a vice-chairperson. More than one pre-hearing conference may be held in any one matter.

Generally, a direction to schedule a pre-hearing conference will be made by the chairperson at the same time that the matter is assigned for hearing.

The Labour and Employment Board conducts numerous formal hearings annually at its offices in Fredericton as well as other centres throughout the province. However, a significant portion of the Board's workload is administrative in nature. During the year in review, a total of 54 matters were dealt with by executive and administrative personnel without the holding of a formal hearing, with the Board generally overseeing this activity.

There were 45 matters pending from the previous fiscal year (2018-2019); 212 new matters were filed with the Board during this reporting period for a total of 257 matters; and 76 matters were disposed of. There remain 181 matters pending at the end of this reporting period.

Following is a general overview of activity by legislation. More detailed summary tables of all matters dealt with by the Board begin at page 15.

Legislation	# matters pending from previous fiscal year	# new matters filed/	# hearing days/	# written reasons for decision	# matters disposed	# matters pending at the end of this fiscal year
Industrial Relations Act	27	54	13	8	51	30
Public Service Labour Relations Act	10	34	30	7	16	28
Employment Standards Act	3	12	15	7	9	6
Pension Benefits Act	0	0	0	0	0	0
Human Rights Act	1	3	1	0	0	4
Fisheries Bargaining Act	0	0	0	0	0	0
Public Interest Disclosure Act	0	0	0	0	0	0
Pay Equity Act, 2009	0	0	0	0	0	0
Essential Services in Nursing Home Act	4	109	0	0	0	113
Total	**45**	**212**	**59**	**22**	**76**	**181**

Number of hearing days

Chairperson or Vice-Chairperson Sitting Alone	Panel of Three Persons	Total
59	0	59

Budget 2019-2020

Primary	Projected	Actual
3 - Personal Services - Payroll, benefits, per diem	561,080	431,520
4 - Other Services -Operational Costs	77,200	(96,766)
5 - Materials and Supplies	13,800	12,866
6 - Property and Equipment	0	(958)
Total	**652,080**	**542,110**

Summary of sample cases

This section provides a sampling of cases rendered by the Labour and Employment Board during the current reporting period, and illustrates the diversity of matters that the Board is required to address. The summaries are indexed according to the relevant statute.

Industrial Relations Act

Application for certification rendered moot by voluntary recognition agreement and collective agreement

Canadian Union of Skilled Workers v. Valard Construction LP, and International Brotherhood of Electrical Workers, Locals 37, 502, 1555, 2166, and Electrical Contractors Association of New Brunswick, IR-030-18, 26 July 2019

In August 2018, the Canadian Union of Skilled Workers filed an application under the construction industry provisions of the *Industrial Relations Act* to be certified as the bargaining agent for a unit of electrical employees who worked for Valard Construction in New Brunswick. Shortly thereafter, board staff wrote to the parties to indicate that the applicant union had filed documents which established its status as a trade union under s. 38 of the act, and which indicated that it had sufficient employee support for outright certification without the need for a hearing or representation vote. In October 2018, while the application for certification was outstanding, the union and the employer entered into a voluntary recognition agreement as well as a collective agreement. In November 2018, the Board, which had not been informed of these agreements, granted a right of intervention to several parties who wished to raise the question of whether the union was indeed a trade union under the act. The Board set a hearing for May 2019. However, shortly before the scheduled hearing, the union informed the Board of the voluntary agreement and collective agreement which had been entered into by the parties back in October 2018. In response, one of the intervenors, the Electrical Contractors Association of New Brunswick, brought a motion to seek termination of proceedings on the grounds that the application for certification had been rendered moot by the fact that the union and the employer had reached a voluntary recognition agreement and a collective agreement. The union and the employer disagreed, saying in part that the question of union status remained a «live issue» which required that the board continue with the certification proceedings.

The board concluded that no labour relations purpose would be served by granting an order for certification in a case where the parties had already executed a voluntary recognition agreement and had reached a collective agreement. Although the bargaining unit had been expanded by the parties in their agreements, it nonetheless included the original group of electrical employees listed in the union's application for certification. Accordingly, in view of the agreements reached by the parties, the union's application for certification was moot and the Board was precluded from granting certification. The question of the union's status as a trade union under the act did not present a «live issue» for the Board to resolve. The matter of trade union status is to be considered within the context of an application for certification; it does not present a «stand alone» issue. This question, which might be relevant in the future, could be addressed at some point on a different application for certification by the union in respect of a bargaining unit with a different employer. The current application for certification was dismissed.

