

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

I am pleased to submit the 2013/14 Annual Report outlining the activities of the Manitoba Labour Board for the period April 1, 2013 to March 31, 2014.

During this reporting period, the Manitoba Labour Board successfully fulfilled its mandate and met its objectives. The Board is dedicated to building upon its past successes, while tackling challenges, both new and longstanding, so as to provide the best level of service possible to the labour relations community and the people of Manitoba. This endeavour requires the Board to identify opportunities to enhance our services and to set future goals in furtherance of its objectives.

The objectives of the Board include:

- discharging its statutory responsibilities in an impartial, efficient, knowledgeable, timely, respectful and consistent manner;
- encouraging and facilitating the settlement of disputes through appropriate alternative dispute resolution mechanisms where possible while providing adjudication where necessary;
- fostering understanding of the rights, responsibilities and procedures set forth in the legislation under which it has responsibilities;
- maintaining current and effective rules, practices and procedures which are clear, accessible, fair and impartial; and
- supporting constructive and harmonious labour relations between employers, employees and unions.

To achieve these objectives, the Board intends to modernize its practices and communications; strengthen its capacity to perform mediation; increase its use of alternative dispute resolution techniques; reduce the length of time that is required to finalize matters brought to the Board; review and evaluate its organizational structure; and explore options for creating efficiencies and reducing costs. I am pleased to report that the Board has made significant progress with respect to these goals and the results have been very encouraging.

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

Colin S. Robinson  
Chairperson

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

J'ai le plaisir de soumettre le rapport annuel 2013-2014 faisant état des activités de la Commission du travail du Manitoba du 1<sup>er</sup> avril 2013 au 31 mars 2014.

Au cours de cette période de déclaration, la Commission a respecté son mandat et a rempli ses objectifs. La Commission poursuit sur la lancée de réussites passées, tout en relevant les défis, à la fois nouveaux et de longue date, afin de fournir le meilleur service possible aux intervenants du secteur des relations du travail et à la population manitobaine. Pour ce faire, la Commission doit cerner les possibilités d'amélioration de nos services et d'établissement de buts futurs pour approfondir ces objectifs.

Les objectifs de la Commission sont les suivants :

- s'acquitter de ses obligations législatives de manière impartiale, efficiente, experte, respectueuse et cohérente, et en temps opportun;
- encourager et faciliter le règlement de différends par l'utilisation d'autres modes appropriés si possible tout en fournissant des services d'arbitrage lorsque cela est nécessaire;
- favoriser la compréhension des droits, des responsabilités et des procédures établies dans les dispositions législatives que la Commission doit faire appliquer;
- tenir à jour des règles, des pratiques et des procédures efficaces, claires, accessibles, justes et impartiales;
- soutenir les relations de travail constructives et harmonieuses entre les employeurs, les employés et les syndicats.

Pour atteindre ces objectifs, la Commission vise à moderniser ses pratiques et ses communications; à renforcer ses capacités d'effectuer la médiation; à augmenter son usage des autres modes de règlement des différends; à réduire le délai requis pour régler les cas portés devant la Commission; à réviser et à évaluer sa structure organisationnelle; à explorer des possibilités d'économies et de réduction des coûts. J'ai le plaisir de vous informer que la Commission a fait des progrès considérables en ce qui a trait aux buts, et que les résultats sont très encourageants.

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

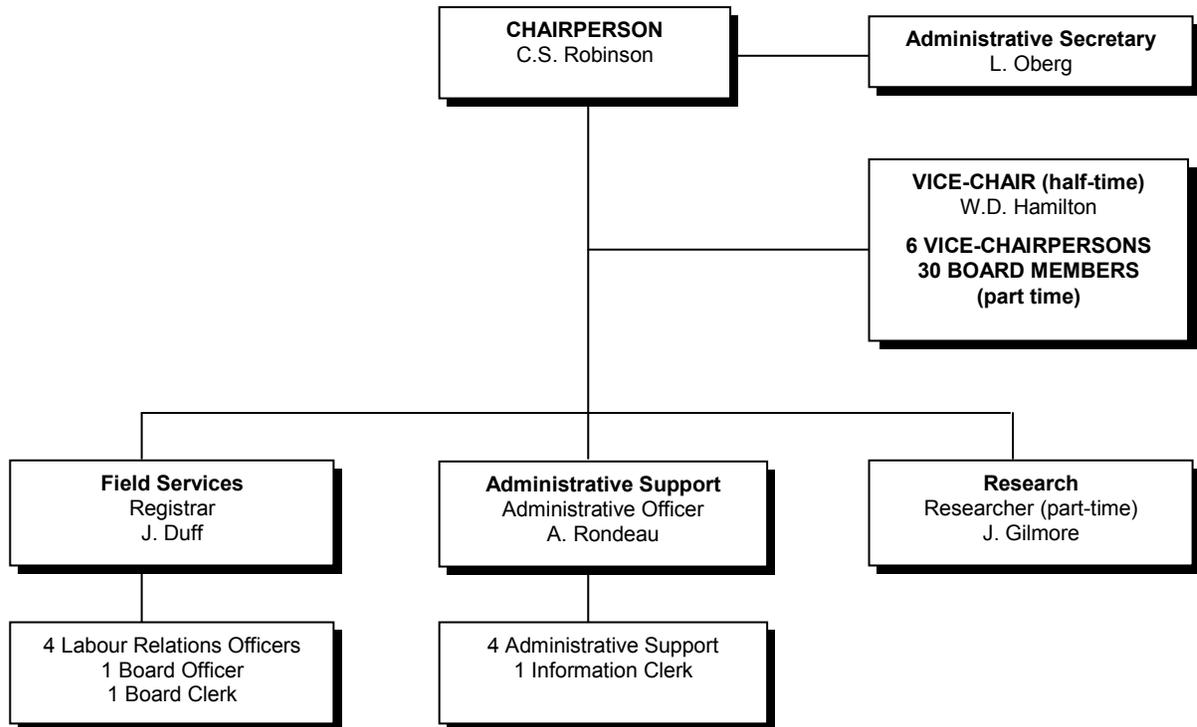
Le président  
Colin S. Robinson

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**Manitoba Labour Board  
Organization Chart  
as of March 31, 2014**



# The Manitoba Labour Board

## INTRODUCTION

### Report Structure

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

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

### Vision and Mission

To further harmonious relations between employers and employees  
by encouraging the practice and procedure of collective bargaining  
between employers and unions  
as the freely designated representatives of employees.

### Objectives

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

### Role

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

The majority of the applications are filed under *The Labour Relations Act (L10)* and *The Employment Standards Code (E110)*. The Board is also responsible for the administration and/or adjudication of matters arising under certain sections of the following Acts:

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

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

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

### ***The Employment Standards Code***

As the wage board appointed pursuant to the *Code*, the Board hears complaints referred to it by the Employment Standards Division regarding wages, statutory holiday pay, vacation pay and wages in lieu of notice, including provisions pursuant to *The Construction Industry Wages Act* and *The Remembrance Day Act*. Until the April 30, 2007 amendment to the *Code*, the Board also handled hours of work exemption requests and applications for exemption from the weekly day of rest.

### ***The Apprenticeship and Certification Act***

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

### ***The Elections Act***

A candidate, election officer, enumerator or an election volunteer for a candidate or a registered political party may file an application relating to requests for leave from employment under section 24.2 of the *Act*. An employer may apply to the chairperson of the Board to request an exemption from the requirement to grant a leave under section 24.2 of the *Act*, if the leave would be detrimental to the employer's operations.

### ***The Essential Services Act***

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

### ***The Pay Equity Act***

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

### ***The Public Interest Disclosure (Whistleblower Protection) Act***

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

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

### ***The Public Schools Act***

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

### ***The Victims' Bill of Rights***

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

### ***The Worker Recruitment and Protection Act***

The director of the Employment Standards Division is empowered, on behalf of a foreign worker, a child performer or family member on behalf of a child performer, to issue orders to recover the amount of any prohibited recruitment fees or costs charged, directly or indirectly, by the employer or a person engaged in recruitment of the foreign worker or child performer and can also, by order, recover from an employer any reduction in wages or recover any reduction/elimination of a benefit or other term or condition of employment where the reduction is made to cover the costs of recruitment, all of which is contrary to sections 15, 16 and 17 of the *Act*. The Board's jurisdiction is triggered when a person affected by a director's order wishes to appeal an order of the director under any of these provisions. The Board hears the appeals pursuant to the provisions of *The Employment Standards Code*.

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

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

## **MANITOBA LABOUR BOARD MEMBERS**

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

### **Chairperson**

#### **Colin S. Robinson**

Appointed as chairperson in 2012, Colin Robinson previously served as the Board's full-time vice-chairperson since 2003. Mr. Robinson holds a Bachelor of Arts Honours degree from the University of Manitoba and a Bachelor of Laws degree from Osgoode Hall Law School. He was called to the Bar in Manitoba in 1995 and practiced primarily in the fields of labour and administrative law prior to being appointed to the Board. In addition, Mr. Robinson serves as the president of the Manitoba Council of Administrative Tribunals and carries on an active practice as an interest and grievance arbitrator and mediator in Manitoba.

### **Vice-Chairpersons**

#### **A. Blair Graham, Q.C.**

Appointed on a part-time basis in 2006, Blair Graham holds a Bachelor of Arts degree and a Bachelor of Laws degree from the University of Manitoba. He practices law as a partner in the law firm of Thompson Dorfman Sweatman LLP with an emphasis on civil litigation, administrative law and labour arbitration as a chairperson. He was appointed a Queen's Counsel in December 1992, and inducted into the American College of Trial Lawyers in October 2004. He has been active as a chairperson in labour arbitration matters since 1997.

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

After serving as a part-time vice-chairperson from 2002 to 2005, William Hamilton served as the full-time chairperson of the Board from November 1, 2005 to October 31, 2012. Effective November 1, 2012, he was appointed as a part-time vice-chairperson serving on a half-time basis. He holds a Bachelor of Arts degree from the University of Winnipeg and a Bachelor of Laws degree

from the University of Manitoba. For many years, Mr. Hamilton has carried on, and continues to carry on, an active practice as an interest and grievance arbitrator/mediator in Manitoba.

**M. Lynne Harrison**

Appointed on a part-time basis in 2008, Lynne Harrison holds a Bachelor of Arts degree from Laval University, a Secondary Education Teaching Certificate from Laval University and a Bachelor of Laws degree from the University of Manitoba. She also serves as an adjudicator under *The Human Rights Code* (Manitoba). She practices law as a partner in the law firm of Thompson Dorfman Sweatman LLP.

**Diane E. Jones, Q.C.**

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

**Michael D. Werier**

Appointed on a part-time basis in 2006, Michael Werier is a partner in the Winnipeg law firm of D'Arcy & Deacon LLP. He carries on a practice as an arbitrator/mediator in Manitoba and as a civil litigator. He is currently chairperson of the Manitoba Labour Management Review Committee and chairperson of the Board of Directors of the Workers Compensation Board of Manitoba.

**Gavin M. Wood**

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

**New Vice-Chairperson**

**Kristin L. Gibson**

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

**Employer Representatives**

**Jim H. Baker, C.A.**

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

**Elizabeth M. (Betty) Black**

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

**Christiane Y. Devlin**

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

**Robert Glass**

Appointed in 2008, Robert Glass was a labour relations/personnel consultant-negotiator with professional qualifications and extensive experience in labour/management relations including negotiation of contracts, collective agreement interpretation and an in-depth knowledge of organized labour, employment policy, hazard control and loss management. He had experience in the communications industry, government, health care and the construction industry. His educational background was from the University of Manitoba, University of Montreal, Safety Leadership Programs and Human Resource Professional Certification. Mr. Glass was an experienced and valuable board Member and it is with regret that we advise he passed away in October 2013.

**Tom Goodman**

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

**Colleen Johnston**

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

**Paul J. LaBossiere**

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

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

Appointed in 2003, Chris Lorenc is currently president of the Manitoba Heavy Construction Association, president of the Western Canada Roadbuilders and Heavy Construction Association, founding board member of the Manitoba Construction Sector Council and vice-chairperson of the Board of CentrePort Canada Inc. He has an extensive background in public policy writing related to trade and transportation, infrastructure, workplace safety and health. A lawyer by background, he graduated from the University of Manitoba with Bachelor of Arts and Bachelor of Laws degrees. He is

a former Winnipeg city councillor having served for nine years between 1983 and 1992. During his tenure on council, he chaired a number of standing committees and held a variety of senior positions. He has also served and continues to serve on a number of boards of business, cultural, community and hospital organizations.

#### **Harvey Miller**

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

#### **Yvette Milner**

Appointed in 1996, Yvette Milner is a safety and disability management consultant and president of On-Site Safety and Health Management Solutions, a consulting company specializing in assisting companies to manage injury and illness in the workplace. Past experience includes director of safety and disability management with Deloitte; president, Milner Consulting, a company specializing in safety and disability claims management; human resources coordinator, Manitoba Health; and assistant director of Rehabilitation, Workers Compensation Board of Manitoba. Active in the Manitoba business community, she is involved with the Manitoba Employers Council and the Manitoba Chamber of Commerce.

#### **Brian Peto**

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

#### **Darcy Strutinsky**

Appointed in 2008, Darcy Strutinsky concluded a lengthy career in senior healthcare human resource leadership positions in 2012. He now provides independent human resource and labour relations consulting services to employers in the private and public sectors. He is a member of the Manitoba Labour Management Review Committee and is a board member of the Children's Hospital Foundation of Manitoba and the Riverview Health Centre.

