Labour and Employment Board

Annual Report

2021–2022

New Nouveau Brunswick

Labour and Employment Board

APRIL 1, 2021 – MARCH 31, 2022

Fredericton City Centre
435 King Street, Suite 200, Fredericton NB E3B 1E5 CANADA

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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, 2021 to March 31, 2022.

Respectfully submitted,

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

HONOURABLE TREVOR A. HOLDER

**Minister of Post-Secondary Education,
Training and Labour**

Sir:

I have the honour to submit the 27th Annual Report of the Labour and Employment Board for the period of April 1, 2021 to March 31, 2022 as required by Section 15 of the *Labour and Employment Board Act,* Chapter L-0.01, R.S.N.B.

Respectfully submitted,

David A. Mombourquette
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 (4) 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; a number of 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 of time.

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 (9) 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

I am honoured to submit the 27th annual report of the Labour and Employment Board for the period of April 1, 2021 to March 31, 2022, which is the first annual report since my appointment as Chairperson in August 2021.

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.*

In addition to its regular caseload, a fall 2021 public sector labour dispute created significant challenges for the Board and Board staff in administering the essential services designations and hearing several significant strike-related complaints under the 24-hour expedited process in the *Public Service Labour Relations Act.*

With the Province still experiencing varying degrees of restriction due to the Covid-19 pandemic, the Board continued its practice of conducting virtual hearings through a video platform. It was anticipated that in-person hearings would resume upon the lifting of the state of Emergency, with the assigned Board member having discretion to require attendees to respect social distancing and masking, if the circumstances warranted. Having observed the efficiencies of the virtual hearing process, it is also anticipated that certain hearings will continue to be conducted by video even after the lifting of all health restrictions.

The Board continues to dialogue with the chairpersons and chief administrators of the various Federal and Provincial labour relations boards. These discussions were particularly valuable in dealing with the Board's response to the pandemic and in planning the post-pandemic transition. Boards across Canada are adopting new technology to permit electronic filing of applications, complaints and documents, and our Board will be assessing its current technological capabilities as we seek efficiencies in the Board's processes.

The total number of matters filed with the Board during this fiscal year was 125, 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 33 days of hearing and 65 pre-hearing conferences.

During the year the Board disposed of a total of 170 matters. In so doing, there were 28 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 one (1) appointment of a Conciliation Officer; and five (5) appointments of a Conciliation Board.

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 such requests and 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 Chairperson, I have continued my participation in the Bar Admission course sessions conducted by the Law Society of New Brunswick.

The Board welcomed several new members during the year and saw the departure of several longstanding members. I wish to thank all current and past members for their valuable contributions to the Board and also our administrative and professional staff, whose dedication and expertise ensure that the Board operates in an efficient and professional manner. Finally, I acknowledge with thanks the generous assistance and mentorship provided to me by outgoing Chairperson George P.L. Filliter, K.C., past Chairperson Robert D. Breen, K.C., and Alternate Chairperson Geoffrey Bladon, who is in his 22nd year as a Board member.

David A. Mombourquette
Chairperson

Composition of the Labour and Employment Board

Chairperson – George P.L. Filliter, K.C./
David A. Mombourquette[1]
Alternate Chairperson – Geoffrey L. Bladon

Vice-Chairpersons

Brian D. Bruce, K.C. (Fredericton)[3]
Annie Daneault (Grand Falls)
John McEvoy, K.C. (Fredericton)
Robert D. Breen, K.C. (Fredericton)[2]
Elizabeth MacPherson (Grand Barachois)[2]
J. Kitty Maurey (Fredericton)[2]
Bernard LeBlanc[3]
Michael Marin, K.C.[3]
Sylvie Godin-Charest[3]

Members representing Employer interests

Stephen Beatteay (Saint John)
Gloria Clark (Saint John)
Gerald Cluney (Moncton)[4]
William Dixon (Moncton)[4]
Jean-Guy Lirette (Shediac)[4]
Marco Gagnon (Grand Falls)[4]

Members representing Employee interests

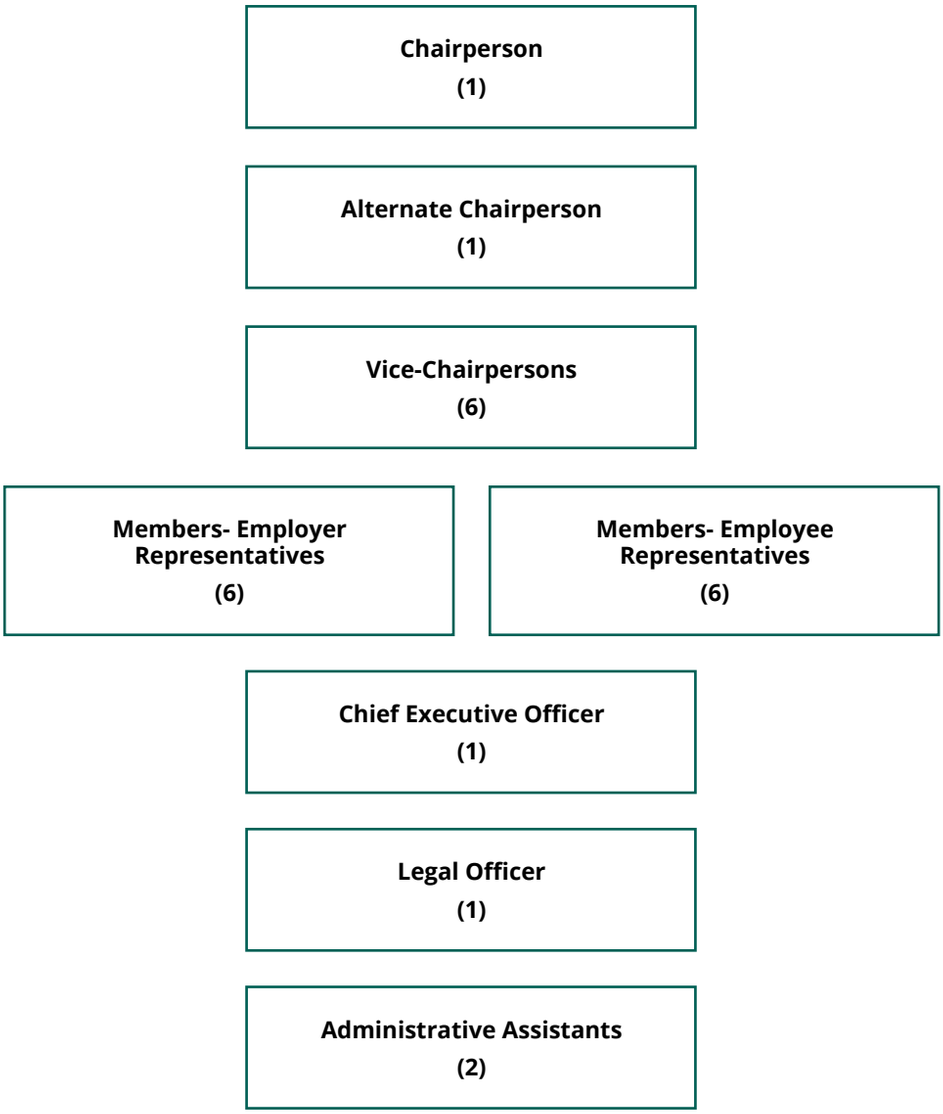
Debbie Gray (Quispamsis)[4]
Richard MacMillan (St. Stephen)[4]
Jacqueline Bergeron-Bridges (Eel River Crossing)[4]
Gary Ritchie (Fredericton)[4]
Marie-Ange Losier (Beresford)
Pamela Guitard (Point-La-Nim)[4]
Chief Executive Officer – Lise Landry
Legal Officer – Shijia Yu

