Labour and Employment Board

ANNUAL REPORT

2022-2023

New Nouveau Brunswick

Labour and Employment Board

ANNUAL REPORT 2022-2023

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TRANSMITTAL LETTERS

From the Minister to the Lieutenant-Governor

The Honourable Brenda Murphy
Lieutenant-Governor of New Brunswick

May it please your Honour:

It is my privilege to submit the annual report of the Labour and Employment Board, Province of New Brunswick, for the fiscal year April 1, 2022, to March 31, 2023.

Respectfully submitted,

Honourable Arlene Dunn
Minister

From the Chairperson to the Minister

The Honourable Arlene Dunn
Minister of Post-Secondary Education, Training and Labour

Madam:

I am pleased to be able to present the 28th annual report describing operations of the Labour and Employment Board for the fiscal year April 1, 2022, to March 31, 2023, as required by section 15 of the *Labour and Employment Board Act*, Chapter L-0.01, R.S.N.B.

Respectfully submitted,

David Mombourquette
Chairperson

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INTRODUCTION

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

This Board was created through the proclamation of the *Labour and Employment Board Act*, Chapter L-0.01, R.S.N.B. in November 1994. It represents the merger of four (4) former Tribunals, each of which was responsible for the administration of a specific Act. Consequently, the Labour and Employment Board performs the duties and functions required under the *Industrial Relations Act*; the *Public Service Labour Relations Act*; the *Employment Standards Act* and the *Pension Benefits Act*, and since 1996, may act as a Board of Inquiry under the *Human Rights Act*. Since December 2001, the Board is responsible for the administration of the *Fisheries Bargaining Act,* and in July 2008, the Board was given responsibility over a complaints procedure in the *Public Interest Disclosure Act*. Since May 2009, the Board is also responsible for the administration of the *Essential Services in Nursing Homes Act*, and since April 2010, it is responsible for appointing arbitrators pursuant to the *Pay Equity Act, 2009*.

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

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

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

The Board has similar responsibilities under the *Public Service Labour Relations Act* which affects all government employees employed in government departments, schools, hospital corporations and crown corporations. In addition to these functions, the Board oversees and determines, if required, the level of essential services which must be maintained by the employees in a particular bargaining

unit in the event of strike action for the health, safety or security of the public. The Board is responsible for the appointments of neutral third parties, such as conciliation officers, to assist the parties in concluding a collective agreement. Excluding crown corporations, there are currently 25 collective agreements affecting more than 40,000 employees in the New Brunswick public sector.

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

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

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

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

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

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

MISSION STATEMENT

The mission of the Board arises out of the nine (9) statutes which provide the basis for its jurisdiction:

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

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

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

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

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

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

MESSAGE FROM THE CHAIRPERSON

I am honoured to submit the 28th annual report of the Labour and Employment Board for the period of April 1, 2022, to March 31, 2023.

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

With the end of the Province's COVID emergency order, the Board returned to in-person hearings both at the Board's offices and, in the case of human rights and employment standards matters, at various locations in the Province. The Board continues to conduct pre-hearing conference through a video platform and, with the consent of the parties, some substantive hearings. Counsel often find that virtual hearings are more efficient and cost effective for their clients, particularly where witnesses are located far from Fredericton.

The Board continues to dialogue with the chairpersons and chief administrators of the various Federal and Provincial labour relations boards. The annual conference was held in person in May 2022, for the first time since 2019. These discussions are valuable in keeping current with the evolving labour board practices and decisions in other jurisdictions, many of which have legislation similar to that in New Brunswick.

The total number of matters filed with the Board during this fiscal year was 101, down from the previous year. Many of these matters were resolved with the assistance of the executive staff, with the oversight of the Board. Those that were not so resolved were scheduled for determination by the Board, resulting in 55 days of hearing and 44 pre-hearing conferences.

During the year the Board disposed of a total of 95 matters. In so doing, there were 21 written decisions released by the Board.

Under the *Public Service Labour Relations Act*, the Board entertained a number of requests for intervention in the collective bargaining process, including five (5) requests for the appointment of a Conciliation Officer; and three (3) requests for the appointment of a Conciliation Board.

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

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

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

The Board held two meetings in the past year: a virtual meeting of the Chairperson and Vice-Chairpersons, and an in-person meeting of the full Board, which includes Board members who represent employees and employers. The meetings were a good opportunity for new Board

members to meet and discuss current issues in the New Brunswick labour relations community, as well as changes to legislation and Board procedures.

I wish to thank all current and past members for their valuable contributions to the Board, especially our departing Alternate Chair, Geoffrey Bladon. Mr. Bladon, an integral member of the Board since 2000, has made a significant contribution to the Board's jurisprudence and earned the respect of his colleagues and lawyers who appear before the Board.

In closing, I extend a special thank you to the Board's administrative and professional staff, who ensure that the Board operates in an effective and efficient manner. The Board could not fulfill its mandate without their professionalism and dedication.