#### **Denis E. Sutton**

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

#### **Peter Wightman**

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

Foundation of Employee Benefit Plans Board of Directors. A graduate of Carleton University in Ottawa, he holds a bachelor's degree in economics and law and has been engaged in the field of labour relations for over 25 years.

#### **Jim Witiuk**

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

### **Employee Representatives**

#### **L. Lea Baturin**

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

#### **Beatrice Bruske**

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

#### **Bill Comstock**

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

#### **Irene E. Giesbrecht**

Appointed in 2002, Irene Giesbrecht was employed by the Manitoba Nurses' Union (MNU) as chief negotiator from 1978 until her retirement in June 2008. She is a founding member of the Canadian Federation of Nurses Unions. Previous to joining the MNU, she was employed as a registered nurse. She is on the Automobile Injury Compensation Appeal Commission. She provides health care/labour relations advice on a part-time consulting basis.

**Sheila Gordon**

Appointed in 2013, Sheila Gordon has been employed as a staff representative/negotiator with the Manitoba Government and General Employees' Union (MGEU) since 1991. As a staff representative, she worked with members to resolve issues, process grievances and negotiate collective agreements in a variety of different public sector workplaces. More recently, she was appointed MGEU chief negotiator, responsible for negotiating the Government Employees' Master Agreement, and for supporting a team of approximately 10 staff representatives working with members of the Manitoba Civil Service. Ms. Gordon's educational background includes a Bachelor of Social Work degree from the University of Manitoba and a Master of Social Work degree from Carleton University.

**Debra R. Grimaldi**

Appointed in 2010, Debra Grimaldi has been employed as a national servicing representative by the Canadian Union of Public Employees since 2000. As a servicing representative, she is actively involved in grievance processing, collective bargaining, conflict resolution and education of local unions. She is a graduate of the Labour College of Canada, class of 1989.

**Maureen Morrison**

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

**James Murphy**

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

**Tom P. Murphy**

Appointed in 2011, Tom Murphy became part of the Canadian Auto Workers' (CAW) local union leadership in 1980 while employed at Bombardier in Thunder Bay. He became involved in collective bargaining in 1984, became the local union unit chairperson and vice-president in 1985, president of the local in 1992, appointed to CAW staff as a national representative in 1998 and appointed as the area director of Manitoba/Saskatchewan/Northern Ontario in 2007. He deals with grievance arbitration matters and collective bargaining. Mr. Murphy retired from the Board in November 2013.

**Edward (Dale) Neal**

Appointed in 2013, Dale Neal was employed with the Manitoba Government and General Employees' Union and has since retired. He is currently employed with the Winnipeg Association of Public Service Officers. Mr. Neal has been an activist in the labour movement for over 30 years.

**Sandra R.M. Oakley**

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

**Rik A. Panciera**

Appointed in 2011, Rik Panciera is currently employed as a national staff representative for the Canadian Union of Public Employees where he has served for the past 18 years. As a staff representative, he deals with daily grievance and labour/management issues, as well as negotiates collective agreements. Mr. Panciera also represents his peers as a regional vice-president for the Canadian Staff Union.

**Grant Rodgers**

Appointed in 1999, Grant Rodgers was employed for 33 years as a staff representative with the Manitoba Government and General Employees' Union (MGEU) and specialized for a number of years in grievance arbitration matters as well as collective bargaining. He holds a Bachelor of Commerce (Honours) degree from the University of Manitoba and is a graduate of the Harvard University Trade Union Program. Community involvement has included membership on the Red River College Advisory Board, director of the Winnipeg Blues Junior "A" hockey team, and involvement with Big Brothers of Winnipeg. Mr. Rodgers retired from the MGEU in January 2008 and has since done some part-time labour relations consulting.

**Ron Stecy**

Appointed in 2013, Ron Stecy recently retired from his position as executive director of the Manitoba Building and Construction Trades Council. Mr. Stecy is a member of the Apprenticeship and Certification Board, member of the Construction Industry Wages Act Panel, and retired member of the Manitoba Construction Sector Council Board. Mr. Stecy began his career as a construction electrician apprentice and received his Red Seal Journeyman Certificate upon completion of his apprenticeship. He was elected as business manager of the International Brotherhood of Electrical Workers Local Union 2085 where he represented construction electricians in Manitoba for nine years. During his career, Mr. Stecy has been appointed and elected to numerous boards and committees. He has served on the Electrical Trades Advisory Committees at Red River College and Assiniboine Community College. He was a delegate to the Winnipeg Labour Council, secretary-treasurer of the Allied Hydro Council and president of the Manitoba Building and Construction Trades Council. In 2011, Mr. Stecy was appointed to the Manitoba Labour Management Review Committee and the Advisory Council on Workplace Safety and Health.

**Sonia E. Taylor**

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

## **OPERATIONAL OVERVIEW**

### **Adjudication**

During 2013/14, the Board was comprised of a full-time chairperson, one half-time vice-chairperson, six part-time vice-chairpersons and 30 board members with an equal number of employer and employee representatives. Part-time vice-chairpersons and board members are appointed by Order in Council and are paid in accordance with the number of meetings and hearings held throughout the year. The Board does not retain legal counsel on staff; legal services are provided through Civil Legal Services of Manitoba Justice.

### **Field Services**

Field services is comprised of the registrar, four labour relations officers, one board officer and one board clerk. Reporting to the chairperson, the registrar is the official responsible for the supervision of the day-to-day field activities of the Board. The primary responsibility of the registrar is the development and execution of the administrative workload as it relates to the various acts under which the Board derives its adjudicative powers. The registrar, in conjunction with the chairperson, vice-chairpersons and panel members, is involved in the establishment of Board practice and policy. Applications filed with the Board are processed through the registrar's office, which ensures each application is processed efficiently, with hearings scheduled in a timely manner and in accordance with the *Manitoba Labour Board Rules of Procedure* and Board practice. The registrar, together with the board officers, communicates with all parties and with the public regarding Board policies, procedures and jurisprudence.

Reporting to the registrar are four "labour relations" board officers who are responsible for dealing with various cases and conducting investigations pertaining to the applications filed with the Board, under the varying statutes. They can be appointed to act as Board representatives in an endeavour to effect settlement between parties, reducing the need for costly hearings. The board officers act as returning officers in Board conducted representation votes, attend hearings and assist the registrar in the processing of various applications. They also play a conciliatory role when assisting parties in concluding a first or subsequent collective agreement and they act as mediators during the dispute resolution process. Also reporting to the registrar is a board officer, primarily responsible for processing all referrals from the Director of the Employment Standards Division and who is involved in mediation efforts in an attempt to resolve the issues. The board clerk is primarily responsible for the processing of expedited arbitration referrals, and maintaining the Board's library of collective agreements and union constitution and by-laws files. Both the board officer and board clerk also attend Board hearings.

### **Administrative Services**

The staff of the administrative services and field services works closely to ensure the expeditious processing of applications. Administrative services is comprised of the administrative officer and five administrative support staff. Reporting to the chairperson, the administrative officer is responsible for the day-to-day administrative support of the Board, fiscal control and accountability of operational expenditures and the development and monitoring of office systems and procedures to ensure departmental and government policies are implemented.

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

### **Research Services**

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

## Library Collection

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

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

## Publications Issued

- *Manitoba Labour Board Annual Report* - a publication disclosing the Board's staffing and membership as well as highlights of significant Board and court decisions and statistics of the various matters dealt with during the reporting period.
- *Index of Written Reasons for Decision* - a publication containing indexes of Written Reasons for Decision and Substantive Orders categorized by topic and employer. Decisions issued under *The Labour Relations Act* are also indexed by section of the *Act*. Until March 31, 2013, this publication had been available on a subscription basis. In the 2013/14 fiscal year, it is anticipated that the Board's website will be updated to provide online access to the Index.

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

## Website Contents

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

\*link to French version available

- Board Members\* (list and biographies)
- Forms\*
- Library\* (hours)
- Publications\* (list and links for convenient access, including previous annual reports)
- "Guide to *The Labour Relations Act*"\* (explanations in lay persons' terms of the various provisions of the *Act* and the role of the Board and Conciliation & Mediation Services)
- Information Bulletins\* (listing and full text)
- Manitoba Labour Board's Arbitrators List\* (list of arbitrators maintained pursuant to section 117(2) of *The Labour Relations Act*)
- Written Reasons for Decision and Substantive Orders (full text, English only, from January 2007 to present, with key word search capability)
- *The Labour Relations Act*\*
- Regulations\* (including *The Manitoba Labour Board Rules of Procedure*)
- Contact Us\* (information and links to the Government of Manitoba Home Page, other Department of Labour and Immigration divisions, LexisNexis Quicklaw and Statutory Publications)

## E-mail

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

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

**NOTE:** The Board does not accept applications or correspondence by e-mail.

If you wish to file an application, contact:

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

## Information Bulletins

The Board produces information bulletins regarding its practice and procedure. The Board did not issue any new or amend any existing information bulletins during the reporting period. The following is a list of the current information bulletins.

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

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

## SUSTAINABLE DEVELOPMENT

The Board strives to achieve the goals set out in the Sustainable Development Action Plan. In compliance with *The Sustainable Development Act*, the Manitoba Labour Board is committed to ensuring that its activities conform to the principles of sustainable development. The Board promoted sustainable development through various activities including recycling, paper management, use of environmentally preferable products and duplex copying.

## FINANCIAL INFORMATION

<b>Expenditures by Sub-Appropriation</b>	<b>Actual 2013/14 (\$000s)</b>	<b>FTE</b>	<b>Estimate 2013/14 (\$000s)</b>	<b>Variance Over/(Under)</b>	<b>Expl. No.</b>
Total Salaries	1,315	16.50	1,338	(23)	
Total Other Expenditures	428		443	(15)	
<b>Total Expenditures</b>	<b>1,743</b>	<b>16.50</b>	<b>1,781</b>	<b>(38)</b>	

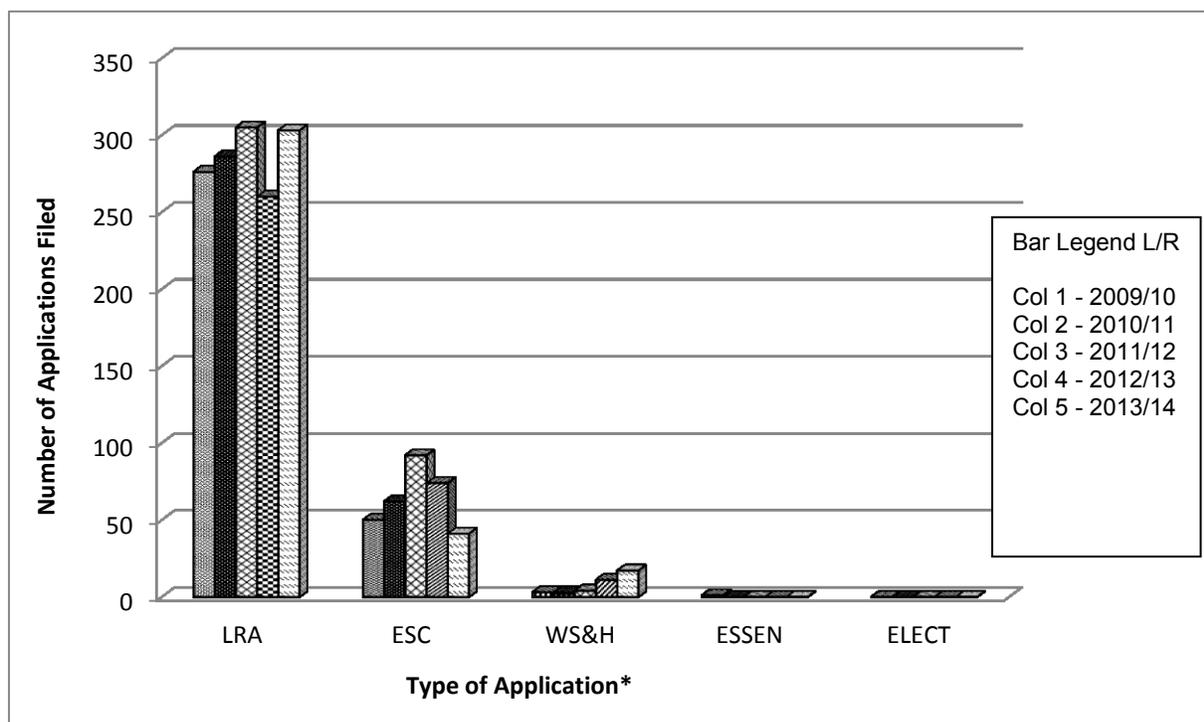
# PERFORMANCE REPORTING

## Summary of Performance

The Manitoba Labour Board adjudicated employer-employee disputes referred to it under various provincial statutes and its decisions established policy, procedures and precedent and provided for a more sound, harmonious labour relations environment. The Board conducted formal hearings; however, a significant portion of the Board's workload was administrative in nature. When possible, the Board encouraged the settlement of disputes in an informal manner by appointing one of its board officers to mediate outstanding issues and complaints. During the 2013/14 fiscal year, issues before the Board were resolved or narrowed in 48 percent of cases where a board officer was formally appointed or assisted the parties informally through the dispute mediation process. In addition, the Board monitored its internal processes to improve efficiencies and expedite processing of applications or referrals.

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

**Manitoba Labour Board  
Number of Applications Filed**



<b>*Types of Applications</b>	
LRA	Labour Relations Act
ESC	Employment Standards Code
WS&H	Workplace Safety and Health Act
ESSEN	Essential Services Act
ELECT	Elections Act

Detailed statistical tables can be found beginning on page 51 of this report.