Administrative Staff

Andrea Mazerolle
Debbie Allain

1. Mr. Mombourquette replaced Mr. Filliter effective August 3, 2021 for a term of five years.
2. These Vice-Chairpersons' terms expired on May 27, 2021.
3. Mr. Bruce and Mr. LeBlanc were appointed effective June 30, 2021, Mr. Marin effective September 21, 2021, and Ms. Godin-Charest effective January 12, 2022, each for a term of three years.
4. These members' terms have expired 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 in excess of 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 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 the Board, usually through 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 cases 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.

The Labour and Employment Board conducts numerous formal hearings annually, either at its offices in Fredericton as well as other centres throughout the province, or, since the COVID-19 pandemic, virtually via the Zoom platform. However, a significant portion of the Board's workload is administrative in nature. During the year in review, a total of 152 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 174 matters pending from the previous fiscal year (2020 – 2021); 125 new matters were filed with the Board during this reporting period for a total of 299 matters; and 170 matters were disposed of. There remain 129 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 22.

LEGISLATION	# MATTERS PENDING FROM PREVIOUS FISCAL YEAR	# NEW MATTERS FILED	# HEARING DAYS	# PRE-HEARING DAYS	# WRITTEN REASONS FOR DECISION	# MATTERS DISPOSED	# MATTERS PENDING AT THE END OF THIS FISCAL YEAR
Industrial Relations Act	19	30	7	15	8	39	10
Public Service Labour Relations Act	31	66	11	15	13	67	30
Employment Standards Act	7	22	14	11	4	13	16
Human Rights Act	4	6	1	24	3	3	7
Essential Services in Nursing Home Act	113	0	0	0	0	47	66
Public Interest Disclosure Act	0	1	0	0	0	1	0
Fisheries Bargaining Act	0	0	0	0	0	0	0
Pay Equity Act, 2009	0	0	0	0	0	0	0
Pension Benefits Act	0	0	0	0	0	0	0
TOTAL	**174**	**125**	**33**	**65**	**28**	**170**	**129**

NUMBER OF HEARING DAYS

CHAIRPERSON OR VICE-CHAIRPERSON SITTING ALONE	PANEL OF THREE PERSONS	TOTAL
33	0	33

BUDGET 2021–2022

PRIMARY	PROJECTED	ACTUAL
3 – Personal Services – Payroll, benefits, per diem	595,476	534,675
4 – Other Services – Operational Costs	77,400	(103,160)
5 – Materials and Supplies	16,800	(20,909)
6 – Property and Equipment	0	(2,506)
Total	**689,676**	**661,250**

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. There is also a case from the Court of Queen's Bench, which reviewed a decision of the Board. The summaries are indexed according to the relevant statute.

INDUSTRIAL RELATIONS ACT

Board emphasizes its duty to closely scrutinize evidence of union membership

International Association of Machinists and Aerospace Workers v. Fredericton Toyota, IR-004-21, IR-012-21, IR-013-21, IR-015-21, 18 August 2021

In January 2021, the applicant union, International Association of Machinists and Aerospace Workers, filed an application for certification to represent a bargaining unit of employees who worked for the respondent, a Toyota car dealership in Fredericton. The Board issued a notice to inform employees of the application for certification, which was posted at the workplace. The Board reviewed the membership evidence, noted that the union appeared to enjoy the support of at least 60% of the employees, and indicated that it intended to issue a Certification Order, unless it received a substantive objection from the respondent employer. In response, the employer objected that a number of employees had not paid the initiation fee to join the union. Shortly thereafter, three employees, including the employee who had acted as union organizer, filed complaints which alleged that the employer had engaged in unfair labour practices.

The question of whether some of the employees had failed to pay the union membership fee of $1.00 raised the possibility of an attempted fraud on the Board as regards evidence of membership. The employee who had acted as union organizer signed a statement to the effect that he had collected the requisite union membership fees, which he then forwarded to the union. However, one of the employees said that, although she had signed a membership card, she had not paid the membership fee. This disparity in evidence raised a question of credibility which, the Board noted, must be assessed by reference to the consistency of the competing evidence. Here, a review of the evidence indicated that the membership card of the relevant employee had not been signed at the time and place indicated by the union organizer, nor had the membership fee been paid. The membership card, therefore, was invalid. The practice of the Board is to scrutinize membership evidence closely because certification may be obtained without a membership vote if there is adequate documentary evidence of membership. The Board must be able to rely on the membership evidence submitted by a union. There will be fraud as regards membership evidence where a false representation has been made, reliance has been placed on that false representation, and the person who made the representation knew, or ought to have known, that it was false. In this case, the elements of fraud had been made out in respect of one membership card, which prompted the Board to reject all membership evidence. The union's application for certification was dismissed.