Board outlines test by which to consider employee petition for union decertification

Vincent LeBlanc, on behalf of a group of employees v. United Food and Commercial Workers Canada, Local 1288P and Canadian Corps of Commissionaires, NB/PEI Division Inc., IR-038-19, 20 November 2019

In 2016, the New Brunswick Labour and Employment Board certified the United Food and Commercial Workers Canada, Local 1288P, as the bargaining agent for a group of employees who worked for the Canadian Corps of Commissionaires at the RCMP detachment in Moncton. In April 2017, the union and the employer entered into a 2-year collective agreement. Early in 2019, the applicant LeBlanc took a job with the employer and formed the opinion that there was general dissatisfaction with the union. LeBlanc referenced online resources to draft a document entitled Petition for Decertification which began with the statement «The undersigned employees of (the Employer) do not want to be represented by (the Union).» Thereafter, the document contained a number of errors regarding such things as the names of the employer and the appropriate labour board, as well as the degree of employee support required for decertification. LeBlanc called a meeting of employees at a Moncton restaurant and secured the signatures of 11 of the 17 members of the bargaining unit at the relevant time. LeBlanc then

filed an application under s. 23 of the *Industrial Relations Act* for a declaration from the Labour and Employment Board to terminate the bargaining rights of the union.

The role of the Board in an application for decertification is to determine whether not less than 40 per cent of the members in the bargaining unit have voluntarily signified in writing that they no longer wish to be represented by a union. The question of voluntariness is to be determined in the circumstances of each case. Here, the application was supported by more than 60 per cent of the employees. The Board declined to adopt a «legalistic approach» to the interpretation of the petition preferring instead to recognize that, despite errors in content, the wording of the petition made clear to its signatories that they were indicating an intention to support decertification. Accordingly, the Board ordered that the matter proceed to a representation vote to confirm whether a majority of employees wished to terminate the bargaining rights of the union.

Employers' offer on retroactive pay did not mislead employees or constitute a failure to bargain in good faith

Canadian Union of Public Employees, Locals 1429, 1726, 1763, 2109, 2170, 4597 as represented by the Council of Nursing Home Unions v. New Brunswick Association of Nursing Homes Inc., IR-055-19, 6 November 2019

The Council of Nursing Home Unions represents several Canadian Union of Public Employee local unions for the purposes of collective bargaining with the New Brunswick Association of Nursing Homes, which represents various employer nursing homes in the province. In September 2019, as part of the bargaining process between the parties, the association on behalf of the employer nursing homes presented the council of unions with a proposal for a new collective agreement which contained a Summary of Main Items. One of the items in the summary related to a lump sum payment for retroactive wage increases of between $2,100 and $2,900 depending on job classification. The parties were unable to reach agreement. The association, pursuant to s. 105.1 of the *Industrial Relations Act*, then requested that the Labour and Employment Board conduct a vote of the relevant employees to determine if its offer was acceptable to them. The council viewed the proposal on retroactive pay to be unclear and misleading because it failed to take account of a variety of contingencies, such as leaves, overtime, holidays or injuries, which could diminish an employee's actual lump sum entitlement. In October 2019, the council sent a complaint to the Minister of Post-Secondary Education, Training and Labour. It alleged that the association had failed to make every reasonable effort to conclude a collective agreement contrary to s. 34 of the *Industrial Relations Act*. The minister referred the matter to the Labour and Employment Board.

Under s. 105.1 of the act, employers have a right to request the Board to conduct a vote of employees in respect of their most recent offer and if the vote indicates acceptance of that offer its terms are to be included in the new collective agreement. As to clarity, the Board must assure itself that the contents of the offer are capable of forming a collective agreement. In this case, the association's proposal, particularly the term on retroactive pay, did not conform to language typically seen in a collective agreement. However, any reasonable employee would recognize that the amounts provided in the association's offer were estimates and that actual entitlement could be altered by a variety of factors. There was no evidence that the association of employers had intended to mislead the employees in order to obtain a favourable outcome on the vote, which had been held although the ballot boxes were sealed pending the Board's decision on the council's complaint in this case, and the one that follows. Here, the Board decided that the association had not failed to make every reasonable effort to reach a collective agreement, sometimes known as the duty to bargain in good faith and, therefore, the council's complaint was dismissed.

Board orders destruction of ballots where new evidence reveals that employers' association made premature request for employee vote to ratify its offer

Canadian Union of Public Employees, Locals 1429, 1726, 1763, 2109, 2170, 4597 as represented by the Council of Nursing Home Unions v. New Brunswick Association of Nursing Homes Inc., IR-057-19, 26 November 2019

The Council of Nursing Home Unions on behalf of a number of CUPE locals lodged a complaint with the Minister of Post-Secondary Education, Training and Labour against the Association of Nursing Homes Inc., which represents various nursing homes in the province. The parties were in the process of negotiating a new collective agreement. The complaint by the council of unions alleged that the association of employers had failed to make every reasonable effort to conclude a collective agreement, often referred to as the duty to bargain in good faith, contrary to s. 34 of the *Industrial Relations Act*. The association had sent the council an offer via email in which it proposed the terms for a new collective agreement. Less than 24 hours later, the association requested that the Labour and Employment Board conduct a vote of nursing home employees in respect of its offer, pursuant to s. 105.1 of the *Act*. The Board agreed to conduct the vote, but the ballot boxes were sealed and the votes were not tabulated pending

the outcome of a prior complaint which the council had made against the association regarding retroactive pay, which the Board would dismiss. It then became apparent that the association had presented its offer to the council via email with no reasonable opportunity for discussion, given that the next day the association requested the Board to order a vote of employees. The parties would meet in person to discuss the association's proposal, but only after the hearing of the first complaint and after the vote had been held. These circumstances prompted the council of unions to file this second complaint, which the minister also referred to the Board for resolution.