David A. Mombourquette

Chairperson

COMPOSITION

Chairperson

David A. Mombourquette

Alternate Chairperson

Geoffrey L. Bladon

Vice-Chairpersons

Brian D. Bruce, K.C. (Fredericton)

Annie C. Daneault, K.C. (Grand Falls)

John P. McEvoy, K.C. (Fredericton)

Bernard T. LeBlanc (Grand-Digue)

Michael Marin, K.C. (Fredericton)

Sylvie Godin-Charest (Moncton)

Members representing Employer interests[4]

Stephen Beatteay (Saint John)[1]

Gloria Clark (Saint John)[1]

Marco Gagnon (Grand Falls)[1]

William Dixon (Moncton)[1]

Members representing Employee interests

Debbie Gray (Quispamsis)[1]

Richard MacMillan (St. Stephen)[1]

Jacqueline Bergeron-Bridges (Eel River Crossing)[1]

Gary Ritchie (Fredericton)[1]

Marie-Ange Losier (Beresford)[2]

Pamela Guitard (Point-La-Nim)[1]

Carl Flanagan (Grand-Digue)[1]

Chief Executive Officer

Lise Landry

Legal Officer

Shijia Yu

Administrative Staff

Andrea Mazerolle / Jennifer Presley[3]

Debbie Allain

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1. These members were reappointed effective December 15, 2022, each for a term of three years. Mr. Flanagan was appointed effective December 15, 2022, for a three-year term.
2. Ms. Losier's term expired on July 15, 2022.
3. Ms. Presley replaced Ms. Mazerolle effective March 13, 2023.
4. There were two vacancies at the end of the reporting period.

ORGANIZATIONAL CHART

ADMINISTRATION

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

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

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

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

The Labour and Employment Board conducts numerous formal hearings annually, either at its offices in Fredericton as well as other centres throughout the province, or, since the COVID-19 pandemic, virtually via the Zoom platform. However, a significant portion of the Board's workload is administrative in nature. During the year in review, a total of 58 matters were dealt with by executive and administrative personnel without the holding of a formal hearing, with the Board generally overseeing this activity.

There were 129 matters pending from the previous fiscal year (2021-2022); 101 new matters were filed with the Board during this reporting period for a total of 230 matters; and 95 matters were disposed of. There remain 135 matters pending at the end of this reporting period.

Following is a general overview of activity by legislation. More detailed summary tables of all matters dealt with by the Board begin at page 28.

Legislation	# matters pending from previous fiscal year	# new matters filed	# hearing days	# pre-hearing days	# written reasons for decision	# matters disposed	# matters pending at the end of this fiscal year
Industrial Relations Act	10	54	14	16	7	44	20
Public Service Labour Relations Act	30	28	13	9	6	31	27
Employment Standards Act	16	12	21	9	6	16	12
Human Rights Act	7	6	7	10	2	4	9
Essential Services in Nursing Home Act	66	0	0	0	0	0	66
Public Interest Disclosure Act	0	1	0	0	0	0	1
Fisheries Bargaining Act	0	0	0	0	0	0	0
Pay Equity Act, 2009	0	0	0	0	0	0	0
Pension Benefits Act	0	0	0	0	0	0	0
TOTAL	**129**	**101**	**55**	**44**	**21**	**95**	**135**

Number of hearing days

Chairperson or Vice-Chairperson Sitting Alone	Panel of Three Persons	Total
55	0	55

BUDGET 2022-2023

Primary	Projected	Actual
3 - Personal Services - Payroll, benefits, per diem	637,970	518,239
4 - Other Services - Operational Costs	69,200	(86,412)
5 - Materials and Supplies	14,800	(15,809)
6 - Property and Equipment	0	0
Total	721,970	620,461

SUMMARY OF SAMPLE CASES

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

INDUSTRIAL RELATIONS ACT

Petition in opposition to union certification invalid because it was obtained through employer influence

United Brotherhood of Carpenters and Joiners of America, Local 1386 v. Peninsula Drywall Inc. and Saint John Construction Association Inc., Moncton Northeast Construction Association, IR-010-22, 29 September 2022

In April 2022, the applicant union, United Brotherhood of Carpenters and Joiners of America, Local 1386, filed an application for certification in respect of a bargaining unit of carpenters employed by the respondent employer, Peninsula Drywall Inc. On learning about the union's application for certification, a supervisor who worked for the employer drafted a petition to oppose certification. He signed the petition and then held meetings of employees at various job sites during work hours to encourage them to also sign the petition. During these meetings the supervisor expressed his dislike of the union. The owner of the employer sat nearby in his parked car when the petition was being circulated. The supervisor was successful in obtaining a sufficient number of signatures to raise a question as to employee support for certification. The union objected to the validity of the petition on the ground that it was tainted by employer influence. The parties called on the Labour and Employment Board to determine whether the petition against the application for certification had been signed voluntarily.