As regards the three complaints of unfair labour practice, the Board recognized that, under s. 3 of the *Industrial Relations Act,* an employer may not participate or interfere in the formation of a union, or discriminate against a person because of union membership, or intimidate or coerce an employee respecting union membership. The first complaint of unfair labour practice came from the employee who had acted as union organizer. He alleged that the employer had called a meeting of employees to question the need for a union and that because of his role as union organizer he had been denied certain lucrative work assignments. He also said that he had been unfairly suspended for "vaping" at work and for failing to meet with the employer regarding a customer complaint. The Board expressed doubts as to the complainant's recall of the incidents in question and indicated that, even if proven, the incidents would not constitute unfair labour practices. A second employee complained, in part, that he had been questioned by the employer as to his involvement with the union and whether he was behind the application for certification. The Board concluded that this part of the complaint amounted to an unfair labour practice. A third employee complained to the Board that on at least three occasions the employer had questioned him as to whether he had paid the $1.00 union membership fee. The Board

concluded that this questioning created stress for the employee and constituted an unfair labour practice on the basis of perceived or actual intimidation or coercion. The Board ordered the employer not to engage in any further unfair labour practices and to provide a copy of the Board's decision to all employees.

Board submits contract negotiations to arbitrator to assist parties at impasse to reach first collective agreement

Maison Nazareth inc. v. United Food and Commercial Workers of Canada, Local 1288P, IR-032-21, IR-003-22, 23 February 2022

In June 2021, the Labour and Employment Board certified the United Food and Commercial Workers of Canada, Local 1288P, as the bargaining agent for a group of employees who worked for Maison Nazareth inc. The employer, which operated a shelter in Moncton that offered services to persons in need, indicated that it was a francophone organization whose working language was French. It wished to negotiate only in French for a collective agreement to be written only in the French language. For its part, the union wished to negotiate on a bilingual basis, suggesting that each party could communicate in its language of choice, either French or English, to reach a collective agreement to be written in both official languages. The issue as to the language of communication created a stalemate between the parties which endured for more than six months without any real progress towards a first collective agreement. Both parties applied under s. 36.1 of the *Industrial Relations Act* to have the matter referred to the Labour and Employment Board for first contract arbitration.

The Board indicated that its role under s. 36.1 of the *Act* is to determine whether an employer has failed to recognize the bargaining authority of a union, whether either of the parties have taken an uncompromising position or have failed to make reasonable efforts in negotiations, or whether some other relevant condition exists as an obstacle to the negotiation of a first collective agreement. If so, the Board can submit the matter to arbitration, or refer the matter to the Minister for the appointment of a mediator. The purpose of s. 36.1 is to respond to delays and intransigence in the negotiation of a first collective agreement, bearing in mind that collective bargaining is both a statutory right under the *Industrial Relations Act,* as well as a constitutional right under the Canadian Charter of Rights and Freedoms. The delay in negotiations which had endured in this case for more than seven months by the time of hearing amounted to a relevant condition which the Board could take into account when inquiring into the negotiations between the parties. Moreover, assertions about the uncompromising positions taken by the parties over the language issue touched upon the essence of collective bargaining, which is communication. Finally, the fact that both parties sought assistance to reach a first collective agreement was also a relevant condition for the Board to take into account in its assessment of negotiations. In light of these factors, the Board decided to submit the matter to arbitration to assist the parties to reach a first collective agreement.

PUBLIC SERVICE LABOUR RELATIONS ACT

Board agrees that paramedics should be reclassified because of significant changes in their qualifications and duties

Canadian Union of Public Employees, Local 1252 v. Province of New Brunswick as represented by Treasury Board, New Brunswick Union of Public and Private Employees, and Paramedic Association of New Brunswick, PS-003-20, PS-004-20, 31 May 2021

In 1969, the *Public Service Labour Relations Act* came into force. It divided the public service into five Occupational Categories, including the Operational Category and the Technical Category which, in turn, were divided into Occupational Groups. In 1970, the Canadian Union of Public Employees, Local 1252, (CUPE 1252) was certified as the bargaining agent for the Patient Services Group, a part of the Operational Category. The Patient Services Group included ambulance attendants, who would later become known as paramedics. In 2007 Ambulance New Brunswick was created to provide ambulance services to the Province. CUPE 1252 continued to represent the paramedics who worked for Ambulance New Brunswick under a series of collective agreements. However, by the fall of 2018, the paramedics at Ambulance New Brunswick had formed a committee in an effort to be reclassified. They wished to move out of the Patient Services Group of the Operational Category, for which CUPE 1252 was the bargaining agent, and into the Medical Science Professionals Group of the Technical Category, which was represented by a different union, the New Brunswick Union of Public and Private Employees. In January 2019, CUPE 1252 gave notice to bargain on behalf of the paramedics. After this notice had been given, the paramedics' reclassification committee

corresponded and met with a number of government officials to promote the idea that the paramedics should be reclassified. In July 2019, the Province began a review to determine whether the 964 paramedics in question should be reclassified. The review indicated that, at the time the paramedics had been placed in the Patient Services Group, the job of ambulance attendant required only first aid training and entailed principally the transportation of patients to hospital. In time, however, paramedics were required to take a 44 week course with 14 modules which covered such topics as anatomy, patient assessment, drugs, trauma and cardiovascular disease. On this basis, the Province, as employer, reclassified paramedics to the Medical Science Professionals Group of the Technical Category within a bargaining unit represented by the New Brunswick Union of Public and Private Employees. CUPE 1252, as bargaining agent for the Patient Services Group in which the paramedics had formerly been classified, brought an application under s. 31 of the *Public Service Labour Relations Act* to contest their reclassification to the Medical Science Professionals Group. CUPE 1252 also brought a complaint which included the allegation that the Province had violated the statutory freeze in s. 46 of the *Act* against any change in terms and conditions of employment during the bargaining period.