The board concluded that the association had failed to present its proposed offer for a new collective agreement in a manner that complied with s. 105.1 of the act. In the circumstances of this case, delivery of the association's offer to the council by email followed shortly thereafter by a request for an employee vote on the offer did not provide sufficient time for the parties to discuss the terms of the offer. However, the association's failure to comply with s. 105.1 was akin to a technical breach of the act which had little impact on negotiations. The breach did not amount to a failure to bargain in good faith contrary to s. 34 of the act. Yet, the Association had failed to comply with s. 105.1 by failing to properly present its offer, which gave rise to the question of whether the board ought to have ordered the vote on that offer. Pursuant to s. 131 of the act, the Board elected to reconsider its decision to order the vote. It observed that such a vote is an extension of the collective bargaining process and indicated that it is always better when the parties discuss, clarify and negotiate a proposal. The parties would have benefited from a face-to-face meeting prior to an employee vote on the association's offer. Such a meeting would have fostered good labour relations between the parties, who enjoyed a positive relationship and history of co-operation. However, a meeting in person at which the association finally presented its offer in accordance with the terms of s. 105.1 of the act was not held until after the vote had been taken. Accordingly, the association's request for a vote on its offer had been premature. The employee vote should not have been ordered. The Board directed that the sealed ballots be destroyed.

Construction firm, rather than recruitment agency, seen as true employer of workers for purposes of certification

International Association of Heat and Frost Insulators and Asbestos Workers, Local 131 v. Dover Insulation Contractors (2005) Inc. and Saint John Construction Association Inc., IR-045-19, 17 December 2019

The applicant union, which represents insulation workers, sought to be certified under the construction industry provisions of the *Industrial Relations Act* as bargaining agent for a unit of workers who performed services for the respondent, a contractor who installed insulation at various construction sites. A recruitment agency had signed a contract with the respondent for the provision of temporary labourers. The agency would advertise for workers, interview them to determine their qualifications, and then refer the workers to the respondent. The contract between the agency and the respondent indicated that the temporary workers were at all times employees of the agency, rather than the respondent contractor. In addition, the recruitment agency had a policy manual which reiterated that the temporary workers they had selected were «legally employed» by the agency. On the union's application for certification, an issue arose as to whether the temporary workers should be viewed as employees of the recruitment agency, in which case their support for the union would not be relevant, or the respondent contractor, in which case their support would be taken into account.

The board observed that the contract between the recruitment agency and the respondent contractor was designed to indicate that the agency, rather than the contractor, was the employer of the temporary workers. However, the definitions of «employee» and «employer» in the *Industrial Relations Act* prevailed over any private agreement between these parties. In addition, the issue of true employer had been addressed by labour boards across the country which had concluded that the central factor is the identity of the party which exercises fundamental control over the work of the employees in question. The evidence indicated that the respondent contractor supervised the temporary workers at the various job sites and had control over hiring and firing workers which the recruitment agency had screened. Moreover, no representative of the recruitment agency had ever attended one of the respondent's construction sites. Accordingly, the contractor, rather than the recruitment agency, was the true employer of the temporary workers. Given that the union had the support of a majority of workers at the relevant time, the Board granted the union's application for certification.

Board declines to terminate union's bargaining rights although there had been no employees in bargaining unit for more than 2 years

Avant Garde Construction and Management Inc. v. United Brotherhood of Carpenters and Joiners of America, Local 1836, and Saint John Construction Association Inc., and Moncton Northeast Construction Association Inc., IR-041-18, 21 June 2019

In January 2014, the respondent union, United Brotherhood of Carpenters and Joiners of America, Local 1836, was certified by the Labour and Employment Board as the bargaining agent in respect of carpentry workers employed by the applicant Avant Garde Construction and Management Inc. The certification bound the applicant employer to a collective agreement between the respondent union and two construction associations. In July 2018, the collective agreement was modified by a Letter of Agreement which allowed the employer to contract or sub-contract carpentry work provided the contractor or sub-contractor respected the collective agreement. In December 2018, the employer applied to the Board under s. 25 of the *Industrial Relations Act* for a declaration to terminate the union's bargaining rights on the grounds that there had been no employees in the bargaining unit for more than two years. The employer indicated that it dealt with sub-contractors and owners and that its business model did not include the hiring of carpenters. While it had hired persons to perform carpentry work on two jobs, most recently in the summer of 2016, it indicated that it had no intention to hire carpenters in the future.