The Board affirmed that it would only consider a petition which reflects the true wishes of employees. A petition which results from employer influence or intimidation will be disregarded as involuntary. The slightest hint of employer involvement in the origination, circulation and execution of an employee petition is fatal to its validity. The supervisor who gathered signatures for the petition was perceived by the employees to be a part of management, as he had the authority to discipline employees and to halt work. He acknowledged that the employees might have felt pressured to sign the petition after seeing his name on it. Otherwise, the owner of the employer sat nearby in his car as the petition was circulated and asked the supervisor to tell him which employees had refused to sign. The petition was tainted by employer influence. It did not represent the voluntary will of the employees and, therefore, was rejected. The Board determined that the applicant union had the support of the majority of employees and issued a certification order.

Employer violated statutory freeze on terms and conditions of employment when it withheld government-funded wage increase for residential care employees

Canadian Union of Public Employees, Local 3884 v. Southampton House Inc., IR-027-22, 6 March 2023

The applicant, Canadian Union of Public Employees, Local 3884, represented some 30 employees who worked for the respondent employer, Southampton House, at its residential care and support

facility in Hanwell. Southampton House is a private non-profit corporation funded entirely by the Province of New Brunswick. It provides 24 hour supervision and care for some 8 persons who have suffered traumatic brain injury. A collective agreement between the union and the employer expired on 31 March 2022. On 3 May 2022, the union gave the employer notice to bargain under the *Industrial Relations Act*. Shortly thereafter, the Department of Social Development announced that wages for residential care workers would be increased by $1.00 per hour effective 1 April 2022 and another $1.00 per hour on 1 October 2022. The respondent employer agreed to accept the provincial funding for wage increases and to pay these out to their residential care workers. However, once it had received the funds from government in June 2022, the respondent withheld payment on the basis that, under s. 35(2) of the *Industrial Relations Act*, there was a freeze on the terms and conditions of employment for the residential care workers which prevented it from increasing their wages until a new collective agreement had been negotiated. In response, the union applied to the Labour and Employment Board for a declaration that the respondent employer had violated the statutory freeze in s. 35(2) of the Act by refusing to pay out the government-funded wage increases to the residential care workers.

The Board concluded that the wage increases provided by government were not the subject of collective bargaining between the parties, were external to the terms and conditions of their collective agreement and, therefore, were not subject to the freeze on terms and conditions of employment under s. 35(2) of the *Industrial Relations Act*. Moreover, as the evidence indicated, the respondent Southampton had not previously withheld hourly wage increases but, rather, had paid out such funded increases to its employees upon receiving the funding from government. Based on past experience, the residential care workers had a reasonable expectation that the wage increases funded by government would be paid to them upon receipt by the respondent employer, or shortly thereafter. The Board declared that the employer had breached the statutory freeze provisions of s. 35(2) of the Act by departing from the usual practice between the parties and ordered it to compensate the employees who had suffered losses due to this violation and to pay out the provincially funded wage increases it had withheld.

Board reviews work performed on date of application for certification to determine whether employees belong within a bargaining unit of carpenters

United Brotherhood of Carpenters and Joiners of America, Local 1386 v. Magna Concrete Contractor Inc., and Saint John Construction Association Inc., Moncton Northeast Construction Association Inc., IR-031-21, 8 February 2023

By an application dated 13 December 2021, the United Brotherhood of Carpenters and Joiners of America, Local 1386, sought to be certified as the bargaining agent for carpenters who worked for the respondent employer, Magna Concrete Contractor Inc. In its reply to the application, the employer identified 9 employees which it considered to be within the proposed bargaining unit on the basis that they were working as carpenters on the date of the application. A disagreement arose between the parties as to whether 4 of the employees identified by the employer had indeed performed the work of a carpenter on the relevant date. The Board conducted a lengthy hearing at which it heard the testimony of 10 witnesses, 5 presented by the union and 5 presented by the employer. Three of the union witnesses had attended a job site on the relevant date and had taken 169 photographs and made notes of the work performed by each employee.

The Board set out the established test for certification of a union in the construction industry, noting that certification is by craft, a union must show that it represents the majority of employees engaged in the craft as of the date on which it applies for certification, and the party which claims that an employee is in the proposed bargaining unit has the onus to present evidence which proves its claim. The Board also recognized that it can be difficult to distinguish between the work of a carpenter, which requires skill, and that of a labourer, which entails unskilled or semi-skilled work. Carpentry deals with such matters as the erection, repair and dismantling of wood and metal items relating to the framing, sheathing and finishing of walls, ceilings, floors, roofs and stairs. A review of the evidence indicated that 2 of the employees in question had performed a variety of tasks on the relevant date, including the operation of a crane to lift materials, the framing of bulkheads, the oiling, stripping and cleaning of forms, the cleaning of the worksite, the passing of material to other employees, and the installation of temporary railing. However, most of this work did not require carpentry skills and, otherwise, any carpentry work performed by these 2 employees was minimal and did not take up the majority of the workday. A review of the evidence as regards the other 2 employees in question indicated that any carpentry work they may have performed could not be taken into account because it did not take place on the date of the application for certification. Accordingly, they too were not performing bargaining unit work for the majority of the relevant workday. Nonetheless, the membership evidence indicated that on the date of application a majority of the employees of Magna Concrete were performing carpentry as members in good standing of the applicant union. The Board confirmed the order for certification it had made earlier.