The Board indicated that its task under s. 31 of the *Act* was to determine the appropriate bargaining unit for paramedics by taking into account such factors as their essential duties and job description. The onus was on the applicant, CUPE 1252, to prove that the decision of the employer Province to take the paramedics out of the Patient Services Group and place them into the Medical Science Professionals Group was incorrect. However, in cases of reclassification, there is an evidentiary onus on the employer to demonstrate that the position in question has changed sufficiently to justify reclassification. The evidence given by paramedics indicated that their duties had evolved to include physical assessment, diagnostic testing, administration of medications, as well as the maintenance and operation of complex equipment. Such duties were consistent with those described in the National Occupational Competency Profile which the paramedics had adopted in 2011 through their professional association. The Board concluded that the overall scope of practice of paramedics had changed substantially since 2008, which was when the Board had last examined paramedic functions. The core function of paramedics was no longer to transport people to hospital. Paramedics had become health care professionals who used complex equipment and worked with very little supervision to diagnose, triage, stabilize and transport a patient. The paramedic, once mostly a driver, had become an extension of the hospital. Moreover, the job of paramedic had become more closely aligned with the job description contained in the Technical Category – Medical Science Professionals Group. For these reasons, the Board agreed with the employer's reclassification decision with the result that the paramedics would now belong to a bargaining unit represented by the New Brunswick Union of Public and Private Employees. As regards the complaint of CUPE 1252 that the Province, as employer, had violated the statutory freeze in s. 46 of the *Act* by engaging in the reclassification process after notice to bargain had been given, the Board indicated that the timing of the review was questionable. However, the employer had the right to classify employees, there had been no change in a term or condition of employment during the freeze, and the reclassification process had not adversely affected the ability of CUPE 1252 to bargain effectively. Accordingly, the CUPE 1252 application and complaint were dismissed.

An employer may not refuse to pay employees who hold essential services positions, even in circumstances where their services are not required

Canadian Union of Public Employees, Local 2745 v. Province of New Brunswick as represented by Treasury Board (Department of Education and Early Childhood Development), PS-019-21, 12 November 2021

In 2015, the Labour and Employment Board designated as essential two positions within the Province's education system, those of Educational Assistant and Student Attendant. These positions belonged to a bargaining unit represented by the Canadian Union of Public Employees, Local 2745. The role of Educational Assistants and Student Attendants is to assist students who have a variety of physical and intellectual challenges. The designation order specified that, in the event of a strike, 45% of the employees in these designated positions would continue to be required to perform duties relating to the care and supervision of special needs students. In October 2021, the union commenced a legal strike, which included the positions of Educational Assistant and Student Attendant. That same morning, which was a Friday, school superintendants announced that the schools would close that day and that distance learning would commence on the following Monday. On the intervening Sunday, the employer advised the union that all its employees, except those in designated positions, would be locked-out. As for

the employees in the designated positions of Educational Assistant and Student Attendant, the employer indicated that, because of the transition to distance learning, they would not be required to work and, therefore, they would be placed on leave without pay. On that same Sunday, the union filed a complaint with the Labour and Employment Board to allege that the Province, as employer, had violated the *Public Service Labour Relations Act* because it had unlawfully locked out the Educational Assistants and Student Attendants, employees whose positions had been designated as essential during a strike. The employer responded that the *Act* gave it the authority to determine which designated employees would be required to work during a strike and that it did not have to pay the Educational Assistants and Student Attendants because it had determined that their services were not necessary. The issue for the Board was whether the decision of the employer to send home the Educational Assistants and Student Attendants without pay during the strike amounted to an unlawful lockout of employees in designated positions contrary to s. 76 of the *Act.*

The Board resolved the case by reference to the important role which is played by the legislative process for the designation of essential services positions. In 2015, the Board issued an order which confirmed the agreement of the parties to designate as essential the positions of Educational Assistant and Student Attendant. This order deprived these designated employees of their right to participate in a lawful strike. On the other hand, the *Act* provided these employees with certain protections. Section 76 of the *Act* prevents an employer from locking out designated employees, or refusing them work or pay. Section 102.1 indicates that the terms and conditions of an expired collective agreement continue to apply to designated employees during a strike or lockout. Read together, these provisions guarantee designated employees the right to paid employment during a strike or lockout. The employer could not deprive designated employees of both the right to strike as well as the protections afforded to them under the *Act* by simply announcing that their designated services were not required. This would permit the employer to unilaterally alter the level of designations which the Board had established as essential under its legislative authority. The employer's decision to transition to distance learning and to leave the designated employees without work or pay during the strike had the effect of a lockout. Although the employer had the right to structure its operations, it was required to do so within the limitations contained in the *Act.* The employer could not, in essence, revise the legislative protections given to employees whose positions had been designated as essential by the Board. In the result, the Educational Assistants and Student Attendants were entitled to compensation even though the employer had chosen not to assign work to them.