The board recognized that the lynchpin to collective bargaining under the act is the principle of voluntarism which is recognized by the establishment of bargaining rights through the process of certification. The principle of voluntarism demands that the board look to the potential impact on future employees which the employer might hire. The board will exercise its discretion to terminate bargaining rights under s. 25 of the act only where there is no real likelihood that the employer will retain future employees such that the bargaining unit would become moribund. Here, the applicant employer had hired carpentry workers as recently as 2016 and its president had testified that he could not say with 100 per cent certainty that the applicant would not need carpenters again. The applicant was attempting to free itself from the collective agreement as modified by the Letter of Understanding, which had become a hindrance to reducing costs. Given these factors, the Board declined to exercise its discretion to terminate the respondent union's bargaining rights and dismissed the employer's application.

Board submits matter to first contract arbitration where parties took uncompromising position on wages

Bee-Clean Building Maintenance v. Canadian Union of Postal Workers, Local 105, IR-042-19, 15 August 2019

In October 2018, the Canadian Union of Postal Workers, Local 105, was certified as the bargaining agent for a unit of employees who worked for Bee-Clean Building Maintenance which provided janitorial services in Saint John and Dieppe. The parties began to bargain for a first collective agreement but reached an impasse on the question of wages. The union sought to establish wage rates by reference to contracts it had negotiated in Ontario which, the employer said, would entail a 34 per cent increase in labour costs. The employer was prepared to make an offer that would increase its labour costs by 2.2 per cent, which the union rejected on the basis that the employees were currently receiving pay near the minimum wage. Following unsuccessful conciliation, the matter was referred to the Labour and Employment Board to determine whether it should proceed to first contract arbitration pursuant to s. 36.1 of the *Industrial Relations Act*.

The Board recognized that the intention of first contract arbitration is not to displace free collective bargaining which is the primary and preferred means by which to settle on a collective agreement. In order to interfere with free collective bargaining, the Board must find that one of the conditions in s. 36.1 of the act has been met: (a) the refusal of the employer to recognize the authority of the bargaining agent, (b) an uncompromising position adopted by a party, (c) the failure of a party to make reasonable efforts to conclude a first collective agreement or (d) any other relevant condition. Here, the evidence indicated that both parties had taken uncompromising positions over the matter of wages. The union sought parity with Ontario while the employer rejected such parity. Neither party had made an effort to provide a reasonable justification for its position. The Board decided to submit the matter to first contract arbitration given that the parties had failed to compromise and that their dispute on wages was narrowly defined, which made the matter well-suited to such arbitration.

Public Service Labour Relations Act

Housing Program Officers a proper «fit» for bargaining unit of government employees dealing with basic human needs

Canadian Union of Public Employees, Local 1418 v. Province of New Brunswick, as represented by Treasury Board, PS-011-18, 23 September 2019

The Canadian Union of Public Employees, Local 1418, represented a bargaining unit comprised of a large number of full-time government employees who worked within the Rehabilitation and Therapy Group at the Department of Social Development. There were some 35 employees known as Housing Program Officers who had been placed within an Administrative Category and excluded from collective bargaining on the premise that they were part of management. The union believed that the functions of the non-bargaining Housing

Program Officers had evolved to the point where they were performing work similar to employees within the bargaining unit, who received notably higher pay. The union applied to the Labour and Employment Board under s. 31 of the *Public Service Labour Relations Act* to have the Housing Program Officers included in the Rehabilitation and Therapy Group bargaining unit.

The question for the Board was to determine whether the Housing Program Officers fell within the non-bargaining Administrative Group, as argued by the employer, or the Rehabilitation and Therapy Group, as represented by the union. The Board acknowledged that its role under s. 31 is to analyze an employee's duties, job description and classification to determine what bargaining unit an employee might fall under. As to duties, the Housing Program Officers were required to respond to the social need for housing. Their job description related, in essence, to shelter as a basic human need. Their classification as Rehabilitation and Therapy Group was defined to promote «social and human rights needs», which includes housing. The evidence showed that the Housing Program Officers had a community of interest with bargaining unit members. They served the same public in furtherance of the same goals and worked together to promote client self-sufficiency. Housing Program Officers were members of the same team as bargaining unit members and worked the same hours in the same locations. The Board concluded that the Housing Program Officers were a proper «fit» for the Rehabilitation and Therapy Group and ordered that they be included in the bargaining unit of these employees as represented by the union.

Province violated statutory freeze on terms and conditions of employment by offering wage premium to recruit nurses

New Brunswick Nurses Union v. Province of New Brunswick as represented by Treasury Board, PS-015-19, 21 January 2020

The New Brunswick Nurses Union was party to a collective agreement with the Province of New Brunswick which expired on 31 December 2018. Two months earlier, on 31 October 2018, the union gave notice to bargain to the employer which, under s. 46 of the *Public Service Labour Relations Act*, triggered a «statutory freeze». Such a freeze is designed to keep in place all terms and conditions of employment until such time as a new collective agreement is reached, an arbitral award is made, or strike action is authorized. The parties bargained during the spring and summer of 2019 at which time the employer recognized that the vacancy rate for nursing positions at a mental health facility known as the Restigouche Hospital Centre (RHC) had reached 40 per cent. In order to attract more psychiatric nurses, the employer proposed a wage premium and a recruitment bonus, but this was rejected by the union because it did not address recruitment and retention issues at other health care facilities in the province. In September 2019, the employer took the unilateral decision to implement a 5 per cent premium in respect of nurses at the RHC claiming that this step was necessary to address a critical situation. In response, the union filed a complaint under s. 19 of the act saying that the employer had violated the statutory freeze and that labour law does not recognize the defence of necessity for such a violation.