## Program Performance Measurements

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

### Program Performance Measurements

April 1 - March 31

Indicator	Actual 2012/13	Actual 2013/14
Percentage of Cases disposed of	69%	76%
Number of hearing dates scheduled	441	355
Percentage of hearings that proceeded	31%	30%
Number of votes conducted	21	14
Median processing time (calendar days):		
<i>The Labour Relations Act</i>	79.5	60
<i>The Workplace Safety and Health Act</i> <sup>1</sup>	159.5	127.5
<i>The Essential Services Act</i>	NA	NA
<i>The Elections Act</i>	NA	NA
<i>The Employment Standards Code</i>	136	122.5

"NA" - No applications processed in reporting period

<sup>1</sup> - The median processing time for applications filed under *The Workplace Safety and Health Act* in both fiscal years was based on the processing of less than 15 cases. The processing times are not necessarily indicative of the normal median processing times of the Board.

In addition to applications filed, and pursuant to *The Labour Relations Act*, the Board also received and filed copies of collective agreements and arbitration awards. In addition to the 3,236 collective agreements on file, there are 2,320 arbitration awards and 1,038 Written Reasons for Decision and Substantive Orders in the Board's collection. Copies of collective agreements, arbitration awards and Written Reasons are available upon request and in accordance with the Board's fee schedule. Copies of Written Reasons for Decision and Substantive Orders issued since January 2007 are posted on the Board's website.

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

- 512 cases before the Board (pending from previous period plus new applications);
- 388 (76 percent) of the cases before the Board were disposed of/closed;
- 177 applications scheduled for hearing;
- 108 hearing dates proceeded;
- Board conducted 14 votes; and
- Issued two Written Reasons for Decision and 54 Substantive Orders.

## **Ongoing Activities and Strategic Priorities**

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

## **Statistiques importantes pendant la période de référence**

- 512 cas ont été portés devant la Commission (demandes en instance depuis l'exercice précédent et nouvelles demandes).
- 76 % des cas portés devant la Commission (388) ont été réglés ou classés.
- Une date d'audience a été fixée pour 177 demandes.
- La Commission a tenu 108 audiences.
- La Commission a tenu 14 votes.
- La Commission a rendu deux motifs écrits de décision et 54 ordonnances importantes.

## **Activités en cours et priorités stratégiques**

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

## SUMMARIES OF SIGNIFICANT BOARD DECISIONS

During the reporting period, the Board issued 2 Written Reasons for Decision and 54 Substantive Orders.

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

### **Pursuant to *The Labour Relations Act***

#### **R.M. of Birtle - and - International Union of Operating Engineers, Local 987 - and - S.B.**

Case No. 231/12/LRA

April 12, 2013

**BARGAINING RIGHTS - PRACTICE AND PROCEDURE** - Regulations/Rules - Applicant filed application seeking cancellation of certification - Board noted Application filed on Form VIII, which contemplated cancellation of certification but Application contained no reference to any certificate nor did it contain any description of bargaining unit - Union clarified Application concerned voluntarily recognized clerical bargaining unit - Board accepted Application and treated it as an application filed pursuant to Section 49(1) of *The Labour Relations Act* to terminate bargaining rights - Board satisfied that more than 50 percent of employees in unit supported Application and ruled bargaining rights of Union be terminated - Substantive Order.

#### **Seven Oaks General Hospital - and - International Union of Operating Engineers, Local 987**

Case No. 277/12/LRA

May 7, 2013

**APPROPRIATE BARGAINING UNIT** - Health Care - Union filed application for certification for unit of all protective services officers - Employer submitted that applied for unit not appropriate for collective bargaining based on Board's report of its Review of Bargaining Unit Appropriateness in Urban Health Care Sector conducted during 1998 - Employer asserted affected security classifications should be treated as "tag end" unit - Board considered whether it should treat matter as stand-alone application for certification or should question of appropriateness be decided pursuant to principles expressed in 1998 report - While 1998 report still provided relevant guidelines on question of appropriateness and could be used when assessing application for certification, procedures outlined in 1998 report, given passage of time, did not constitute mandatory predetermination of whether particular bargaining unit was an appropriate bargaining unit - Board ruled bargaining unit comprised of protective service officers did constitute appropriate bargaining unit - Fact that these employees had been unrepresented for many years satisfied Board that application should be treated as stand-alone application and that unit was appropriate for collective bargaining - Certification granted - Substantive Order.

#### **Halton Recycling dba Emterra Environmental - and - Canadian Union of Public Employees, L. 500**

Case No. 88/13/LRA

May 8, 2013

**MEMBERSHIP EVIDENCE** - Union filed application for certification for unit of all inside recycling employees of Employer - Board received letters of objection which were not supported by statutory declaration - Board ordered employees to provide further particulars of their objections, verified by statutory declaration - Board, following consideration of objections filed by employees, determined, pursuant to sections 45(4)(b) and 45(4)(d) of *The Labour Relations Act*, that it would not accept union membership cards as evidence that they wished to have Union represent them as their bargaining agent - Substantive Order - Reasons not issued.

**Winnipeg Regional Health Authority, Deer Lodge Centre Site - and - Professional Institute of Public Service of Canada**

Case No. 14/13/LRA

May 16, 2013

**APPROPRIATE BARGAINING UNIT** - Scope - Union applied to amend Board certificate for all medical doctors employed by Employer to include classification of physician assistants - Board ruled physician assistants not "medical doctors" and did not fall within scope of bargaining unit - Application for amended certificate not proper avenue for adding classification of previously non-certified employees to bargaining unit - Substantive Order.

**Jobworks Employment Education Programs Inc. - and - Canadian Union of Public Employees, Local 5149 - and - C.P., S.P., S.R., P.T.**

Case No. 360/12/LRA

June 21, 2013

**APPLICATION FOR CERTIFICATION - MEMBERSHIP EVIDENCE** - Revocation - Prior to date of application for certification, Employee sent email to individual who was acting on behalf of Union to conduct organizing drive, withdrawing her support for Union, having previously signed membership card - As per section 45(2) of *The Labour Relations Act*, an employee may, prior to date of application for certification, terminate membership in Union by taking "reasonable and unequivocal steps to do so" - Best practice to terminate membership is in writing to Union and to copy correspondence to Board - However, Board satisfied that email sent prior to date of application constituted reasonable and unequivocal step taken to terminate membership in Union - Membership evidence with respect to Employee not accepted - Substantive Order.

**APPLICATION FOR CERTIFICATION - MEMBERSHIP EVIDENCE** - Revocation - Prior to date of application for certification, Employee took steps to terminate her membership, including attending at Union's office, leaving voice mail message with senior Union official, and meeting with individual who was acting on behalf of Union to conduct organizing drive and advising him numerous times she wished to have membership card that she signed returned to her - As per section 45(2) of *The Labour Relations Act*, an employee may, prior to date of application for certification, terminate membership in Union by taking "reasonable and unequivocal steps to do so" - Best practice to terminate membership is in writing to Union and to copy correspondence to Board - Board satisfied, while Employee did not seek to terminate her membership in writing, she took reasonable and unequivocal steps to do so prior to date application for certification was filed - Membership evidence with respect to Employee not accepted - Substantive Order.

**APPLICATION FOR CERTIFICATION - MEMBERSHIP EVIDENCE** - Defects/ Irregularities - Employees testified they were not provided with information required under section 45(3.1) of *The Labour Relations Act* - Board was satisfied their signatures on membership cards acknowledging they were provided with information regarding initiation fees and membership dues and how they were determined, constituted proof of compliance with section 45(3.1) - Substantive Order.

**Rod McGillivray Memorial Care Home - and - Manitoba Nurses Union – Opaskwayak Nurses L. 150**

Case No. 129/13/LRA

June 21, 2013

**APPLICATION FOR CERTIFICATION - JURISDICTION** - Constitutional - Indian Act - Union applied for certification as bargaining agent for nursing unit - Employer questioned Board's jurisdiction submitting that care home was located on Cree Nation reserve and, by the *Indian Act*, matter would be under federal jurisdiction - Board applied "functional test" to nature, habitual activities and daily operations of care home, found nature of operation is to provide residential care for the elderly and infirm members of the community - Board satisfied activities of Employer do not constitute federal undertakings - Fact that care home operated by an entity constituted by "Band By-Law" passed and enacted pursuant to a statutory authority contained in section 81 of the *Indian Act* and was "derivative entity" of Opaskwayak Cree

Nation did not alter conclusion - Labour relations of Employer subject to provincial regulation and application for certification properly advanced under *The Labour Relations Act* - Certification granted - Substantive Order.

**Winnipeg Regional Health Authority - and - MGEU, A.J. Hunter (Staff Representative), David Lewis (Legal Counsel) - and - M.C.**

Case No. 323/12/LRA

July 8, 2013

**DUTY OF FAIR REPRESENTATION - EMPLOYEE** - Probationary - Legal Opinion - Employee released during probationary period, one factor being that she never achieved keyboarding speed which had been condition of probation - Collective agreement stated rejection on probation neither grievable nor arbitrable, subject only to right to grieve rejection to vice president of Community Care whose decision on grievance was final - Employer denied Grievance - Union decided to proceed to arbitration but later, through counsel, decided, given wording of agreement, grievance would not likely be upheld at arbitration - Union closed file after Employee rejected various settlement options - Employee filed duty of fair representation application - Board concluded that case fell under section 20(a) of *The Labour Relations Act*, because employer's unilateral decision/action to end employment relationship of probationer fell within meaning of "dismissal" - Union relied on legal opinion of experienced counsel and Board does not second guess opinion from correctness perspective - Held decision not to proceed to arbitration, based on advice of counsel, fulfilled standard of "reasonable care" - Application dismissed - Substantive Order.

**Boeing Canada - and - CAW, Local 2169 - and - S.S.**

Case No. 116/13/LRA

July 24, 2013

**DUTY OF FAIR REPRESENTATION - TIMELINESS** - *Prima facie* - In 2005, Board dismissed Employee's application alleging Union breached section 20 of *The Labour Relations Act* and dismissed application for Review and Reconsideration - Employee filed present application on May 7, 2013 indicating that, following her 2004 termination, she was offered severance package but would have been required to retire and she expected to go back to work - She claimed Union ought to have known Employer would not have taken her back and should have told her to take severance package - She also claimed she met with bargaining agent in October 2012 and alleged it had not kept her up to date with company programs and offered no further assistance - Board noted it had previously dismissed Employee's complaints regarding Union's representation regarding her 2004 termination - Even accepting Applicant's complaint regarding severance package was different aspect of Union's representation, it was unduly delayed and portion of complaint referring to advice regarding severance package dismissed - Regarding Employee's complaint of Union's representation in October 2012, Board satisfied application failed to disclose *prima facie* violation of section 20 - Application dismissed - Substantive Order.

**Phillips & Temro Co. - and - Glass, Molders, Pottery, Plastics & Allied Workers International Union - and - F.V.M.**

Case No. 157/12/LRA

August 16, 2013

**DUTY OF FAIR REPRESENTATION** - Failure to Refer Grievance to Arbitration - Day before arbitration hearing, Union Representative met with Employee and his brother, who had better English skills than Employee, and indicated he was hopeful grievance would succeed - Later that evening, as result of conversation with shop steward and Employer, Representative no longer thought grievance would be successful and contacted Employee's brother to discuss settling grievance - Brother indicated he wanted arbitration adjourned to obtain legal advice - Representative contacted Employer who agreed to adjournment - Two months later, Union decided not to proceed to arbitration and wrote to Employee by registered letter to advise him - Letter was never picked up as it was incorrectly addressed - Two months later, Brother contacted Representative and was informed about letter and decision not to proceed with grievance - Subsequently, Employee filed duty of fair representation application - Board satisfied that up

to and including day arbitration was scheduled, Union did not act arbitrarily, discriminatorily, or in bad faith - Following adjournment, Board determined Union breached its duty of fair representation - Union received no new information about case following adjournment when it unilaterally decided not to proceed - It would have been reasonable for Union to obtain legal opinion with respect to its obligations to Employee, and reasonableness of abandoning grievance, but lack of legal opinion not factor in establishing breach of union's duty of fair representation - While it was understandable that Representative communicated with Employee's brother, he should have communicated more frequently and directly with Employee as Union's duty of fair representation was owed to Employee, not his brother - Registered letter, whether received or not, was inadequate, and did not represent clear, explicit and comprehensive communication demonstrating Union had proper regard for Employee's interests - Union's position weakened that it sent registered letter to wrong address, and that it advised Employer that it would not be proceeding with grievance, before confirming Employee had received letter - Application granted.

**TIMELINESS** - Union asserted Employee unduly delayed filing duty of fair representation complaint - Union wrote to Employee by registered letter advising of decision not to proceed to arbitration - Letter was never picked up as it was incorrectly addressed - First date Employee become aware Union had decided not to proceed with grievance was when Union Representative, responding to voicemail message from Employee's brother, sent e-mail advising of its decision, made several months earlier, not to proceed with grievance - Board held six month period should commence on or about date of email - Application filed within 6 months - Application filed without undue delay.

**DUTY OF FAIR REPRESENTATION - REMEDY** - Board found Union failed in its duty of fair representation and concluded that, notwithstanding possibility of prejudice to Employer's case caused by delay, that original grievance proceed to arbitration - Parties would be able to either settle grievance, or have it determined through arbitration hearing - Employer to process grievance without objection relating to time limits or other procedural deficiencies arising from delay - Union to engage, at its cost, lawyer experienced in labour relations in Manitoba, jointly selected by Union and Employee - Union may be responsible for portion of damages payable to Employee representing compensation for monetary losses.