Provincial government had authority to order striking health services employees to return to work due to COVID-related staff shortages

Canadian Union of Public Employees, Locals 1252, 1190 and 1251 v. Province of New Brunswick as represented by Treasury Board, PS-021-21, 20 December 2021

In October 2021, the three complainants, in addition to other local unions of the Canadian Union of Public Employees, went on strike. In November 2021, the Minister of Justice and Public Safety, in response to the COVID-19 pandemic, issued two mandatory orders pursuant to the provincial *Emergency Measures Act.* The initial order affected health facilities and certain off-site support facilities, such as laundry. It purported to designate as essential over 6,000 employees at these facilities and included penalties for non-compliance which ranged as high as $20,400 per day for an individual employee to $100,000 per day for a union. The initial order apparently created some confusion as to which employees were required to work and, therefore, could not continue to participate in the strike. Prior to the strike, the Labour and Employment Board had designated certain health services positions as essential pursuant to the *Public Service Labour Relations Act.* It was unclear as to whether the initial mandatory order intended to apply only to the employees in the positions which the Board had already designated as essential, or whether it intended to designate additional positions as essential for reasons of public health. To clarify the situation, the Minister issued a second order which indicated that the back to work directive applied to positions in addition to those that had already been designated as essential by the Board. The complainants raised a number of issues regarding the validity of the mandatory orders. A preliminary question arose as to the jurisdiction of the Labour and Employment Board to deal with such orders, given that they were issued under the *Emergency Measures Act* and not the *Public Service Labour Relations Act.*

The Board indicated at the outset that it has jurisdiction to deal with orders issued under the *Emergency Measures Act,* at least to the extent that it can determine whether such orders violate the *Public Service Labour Relations Act.* In this case, the employer's initial order purported to

designate certain positions as essential in the interests of public health. This was a violation of the *Act,* which gives the Board exclusive jurisdiction under s. 43.1 to make essential services designation orders. However, where there is a change of circumstances during a strike, s. 113 of the *Act* allows the Province to make orders under the *Emergency Measures Act* to require striking employees to return to work even if they do not hold positions which the Board has designated as essential. Here, the Minister on behalf of the provincial government had made mandatory back-to-work orders under the *Emergency Measures Act* which were permissible under the *Public Service Labour Relations Act.* An examination of the evidence confirmed that such orders, which applied to employees in non-designated positions, had been made in the interests of public health. COVID-19 had strained the human resources of the healthcare system in New Brunswick to the point where there was insufficient staff to perform adequate cleaning, maintain laundry supplies, properly care for the nutritional needs of patients, conduct COVID-19 screening and testing, or administer the COVID-19 vaccine program. This had created an untenable risk to public health and safety. The mandatory back-to-work orders of the employer were valid and overrode the right to strike of the non-designated employees who were affected by the orders. The Board dismissed the union complaint.

Board extends time for filing of grievance by public servant who was dismissed on basis that he violated employer's COVID-19 directives

Floyd v. Province of New Brunswick as represented by Treasury Board, PS-031-21, 2 February 2022

The applicant, Floyd, had worked for the employer, Service New Brunswick, for more than eleven years as a non-bargaining, or non-unionized, public employee. On 14 October 2021, his employment was terminated on the basis that he had violated the employer's directives with respect to COVID-19 vaccination and testing. The day before, the applicant had made it clear in two letters that he disagreed with the employer's impending decision to terminate his employment. On 17 December 2021, more than sixty days after his termination, the applicant submitted a grievance to the employer to challenge his discharge, pursuant to s. 100.1 of the *Public Service Labour Relations Act.* The employer rejected the grievance because it had been submitted beyond the 25-day time limit for filing a grievance as set out in a regulation under the *Act.* The applicant acknowledged that his grievance had been late, but took the position that the employer should have given him notice of the time limit. The applicant requested that the Labour and Employment Board act under its regulatory authority to grant an extension of time in which to file his grievance.

The Board recognized that an extension of time in which to file a grievance under the *Public Service Labour Relations Act* should be granted only for a good and valid reason. Such reasons are not limited to incorrect legal advice, or to medical, physical or emotional barriers. Rather, all the circumstances surrounding a delay must be taken into account, including the consequences of an extension, or its denial, on both the employee and the employer. A regulation under the *Act* imposes an obligation on an employer to inform non-bargaining employees of the grievance process, including the necessary forms and the identity of relevant employer representatives. Such notice is important because non-bargaining employees do not have a union representative to consult with about the grievance process. Where the employer does not inform a non-bargaining employee of his or her grievance rights, the Board will be sympathetic to a request for an extension in time. Here, there was no indication that the employer had notified the applicant of the procedure for filing a grievance. Moreover, the employer had been informed in advance that the employee disagreed with the decision to terminate his employment. The employer did not allege that it would suffer a hardship if an extension was granted in this case, which involved a relatively short delay. However, a refusal to grant an extension would deprive the applicant of an opportunity to have his case heard and determined. Accordingly, the Board concluded that the applicant had established a good and valid reason for an extension, and deemed his grievance to be filed on the date of its decision.

Board declines to grant an extension for filing a grievance by a public employee who was placed on leave without pay for failing to provide proof of COVID-19 vaccination

Gorham v. Province of New Brunswick as represented by Treasury Board (Horizon Health Network), PS-009-22, 1 April 2022

On 7 November, 2021, the applicant, who was a non-bargaining, or non-unionized, healthcare worker, filed an application in the Court of Queen's Bench in which she, and others, challenged the constitutionality of the employer's

COVID-19 policy, which required unvaccinated employees to be placed on leave without pay. On 22 November 2021, the applicant was placed on leave without pay on the basis that she had failed to provide proof of vaccination. On 2 December 2021, the Province filed a motion with the Court of Queen's Bench to dismiss the constitutional challenge in which the applicant was involved. The Province took the position that the Court did not have jurisdiction over the constitutional case, because the applicant was required to take proceedings under the *Public Service Labour Relations Act,* which meant that she should proceed before the Labour and Employment Board, rather than the Court. One effect of the Province's motion, which was eventually successful, was that it provided the applicant with notice of her rights of grievance under the *Act.* Some eight weeks later, on 24 January 2022, the applicant filed a grievance with the employer under the *Act* to contest the decision to place her on leave without pay for failure to provide proof of COVID-19 vaccination. On 7 February 2022, the employer rejected the grievance on the basis that it had not been submitted within the time limit for filing a grievance. In response, the applicant sought an extension of the time limit from the Labour and Employment Board, in which she argued that the employer had an obligation to inform her of the time limit for a grievance under the *Act.*

The Board observed that the court motion which the Province had filed in respect of the applicant's constitutional challenge provided the applicant with clear and unequivocal notice that she had the right to file a grievance and seek adjudication under the *Public Service Labour Relations Act.* However, the applicant delayed for eight weeks before she filed her grievance. It was apparent that she had delayed, not because she was unaware of the grievance process but, rather, because she hoped to succeed in the court proceeding. She filed her grievance under the *Act* only after it became apparent to her that the court proceeding would likely be dismissed. The applicant had actual notice of her rights prior to the expiration of the time limit and it was incumbent on her to follow the grievance process in a timely manner. The Board declined to grant an extension of time for the filing of a grievance because there was no good and valid reason to do so in this case.