The Board acknowledged that a statutory freeze on terms and conditions of employment during negotiations for a new collective agreement is part of the foundation of the collective bargaining system and that exceptions to the freeze should be rare and narrowly construed. A defence of necessity has not been recognized or applied in the labour relations context. Such a defence is known at common law. The onus is on an employer to demonstrate very exceptional and extraordinary circumstances beyond its control sufficient to justify a violation of the statutory freeze. Here, the employer failed to prove such circumstances. Nursing shortages are not unusual in the province. There had been a series of reports on the difficulties of recruitment and retention of nurses at the RHC which made the increase in the staff vacancy rate foreseeable. To a large extent, the shortages were the culmination of the employer's failure to address the situation much earlier. The nursing shortages at the RHC were a continuing problem and not the result of exceptional and extraordinary circumstances. Moreover, the employer failed to discuss alternatives with the union and, as events showed, the 5 per cent premium had little positive effect. The Board concluded that the employer had violated the statutory freeze in s. 46 of the act and ordered it not to commit further violations of the act.

Board reiterates view that larger bargaining units consistent with good labour relations

New Brunswick Union of Public and Private Employees v. Cannabis NB Ltd., PS-001-19, PS-002-19, PS-004-19, 21 May 2019

The New Brunswick Union of Public and Private Employees filed three applications with the Labour and Employment Board seeking certification as bargaining agent in respect of retail employees at Cannabis NB locations in Miramichi, Campbellton and Saint John. The employer had 20 locations throughout the province with a total of 209 retail employees. The three applications covered 32 of these retail employees, a majority of which supported the applications. The employer raised a question as to the appropriateness of the proposed bargaining units, in particular whether the Board should depart from its

long-standing practice against fragmentation to allow a proliferation of small bargaining units. The board consolidated the three applications for the purposes of a hearing which focussed on this question.

The board was guided by the overarching principle, which it has long followed, that larger public sector bargaining units are consistent with good labour relations. To allow the union to carve out smaller bargaining units would open the opportunity for another union to organize employees at other locations operated by the employer. This could lead to complexity and fragmentation which would do nothing to promote good labour relations. Moreover, the employer's retail and distribution system was aligned with that of the New Brunswick Liquor Commission which had been certified on a corporation wide basis. The Board concluded that the appropriate bargaining unit would consist of all the retail employees at the employer's 20 locations. Given that the union did not have sufficient support within this larger bargaining unit, its applications for certification were dismissed.

Board issues cease and desist order against unlawful strike activity at provincial laundry

Service New Brunswick - Health Services and Province of New Brunswick as represented by Treasury Board v. Canadian Union of Public Employees, Local 1251 and 1190, PS-016-19, 23 October 2019

The employer, Service New Brunswick - Health Services, operated a laundry facility in Saint John which provided laundry services to hospitals and nursing homes throughout the province. The laundry employees were represented by two locals of the Canadian Union of Public Employees. Collective agreements were in force between the union and the employer. Nonetheless, in the absence of union support, and contrary to these agreements as well as s. 102 of the *Public Service Labour Relations Act*, some laundry employees participated in a walk-out to express their concerns about workplace harassment. The employer responded by filing a complaint with the Labour and Employment Board in which it sought a cease and desist order against the union and the employees.

Under the act, the Board is required to deal with a complaint which alleges illegal strike activity within 24 hours. Accordingly, the Board scheduled an immediate hearing at which it heard from union officials who did not contest the existence of a work stoppage. A finding of illegal strike activity was obvious in the circumstances. Although the issue of union responsibility for an unlawful strike was not before the Board at this stage, the obligation of the union to take reasonable steps to end an unlawful strike was noted as a reminder to all parties to respect workplace democracy as well as the rights and obligations established in the collective agreements. The Board issued a cease and desist order against the union and the employees and reserved jurisdiction to deal with any matter arising out of its order.

Employment Standards Act

Board may determine whether employer has followed legislative procedure to dismiss employee for cause, but it has no authority to assess the merits of the dismissal

Foreman v. Adecco Employment Services Limited, ES-002-19, 18 December 2019

The employee signed a contract of employment as sales representative with the employer, a company which provides sales services in the field of telecommunications. The contract stipulated that the employee could be terminated for cause without notice or pay in lieu thereof and that he would be entitled to only salary and vacation pay to the date of termination. After working for three years, the employee received a letter which indicated that he was being dismissed for cause due to performance issues. The employee filed a complaint with the Director of Employment Standards in which he took issue with his grounds of dismissal and made a claim of $1,100 for pay in lieu of notice of termination, $3,000 for unpaid commissions and bonuses, and $300 for vacation pay. The director investigated the employee's complaint and, after a prolonged period during which documents were sought, eventually issued a notice in which the complaint was dismissed. The employee referred the matter to the Labour and Employment Board.