**Prairie Mountain Health - and - Manitoba Association of Health Care Professionals, - and - Manitoba Government and General Employees' Union**

Case No. 113/13/LRA

August 16, 2013

**REVIEW - VOTE - CHARTER OF RIGHTS AND FREEDOMS** - As result of mail-in representation vote, MGEU was selected as certified bargaining agent for intermingled employees of technical/professional paramedical classifications of amalgamated Regional Health Authority - MAHCP filed application seeking Review and Reconsideration of certificate - Board addressed MAHCP's grounds for seeking review - Board acted within its jurisdiction and applied relevant provisions of *Freedom of Information and Protection of Privacy Act (FIPPA)* in refusing to provide residential addresses of employees, a position supported by Manitoba Ombudsman - Board was within its jurisdiction when it ordered representation vote be conducted by mail-in ballot - Pursuant to section 48(2) of *The Labour Relations Act*, Board has authority to make arrangements and give directions it considered necessary for proper conduct of vote - Board found MAHCP's position that telephone, post or possibly email was only effective means of communication overlooked additional means of communicating with employees - Crux of MAHCP's position is Board ought to facilitate communication by providing addresses - Board concluded section 2(b) *Charter* arguments Union advanced that Board abridged its rights to freedom of expression, did not meet "low threshold" of constituting serious issue to be tried - Further, submission that employees who voted for MAHCP without democratically held election were deprived of section 2(d) *Charter* rights to freedom of association founded upon unsupported assertion representation vote did not afford fair opportunity to employees to express their wish as to their choice of bargaining agent - Board satisfied vote conducted in fair and proper manner and submission with respect to section 2(d) of *Charter* was expression of dissatisfaction with vote result which did not constitute breach of freedom of association - Union's submission Board failed to follow its own procedure, as set by section 26(1) of the *Manitoba Labour Board Rules of Procedure*, by not affording Unions opportunity to examine the lists of employees' names and addresses was fundamental misreading of the *Rules* - Section 26(1) did not refer to provision of

employees' addresses to unions involved in representation vote - Board acknowledged that it did not conduct oral hearings to determine issues regarding provision of addresses; decision to conduct mail-in vote; and MAHCP's refusal to sign fair vote certificate, but Board not required to conduct an oral hearing and Courts have repeatedly acknowledged that it was within Board's jurisdiction to make determinations under the *Act* without conducting oral hearing - Therefore, Board dismissed application seeking Review and Reconsideration - Substantive Order.

**Southern Health - Santé Sud - and - Manitoba Association of Health Care Professionals, - and - Manitoba Government and General Employees' Union**

Case No. 114/13/LRA

August 16, 2013

**REVIEW - VOTE - CHARTER OF RIGHTS AND FREEDOMS** - As result of mail-in representation vote, MGEU was selected as certified bargaining agent for intermingled employees of technical/professional paramedical classifications of amalgamated Regional Health Authority - MAHCP filed application seeking Review and Reconsideration of certificate - Board addressed MAHCP's grounds for seeking review - Board acted within its jurisdiction and applied relevant provisions of *Freedom of Information and Protection of Privacy Act (FIPPA)* in refusing to provide residential addresses of employees, a position supported by Manitoba Ombudsman - Board was within its jurisdiction when it ordered representation vote be conducted by mail-in ballot - Pursuant to section 48(2) of *The Labour Relations Act*, Board has authority to make arrangements and give directions it considered necessary for proper conduct of vote - Board found MAHCP's position that telephone, post or possibly email was only effective means of communication overlooked additional means of communicating with employees - Crux of MAHCP's position is Board ought to facilitate communication by providing addresses - Board concluded section 2(b) *Charter* arguments Union advanced that Board abridged its rights to freedom of expression, did not meet "low threshold" of constituting serious issue to be tried - Further, submission that employees who voted for MAHCP in denial of section 2(d) *Charter* rights to freedom of association founded upon unsupported assertion representation vote did not afford fair opportunity to employees to express their wish as to their choice of bargaining agent - Board satisfied vote conducted in fair and proper manner and submission with respect to section 2(d) of *Charter* was expression of dissatisfaction with vote result which did not constitute breach of freedom of association - Union's submission Board failed to follow its own procedure set in section 26(1) of the *Manitoba Labour Board Rules of Procedure*, by not affording Unions opportunity to examine the lists of employees' names and addresses was fundamental misreading of the *Rules* - Section 26(1) did not refer to provision of employees' addresses to unions involved in representation vote - Board acknowledged that it did not conduct oral hearings to determine issues regarding provision of addresses; decision to conduct mail-in vote; and MAHCP's refusal to sign fair vote certificate, but Board not required to conduct an oral hearing and Courts have repeatedly acknowledged that it was within Board's jurisdiction to make determinations under the *Act* without conducting oral hearing - Therefore, Board dismissed application seeking Review - Substantive Order.

**University of Manitoba - and - Association of Employees Supporting Education Services - and - N.V.**

Case No. 123/12/LRA

August 21, 2013

**DUTY OF FAIR REPRESENTATION - JURISDICTION - REMEDY** - Employee filed duty of fair representation application alleging Union failed to ensure he was being paid in accordance with April 2005 Letter of Agreement - As remedial relief, he requested salary of job classification be adjusted and requested retroactive pay - Union denied allegations and asserted matters raised were *res judicata* as they were same as Duty of Fair Representation application Employee filed in January 2012 - Board determined Application without merit as it was essentially re-litigating essence of January 2012 complaint which was disposed of with finality, particularly having regard that Employee did not file application for review and reconsideration - Further, nature of relief Applicant was seeking would require Board to function as surrogate interest arbitrator and award substantive monetary relief against Union and Employer on retroactive basis beyond Board's jurisdiction under section 20 of *The Labour Relations Act* - No breach of section 20(b) of the *Act* revealed in factual circumstances - Application dismissed - Substantive Order.

**DUTY OF FAIR REPRESENTATION - TIMELINESS** - In April 2012, Employee filed duty of fair representation application alleging Union failed to ensure he was being paid in accordance with April 2005 Letter of Agreement - Union argued Employee unduly delayed filing Application because he had been aware of his salary ranges when he was hired in February 2006 - Board declined to dismiss Application on this account alone because Employee asserted he became aware of letter when he reviewed Union's Reply to application he had filed in January 2012 which means current Application filed within three months of Employee becoming aware of letter of agreement - Time frame fell within range of time Board found to be acceptable for filing of unfair labour practice applications - Substantive Order.

**Concordia Hospital - and - Manitoba Association of Health Care Professionals - and - L.B.Z.**

Case No. 150/13/LRA

August 21, 2013

**DUTY OF FAIR REPRESENTATION - PRACTICE AND PROCEDURE** - Union filed grievance day after Employee terminated for allegedly violating Respectful Workplace Policy on multiple occasions - Union referred grievance to arbitration, assigned its legal counsel to advance grievance, and Union met with Employee on number of occasions to prepare for hearing - When Employer made motion to adjourn arbitration hearing, Union argued against adjournment and requested Employee be placed back on payroll until grievance was determined - Arbitrator ordered hearing be adjourned and did not agree Employee entitled to interim reinstatement - New arbitration hearing dates were scheduled at earliest opportunity - Prior to date of rescheduled hearing, Employee filed duty of fair representation application - Board determined Employee had not established *prima facie* violation of section 20 of *The Labour Relations Act* - Material filed by Employee suggested Union had taken considerable care in representing her - Moreover, Board noted that arbitration procedure had not been exhausted and, therefore, application was premature and was dismissed pursuant to section 140(8) of the *Act* - Substantive Order.

**J.D., Simaril Inc. - and – T.M.M.**

Case No. 247/12/LRA

September 18, 2013

**UNFAIR LABOUR PRACTICE** - Discharge - Exercising Legislated Rights - Employee filed application alleging Employer acted contrary to section 7(h) of *The Labour Relations Act* for suspending and dismissing her for exercising her right to speak with Employment Standards Division and Board concerning procedure to file wage complaint – Board noted letter of termination was dated before, but was given to her after, Employee contacted Board – Letter recited reason Employer was terminating Employee was for statements she made which Employer found to be disrespectful, unprofessional and insubordinate – Fact that Employee feels dismissal unfair or unjust does not fall into remedial jurisdiction of Board under section 7 of the *Act* - Application dismissed for failure to disclose *prima facie* case – Substantive Order.

**Government of Manitoba; Manitoba Family Services and Labour (Selkirk Office) - and - R.M. - and - Manitoba Government and General Employees' Union**

Case No. 314/12/LRA

September 18, 2013

**TIMELINESS** - Employee filed unfair labour practice application alleging Employer terminated his employment, contrary to section 7 of *The Labour Relations Act* – Employee filed application 18 months after termination - He asserted reason due to ongoing union grievances - Board did not accept Employee's explanation because Union had advised him decision made by Employer under provisions of collective agreement was neither grievable nor arbitrable – Also, Employee and Union did not file grievance regarding his termination - Accordingly, Board found Employee's filing of Application 18 months following his termination constituted undue delay within section 30(2) of the *Act* - Application dismissed.

**UNFAIR LABOUR PRACTICE - REMEDY** - Costs - Employee filed application under section 7 of *The Labour Relations Act* - Employer requested Board dismiss application with costs given unfounded and

baseless allegations made by Applicant - Board denied claim for costs - Based on reasoning in Supreme Court of Canada decision, Board does not possess authority under *The Labour Relations Act* to award costs- Substantive Order.

**UNFAIR LABOUR PRACTICE** - Discharge - Exercising Legislated Rights - Employee filed unfair labour practice application alleging Employer terminated his employment, contrary to section 7 of *The Labour Relations Act*, because of rumors and gossip - Employee did not allege that he was terminated for exercising any rights referred to in sub-clauses of section 7, meaning there was no entry point for seeking remedial relief under section 7 - Employee relied on section 7 in general, but there must be more than general assertion or allegation to establish *prima facie* case - Application dismissed.

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

Case No. 366/12/LRA

October 1, 2013

**DUTY OF FAIR REPRESENTATION** - Failure to Refer Grievance to Arbitration - Employee had applied for, but did not receive, Skilled Maintenance Worker position for which he was most senior qualified applicant - Prior to arbitration hearing, based on opinion of outside counsel that grievance would not succeed, Union withdrew grievance - Employee filed duty of fair representation application arguing Union overlooked relevant articles in collective agreement dealing with promotions and did not properly prepare for arbitration hearing, one reason being its failure to interview co-worker whose evidence was strongly supportive of his case - Board determined that while articles were not mentioned at grievance hearing or in legal opinion, Union Executive, after hearing submission from Employee, was mindful of articles - Union counsel did not interview co-worker but was aware of substance of his evidence - Board concluded Union undertook adequate preparations and had properly considered substantive issues before withdrawing grievance - Union received opinion from experienced counsel and acted in accordance with that opinion which is important element in its defence to Employee's unfair labour practice complaint - Union also followed fair and appropriate process in providing Employee with copy of legal opinion and allowing Employee to appear before Executive to outline his position before making final decision to withdraw grievance - Application Dismissed.

**Manitoba Lotteries Corporation - and - CAW-Canada Local 144 - and - J.M.W.**

Case No. 121/12/LRA

October 4, 2013

**DUTY OF FAIR REPRESENTATION** - Scope of Duty - Contract Negotiation - Failure to Consult Unit - Employee filed Duty of Fair Representation application alleging Union failed to pursue number of issues on his behalf - In their Replies, Employer and Union noted they would resolve some issues in Applicant's favour - Therefore, Board found no basis to claim violation - On issue of failure to be trained as Bingo Paymaster, Union was not aware he had requested training and Employee did not request Union file grievance, therefore, no *prima facie* evidence Union refused to file grievance - As to Employee's complaint Employer and Union agreed to new protocol regarding sharing of tips with inadequate consultation with him and others, Board satisfied agreement on sharing of tips did not engage section 20 of *The Labour Relations Act* for number of reasons - Remedial relief Employee seeking involved Employer directly and section 20 complaint not forum for complaints against employer - Agreement reached resulted from direct bargaining process between Union and Employer which does not involve representing rights of employee under collective agreement and was beyond scope of section 20 - Applicant failed to establish *prima facie* case - Application dismissed - Substantive Order.

**Winnipeg Regional Health Authority (Riverview Health Centre) - and - Winnipeg Association of Public Service Officers / Bill Comstock - and - M.B.**

Case No. 262/12/LRA

October 4, 2013

**DUTY OF FAIR REPRESENTATION - TIMELINESS** - Employee filed Duty of Fair Representation application submitting Union failed to pursue her grievance and disrespectful workplace complaint regarding her failure to be selected for staff pharmacist position - Board noted Application filed 20 months after Employee was aware that she was unsuccessful candidate - Even if meeting, which was to discuss her concerns with Employer and Union Representative, accepted as relevant benchmark, Application still not filed for approximately one year after that meeting - By either benchmark, Board satisfied Applicant unduly delayed filing Application and failed to provide satisfactory explanation for delay - Application dismissed for undue delay - Substantive Order.

**Carpenters Union, Local 343 - and - H.L.**

Case No. 208/12/LRA

October 11, 2013

**PRACTICE AND PROCEDURE - Adjournment** - At commencement of hearing, Applicant informed Board that witness he wished to call was not available to attend hearing in person on that date, but would be available to appear at later date - Board, having satisfied itself that Applicant had closed his case, denied motion to adjourn hearing to call his witness, or alternatively to submit witness' written statement - Substantive Order.