EMPLOYMENT STANDARDS ACT

Board determines that public servant may take parallel proceedings concerning his dismissal because each has a different purpose and possible remedy

Campbell v. Opportunities New Brunswick, ES-006-21, 6 October 2021

In 2016, the complainant employee, Campbell, commenced employment with the employer, Opportunities NB, as a Business Development Executive. In August 2019, the employee submitted a harassment complaint pursuant to the employer's Respectful Workplace Policy. The employee alleged that he had been subjected to threats by two superiors because he would not agree with them regarding the assessment of a company in which they wished to recommend an investment of provincial funds. In July 2020, the employee was dismissed on the premise that his skill set did not meet the needs of the employer. In August 2020, the employee filed a grievance under s. 100.1 of the *Public Service Labour Relations Act,* which allows a non-unionized public servant to challenge his dismissal. The employer denied the grievance whereupon the employee referred the matter to the Labour and Employment Board for adjudication. In March 2021, the employee filed a complaint in which he alleged that his dismissal also violated s. 28 of the *Employment Standards Act*, which provides protection to a whistleblower, *i.e.,* an employee who provides information that an employer has engaged in unlawful conduct. In June 2021, the Director of Employment Standards declined to proceed with the employee's complaint on the grounds that it concerned his dismissal which was also the "subject matter" of another proceeding and based on the same facts. In response, the employee requested that the Director's decision be referred to the Board. The referral gave rise to a preliminary question as to whether the employee could pursue a grievance under the *Public Service Labour Relations Act* and a complaint under the *Employment Standards Act* at the same time.

The Board indicated that the case turned on the meaning of the words "subject matter" in s. 62 of the *Employment Standards Act,* which prevents the Director of Employment Standards from acting on a complaint whose subject matter is the same as that being dealt with in another proceeding. The purpose of s. 62 is to prevent a multiplicity of proceedings, as well as inconsistent results in different proceedings based on the same circumstances, which would bring the administration of justice into disrepute. The determination of whether the employee's grievance under the *Public Service Labour Relations Act* was the same as his complaint under the *Employment Standards Act* depended on an assessment of the facts in their entire context,

including the purpose of the respective legislation and the available remedies. The purpose of s. 100.1 of the *Public Service Relations Act* is to provide a non-bargaining public employee with a monetary remedy for wrongful dismissal. On the other hand, the purpose of s. 28 of the *Employment Standards Act* is to provide employees with a measure of immunity from employer retaliation and, thereby, to recruit such employees to assist with the suppression of unlawful conduct by the employer. An employee who is dismissed for such whistle-blowing may seek the remedy of reinstatement, rather than mere compensation. Accordingly, said the Board, the "subject matter" of a grievance under s. 100.1 of the *Public Service Labour Relations Act* and a complaint under s. 28 of the *Employment Standards Act* "are as distinct as chalk and cheese." The grievance relates largely to an employee's conduct while a complaint is directed at the conduct of an employer. There would be no concern for conflicting decisions because the reasoning in each proceeding would be different. In the event that the employee was to succeed in both proceedings, he would be entitled to only one remedy. To the extent that the law lacked clarity as to the rights of a non-bargaining public servant who had been dismissed without cause, the better course of action at this early stage of litigation was to allow both the employee's grievance and his complaint to proceed in parallel. The Board ordered the Director of Employment Standards to proceed with the employee's complaint under the *Employment Standards Act,* regardless that he also had an outstanding grievance under the *Public Service Labour Relations Act.*

Board considers criteria to determine whether employee has quit or been terminated

Aliabadi v. Element5 Spa Inc., ES-010-20, 12 May 2021

In 2013, the employee, Aliabadi, began work as a nail technician for the employer, Element5 Spa, at its Market Square location in Saint John. In February 2019, the employer was informed that the employee had served alcohol to an underage client. The employer conducted a brief investigation into this allegation and then suspended the employee for two days on the basis that she had violated the employer's protocol on liquor. The employee viewed the suspension as unfair. She returned to work following her suspension and attended a meeting with the employer. During the meeting, the employee suffered a panic attack. She left the meeting to seek medical treatment and was advised to take two week's rest from work. During her medical leave, the employee noted that she had been removed from the employer's Facebook staff page. She was also asked by a member of the employer's staff to empty her staff room locker, although the employer indicated in an email that it only wished to access her locker to obtain tools which belonged to someone else, adding that the employee's personal items would be placed in a bag which she could pick up the next time she was at Market Square. On the basis of these events, the employee formed the opinion that she had been terminated, although the employer took the position that she had quit. The employee filed a complaint with the Director of Employment Standards to allege that she had been dismissed without cause pursuant to s. 30 of the *Employment Standards Act* and was entitled to pay in lieu of notice. The Director concluded that the employee had been dismissed without cause and ordered the employer to pay her $1,115.04 in lieu of the required notice. The employer referred the matter to the Labour and Employment Board which was called on to determine the sole issue of whether the employee had been terminated, which would entitle her to a remedy under the *Act,* or whether she had quit, in which case there would be no such remedy.

The Board noted that, under s. 30 of the *Employment Standards Act,* where an employee is dismissed without cause, an employer is required to give notice, or pay in lieu of such notice. An employer who alleges that an employee has quit, rather than been dismissed, must establish, first, that there has been an express statement or action by the employee which confirms her intention to quit and, second, that the employee took a clear and unequivocal act to carry out that intention. Here, the employer failed on both counts. The employee had left work due to a panic attack to seek medical assistance. This was not the act of a person who intended to quit her job. Moreover, in an email concerning the employee's locker, the employer had indicated that her personal items would be placed in a bag for her to collect the next time she was at Market Square. This clearly indicated that the employer intended to terminate the employee. Accordingly, the Board concluded that the employee had been dismissed without cause and confirmed the order of the Director which awarded her $1,115.04 as pay in lieu of notice.