After a lengthy hearing, the Board concluded that the employee was not entitled to pay in lieu of notice of termination. The employer had dismissed the employee for cause and, in doing so, had complied with s. 30(2) of the *Employment Standards Act* by providing the employee with reasons in writing for his dismissal. The employer had complied with the procedural requirements for dismissal for cause. The Board had no jurisdiction to assess the merits of the grounds for dismissal. The Board also concluded that the employee was not entitled to payment for any outstanding commissions or bonuses because in a case of dismissal for cause his contract of employment limited payment to salary and vacation pay. However, about vacation pay there had been an apparent error in calculation. The Board ordered that the employer pay the employee an additional amount of $174.08 in vacation pay.

Judicial review

During the current reporting period there was one decision of note by the New Brunswick Court of Queen's Bench on a matter that originated with the Labour and Employment Board.

Court upholds board decision on constitutional status of essential services legislation for nursing homes

Province of New Brunswick v. New Brunswick Council of Nursing Home Unions (CUPE), New Brunswick Association of Nursing Homes, Court File No. MM-42-2019, 2 July 2019

In May 2009, the New Brunswick legislature enacted the *Essential Services in Nursing Homes Act* which established a mechanism by which to determine essential services to be maintained at nursing homes in the event of a labour dispute so as to ensure the health, safety and security of vulnerable residents. Under the act, an employer may identify positions which it believes are essential and, if the parties are unable to reach agreement on these positions, the Labour and Employment Board may then make a designation as to essential services, in which case the employees who provide such services are prohibited from going on strike. Notably, the act did not contain a meaningful dispute resolution mechanism as an alternative to the right to strike.

In 2011, the employers' association notified the Board that it had identified services within all nursing home bargaining units to be essential. Using the York Care Centre as a template for all concerned nursing homes, the association and the union were able to reach agreement on essential services positions for all bargaining unit classifications, except those of Licensed Practical Nurse (LPN) and Resident Attendant (RA). These were referred to the Board.

In July 2013 the union filed notice that it intended to challenge the constitutionality of the act on the basis that it violated the right to association under s. 2(d) of the Canadian Charter of Rights and Freedoms because it denied the right to strike to nursing home employees who were designated as essential, either by agreement or by an order of the Board.

In October 2014, the Labour and Employment Board, following an extensive hearing, designated 90 per cent of LPN and RA positions at the York Care Centre to be essential. After allowing the parties an opportunity to prepare their evidence and submissions, the Board resumed its hearing in 2017 and again in 2018 to deal with the union's constitutional challenge to the New Brunswick Essential Services in Nursing Homes legislation.

In a decision released in December 2018, the Board concluded that the limitation on the right to strike in the *Essential Services in Nursing Homes Act* constituted an unjustifiable violation of the constitutional right to association under s. 2(d) of the Charter. The Board declared the s. 8 of the act to be of no force or effect in the case at hand. The province thereupon brought an application to have a court review the Board's decision on matters relevant to the constitutional analysis of a Charter issue. If necessary, the province also sought to suspend the implementation of the Board's decision for six months in order to give it an opportunity to comply with the Charter.

The court noted, at the outset, that an administrative tribunal, such as the Labour and Employment Board, has the authority to consider constitutional questions which arise within its sphere of expertise. The role of the court is to review the Board's decision to ensure that it is correct.

As regards evidence, the province argued that the Board should not have considered the constitutionality of the legislation because no strike had yet occurred and, therefore, there was an insufficient factual basis on which to determine whether the legislative prohibition on strikes by essential services employees would have adverse effects on collective bargaining rights, including the right of association as guaranteed by s. 2(d) of the Charter. However, the record showed that the Board had considered the evidence of three expert witnesses in labour law, as well as the testimony of a former union director, which illustrated that the loss of the right to strike would negatively affect the collective bargaining rights of employees designated as essential. The Court concluded that the Board had a sufficient evidential basis on which to consider the constitutionality of the *Essential Services in Nursing Homes Act*.

The Court also noted that the Supreme Court of Canada had recently defined the applicable law in a Saskatchewan case where essential services legislation was found to be unconstitutional because it removed the right to strike. While there were some differences between the Saskatchewan and New Brunswick legislation, particularly as concerns how to designate essential services, the effect of both statues was the same: union members were precluded from meaningful strike activity. Accordingly, the board was correct to take account of the Supreme Court's binding decision in the Saskatchewan case.