**UNFAIR LABOUR PRACTICE** - Applicant filed unfair labour practice application asserting Union suspended his membership in discriminatory manner contrary to section 19(c) and 19(d) of *The Labour Relations Act* - He alleged suspension was retribution for him having filed unfair labour practice application against Union two years before - Board concluded Union's decision and conduct not influenced, in whole or in part, by Applicant's previous complaints - Uncontested evidence was Applicant's dues were in arrears for many months and Union sent him computer generated form letters advising him of issue - Union's policies and provisions of its Constitution spelling out consequences to a member in the circumstances applied to Applicant in non-discriminatory manner and consistent with how other similarly situated members were treated - Also, individual who decided to uphold suspension had no prior knowledge of Applicant or his past complaints regarding Union - Refusal to reinstate Applicant's membership based upon non-discriminatory evaluation of relevant considerations including high level of unemployment amongst Union's membership and related economic circumstances then prevailing - Application dismissed - Substantive Order.

**Rexall Pharmaplus Drugmarts - and - E.D.C.**

Case No. 138/13/LRA

October 15, 2013

**UNFAIR LABOUR PRACTICE - Exercising Legislated Rights** - Employee, who was manager at one of Employer's stores, filed unfair labour practice application under section 7 of *The Labour Relations Act* - Board noted that Employee was not member of any bargaining unit and accordingly, Section 7(a), (b) and (c) of the *Act* had no application to Employee's position - Sections 7(d) to (h) of the *Act* had no application to facts as Employee alleged issue initiating his termination was his disclosure to various parties about hazards of in-pharmacy blood testing - Employee alleged he was acting pursuant to provisions of *The Public Interest Disclosure (Whistleblower Protection) Act* (PIDA), in particular, sections 14(1) and 14(2) - Employee not entitled to rely on that section as he was not an employee within meaning of PIDA which does not apply to private sector - Applicant failed to establish *prima facie* case - Application dismissed - Substantive Order.

**CancerCare Manitoba - and - Manitoba Association of Health Care Professionals**

Case No. 126/11/LRA

October 24, 2013

**APPROPRIATE BARGAINING UNIT - PRACTICE AND PROCEDURE** - Mootness - Union filed application seeking Board Determination that individuals in classification of clinical specialist – radiation oncology systems were employees as contemplated by *The Labour Relations Act* and fell within scope of certificate and collective agreement - Employer advanced preliminary motion that application be dismissed on basis matter was moot because clinical specialist classification had been permanently discontinued resulting from *bona fide* operational changes - Board satisfied matter lacked live controversy as tangible and concrete dispute had disappeared - Board satisfied that once classification was permanently eliminated, adversarial context also ceased to exist - Board satisfied issue with respect to classification was narrow one, resolution of which no longer had effect on rights of parties - No compelling rationale for Board (or parties) to devote scarce resources to resolve an issue regarding classification that no longer existed - Board should not determine question, Union raised whether employees should be in bargaining unit by reason of certain required qualifications, in absence of proper factual context involving classification that actually existed - Board satisfied that no reasonable labour relations purpose served by having parties argue over a moot point - Substantive Order.

**Actionmarguerite (Saint-Boniface) Inc. - and - Manitoba Nurses Union - and - C.C.**

Case No. 202/13/LRA

October 28, 2013

**DUTY OF FAIR REPRESENTATION** - *Prima Facie* - Timeliness - Applicant claimed Union provided superficial representation to her and treated her in discriminatory and bad faith manner in dealing with her respectful workplace complaint - Board determined Union turned its mind to Applicant's concerns, provided her with advice, attended meetings with her, participated in mediation process, and negotiated on her behalf with Employer - No factual foundation for Board to conclude Union conducted itself in a manner that violated section 20(b) of *The Labour Relations Act* - Any alleged delay with respect to Applicant's return to work was because she had not been medically certified to return to work - No facts were advanced to support allegation Union discriminated against her on basis of her age or claim Union displayed preference for another member who held a position with it - Unsupported allegations, without any factual underpinnings, entitle Board to conclude *prima facie* case not established - Also, as per section 30(2) of the *Act*, complaints that arose out of allegations of conduct that occurred more than six months prior to filing of application were dismissed due to undue delay - Application dismissed - Substantive Order.

**Actionmarguerite (Saint-Boniface) Inc. - and - Manitoba Nurses Union - and - C.C.**

Case No. 203/13/LRA

October 28, 2013

**UNFAIR LABOUR PRACTICE** - Exercise Legislative Rights - Applicant filed unfair labour practice application claiming Employer acted contrary to section 7(d) and (h) of *The Labour Relations Act* by harassing her so that she became ill and was forced from workplace for medical reasons - Board determined Applicant forwarded complaints that she had been subjected to workplace harassment to Employer and Workplace Safety and Health - Having sent complaint to Workplace Safety and Health, Applicant met onus of establishing she engaged in activities or forms of conduct described in subsections 7(d) and (h) of the *Act* - However, Applicant had not established Employer refused her employment or continued employment, discharged, or discriminated against her in regard to her employment following the complaint filed with Workplace Safety and Health or otherwise exercising her rights under any Act of the Legislature or of Parliament - Rather, Employer recognized Applicant was on sick leave and disability and had indicated it would cooperate with return to work program, including mediation, once Applicant was medically certified to return to work - Employee was clearly aggrieved; however application did not provide factual foundation to suggest Employer engaged in any conduct set forth in section 7 following the Applicant's decision to file complaint - Applicant failed to establish *prima facie* violation of section 7 - Pursuant to section 140(7) of the *Act*, alleged conduct complained of in application could have been raised pursuant to provisions of collective agreement - Application dismissed - Substantive Order.

**K.S., Winnipeg School Division - and - Henry Shyka, Manitoba Teachers Society Bargaining Agent/Respondent, - and - D.B.D**

Case No. 221/13/LRA

November 15, 2013

**DUTY OF FAIR REPRESENTATION** - Failure to Refer Grievance to Arbitration - Employee received 3-day unpaid suspension for not attending meeting as requested by Employer - Employee indicated to Union representative and its legal counsel that she would resign - Union representative counselled Employee not to resign at least until she had new job - Legal counsel concluded that he did not feel arbitrator would fully absolve Employee from imposed discipline, although she might receive shorter suspension or written warning - Union representative discussed possibility of reducing period of suspension with Employer, but discussions were not concluded at time Employee submitted her resignation - Union, relying on legal opinion, determined it would not proceed with harassment concern given Employee resigned - Employee filed duty of fair representation complaint maintaining Union failed to represent her and Union Representative had paternalistic, complacent and negative attitude towards her, resulting in him failing in his duty to protect her - Board determined Union responded appropriately to Employee's concerns and supported her as situation unfolded - Facts do not show any attitude of indifference or capriciousness or in not caring about Employee - No facts presented to suggest Union did not meet its obligations - Union Representative provided appropriate advice and addressed Employee's concerns throughout; she was urged not to resign, and Union sought legal opinions from experienced labour counsel - Employee failed to establish, on balance of probabilities, that Union or Union representative breached section 20 of *The Labour Relations Act* - Application dismissed - Substantive Order.

**K.S., Winnipeg School Division - and - Henry Shyka, Manitoba Teachers Society Bargaining Agent/Respondent, - and - D.B.D**

Case No. 221/13/LRA

November 15, 2013

**VOTE - PRACTICE AND PROCEDURE** - Wishes of Employees - Employee filed application for Termination of Bargaining Rights but Board noted it had issued a Certificate, existence of which meant application ought to be filed as application seeking cancellation of Certificate - Notwithstanding that Union submitted vote should be conducted regardless of irregularities it referred to in its Reply, Board must *first* satisfy *itself* that material filed in support of application revealed that majority of employees no longer wished to have Union represent them - Board noted petition or statement filed in support of application did not explicitly state its purpose which would allow Board to satisfy itself employees who signed petition did so with basic understanding of its purpose and they were signing petition in support of that purpose and reasons stated - Also, document filed in support of application only listed names of certain individuals - Board was unable to ascertain if individuals actually signed document - Further, each signature obtained should be witnessed by individual who circulated petition and date of signing by each individual ought to be inserted - Irregularities led Board to conclude that it cannot satisfy itself majority of employees no longer wished to have Union represent them - Application dismissed - Substantive Order.

**Bristol Aerospace Ltd. - and - CAW-Canada - and - M.T.**

Case No. 132/12/LRA

December 13, 2013

**DUTY OF FAIR REPRESENTATION** - Reasonable Care - Arbitrary Conduct - Failure to Refer Grievance to Arbitration - Employee claimed Union failed to fulfill its obligations under section 20 of *The Labour Relations Act* by failing to proceed to arbitration with termination and denial of disability benefits grievances - Employer was of position that video surveillance provided evidence Employee was malingering and lying regarding severity of his medical condition - Board satisfied Union acted in arbitrary manner in representing Employee as it failed to direct its mind to merits of matter, to inquire into or to act on available evidence, or to conduct meaningful investigation to justify decision to withdraw benefits grievance - Any discussion by Union's Bargaining Committee of merits of benefits grievance was so perfunctory as to indicate arbitrary representation - Although video evidence was central to termination

grievance, committee members had not viewed video in its entirety prior to making determination not to proceed with grievance - Employee was not even advised of right to appeal decision - Board satisfied persons acting on behalf of Union pressured and browbeat Employee into saying he committed "indiscretion" and that he was sorry for what he had done despite his repeated claims he had not engaged in misconduct - Union processed grievance in careless and superficial way, failing to investigate or to give any credence to Employee's claims that he did not engage in misconduct - Union did not arrange for Employee to view video evidence, it did not consult with Employee's physician to evaluate whether, from medical perspective, his claims that he did not engage in misconduct were valid - Union's conduct did not meet standard of exercising reasonable care - Board satisfied Union rushed to judgement, believing Employee to be guilty as Employer alleged - Application allowed - Substantive Order.

**Native Clan Organization Inc. - and - Canadian Union of Public Employees - and - J.C.**

Case No. 208/13/LRA

December 16, 2013

**DECERTIFICATION - Discretion to Dismiss - Applicant filed application seeking cancellation of Certificate** - Union submitted Board should exercise discretion under subsection 50(4) of *The Labour Relations Act* to dismiss Application claiming Employer failed or refused to make efforts in good faith, with result collective bargaining process had been frustrated - Board noted Employer acknowledged that it cancelled six negotiating meetings due to ill health of executive director and asked to reschedule bargaining sessions to accommodate schedule of legal counsel - Employer participated in conciliation and, at each session, additional provisions of first collective agreement had been agreed upon - Conciliation officer did not notify Board that parties not likely to conclude collective agreement for purpose of subsection 87(1) of the *Act* - Neither party filed an application seeking imposition of first collective agreement - Union had not filed application alleging any unfair labour practice by Employer nor had it discussed any concerns with Employer that it may have had regarding good faith efforts by Employer - Board satisfied Employer did not fail or refuse to bargain collectively in good faith and make every reasonable effort to conclude collective agreement - Board ordered ballots cast in representation vote be counted - Substantive Order.

**Canada Safeway - and - United Food and Commercial Workers Union, Local No. 832 - and - H.P.**

Case No. 370/12/LRA

December 24, 2013

**DUTY OF FAIR REPRESENTATION - Failure to Refer Grievance to Arbitration - Board found Union filed appropriate grievances on behalf of the Employee, conducted thorough investigations, obtained two legal opinions that grievances were unlikely to be successful, and offered appeal procedure to contest decision not to proceed to arbitration, which Employee elected not to pursue - Union complied with obligations in section 20 of *The Labour Relations Act* - Employee failed to establish breach of section 20 of the *Act* - Application dismissed - Substantive Order.**

**Hy Way Construction - and - R.P.**

Case No. 205/13/LRA

December 31, 2013

**UNFAIR LABOUR PRACTICE - Exercising Legislative Right - Employee, who was employed in heavy construction sector, alleged employment terminated because he exercised his statutory rights by advising Employer he finished his shift with an hour of overtime and he had right to refuse work - Board found, at time of refusal to work, Employee had not reached threshold of overtime as defined in subsection (a) of the definition of overtime in *The Employment Standards Code* or as contemplated by section 11(b) of *The Construction Industry Wages Act* - Board accepted Employee terminated for unwillingness to work required shift and disrespectful comments he made to superiors and not for any reason prohibited by section 7 of *The Labour Relations Act* - Therefore, he was not exercising right under an Act of Legislature as claimed - *Prima facie* case not established - Application dismissed - Substantive Order.**

**Winnipeg Child and Family Services - and - Canadian Union of Public Employees, Local 2153 - and - F.M.**

Case Nos. 298/12/LRA & 299/12/LRA  
January 14, 2014

**DUTY OF FAIR REPRESENTATION** - Discharge - Failure to Process Grievance - Reasonable Care - Board found no evidence that Union thoroughly tested or investigated Employer's claim that Employee administered "wrong medication" - Union's failure to obtain and review copies of documentation, protocols and policies, expressly referred to in termination letter, reflected lack of meaningful investigation into central elements of case - Union failed to meaningfully explore and investigate positions and perspectives that Employee advanced including her state of mind at material time and her explanations for her actions - Board reviewed disclosures Employee made during Local Executive meeting, that given her state of mind at material times, she ought to have sought psychiatric help and that legal opinion suggested she had reasonable chance of succeeding with grievance if she expressed remorse and committed to complying with work rules, policies and procedures - Reasonable care required Union to further reflect upon Employee's mental and emotional state and, at minimum, to seek further advice from counsel - Board determined Union failed to take reasonable care in representing Employee's rights with respect to her dismissal grievance and committed unfair labour practice contrary to section 20(a) of *The Labour Relations Act*.