HUMAN RIGHTS ACT

Board makes award of $12,500 under Human Rights Act as remedy for discrimination on the basis of mental disability

Martin v. E.C. Wellness Centre Inc., New Brunswick Human Rights Commission, HR-001-21, 21 June 2021

In 2010, the complainant was diagnosed with a mental condition which included depression and anxiety. She participated in treatment programs and took anti-depression medication. In the summer of 2017, the complainant began to work for the respondent, which operated several marijuana dispensaries in New Brunswick. The respondent was aware of the complainant's medical condition. Initially, the complainant enjoyed her job at the respondent's Fredericton warehouse, which included the packaging of marijuana for the respondent's retail stores, as well as the filling of on-line orders. However, as the year progressed, the complainant began to experience anxiety, depression and insomnia which she attributed to the respondent's manager who, she said, had created a toxic workplace by yelling and being disrespectful to staff. In January of 2018, the complainant saw her family doctor, who recommended a medical leave of one week. The complainant returned to work in early February of 2018 at which time she felt reinvigorated. On her return, however, she was demoted in the sense that her work was limited to packaging marijuana. She would no longer fill online orders. On the day of her return, the complainant was called to a meeting with the manager who demanded to know the reason why she had been on medical leave and whether this would be a recurring issue. The complainant declined to disclose the specific reason for her medical leave, but told the manager that the need for such leave would not recur. The manager indicated that if the complainant took further medical leave, he would hire additional staff and cut the complainant's hours. The next day, the complainant's employment was terminated. In response, she filed a complaint with the New Brunswick Human Rights Commission alleging that she had been discriminated against on the basis of mental disability contrary to s. 4 of the provincial *Human Rights Act.* The Commission conducted an investigation and then, in March 2021, referred the matter to the Labour and Employment Board.

The Board noted that the *Human Rights Act* prohibits discrimination on the basis of mental disability in respect of employment. The Supreme Court of Canada had set out a three-part test under which the complainant was required to establish a prima facie case of discrimination, meaning a case strong enough to necessitate a rebuttal from the opposing party. Under this test a complainant must prove (1) that she has a characteristic which is protected from discrimination under the *Human Rights Act,* (2) that she has experienced an adverse impact, and (3) that the protected characteristic was a factor in the adverse impact. In this case, the complainant's evidence illustrated that she had a mental health issue of which the respondent was aware, that she experienced an adverse impact from her demotion and termination, and that her mental health was a factor in the employer's decisions. Accordingly, the complainant had made out a prima facie case of discrimination on the basis of mental disability which the respondent employer was required to rebut. However, by the time of these proceedings, the respondent had gone out of business and no one attended the hearing on its behalf. Accordingly, on the basis of the complainant's uncontested evidence, the Board found the respondent liable for unlawful discrimination under the *Human Rights Act.* By way of remedy, the Board awarded the complainant special damages of $12,852 to cover lost wages for the period between the date she was terminated and the date six months later when she was able to find alternate employment, subject to the possibility that she might be required to settle any overpayment of employment insurance benefits she had received during her period of unemployment. As for general damages, the Board observed that the complainant had suffered from stress due to her demotion at the time she returned to work from medical leave. Moreover, due to her termination she had suffered a loss of gainful employment which, in addition, had led to the loss of a personal relationship. The Board described the actions of the respondent as reprehensible and awarded the complainant general damages of $12,500, being $2,500 for her demotion and $10,000 for her termination.

JUDICIAL REVIEW

United Brotherhood of Carpenters and Joiners of America, Local 1386 v. Ferro-Chemi Crete Engineering Limited, 2021 NBQB 143, 23 June 2021

Board Decision

In June 2019, the applicant union, United Brotherhood of Carpenters and Joiners of America, Local 1386, sought to be certified in respect of a bargaining unit comprised of five carpenters who, the union said, were employed by the respondent, Ferro-Chemi Crete Engineering Limited. The respondent took the position that it was not the employer of the carpenters but, rather, that they were employed by a related company. The parties agreed to request the Labour and Employment Board to rule on the preliminary issue as to the identity of the true employer of the workers in question. The Board applied the established test for determining the true employer which includes such factors as authority to hire and dismiss employees, as well as the perception of the employees as to the identity of their employer. The Board concluded that the respondent was not the true employer but, rather, that the employees in question were employed by a related company. The union made an application for judicial review of the Board's decision to the Court of Queen's Bench.

Application for Judicial Review

The Court indicated that its role on an application for judicial review is to examine the reasons given by the Board to determine whether its decision is based on an internally coherent chain of reasoning which can be justified in light of the relevant facts and law. The Court should review a Board decision to determine whether it is reasonable and should refrain from reweighing and reassessing the evidence considered by the Board. Here, as regards responsibility for hiring, the respondent advertised the positions and had representatives present at the interviews. However, as the Board noted, the hiring documents indicated that a related company was the employer, that the workers in question were paid by that company and that it, not the respondent, made the requisite workers' compensation remittances. Moreover, the Board had found no evidence to support the union's assertion that the respondent had the authority to discipline or dismiss an employee which, the Court said, was a reasonable conclusion. Finally, on the question of perceptions, the Board had acknowledged that the employees viewed the respondent as their true employer. However, it said that this perception was mistaken given, in particular, the documentary evidence which indicated that they were paid by a related company. The Court concluded that the Board had taken into account the evidence of the union, that its reasoning was coherent and clearly discernible in its decision, and that it had met the standard of reasonableness in coming to its conclusion that the respondent was not the true employer of the workers in question. The union's application for judicial review was dismissed.