Moreover, the board had applied the proper test to determine whether the Province could justify the limitation on the right to strike imposed by the *Essential Services in Nursing Homes Act*. This was not a matter of determining whether the board had taken Charter

values into account when exercising its discretion in a particular case to designate 90 per cent of LPN and RA positions as essential. Rather, this was a matter of determining whether the legislation was constitutional. The Board had proceeded correctly with a general analysis under which it examined the legislation for rationality, minimal impairment and proportionality in its effects. The legislation failed to impair the right to strike in a minimal manner because it did not offer essential services employees an effective mechanism by which to resolve a labour dispute as an alternative to a strike. Accordingly, the Board had concluded correctly that the legislative limitation on the right to strike was a violation of the right of association under s. 2(d) of the Charter, which the province could not justify. Moreover, the adverse effects of the legislation on essential services employees were not proportional to the law's objective to ensure the ongoing care of vulnerable nursing home residents.

The Court acknowledged that the Board had the authority to decide the question of the constitutionality of the *Essential Services in Nursing Homes Act* and, by way of remedy, to issue a declaration that the offending provision was of no force or effect in relation to this particular case. The province was not incorrect in concluding that the practical impact of such a restricted declaration was tantamount to a general declaration of constitutional invalidity. However, despite the fact that the Board's thorough analysis of the constitutional question led to a conclusion that the legislation was unconstitutional, the Board had not overstepped its statutory authority because it restricted the application of that conclusion to the case at hand.

In the result, the Court agreed with the Board's decision and dismissed the province's application for judicial review. However, the Court exercised its inherent jurisdiction to order that the implementation of the Board's decision be delayed for a period of six months in order to give the province an opportunity to amend the legislation so that it would comply with the Charter.

The province appealed the decision of the Court of Queen's Bench on a number of grounds relating to its constitutional analysis. The Court of Appeal adopted the reasons of the lower court, indicating that the issues had been dealt with in a comprehensive manner and that no error had been made. Accordingly, the appeal was dismissed and the province was ordered to pay costs to the Council of Unions.

Court dismisses application for judicial review of Board decision to deny extension of time for appointment of arbitrator

Cameron v. Regional Health Authority A, M/M/186/2018, 21 October 2019

The applicant doctor had been employed by the respondent health authority in Moncton. In 2017 his employment was terminated and he was offered a lump sum payment equivalent to seven months' salary and benefits in lieu of notice. The applicant took the position that seven months' compensation was not reasonable. He retained legal counsel who wrote to the employer to propose a settlement and to indicate that the applicant was prepared to pursue a court action if necessary. It subsequently came to light that the *Public Service Labour Relations Act* provides a grievance procedure for employees, such as the applicant doctor, who have been discharged. However, there is a limitation period for this procedure, which had passed. The Labour and Employment Board exercised its discretion to extend the period for the filing of a grievance on the basis that the employer ought to have informed the applicant as to the availability of this procedure. The applicant then took the first step in the grievance process, which was to file a grievance with the employer. The employer took the position that seven months' compensation in lieu of notice was reasonable, and informed the applicant's lawyer that the grievance had been dismissed. The applicant then had 20 days under the applicable regulation to pursue the next step in the grievance process, which was to request the appointment of an arbitrator. However, due to an administrative oversight, the employer's decision to dismiss the applicant's grievance did not come to the attention of the applicant's lawyer until after the 20-day period had passed. The applicant once again requested that the Board grant an extension of time, during which he could request the appointment of an arbitrator. The Board declined to grant the extension, noting that there had already been considerable delay in the grievance process and that the applicant had not provided sufficient grounds for the Board to once more exercise its discretion in his favour. The applicant sought judicial review of the Board's denial.

The Court indicated that, in reviewing a decision of a specialized administrative tribunal like the Labour and Employment Board, its role is to determine whether the board had made a reasonable decision. A board decision will meet this reasonableness standard of review if it is justified, transparent and intelligible. In this case, the Board's decision fell within the range of acceptable outcomes and was reasonable. The Board had considered the applicant's arguments, but found that they were not sufficient to justify an extension of time for him to request the appointment of an arbitrator. The employer had not contributed to any confusion on the

part of the applicant as regards such an appointment. The court dismissed his application for judicial review. This decision is currently being appealed.

Summary tables of all matters dealt with by the Board

Industrial Relations Act

April 1, 2019 - March 31, 2020

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters			Total Matters Disposed	Number of cases Pending
				Granted	Dismissed	Withdrawn		
Application for Certification	--	15	15	8	1	2	11	4
Application for a Declaration of Common Employer	2	--	2	--	--	--	--	2
Intervener's Application for Certification	--	--	--	--	--	--	--	--
Application for Right of Access	--	--	--	--	--	--	--	--
Application for a Declaration Terminating Bargaining Rights	1	5	6	5	--	--	5	1
Application for a Declaration Concerning Status of Successor Rights (Trade Union)	17	--	17	3	--	--	3	14
Application for Declaration Concerning Status of Successor Rights (Sale of a Business)	--	1	1	--	--	--	--	1
Application for a Declaration Concerning the Legality of a Strike or a Lockout	--	2	2	1	--	1	2	--
Application for Consent to Institute a Prosecution	--	--	--	--	--	--	--	--
Miscellaneous Applications (s. 22, s. 35, s. 131)	1	3	4	1	--	1	2	2
Complaint Concerning Financial Statement	--	--	--	--	--	--	--	--
Complaint of Unfair Practice	6	4	10	--	1	5	6	4
Referral of a Complaint by the Minister of Post-Secondary Education, Training and Labour (s. 107)	--	5	5	--	2	1	3	2
Complaint Concerning a Work Assignment	--	--	--	--	--	--	--	--
Application for Accreditation	--	--	--	--	--	--	--	--
Application for Termination of Accreditation	--	--	--	--	--	--	--	--
Request pursuant to Section 105.1	--	19	19	5	6	8	19	--