**DUTY OF FAIR REPRESENTATION** - Suspension - Failure to Process Grievance - Legal opinion concluded 10-day suspension was excessive and suspension grievance had merit - Board satisfied that Union failed to follow advice of legal counsel - While Union belatedly attempted to negotiate settlement which would have seen discipline varied to fall within range identified by counsel, Employer did not agree to settlement - Rather than referring grievance to arbitration to attempt to achieve result that was in line with legal opinion, Union withdrew grievance, leaving Employee with 10-day suspension on her employment record and bearing resulting wage loss - Board satisfied Union failed to represent Employee in manner which was consistent with legal conclusion regarding suspension grievance - Employee was detrimentally affected by this failure - Board concluded Union represented rights of Employee in arbitrary manner and committed unfair labour practice contrary to section 20(b) of *The Labour Relations Act*.

**DUTY OF FAIR REPRESENTATION** - Bad Faith - Union acknowledged Union's President yelled at Employee during meeting - Board found outburst was momentary expression of frustration during otherwise cordial and respectful meeting - Isolated act indicative of frustration, while regrettable, does not amount to bad faith and was not violation of section 20 of *The Labour Relations Act*.

**R.M. of North Norfolk and Town of MacGregor - and - L.B.**

Case No. 166/13/LRA  
January 14, 2014

**UNFAIR LABOUR PRACTICE** - Exercising Legislative Right - Employee filed unfair labour practice application contrary to subsection 7(f) of *The Labour Relations Act* - Nothing to suggest Employee, who was employed as landfill attendant, was member of any bargaining unit - Subsections 7(a), (b) and (c) had no application - Subsection 7(f) relates to Employee having "made, or may make, a disclosure that may be required of him in a proceeding under any Act of the Legislature or of Parliament" - No facts alleged in application or supporting appendices which support breach of subsection 7(f) or any other section of the *Act* - Employee not terminated for such conduct, nor did he allege having made such a disclosure - Employee failed to establish *prima facie* case - Application dismissed - Substantive Order.

**City of Brandon - and - CUPE, Local 69 - and -L.G.**

Case No. 315/13/LRA  
January 22, 2014

**DUTY OF FAIR REPRESENTATION** - Employee filed duty of fair representation application submitting Union failed to adequately represent his interests when it refused to proceed to arbitration with grievance contesting letter of discipline - Board determined Union filed grievance, attended grievance hearings,

obtained legal opinion from counsel which indicated highly unlikely arbitrator would substitute lesser penalty, and provided appeal procedure to contest decision not to proceed to arbitration - Employee failed to establish *prima facie* - Application dismissed - Substantive Order.

**Hotel Fort Garry - and - CAW TCA Canada - and - R.D.C.**

Case No. 279/13/LRA

January 31, 2014

**DUTY OF FAIR REPRESENTATION** - Failure to Process Grievance - While on short-term disability, Employee advised manager he was going to Philippines due to his brother's death - Despite being advised by manager to put in vacation request, Employee left that afternoon - When he did not return to work on date expected, his employment was terminated - A month later Employee contacted Union which determined matter would not be successfully pursued by way of grievance - Employee filed duty of fair representation application - Board noted president of Local dealt directly with Employer in attempt to return Employee to work; Union retained consultant, who dealt with Employer; and, Employee had not taken into account internal appeal processes, which Union explained to him as being available - Application suggested Employee was principally critical of Employer conduct in terminating him - Board was of view Employee's complaint against Union was an afterthought, and without consideration of requirements that had to be met to bring matter within section 20 of *The Labour Relations Act* - Employee did not establish *prima facie* violation of section 20 - Application dismissed - Substantive Order.

**City of Winnipeg - and - CUPE, Local 500 - and - M.M.**

Case No. 287/13/LRA

January 31, 2014

**DUTY OF FAIR REPRESENTATION** - Scope of Duty - Employee filed Step 1 grievance, without consultation with Union, when his application for Building Servicer I position was rejected - After Employer rejected Step 1 grievance, Employee filed duty of fair representation complaint which was first direct knowledge Union had of grievance - Board found that Employee was making complaint over seniority dates established in Property, Planning, and Development Agreement as opposed to Union's handling of issue - Facts did not show Union had attitude of indifference or capriciousness in not caring about Employee - Concerning standard of care requirement, Employee claimed he had not been fairly represented, but Union first learned of grievance when Notice of Application was presented - Therefore, claim that Union had not acted to fairly represent Employee was unfounded - Application claiming unfair representation premature - Applicant failed to advance *prima facie* violation of section 20 of *The Labour Relations Act* - Application dismissed - Substantive Order.

**Summit Pipeline Services - and - United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of United States and Canada, L. 254 - and - C.D.**

Case No. 259/13/LRA

February 4, 2014

**DUTY OF FAIR REPRESENTATION – TIMELINESS** - Employee filed duty of fair representation application alleging Union acted contrary to section 20 of *The Labour Relations Act* in almost all his dealings with them over “past three years” - Portions of application, which related to conduct alleged to have occurred more than six months prior to date Employee filed application, dismissed for undue delay which Board has interpreted to mean periods of as little as six months - Substantive Order.

**DUTY OF FAIR REPRESENTATION** - Employee filed duty of fair representation application alleging Union failed to pursue his claim for subsistence allowance; failed to pursue certain amounts owing to him under collective agreement when he was dispatched to a position in Brandon; and, failed to dispatch him to a position in The Pas, Manitoba and did not seek written reasons from company that refused to hire him – Board noted Union investigated issue of subsistence allowance but determined evidence insufficient to pursue grievance – Therefore, application did not establish conduct of Union was arbitrary, discriminatory or that it acted with bad faith – Regarding issue of dispatching Employee to position in

Brandon, Board stated Union mistakenly dispatching Employee did not relate to representation of rights under collective agreement - Moreover, Union investigated matter and determined Employee not entitled to payment under collective agreement but had paid him amount representing four hours' pay, having regard that it dispatched him without realizing he was not qualified for position – Regarding refusal to dispatch him to a position in The Pas, collective agreement confers upon employer “the right to reject any applicant referred by the Union for cause” - Union determined that as he was not hired, no basis to grieve company's decision under collective agreement – Employee contended Union damaged his reputation in his trade and that accounts for company's refusal to accept him, but Board noted required factual foundation absent from Employee's allegations – Employee failed to establish conduct of Union was arbitrary, discriminatory or that it acted in bad faith – Employee failed to establish *prima facie* case – Application dismissed – Substantive Order.

**Government of Manitoba, Selkirk Family Services - and - MGEU - and - R.M.**

Case No. 346/13/LRA

February 14, 2014

**DUTY OF FAIR REPRESENTATION – TIMELINESS** - Employee filed duty of fair representation application 32 months after he claimed to have first become aware Union allegedly breached section 20 of *The Labour Relations Act* and 21 months after Union explained it could not grieve or arbitrate his issues and it could do nothing further on his behalf - Employee stated delay in filing Application due to his pursuit of remedies in other venues - Board stated that pursuit of claims with other entities not acceptable explanation for delay - Application dismissed - Substantive Order.

**Bristol Aerospace Ltd. - and - National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 3005 - and - M.T.**

Case No. 345/13/LRA

February 27, 2014

**REVIEW – REMEDY** - Union filed application seeking clarification and review of paragraphs 4, 5 and 6 of remedies section of Order No. 1576 submitting they were not sufficiently clear – Board noted paragraph 4 simply confirmed jurisdiction of arbitrator to deal with evidentiary matters that may arise having regard to passage of time since date of Employee's termination - Board's intent was to hold Union responsible for any amounts owing to Employee as result of one or both grievances during period in which Employer was saved harmless - Board satisfied paragraph 6 ought to be reviewed and reconsidered having regard to submissions which noted Employee was responsible for significant delays with respect to filing and hearing of his unfair labour practice application - Remedy with respect to apportionment of damages to take into account Employee's delays and should be fairly adjusted so that Union was not responsible to Employee for all damages for period in which Employer was saved harmless – Substantive Order.

***Pursuant to The Employment Standards Code***

**KDR Design Builders Inc. - and - J.S.**

Case No. 150/12/ESC

April 10, 2013

**WAGES** - Overtime - Calculation - Standard Work Week Over 40 Hours - Salaried Supervisor - Employer appealed Order to pay overtime submitting Employee signed agreement to work standard work week of 40 to 48 hours and only time worked above 48 hours in a week was overtime - Employer pointed out overtime calculations in Order based on standard 40-hour work week - Board concluded phrase “standard work week of 40 to 48 hours” reasonably construed as meaning standard work week consists of any number of hours between 40 to 48 hours and only hours worked in excess of 48 hours in a week result in overtime - Held that amount determined by Employment Standards Division to be owing be reduced as Employee only entitled to overtime on hours worked in excess of 48 hours - Substantive Order.

**KDR Design Builders (Commercial) Inc. - and - J.S.**

Case No. 151/12/ESC

April 10, 2013

**WAGES** - Overtime - Calculation - Standard Work Week Over 40 Hours - Salaried Supervisor - Employer appealed Order to pay overtime submitting Employee signed agreement to work standard work week of 40 to 48 hours and only time worked above 48 hours in a week was overtime - Employer pointed out overtime calculations in Order based on standard 40-hour work week - Board concluded phrase "standard work week of 40 to 48 hours" reasonably construed as meaning standard work week consists of any number of hours between 40 to 48 hours and only hours worked in excess of 48 hours in a week result in overtime - Held amount determined by Employment Standards Division to be owing be revised as Employee was only entitled to overtime on hours worked in excess of 48 hours, but was entitled to receive proportionate weekly value of annual salary during weeks he worked less than 40 hours - Substantive Order.

**EVIDENCE - WAGES** - Overtime - Calculation - Record Keeping - Employer appealed Order to pay wages submitting spreadsheet prepared by Employment Standards Division based on Employee's time records which were not correct because he claimed more hours than he actually worked - Employer noted instances on timesheet where Employee indicated he was at project site, yet he had not signed sign-in sheet required for attendance at job site and noted instances when Employee stated he was at particular job site, but he could not be located on site by Employer representative - Board determined Employee's explanations somewhat contrived, but were not entirely implausible and Employer's evidence not sufficient to discredit accuracy of Employee's evidence of hours worked during period of his employment - Substantive Order .

**D.S.I. Technical Systems Inc. - and - E.D.**

Case No. 131/11/ESC

July 9, 2013

**EVIDENCE** - Board denied Employee's request to file additional evidence noting that, even though hearing had been adjourned for more than a month, issue had not been raised until second day of hearing, nor had proposed statutory declaration been made available to Employer - Substantive Order.

**WAGES** - Overtime - Calculations - Employee disputed Dismissal Order on basis there were errors in calculation of overtime hours - Board not satisfied timecards sufficiently or reliably establish hours worked or overtime as timecards list only total hours worked each day without providing any details and were not provided to Employer during Employee's employment - Therefore, Board not convinced Employer expressly or impliedly knew of or authorized hours - GPS records do not provide accurate picture of hours worked and work performed, but may signal when Employee started and finished work - Board satisfied daily job sheets provided sufficiently detailed and reasonably accurate and reliable record of hours worked and were expressly, or at least impliedly, authorized by Employer - No evidence to back up Employer's contention that hours should be reduced to reflect one hour lunch break - Board did not accept Employee was compensated for overtime by accumulating and taking advantage of banked time as there was no written agreement with respect to banked hours or time off in lieu of wages for overtime as required under Section 18 of *The Employment Standards Code* - Board satisfied all overtime wages owed for six months prior to Employee's termination, as contemplated under Section 96(2)(a)(ii) of the *Code*, had been paid - Appeal dismissed - Substantive Order.

**Sunova Credit Union Limited - and - R.S.**

Case No. 58/13/ESC

July 10, 2013

**NOTICE** - Proper Notice - Employer disputed Order to pay wages in lieu of notice - After June 4<sup>th</sup> performance meeting, Employee was presented with document that stated if she was unable to demonstrate ability to meet sales goals, her employment would be terminated effective June 28<sup>th</sup> - Employer submitted her employment was terminated on June 4<sup>th</sup> and subsequent days to June 28<sup>th</sup> were

notice period and memo given constituted proper two weeks' notice - Board determined that "notice" provided was not clear, specific and unequivocal notice of termination, but was "conditional" notice of termination because of possibility employment would not be terminated if performance improved in intervening period - Appeal dismissed - Substantive Order.

**Maxim Transportation Services Inc. t/a Maxim Truck & Trailer - and - D.A.**

Case No. 225/12/ESC

July 17, 2013

**WAGES - VACATION ENTITLEMENT** - Commission Draws - Employee appealed Order submitting that vacation pay to be paid in addition to and separate from his normal draw and commissions and Employer not entitled to deduct draws which he had received in excess of commissions earned from his vacation balance - Board, being statutory tribunal, can only deal with claim for wages, including vacation wages, in accordance with specific provisions of *The Employment Standards Code* and *Employment Standards Regulation* - Board satisfied, on balance of probabilities, that Employee paid all wages owing to him under the *Code*, including all vacation wages in respect of the last 22 months of his employment - Board did not agree with Employee's contention that Employer not entitled to deduct draws received in excess of commissions earned from vacation pay - Board satisfied that monthly draws which were paid to Employee fell within scope of deductions permitted under Rule 7(a) of Subsection 19(2) of the *Regulation* - Appeal dismissed - Substantive Order.