PUBLIC SERVICE LABOUR RELATIONS ACT

Province granted shorter extension than sought to implement retroactive pay in new collective agreements

Province of New Brunswick, as represented by Treasury Board v. Canadian Union of Public Employees, Locals 1190, 1251 and 1418, PS-010-22, PS-011-22, PS-012-22, 17 May 2022

The applicant employer, the Province of New Brunswick as represented by its Treasury Board, and the respondent union Locals 1190, 1251, and 1418 of the Canadian Union of Public Employees, had collective agreements which expired in 2017. By the fall of 2021, the parties had reached an impasse in their negotiations to renew their collective agreements. The union went on strike for about 2 weeks and, in mid-December of 2021, the parties entered into new collective agreements under which the employer was obligated to give union members retroactive pay increases to cover the period since 2017 when the previous collective agreements had expired. Under s. 63(1) of the *Public Service Labour Relations Act*, the provisions of a collective agreement which does not specify a time period for implementation must be brought into effect within 90 days, failing which a party which requires more time may apply to the Labour and Employment Board for an extension. The renewed agreements did not contain a time period for implementation of retroactive payments and, therefore, the employer had 90 days, until mid-March 2022, to make the payments.

On 1 March 2022, the employer indicated to the union locals that it would be unable to complete the retroactive payments within the 90-day period set out in s. 63(1) of the Act and asked the locals to consent to an extension of time. The union locals rejected this request. In response, on 11 March 2022, only a week before the deadline to make retroactive payment to union members, the employer applied to the Board under s. 63(1) of the Act for an extension of the 90-day time limit. On

15 March 2022, the union locals filed a complaint in which they alleged that the failure of the employer to make the retroactive payments on time constituted a violation of s. 63(1) and s. 65 of the Act. They sought damages for this violation, as well as an order directing the employer to immediately implement the retroactive wage payments. The Board resolved to deal with the employer's application for an extension of time in this proceeding, and to deal later with the complaint of the union locals.

The Board observed that the employer relies on a government entity known as Service New Brunswick (SNB) to administer payroll and benefits. The evidence indicated that SNB had never dealt with the implementation of so many collective agreements at the same time and that retroactive pay was owed to some 4,000 union employees, past and present. It was necessary for SNB to take into account the work history of each employee, which differed due to such factors as overtime, leaves of absence or changes in pay rates since 2017. It could take as long as 5 hours to manually input the data relevant to a particular employee into one of three different payroll systems. For the sake of efficiency, SNB worked on the implementation of retroactive pay in respect of one bargaining unit at a time and calculated that it would require an extension of 6 months to complete the work. SNB hired additional staff to assist in processing the retroactive pay. The evidence also indicated that the union locals had rejected the employer's request for an extension due to the hardship this would cause employees. The employer had not raised an issue with the 90-day implementation period for retroactive pay during negotiations, and had given an oral assurance that the deadline would be met. Otherwise, the employer's implementation team did not begin work on such matters as gathering employee history until after the collective agreements had been signed. The training of newly hired employees for the implementation team could take as long as 6 months, well after the 90-day time period to implement retroactive pay.

The Board indicated that in respect of an application under s. 63(1) of the Act, an employer has the onus to establish a reasonable basis for an extension of time. The Board recognized that the applicable principles have been set out by its Federal counterpart in cases which dealt with legislation similar to that of New Brunswick. The Board agreed that an extension should be limited to exceptional circumstances where the employer has been diligent, the delay in implementation is due to unforeseen factors, the employer notifies the union as soon as it becomes aware of a possible delay, and the employer makes timely application for an extension. The authority of the Board to grant an extension acts as a "safety valve" to be used only where an employer has been diligent but has encountered an unexpected situation which is impossible to rectify by the deadline.