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters			Total Matters Disposed	Number of cases Pending
				Granted	Dismissed	Withdrawn		
Stated Case to the Court of Appeal	--	--	--	--	--	--	--	--
Reference Concerning a Strike or Lockout	--	--	--	--	--	--	--	--
TOTAL	**27**	**54**	**81**	**23**	**10**	**18**	**51**	**30**

Public Service Labour Relations Act

April 1, 2019 - March 31, 2020

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters			Total Matters Disposed	Number of cases Pending
				Granted	Dismissed	Withdrawn		
Application for Certification	--	1	1	--	--	--	--	1
Application for Revocation of Certification	--	--	--	--	--	--	--	--
Notice pursuant to s. 43.1 (Designation of Essential Services)	1	--	1	--	--	--	--	1
Application pursuant to s. 43.1(8)	2	6	8	4	--	--	4	4
Complaint pursuant to s. 19	2	8	10	2	1	2	5	5
Application for Declaration Concerning Status of Successor Employee Organization	--	--	--	--	--	--	--	--
Application pursuant to s. 29 (Designation of Position of Person employed in a Managerial or Confidential Capacity)	--	1	1	1	--	--	1	--
Application pursuant to s. 31	1	2	3	1	--	--	1	2
Application for Consent to Institute a Prosecution	--	--	--	--	--	--	--	--
Reference to Adjudication	--	--	--	--	--	--	--	--
Application for Appointment of an Adjudicator (s. 100.1)	3	2	5	--	--	--	--	5
Application for Appointment of a Mediator (s. 16)	--	--	--	--	--	--	--	--
Application for Appointment of Conciliation Officer (s. 47)	--	8	8	1	--	--	1	7
Application for Appointment of Conciliation Board (s. 49)	--	4	4	2	--	--	2	2
Application pursuant to s. 17	--	--	--	--	--	--	--	--
Application for Reconsideration (s. 23)	--	--	--	--	--	--	--	--
Application for Appointment of Commissioner (s. 60.1)	--	--	--	--	--	--	--	--
Request for a Declaration of Deadlock (s. 70)	1	1	2	1	--	--	1	1

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters			Total Matters Disposed	Number of cases Pending
				Granted	Dismissed	Withdrawn		
Notice pursuant to Section 44.1 of the *Act*	--	1	1	1	--	--	1	--
Request for the Appointment of an Arbitration Tribunal pursuant to s. 66	--	--	--	--	--	--	--	--
TOTAL	**10**	**34**	**44**	**13**	**1**	**2**	**16**	**28**

Employment Standards Act

April 1, 2019 - March 31, 2020

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters						Total Matters Disposed	Number of cases Pending
				Affirmed	Settled	Vacated	Varied	Withdrawn	Dismissed		
Request to Refer Orders of the Director of Employment Standards	1	5	6	--	1	1	--	1	--	3	3
Request to Refer Notices of the Director of Employment Standards	1	3	4	--	--	1	--	1	--	2	2
Application for exemption, s. 8	--	--	--	--	--	--	--	--	--	--	--
Request for Show Cause hearing, s. 75	1	4	5	3	--	--	--	1	--	4	1
TOTAL	**3**	**12**	**15**	**3**	**1**	**2**	**--**	**3**	**--**	**9**	**6**

Human Rights Act

April 1, 2019 - March 31, 2020

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters				Total Matters Disposed	Number of cases Pending
				Granted	Dismissed	Settled	Withdrawn		
Complaint pursuant to s. 23(1)	1	3	4	--	--	--	--	--	4
TOTAL	**1**	**3**	**4**	**--**	**--**	**--**	**--**	**--**	**4**

Essential Services in Nursing Homes Act

April 1, 2019 - March 31, 2020

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters				Total Matters Disposed	Number of cases Pending
				Granted	Dismissed	Settled	Withdrawn		
Notice pursuant to s. 5(1)	4	109	113	--	--	--	--	--	113
TOTAL	**4**	**109**	**113**	**--**	**--**	**--**	**--**	**--**	**113**

Note: There was no activity during the reporting period under the *Fisheries Bargaining Act*, the *Pay Equity Act, 2009*, the *Pension Benefits Act* and the *Public Interest Disclosure Act*.