**C.L.C. t/a C.C.'s Restaurant & Lounge - and - J.K.**

Case No. 212/12/ESC

August 22, 2013

**NOTICE** - Discharge - Wilful misconduct - Employer appealed Order to pay Employee wages in lieu of notice asserting wages not owed because Employee engaged in conduct that constituted wilful misconduct or behaviour or disobedience - Employer testified, after meeting with Employee to discuss incident where he angrily swore at young co-worker, she sent him home and as Employee was leaving, he swore at Employer while customers were present and slammed front door as he left - Board accepted Employer's evidence that she was shaken by Employee's remarks and felt threatened - Whatever characterization one may make regarding Employee's initial and improper remarks to co-worker as stand-alone event, later actions and conduct of Employee involving Employer reflected deliberate, intentional and voluntary actions and fell within ambit of exception contemplated by Section 62(1)(h)(i) of *The Employment Standards Code* (as it then stood) - Board satisfied Employer met its onus, on balance of probabilities, that Employee acted in manner that constituted wilful misconduct, disobedience or insubordination - Appeal allowed - Substantive Order.

**1405383 Alberta Ltd. t/a Aarons Furniture - and - S.M.**

Case No. 140/12/ESC

October 4, 2013

**WAGES** - Overtime - Managerial Exclusion - Employer appealed Order to pay Employee overtime wages arguing he was General Manager and his salary took into account overtime - Board satisfied Employer failed to establish Employee performed management functions primarily - Board not satisfied Employee had effective or independent authority to hire or dismiss anyone - Employee was responsible for preparing work schedules, but with limitations and subject to review by Regional Manager - Employee did not have authority to schedule or authorize overtime, although he could give employees time off in lieu - Employee had some control over marketing, purchasing and collections - Little or no evidence was introduced to establish whether Employee performed functions considered indicative of managerial role such as promotion or demotion of employees, authorizing absences or leaves of absence, completing performance appraisals, engaging in policy making, or establishing budgets - Board not convinced there was agreement salary was inclusive of overtime worked - In any event, Board consistently held such agreement inconsistent with, and no defence to, a claim under *The Employment Standards Code* - Board found Employer had not met onus of establishing, on balance of probabilities, Employee performed

management functions primarily within meaning of section 2(4)(a) of the *Code* - Employee entitled to claim overtime - Substantive Order.

**WAGES** - Overtime - Calculation - Record Keeping - Employer and Employee appealed Order to pay Employee overtime wages - Employer argued Employee was General Manager and his salary took into account overtime - At very least, Order should be reduced to take into account meal breaks which Employee would have been expected to take - With respect to Employer's assertion it did not keep track of Employee's hours because his salary took into account overtime, Employer had obligation to keep track of hours worked as per section 135 of *The Employment Standards Code* - Board found Employer had not met onus of establishing, on balance of probabilities, Employee performed management functions primarily within meaning of section 2(4)(a) of the *Code* - Employee entitled to claim overtime - Employee appealed Order for overtime wages arguing he was entitled to additional overtime wages based on his documented hours of work for six-month period in question - Board not convinced Employee's daytimer accurately or reliably established hours he worked as pages only show start and end times without providing details or any record of time taken for meal breaks - Daytimer not provided to Employer during course of Employee's employment - Board not satisfied that Employer knew of or authorized those hours - Board satisfied, on balance of probabilities, that Employee was expected to and would have taken one hour break during work day - Statement of Adjustment adjusted to take into account unpaid meal break of one hour on every day Employee worked, except those where he worked less than six hours, and to include time in respect of three-day conference Employee attended - Substantive Order.

**Dapasons Ltd. - and - I.C.L. (formerly known as I.C.B.)**

Case No. 53/12/ESC

October 11, 2013

**SUCCESSORSHIP - NOTICE** - Sale of Business - Period of Notice - Employer disputed Order to pay wages in lieu of notice submitting its business was distinct from and not continuation of business in which Employee formerly employed and claimed when Employee was released, she had been employed for less than one year - Board satisfied there was sale or transfer of business within meaning of Section 5 of *The Employment Standards Code* such that Employee's employment deemed to have been continuous and uninterrupted - Having purchased remaining inventory from their predecessor, new owners reopened and continued to operate store as going concern, with very little or no interruption, selling essentially same products, under same name, at same location, and with same workforce - Board not convinced evidence established Employee agreed to start from scratch - Even if she did agree, term to that effect would be inconsistent with provisions of the *Code* which preserve employee's continuity of employment, and would amount to attempt to "contract out" of those provisions - Under section 3(3) of the *Code*, any agreement which purports to do so does not prevail over the *Code* - Appeal dismissed - Substantive Order.

**NOTICE** - Unacceptable Behaviour - Employer disputed Order to pay wages in lieu of notice submitting reason for Employee's dismissal included unacceptable behaviour which fell within exceptions to notice requirements in Section 62(1)(h) of *The Employment Standards Code* - Employee was not reprimanded or cautioned that her behaviour or conduct was unacceptable - Employer argued Employee flagrantly disregarded its rules, policies and procedures, but did not identify what rules, policies or procedures, or breach, it was relying on, or how that fit within exceptions in section 62(1) of the *Code* - Appeal dismissed - Substantive Order.

**PARKSIDE FORD LINCOLN - and - W.O.**

Case No. 41/13/ESC

October 11, 2013

**WAGES** - Vacation Pay - Bonus - Employer disputed Order to pay Employee vacation wages on premium earnings - Relying on section 40 of *The Employment Standards Code*, Employer characterized premium earnings (incentives) as bonus and asserted vacation pay not payable on bonus - Board held incentive payments were a "commission" as payments were based on gross value of sales made or number of

vehicles sold - Wage plan could not be characterized as “bonus” which is payable at Employer’s discretion on *ex gratia* basis - Section 40 not a “limiting” provision, but rather is “confirmatory” in nature, its purpose to ensure employer cannot reduce or offset entitlement to vacation or vacation pay by reason of any bonus or other pecuniary benefit provided - Fact Employee signed Pay Plan which contained provision that vacation pay was based on base salary and not “incentives” cannot be relied upon - As per sections 3(3) and 4(1) of the *Code*, agreement to work for less than applicable minimum wage, or under any term or condition that is contrary to the *Code* or less beneficial to employee than what is required by the *Code* not a defence in proceeding or prosecution under this *Code* - Appeal dismissed - Substantive Order.

**WAGES** - Unauthorized Deductions - Employer disputed Order to repay for improper deductions made to recover cost of damages, and speeding and parking tickets issued to vehicles Employee provided to individuals for test drive - Part of amount was paid by deducting vacation pay and Employee paid remaining amount via debit card - Board satisfied Employee was authorized to release vehicles to potential customers and he was not personally responsible for damage done to vehicles nor were tickets issued to him personally - Rule 1 of section 19(2) of the *Employment Standards Regulation* not applicable as deduction cannot be characterized as Employer having provided “direct benefit” to Employee, but rather was Employer imposing liability on him - Employee paying via debit constituted deduction from wages - Employee did not voluntarily consent to deduction which would be of direct benefit to himself and further, Employer, in effect, required Employee to pay amount to cover damages contrary to rule 19(2)5 - Rule 19(2)8 did not apply because no offence committed by Employee -To extent Employee agreed to deduction or payment, sections 3(3) and 4(1) of *The Employment Standards Code* applied which provided the *Code* prevails over agreement that would provide employee wages that are less than provided under the *Code* - Appeal dismissed - Substantive Order.

**Duffy’s Taxi (1996) Ltd. - and - M.K.**

Case No. 80/13/ESC

December 9, 2013

**WAGES - EXCLUSIONS** - Overtime - Management - Employee, who was General Manager (G.M.), appealed Dismissal Order that determined his claim for overtime wages be dismissed as per section 2(4) of *The Employment Standards Code* as he performed management functions primarily - Board found G.M. responsible for labour relations activities including supervising, hiring, scheduling, promoting, disciplining and terminating employees - While he consulted with members of Board of Directors in performance of his duties, G.M. was responsible for overall management of enterprise - Board satisfied G.M. came within definition of “employer” set out in the *Code* as he had control or direction of, or directly or indirectly was responsible for employment of employees - Held G.M. not entitled to amounts sought in his complaint under the *Code*- Appeal dismissed - Substantive Order.

**WAGES - EVIDENCE** - Relevance - Reporting to Work - Employee appealed Dismissal Order that determined after hour phone calls did not fall under section 51 of *The Employment Standards Code* and his claim for wages for reporting to work was dismissed - Board not satisfied evidence established Appellant worked authorized overtime for which he was entitled to further compensation - Evidence of time worked was little more than listing of telephone calls and insufficient documentation or explanation was provided to satisfy Board, on balance of probabilities, Appellant was entitled to any further wages - He did not have records to identify purpose or meaningful details of specific calls - Appeal dismissed - Substantive Order.

**City Collections and Bailiff Service Inc. - and - B.M.**

Case No. 206/13/ESC

January 29, 2014

**EVIDENCE** - Employer disputed Order to pay wages asserting Employee's claim, which was primarily for overtime wages, was complete fabrication - Employer introduced open/close signal history report which showed dates and times when company's alarm system was activated and de-activated, and identified name of employee who had activated or de-activated alarm - Board noted report was not record of a “time

clock” showing arrival and departure times of each employee - However, it was of some use in establishing when particular employee may have been on business premises -Substantive Order.

**REMEDY** - Costs - Employee's representative requested Board award costs against Employer pursuant to section 125(5) of *The Employment Standards Code*, asserting general manager's conduct before Board was unreasonable - Board noted general manager did assert Employer's position aggressively and was insulting and sarcastic towards Employee; however, Employee's responses were similar in tone and content - Further, Employer's positions were not frivolous or vexatious as Board determined Employee's claim was inflated - Board determined not appropriate case to award costs in favour of either party - Substantive Order.

**WAGES** - Overtime - Entitlement - Calculation - Employer disputed Order to pay wages asserting Employee's claim, which was primarily for overtime wages, was complete fabrication - Board concluded, as Employee alleged, that he made agreement with co-owner that he would perform collections work during regular hours and perform extra IT work outside regular working hours - However, Board concluded Employee's claim was inflated and not supported by any conclusive documentation - Employee did prepare spreadsheet after he filed his claim, but acknowledged it was “guesstimate” - Board made adjustments to reduce hours claimed on certain specific days where alarm system open/close signal history report did not support his claim - Board rejected Employee's claim that he was denied lunch break because evidence as to what co-owner specifically said with respect to Employee's lunch break was not established with sufficient specificity - Also, Board also noted arithmetic error in Employment Standard calculations with respect to number of overtime hours worked during one of the weeks - Substantive Order.

**South Beach Casino Inc. - and - J.M.**

Case No. 291/12/ESC

February 28, 2014

**NOTICE – DISCHARGE** - Just Cause - On day in question, Employee, who was table games inspector, witnessed dealer pay out additional \$350 and then touched player's chips - As a result of incident, Employer terminated his employment for violating Employer's and gaming commission's policies and procedures - Employer disputed Order to pay Employee wages in lieu of notice asserting it had just cause to terminate his employment without notice because Employee did not perform his job responsibilities in accordance with policies and procedures – Board noted an employer's dissatisfaction or displeasure with an employee's performance is generally not enough to constitute just cause for dismissal without notice - Board found Employee caught sight of dealer's error, and proceeded to bring it to Employer's attention - Employer did not point to particular policies and procedures that it was relying on, nor did it elaborate on how policies or procedures were allegedly breached - Board could not conclude Employee's actions or performance amounted to “just cause” within meaning of section 62(1)(h) of *The Employment Standards Code* - Employee entitled to six weeks' wages in lieu of notice - Appeal dismissed - Substantive Order.

**AAR-Auto List of Canada (1999) Inc. t/a Auto List Of Canada - and - M.V.**

Case No. 288/12/ESC

March 3, 2014

**WAGES** - Calculation - Employer disputed Order to pay Employee overtime and vacation wages as calculated on Statement of Adjustment - Board agreed with Employer's submission that overtime hours were calculated using 47.57 for total weeks worked, but it should be 48 weeks - There was nothing to indicate where 47.57 came from - Board satisfied, on balance of probabilities, that agreement between Employer and Employee was that Employee would be entitled to annual vacation of three weeks, and would be increased to four weeks - Statement of Adjustment based on 8% of wages up to March 18, 2011 pay period, and 10% of his wages thereafter - Board agreed with Employer that vacation allowance should be calculated at 6% of wages earned to April 2, 2011, and 8% thereafter - Board satisfied no deduction to be made for 11.5 days which Employer listed, because list compiled after Employee had left his employment and Employer did not file documentation to substantiate or support its assertion that Employee was absent on those days - Appeal allowed in part - Substantive Order.

## **Pursuant to *The Workplace Safety and Health Act***

### **Anco Lumber Warehouse Inc. - and - Director, Workplace Safety & Health**

Case No. 25/13/WSH

June 11, 2013

**ADMINISTRATIVE PENALTY - JURISDICTION** - Appeal - Appellant appealed Administrative Penalty for failure to comply with Improvement Order (I.O.) arguing he had insufficient time to acquire saw guards that were in compliance with regulation, and penalty was too high given low profit margins of his business - With guidance from Workplace Safety and Health Officer, Appellant complied with I.O., but three months after I.O. compliance date and one month after Administrative Penalty was issued - Since Appellant did not appeal I.O., Board constrained by subsection 53.1(9) of *The Workplace Safety and Health Act* to confirm Administrative Penalty as it had no jurisdiction or discretion to excuse or condone non-compliance - Board's jurisdiction to vary amount of Administrative Penalty only arose if Administrative Penalty was not established in accordance with regulations - Board concluded I.O. was validly issued as saw guard was "device" within meaning of term "control measure" as defined in Administrative Penalty regulation - Substantive Order.