Here, it was clear that there were staffing issues. However, the employer knew when the new collective agreements were ratified in late 2021 that it would soon be required to implement those agreements. Yet, SNB demonstrated a lack of urgency. It did not assign most members to its implementation team until January 2022 although the collection of historical information relevant to each employee could have begun earlier. The employer should have foreseen that if it did not take steps to hire and train new employees prior to the signing of the collective agreements those employees would not be fully productive until well into the implementation process. There may have been poor communication between Treasury Board and SNB, which was not advised of the new collective agreements until December 2021. With better communication, Treasury Board could have learned of SNB staffing issues earlier and proposed a longer implementation period during negotiations. In addition, the employer did not notify the union locals that it would be unable to meet the 90-day requirement until 2 weeks prior to the implementation deadline, which was too late to permit productive discussions. While the Board recognized that a significant amount of manual work was required for SNB to implement the retroactive pay in the new collective agreements, it

found that most of the delay resulted from a lack of planning and coordination between Treasury Board and SNB. The delay in implementation was foreseeable. Accordingly, the employer failed to establish the reasonableness of its demand for a 6-month extension of time in which to implement retroactive pay. However, even with more careful planning, the volume of work required to implement so many collective agreements within 90 days justified an extension in the implementation period. Accordingly, the Board granted the employer an extension of 7 weeks.

Board determines that it has the authority to award damages under the Public Service Labour Relations Act

Province of New Brunswick, as represented by Treasury Board v. Canadian Union of Public Employees, Locals 1190, 1251 and 1418, PS-010-22, PS-011-22, PS-012-22, 9 November 2022

In mid-December 2021, the employer, the Province of New Brunswick as represented by its Treasury Board, renewed collective agreements with the Canadian Union of Public Employees, Locals 1190, 1251 and 1418. In accordance with s. 63 of the *Public Service Labour Relations Act*, the employer was required to implement the collective agreements, including a provision for retroactive pay, within 90 days. After determining that it would be unable to implement the retroactive wage payments required by the collective agreement within the 90-day period, the employer applied to the Board for an extension of time. The union locals filed a complaint under s. 19 of the Act seeking compensation for their members on the basis that the employer had violated s. 63 of the Act by failing to implement retroactive pay in a timely manner. The Board consolidated the employer's application for an extension with the complaint of the union locals. A hearing was held in March 2022 which dealt only with the extension request. The Board determined that the failure to implement retroactive pay within the 90 period was due to a lack of planning on the employer's part, but nonetheless granted a 7-week extension to 9 May 2022 because of the amount of work which implementation involved. The employer failed to meet the deadline extension. In late July 2022, the Board began a hearing on the merits of the complaint filed by the union locals, as well as their claim for damages and interest on behalf of members adversely affected by the delay in receipt of retroactive pay. An issue arose as to the extent of the Board's authority under the Act to award interest or damages. The Board adjourned the hearing and invited the parties to make written submissions as to the scope of its remedial authority.

The Board concluded that it had no authority under the *Public Service Labour Relations Act* to make an award of interest. Under the common law, there is a presumption that the crown has immunity against an award of interest. This common law presumption can only be overcome by clear legislative intent. However, there is nothing in the Act to disclose a legislative intent to override the common law presumption that interest should not be awarded against the crown for a violation of the Act. As regards monetary damages, the Board concluded that it was the intent of the legislature that the broadly worded remedial provisions in sections 17 and 19 of the Act confers sufficient authority on the Board to make effective remedies where any party violates any provision of the Act. The legislature did not intend to limit the remedial authority of the Board to mere declarations, as this would render the Board powerless to provide a meaningful remedy where a party suffers real financial loss due to a breach of statutory rights. However, in the case at hand, the union locals sought monetary damages to compensate for late payment to individual employees. Section 63(1) of the Act creates an obligation that the parties to a collective agreement, the employer and the union, implement the agreement within 90 days. This obligation affects the union locals as

bargaining agents; it does not give a right to individual employees that would entitle each of them to an award of damages for an employer's violation of the Act. Moreover, there is a practical reason why the Board's authority to grant damages for implementation delay should be limited to bargaining agents. Such a limitation avoids the need for the Board to engage in the onerous task of determining the quantum of damages for each of the thousands of individuals affected by the employer's delay in implementing retroactive pay. Otherwise, as for moral damages to compensate for things like stress and aggravation, such awards are granted only rarely in cases where there is serious employer misconduct leading to mental distress. Here, individual employees may have experienced duress due to the late payment of wages owed to them; however, the employer had acted in good faith in attempting to implement the collective agreements and, accordingly, there was no basis for an award of moral damages. Having determined the scope of its remedial authority, the Board indicated that it would reconvene the hearing to consider the request of the union locals for detailed calculations of wages as well as arguments as to an appropriate remedy.