Summary tables of all matters dealt with by the Board

INDUSTRIAL RELATIONS ACT

April 1, 2021 – March 31, 2022

MATTER	PENDING FROM PREVIOUS FISCAL	MATTERS FILED	TOTAL	DISPOSITION OF MATTERS			TOTAL MATTERS DISPOSED	NUMBER OF CASES PENDING
				GRANTED	DISMISSED	WITHDRAWN		
Application for Certification	7	13	20	8	1	8	17	3
Application for a Declaration of Common Employer	--	1	1	--	--	--	--	1
Intervener's Application for Certification	--	--	--	--	--	--	--	--
Application for Right of Access	--	--	--	--	--	--	--	--
Application for a Declaration Terminating Bargaining Rights	--	1	1	1	--	--	1	--
Application for a Declaration Concerning Status of Successor Rights (Trade Union)	--	--	--	--	--	--	--	--
Application for Declaration Concerning Status of Successor Rights (Sale of a Business)	1	1	2	--	1	1	2	--
Application for a Declaration Concerning the Legality of a Strike or a Lockout	1	1	2	--	1	--	1	1
Application for Consent to Institute a Prosecution	--	--	--	--	--	--	--	--
Miscellaneous Applications (s. 22, s. 35, s. 131)	1	3	4	3	--	1	4	--
Complaint Concerning Financial Statement	--	--	--	--	--	--	--	--
Complaint of Unfair Practice	3	9	12	5	--	3	8	4
Referral of a Complaint by the Minister of Post-Secondary Education, Training and Labour (s. 107)	--	1	1	--	--	--	--	1

MATTER	PENDING FROM PREVIOUS FISCAL	MATTERS FILED	TOTAL	DISPOSITION OF MATTERS			TOTAL MATTERS DISPOSED	NUMBER OF CASES PENDING
				GRANTED	DISMISSED	WITHDRAWN		
Complaint Concerning a Work Assignment	6	--	6	1	5	--	6	--
Application for Accreditation	--	--	--	--	--	--	--	--
Application for Termination of Accreditation	--	--	--	--	--	--	--	--
Request pursuant to Section 105.1	--	--	--	--	--	--	--	--
Stated Case to the Court of Appeal	--	--	--	--	--	--	--	--
Reference Concerning a Strike or Lockout	--	--	--	--	--	--	--	--
TOTAL	**19**	**30**	**49**	**18**	**8**	**13**	**39**	**10**

PUBLIC SERVICE LABOUR RELATIONS ACT

April 1, 2021 – March 31, 2022

MATTER	PENDING FROM PREVIOUS FISCAL	MATTERS FILED	TOTAL	DISPOSITION OF MATTERS			TOTAL MATTERS DISPOSED	NUMBER OF CASES PENDING
				GRANTED	DISMISSED	WITHDRAWN		
Application for Certification	--	--	--	--	--	--	--	--
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)	6	3	9	6	--	--	6	3
Complaint pursuant to s. 19	5	19	24	2	5	6	13	11
Application for Declaration Concerning Status of Successor Employee Organization	--	--	--	--	--	--	--	--
Miscellaneous (s. 63)	--	3	3	3	--	--	3	--
Application pursuant to s. 29 (Designation of Position of Person employed in a Managerial or Confidential Capacity)	--	--	--	--	--	--	--	--
Application pursuant to s. 31	5	2	7	--	1	4	5	2

MATTER	PENDING FROM PREVIOUS FISCAL	MATTERS FILED	TOTAL	DISPOSITION OF MATTERS			TOTAL MATTERS DISPOSED	NUMBER OF CASES PENDING
				GRANTED	DISMISSED	WITHDRAWN		
Application for Consent to Institute a Prosecution	--	--	--	--	--	--	--	--
Reference to Adjudication (s. 92)	--	6	6	4	--	--	4	2
Application for Appointment of an Adjudicator (s. 100.1)	5	12	17	7	1	--	8	9
Application for Appointment of a Mediator (s. 16)	--	--	--	--	--	--	--	--
Application for Appointment of Conciliation Officer (s. 47)	3	1	4	2	--	--	2	2
Application for Appointment of Conciliation Board (s. 49)	3	5	8	7	1	--	8	--
Application pursuant to s. 17	--	--	--	--	--	--	--	--
Application for Reconsideration (s. 23)	1	--	1	--	--	1	1	--
Application for Appointment of Commissioner (s. 60.1)	1	--	1	1	--	--	1	--
Request for a Declaration of Deadlock (s. 70)	1	15	16	12	4	--	16	--
Notice pursuant to Section 44.1 of the *Act*	--	--	--	--	--	--	--	--
Request for the Appointment of an Arbitration Tribunal pursuant to s. 66	--	--	--	--	--	--	--	--
TOTAL	**31**	**66**	**97**	**44**	**12**	**11**	**67**	**30**

EMPLOYMENT STANDARDS ACT

April 1, 2021 – March 31, 2022

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	3	13	16	5	2	--	--	1	--	8	8
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	3	6	9	1	1	--	--	1	--	3	6
TOTAL	**7**	**22**	**29**	**6**	**3**	**--**	**1**	**3**	**--**	**13**	**16**

HUMAN RIGHTS ACT

April 1, 2021 – March 31, 2022

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)	4	6	10	3	--	--	--	3	7
TOTAL	**4**	**6**	**10**	**3**	**--**	**--**	**--**	**3**	**7**

ESSENTIAL SERVICES IN NURSING HOMES ACT

April 1, 2021 – March 31, 2022

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)	113	--	113	47	--	--	--	47	66
TOTAL	**113**	**--**	**113**	**47**	**--**	**--**	**--**	**47**	**66**

PUBLIC INTEREST DISCLOSURE ACT

April 1, 2021 – March 31, 2022

MATTER	PENDING FROM PREVIOUS FISCAL	MATTERS FILED	TOTAL	DISPOSITION OF MATTERS				TOTAL MATTERS DISPOSED	NUMBER OF CASES PENDING
				GRANTED	DISMISSED	SETTLED	WITHDRAWN		
Complaint of Reprisal	--	1	1	1	--	--	--	1	--
TOTAL	**--**	**1**	**1**	**1**	**--**	**--**	**--**	**1**	**--**

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