### **G4S Secure Solutions (Canada) Ltd. - and - Director, Workplace Safety & Health**

Case No. 117/13/WSH

July 24, 2013

**ADMINISTRATIVE PENALTY - JURISDICTION** - Appeal - Appellant appealed administrative penalty issued for failure to comply with Improvement Order (I.O.) - I.O. was not appealed when it was issued and time for appealing under section 39(2) of *The Workplace Safety and Health Act* expired - Under section 53.1(9) of the *Act*, jurisdiction of Board limited to determining whether Appellant complied with improvement order as Board can only confirm or revoke administrative penalty - Board did not have jurisdiction to assess merits or reasonableness of improvement order for purpose of varying order because jurisdiction to vary an order only vested in Board under section 39(6) of the *Act* when improvement order was appealed - Board satisfied Appellant failed to comply with I.O. and penalty imposed established in accordance with the *Administrative Penalty Regulation 62/2003* - Appeal dismissed - Substantive Order.

### **M & M Roofing & Exteriors Inc. - and - Director, Workplace Safety and Health**

Case No. 218/13/WSH

December 20, 2013

**ADMINISTRATIVE PENALTY** - Appeal - Appellant appealed administrative penalty for failure to comply with Improvement Order (IO) which was issued for not providing and/or implementing fall protection systems for its workers - Appellant argued Safety Officers discontinued Stop Work Order (SWO), concurrently issued with IO, and therefore, no need to appeal IO as it had effectively been rescinded - It also argued it should not be responsible for Administrative Penalties resulting from employees failing to follow safety procedures which it directed them to follow - Third, it submitted some requirements of regulation were impractical and may create unsafe situations if enforced too vigorously - Board determined that although SWOs had been lifted IO remained in force - Board sympathetic to Appellant's frustration that employees do not use safety equipment, however, Appellant's efforts not basis for overturning Administrative Penalty - Safety officer authorized to issue IO against "person" which by *The Interpretation Act* is defined to include corporation - Therefore, IO can be issued to Appellant rather than to workers on site - IO was not appealed and Board's jurisdiction limited to determining whether IO had been complied with - Appellant's observations with respect to the regulation were interesting, but Board proceedings not appropriate forum to assess or comment upon content of regulation - Board satisfied Appellant failed to comply with IO and as a result of noncompliance, confirmed Administrative Penalty - Appeal Dismissed - Substantive Order.

**Oakwood Roofing & Sheet Metal Co. Ltd. - and - Director, Workplace Safety & Health**

Case No. 140/13/WSH

January 24, 2014

**PRACTICE AND PROCEDURE** - Mootness - Appellant appealed three Stop Work Orders (SWOs) - Director raised preliminary motion that issues raised in appeal were moot because SWOs were discontinued prior to filing of appeal with Director - Board satisfied there continued to be live controversy between parties to justify appeal proceeding to hearing on its merits pursuant to section 39(b) of *The Workplace Safety and Health Act* - Appellant had sufficient business or ongoing legal interest in seeking determination that SWOs should not have been issued in first instance - Even in circumstances where issue may be moot because there was no ongoing or live controversy, Board retained discretion to decide to hear case and Board satisfied it should exercise its discretion to hear appeal - Preliminary motion dismissed - Substantive Order.

**The Accurate Technology Group - and - D.R. - and - Director, Workplace Safety & Health**

Case No. 119/13/WSH

March 25, 2014

**DISCRIMINATORY ACTION COMPLAINT** - Employee appealed dismissal of his discriminatory action complaint on basis termination of his employment was discriminatory because he raised safety concerns with Employer relating to company van's ABS brakes - Employer stated Employee was terminated because he made false entries on time sheets and because he did not accept responsibility for ticket issued for failing to stop van at red light - Board noted not clear whether ABS brakes issue was ever Safety Committee and service manager, Board concluded Employee gave information about workplace conditions affecting safety, health or welfare of any worker to person acting on behalf of employer and was acting within subsection 42(1)(c)(i) of *The Workplace Safety and Health Act* - Company president's clear and unequivocal evidence, combined with timesheets and video evidence sufficient to discharge onus to prove decision to terminate not influenced by Employee raising safety concerns - Appeal dismissed - Sections 42.1(1), 42(1) and 42(2) of the *Act* considered - Substantive Order.

**EVIDENCE** - During hearing, Employee sought leave to introduce e-mail he received, after first two days of hearing had been conducted, from Director of Inspection Services with Workplace, Safety and Health - Notwithstanding legitimacy of Employer's objections, Board allowed e-mail to be introduced because it was potentially probative of important issue in proceedings - On basis of e-mail, Board found transport van would be considered by Workplace, Safety and Health to be unsafe in any period when ABS braking system not functioning - Substantive Order.

**REMEDY - JURISDICTION** - Costs - Employer stated Employee's complaint was abuse of process and was raised as collateral attack on decision to terminate his employment, and urged Board consider making award of costs - Section 39(6) of *The Workplace Safety and Health Act* states that after hearing an appeal, Board may make order confirming, varying or setting aside order or decision appealed from and may also make any other order it considers necessary mentioned in subsection 31(4) of *The Labour Relations Act* - Subsection 31(4) of *The Labour Relations Act*, which outlines remedies for unfair labour practice, does not expressly confer upon Board authority to order costs against unsuccessful party - Board declined to order costs, because it had reservations about its jurisdiction to do so in context of the proceedings - Substantive Order.

## SUMMARIES OF SIGNIFICANT COURT DECISIONS

### Car World t/a Car World Superstore - and - Bill Carvelli

Court of Appeal

MLB Case No. 120/11/ESC

Docket No. A112-30-07900

Heard by Justice Burnett

May 16, 2013

In its Substantive Order dated November 13, 2012, the Manitoba Labour Board determined that the Employee had substantial control over his hours of work, and that his annual regular wage was more than two times the Manitoba industrial average wage, he was exempt from the standard hours of work and overtime provisions of the *Code*, on the basis of Sec. 2(4)(b) of the *Code*; the Employee had failed to establish that he was entitled to receive additional wages in the form of a base monthly salary of \$5,000; the Employer did not terminate the Employee's employment. Rather, the Employee himself terminated his employment, and was therefore not entitled to wages in lieu of notice; and, in the result, the appeal of the Employer was allowed, and the Order issued by the Employment Standards Division was rescinded. The appeal and the claim of the Employee were dismissed.

On December 14, 2012, the Employee filed a Notice of Motion in the Court of Appeal.

In his Order dated May 16, 2013, Mr. Justice Burnett dismissed the application for leave to appeal as he concluded that the matter was fact-intensive and that a question of law could not be isolated. In addition, in noting the standard of review of reasonableness that would apply in such circumstances, it was likely that the Board's decision came within the range of possible and defensible outcomes.



**STATISTICAL TABLES**



**TABLE 1**  
**STATISTICS RELATING TO THE ADMINISTRATION OF THE LABOUR RELATIONS ACT**  
**(April 1, 2013 – March 31, 2014)**

Type of Application	Cases Carried Over	Cases Filed	Total	Disposition of Cases					Number of Cases Disposed	Number of Cases Pending
				Granted	Dismissed	Withdrawn	Did Not Proceed	Declined to Take Action		
Certification	8	48	56	35	10	4	0	0	49	7
Revocation	2	4	6	3	1	1	0	0	5	1
Amended Certificate <sup>1</sup>	16	23	39	33	0	1	0	1	35	4
Unfair Labour Practice	15	32	47	0	11	27	0	0	38	9
Board Ruling	25	6	31	5	0	1	19	0	25	6
Review and Reconsideration	2	6	8	1	6	0	0	0	7	1
Successor Rights	2	55	57	2	0	0	0	0	2	55
Termination of Bargaining Rights	1	1	2	1	1	0	0	0	2	0
Changes in Work Conditions (Sec.10(1)) <sup>2</sup>	0	0	0	0	0	0	0	0	0	0
Changes in Work Conditions (Sec. 10(3)) <sup>3</sup>	0	8	8	7	0	0	0	0	7	1
Duty of Fair Representation (Sec. 20)	13	16	29	4	15	2	0	1	22	7
Permit for Union Visit (Sec. 21(2))	0	0	0	0	0	0	0	0	0	0
Access Agreement (Sec. 22)	0	0	0	0	0	0	0	0	0	0
Ratification Vote Complaint (Sec. 69, 70)	0	0	0	0	0	0	0	0	0	0
Minister Requires Ratification Vote (Sec. 72.1)	0	0	0	0	0	0	0	0	0	0
Religious Objector (Sec. 76(3))	2	4	6	6	0	0	0	0	6	0
First Collective Agreement (Sec. 87(1))	1	3	4	2	0	2	0	0	4	0
Subsequent agreement (Sec. 87.1(1))	0	0	0	0	0	0	0	0	0	0
Appoint Arbitrator (Sec. 115(5))	0	12	12	6	0	6	0	0	12	0
Extension of Time Limit (Sec. 130(10.1)) <sup>4</sup>	0	4	4	4	0	0	0	0	4	0
Disclosure of Union Information (Sec. 132.1)	0	0	0	0	0	0	0	0	0	0
Referral for Expedited Arbitration <sup>5</sup>	24	81	105	-	-	-	-	-	94	11
<b>Totals</b>	<b>111</b>	<b>303</b>	<b>414</b>	<b>109</b>	<b>44</b>	<b>44</b>	<b>19</b>	<b>2</b>	<b>312</b>	<b>102</b>

1. Eleven of the sixteen carried over cases were Amended Certificate/Board Ruling (AC/BR), but for statistical purposes have been reported as Amended Certificates. Eleven of the granted cases were AC/BR.
2. When an Application for Certification is filed with the Board, changes in conditions of employment cannot be made without the Board's consent until the Application is disposed of.
3. Within the first 90 days following certification of a union as a bargaining agent, strikes and lockouts are prohibited, and changes in conditions of employment cannot be made without the consent of the bargaining agent. Applications under this section are for an extension of this period of up to 90 days.
4. Extension of Time Limit for expedited decisions.
5. See Table 3 for a breakdown of statistics relating to applications for referral for expedited arbitration.

**TABLE 2**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REPRESENTATION VOTES**  
**(April 1, 2013 – March 31, 2014)**

TYPE OF APPLICATION INVOLVING VOTE	Number of Votes Conducted	Number of Employees Affected by Votes	Applications GRANTED After Vote	Applications DISMISSED After Vote	Applications Withdrawn After Vote	Outcome Pending	Vote Conducted but not counted
Certification	11	897	6	4	0	1	1
Revocation	2	15	2	0	0	0	0
Intermingling	0	0	0	0	0	0	0
Displacement	1	52	0	0	0	1	1

**TABLE 3**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE LABOUR RELATIONS ACT* RESPECTING REFERRALS FOR EXPEDITED ARBITRATION**  
**(April 1, 2013 – March 31, 2014)**

Cases Carried Over	Referrals Filed	TOTAL	Cases Where Mediator Appointed	Disposition of Cases					Cases Disposed	Cases Pending
				Settled by Mediation	Settled by Parties	Arbitration Award Issued	Declined to Take Action	Withdrawn		
24	81	105	21	17	25	7	3	42	94	11

**TABLE 4**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE EMPLOYMENT STANDARDS CODE***  
**(April 1, 2013 – March 31, 2014)**

Cases Carried Over	Number of Applications Filed	TOTAL	Orders Issued by the Board	Applications Withdrawn	Not Proceeded with by Applicant	Number of Cases Disposed of	Number of Cases Pending
35	41	76	39	22	1	62	14

**TABLE 5**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE WORKPLACE SAFETY AND HEALTH ACT***  
**APPLICATION FOR APPEAL OF DIRECTOR'S ORDER**  
**(April 1, 2013 – March 31, 2014)**

Cases Carried Over	Number of Applications Filed	TOTAL	Decisions/Orders Issued by the Board	Applications Withdrawn	Number of Cases Disposed	Number of Cases Pending
5	17	22	6	8	14	8

**TABLE 6**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE ESSENTIAL SERVICES ACT***  
**(April 1, 2013 – March 31, 2014)**

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

**TABLE 7**  
**STATISTICS RELATING TO THE ADMINISTRATION OF *THE ELECTIONS ACT***  
**(April 1, 2013 – March 31, 2014)**

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

**TABLE 8**  
**STATISTICS RELATING TO BOARD HEARINGS**  
**(April 1, 2013 – March 31, 2014)**

During the reporting period, 164 matters were scheduled to be heard involving 177 applications. <sup>1</sup>	Scheduled Hearing dates	Actual Hearing dates that Proceeded	Percentage of Actual to Scheduled
Number of hearing dates <sup>2</sup>	355	108	30.4

1 A "matter" may deal with one or more applications. For example, a matter could involve one application for unfair labour practice or a matter could involve an unfair labour practice and a related application for certification.

2 A hearing can be either a full or half day.

**TABLE 9**  
**FIRST AGREEMENT LEGISLATION REVIEW OF CASES FILED**  
**(April 1, 2013 – March 31, 2014)**

Union	Employer	Date of Application	Outcome of Application	Status as at March 31
<b><u>Pending from Previous Reporting Period</u></b>				
International Union of Operating Engineers, Local 987	Rural Municipality of Glenwood	March 26, 2013	Withdrawn	
<b><u>New Applications from Current Reporting Period</u></b>				
Public Service Alliance of Canada	University of Winnipeg	September 23, 2013	Withdrawn	
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union	Star Truss Systems (a Division of Star Building Materials)	January 15, 2014	Board imposed first collective agreement	Expiry March 16, 2015
Manitoba Nurses' Union, Local 150	Rod McGillivray Memorial Care Home	January 16, 2014	Board imposed first collective agreement	Expiry March 12, 2015

**TABLE 10**  
**SUBSEQUENT AGREEMENT LEGISLATION REVIEW OF CASES FILED**  
**(April 1, 2013 – March 31, 2014)**

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