New Brunswick Teachers' Federation entitled to names of members suspended without pay for failing to provide employer with proof of COVID vaccination

New Brunswick Teachers' Federation v. Province of New Brunswick, as represented by Treasury Board, PS-030-21, 10 August 2022

The complainant New Brunswick Teachers' Federation (NBTF) represented some 8400 teachers under a collective agreement with the respondent employer, Province of New Brunswick. On 20 August 2021, the Province's Minister of Education and Early Childhood Development announced a policy which required school district employees to provide proof of vaccination against COVID. A few days later the school districts advised teachers that they would maintain a list of employees who had provided proof of vaccination, but would not keep a copy of the vaccination records. In early October 2021, the Department of Education and Early Childhood Development (Department) advised all school employees that vaccination would be mandatory and indicated that proof of vaccination would be required by 19 November 2021. Some 175 teachers were placed on leave without pay because they did not provide proof of vaccination by the deadline. In order to perform its duty to represent its members, the NBTF made requests for disclosure of the names of the teachers who had been sent home without pay, but did not receive disclosure from the Department or the school districts. The NBTF was able to file grievances on behalf of 34 teachers who advised it directly that they had been sent home without pay. On 23 December 2021, the NFTF filed a complaint with the Labour and Employment Board alleging that the Province had violated s. 7(2) of the *Public Service Labour Relations Act* by interfering with the NBTF's ability to represent its members when it withheld member names. On 11 January 2022, the Province filed a reply in which it said that the information sought by the NBTF related to personal health which it was prohibited from disclosing under provincial privacy legislation. The Board dealt with the complaint by way of written submissions from the parties.

The complaint required the Board to determine whether the employer's refusal to disclose teacher names violated s. 7(2) of the *Public Service Labour Relations Act* as an interference with the NBTF's obligation to represent its members. In New Brunswick, a bargaining agent like the NBTF is under a common law duty of fair representation; it must represent its members fairly, without negligence, discrimination or bad faith. In order to fulfill this duty, a bargaining agent must be able to communicate with its members and must have access to sufficient information on matters which

affect its members. Labour boards have recognized that the ability of a bargaining agent to communicate with its members entitles it to have access to contact information which its members have provided to their employer. The identity of members subjected to suspension goes to the heart of a union's ability to represent its members. The bargaining agent must know the identity of affected members so that it can advocate on their behalf both before and after the imposition of serious employment consequences, like suspension without pay. The NBTF has as much right as the employer to the contact information of its members. Accordingly, the refusal of the employer to disclose the relevant contact information constituted an interference with the NBTF's duty to represent its members contrary to s. 7(2) of the Act, unless the employer could show that it was prohibited by privacy legislation from making such disclosure.

In 2009, the legislature simultaneously enacted the *Personal Health Information Privacy and Access Act* (*PHIPAA*), which prohibits disclosure of "personal health information", and the *Right to Information and Protection of Privacy Act* (*RTIPPA*), which prohibits disclosure of "personal information". As regards the *PHIPAA*, the Board determined that employee contact information collected by an employer for the purposes of human resources rather than health does not fall within the definition of "personal health information". Even if the information sought by the NBTF was characterized as "personal health information" it fell within the exemption in s. 3(2) of the Act because it was collected for employment purposes, rather than health. As regards the *RTIPPA*, the Board determined that employee contact information held by the employer did constitute "personal information" as defined under the Act. However, this information fell within an exemption under s. 46(1) of the Act because it had been collected for a purpose consistent with human resources, which allowed the employer to disclose it to the NBTF. The Board concluded that the failure of the employer to provide the NBTF with the names of teachers who had been suspended without pay for failing to provide school districts with proof of COVID vaccination constituted a violation of s. 7(2) of the *Public Service Labour Relations Act*. The Board ordered the employer to immediately provide the NBTF with the member names it had requested.

Province should not have devised scheme to replace union custodians at school day care centres during strike

Canadian Union of Public Employees, Local 1253 v. Province of New Brunswick, as represented by Treasury Board, PS-025-21, 29 July 2022

The complainant Canadian Union of Public Employees, Local 1253, represented public school employees, including custodians, who worked within the public school system operated by the respondent Province. The Province had entered into agreements with private sector day care centres which allowed for their operation on premises within, or attached to, schools. Custodians represented by the union had the responsibility to clean all school premises, including the day care centres. In the autumn of 2021, the custodians and other union members went on strike and the schools closed. For the duration of the strike, the custodians did not clean schools or the day care centres attached to the schools. However, at the beginning of the strike, an official with the Department of Education and Early Childhood Development sent a memo to the operators of the day care centres in which he said that they could remain open, that the Province would issue them a key so that they would have access to school premises, and that the Province would provide $50 per day for cleaning. The memo indicated that the cleaning could be done by day care staff or by a commercial cleaner listed on an attachment to the memo. Evidence indicated that during the

course of the strike, which lasted about 2 weeks, persons other than union custodians cleaned the day care premises by doing such things as cleaning the washrooms and disposing of garbage. The union brought a complaint to the Labour and Employment Board alleging that the Province had violated s. 103(2) of the *Public Service Labour Relations Act* by replacing the striking custodians during the course of the strike.

The Board observed that the lease agreement between the respondent Province and the day care operators indicated that the operators would perform light housekeeping, such as ensuring the premises were tidy, in order to facilitate regular cleaning by school custodial staff. However, in this case the work which was performed on day care premises included such things as cleaning washrooms and garbage disposal, which were duties typically performed by union custodians. The amount of $50 per day, which the respondent Province offered for cleaning services, allowed for about 2 hours of cleaning work, which was about the amount of time which union custodians required to perform their cleaning duties. The Province had created a scheme by which to outsource cleaning services to day care operators or commercial cleaners, thereby increasing the output of cleaning services during the strike and, in consequence, decreasing the pressure which the union could assert on the employer. The Board declared that the Province had violated its obligations under s. 102(3) of the Act as alleged in the union's complaint by replacing union custodians during the strike.

EMPLOYMENT STANDARDS ACT

Employment Standards Act contains no provision under which Labour and Employment Board may penalize an employer on the basis of difficulties it is alleged to have caused an employee

Bleakney v. Manpower Canada Services Ltd., ES-009-22, 8 February 2023

The employee, Bleakney, worked for the employer, Manpower Canada Services Ltd., which is an employment agency. He was assigned by the employer to act as an Accounts Receivable Adjuster for a courier firm in Moncton at $18.00 per hour from 18 February 2021 until 12 April 2021, at which time the assignment was completed. The assignment required the employee both to read the courier company's training manual, and to pick up and set up a laptop computer in preparation for work. The employee did not receive any pay for this pre-work preparation. There was a statutory holiday during the period of the employee's assignment for which he did not receive holiday pay, and there were two instances in which he did not receive pay stubs. In January 2022, the employee brought a complaint to the Director of Employment Standards concerning pay for the pre-work training period, holiday pay and late pay stubs. The complaint was investigated by an Employment Standards Officer which revealed that the employer had violated sections 36(1) and 35(3) of the *Employment Standards Act*. These were rectified by the employer through a payment of $54 for training time and the provision of the missing pay stubs. The Director dismissed the complaint regarding holiday pay on the basis that the employee had not worked long enough to qualify for such pay. The employee was dissatisfied with the Director's decision and referred the matter to the Labour and Employment Board seeking holiday pay as well as more compensation for pre-work training. The employee also felt that the employer ought to have been penalized for the difficulties it had caused him through such things as providing late pay stubs.

As regards the employee's claim for holiday pay, the Board observed that, under s. 18(1) of the *Employment Standards Act*, only an employee who has worked at least 90 days for the employer in the 12 months immediately preceding the holiday is entitled to such pay. The employee had not worked long enough to qualify for holiday pay. As for pre-work preparation, the Board acknowledged that an employee should be paid for training. The Director had requested the employer to pay for 3 hours of training which, at $18.00 per hour, amounted to $54.00, which the employee received. This was fair and reasonable in the circumstances and the employee was entitled to no further compensation for training. As for pay stubs, the employer had provided them to the employee, albeit in an untimely manner and the Board dismissed any further claim by the employee in this regard. Otherwise, there is no provision in the Act under which the Board may penalize an employer for the difficulties it is alleged to have caused an employee. The Board affirmed the decision of the Director in the handling of the employee's complaint.

Board lacks the jurisdiction to reconsider a decision it has made under the *Employment Standards Act*

Savard v. Peppercorn Construction and Design Ltd., ES-013-22, 9 August 2022

The employee, Savard, who had worked for the employer, Peppercorn Construction and Design Ltd., brought a complaint which sought unpaid wages in respect of an alleged violation by the employer of s. 37 of the *Employment Standards Act*. In March 2022, the Director of Employment Standards issued an order under the Act which required the employer to pay the employee $5890.16 in back wages. The order was received by the employer the next day. However, no steps were taken by the employer to comply with the order or to request that the matter be referred to the Labour and Employment Board within the 14-day time limit provided under the Act. The Director commenced enforcement proceedings which lead to a notice of registration of judgment which the employer received on 31 May 2022. This prompted the employer to write to the Director on 3 June 2022 to ask that the matter be referred to the Board. By way of justification for its delay, the employer indicated that the Director's order had not been brought to the attention of its Chief Executive Officer but, rather, had been referred to the employer's accountant in Ontario to determine whether Savard had ever been on the payroll as an employee. On 7 June 2022, the Director wrote to the Board to inform it of the employer's request to refer and to give the opinion that the employer's reasons to justify the delay were insufficient. The Board concluded that the Director's order had been received by a responsible representative of the employer, along with a letter that clearly stated that the employer had 14 days in which to request that the matter be referred by the Director to the Board. In these circumstances, the Board concluded that the employer's explanation for the delay was wholly inadequate. Regardless of whether the CEO was made aware of the order, it was the employer's responsibility to comply with the time limit for challenging the order and it failed to do so. A failure of the employer's internal communication processes does not constitute a valid reason for such a lengthy delay. Accordingly, on 28 June 2022, the Board decided that it would not conduct a hearing on the employer's request given that it was made 10 weeks beyond the time limit and no valid justification was offered for the delay. The Board said that the employer was required to comply with the Director's order and pay $5890.16 to Savard for unpaid wages. On 13 July 2022, the employer asked the Board to reconsider its decision against holding a hearing on its request that the matter of the Director's order be referred to the Board.

The Board noted that it had indicated in a previous decision that it does not have jurisdiction to reconsider a decision made under the *Employment Standards Act*. The Board's lack of jurisdiction to reconsider was apparent from the fact that the other 2 major statutes administered by the Board, the *Industrial Relations Act* and the *Public Service Labour Relations Act*, confer explicit authority on the Board to reconsider a decision made under those statutes whereas the *Employment Standards Act* grants no such explicit authority. Moreover, the absence of a prohibition against a power of reconsideration does not support an inferred right of such authority. In any event, the employer had not met the test for reconsideration, which required it to establish an ongoing intention to challenge the Director's order along with a reasonable explanation for its delay in filing its request to refer the order to the Board. In addition, the employer had not raised any new evidence, submission, law, or policy that was unavailable prior to the Board's decision not to hold a hearing on the merits of the employer's request to refer the Director's order to the Board. In the result, the Board found that it had no jurisdiction to reconsider its prior decision and, alternatively, that the employer had not established sufficient grounds for reconsideration. The employer's request for reconsideration was denied.

HUMAN RIGHTS ACT

Labour and Employment Board, acting as a Board of Inquiry under the *Human Rights Act*, has jurisdiction to hear a complaint of age discrimination

Robson v. University of New Brunswick, Canadian Union of Public Employees, Local 3339, and New Brunswick Human Rights Commission, HR-002-20, 25 April 2022

The complainant, Robson, who was a member of the respondent, Canadian Union of Public Employees, Local 3339, had been employed by the respondent, University of New Brunswick (UNB), at its Saint John campus between 2010 and 2017. The collective agreement between the union and the employer contained a mandatory retirement provision which applied at age 65. The complainant turned 65 and was compelled to retire against her will on 30 June 2017. About a week prior to her mandatory retirement, the complainant filed a complaint with the New Brunswick Human Rights Commission alleging discrimination on the basis of age contrary to s. 4 of the New Brunswick Human Rights Act on the grounds that the employer and the union had negotiated and included a mandatory retirement clause in their collective agreement. The complaint was investigated by the Commission whose investigator issued a Case Analysis Report in November 2020 which concluded that the complainant had an arguable case of age discrimination. In December 2020, the Commission referred the matter to the New Brunswick Labour and Employment Board to act as a Board of Inquiry under the Human Rights Act. In November 2021, the respondent employer, UNB, raised a preliminary objection, arguing that the Board did not have jurisdiction over the complaint. UNB took the position that the complaint fell within the scope of the collective agreement, that the complainant was required to pursue a grievance under the collective agreement, and that an arbitrator appointed pursuant to the Industrial Relations Act to deal with the grievance had exclusive jurisdiction to hear the complaint. In December 2021, the Board held a preliminary hearing to determine whether it had the jurisdiction to hear the age discrimination complaint.

The Board undertook a detailed review of the relevant legislation, as well as cases from both the Supreme Court of Canada and New Brunswick which dealt with disputes as to jurisdiction to hear a

human rights complaint filed by a unionized employee. These cases indicated that the Board should first identify the scope of an arbitrator's exclusive jurisdiction and then determine the essential nature of the dispute to see if it falls within that exclusive jurisdiction. In New Brunswick, s. 55 of the Industrial Relations Act gives an arbitrator exclusive jurisdiction to deal with matters which arise from the interpretation, application, administration or alleged violation of a collective agreement. An arbitrator retains exclusive jurisdiction even in cases which also arise under common law or a statute, such as human rights legislation. However, the exclusive nature of an arbitrator's jurisdiction is not unlimited. It extends only to disputes which expressly or inferentially arise out of the collective agreement. Here, the complainant alleged that the employer and the union had negotiated and included a mandatory retirement provision in the collective agreement which violated s. 4 of the Human Rights Act. The essential character of the dispute alleged in the complaint related to the formation of the collective agreement rather than to the interpretation, application, administration or alleged violation of the collective agreement once it had been formed. Accordingly, the dispute did not fall within the exclusive jurisdiction of an arbitrator. Moreover, a review of the Human Rights Act showed that s. 19(2) implicitly recognizes that the Human Rights Commission, and its Board of Inquiry, have concurrent jurisdiction over a human rights issue, which is also the subject of a grievance. The Board concluded that it had the jurisdiction to deal with the complaint and, moreover, that it was the most appropriate forum in which to determine the alleged violation of the Human Rights Act. Having resolved the preliminary question as to its jurisdiction, the Board indicated that it would schedule a hearing on the merits of the complaint.

Used car dealer found liable for unlawful discrimination

Amegadze v. Automobiles Beresford Auto and Comeau, HR-004-21, 22 March 2023

The complainant, Amegadze, a black man of African origin, agreed in his capacity as a volunteer with a New Brunswick multicultural association to help a newcomer from France buy a car because she was not familiar with the purchase process in Canada. Together, they went to a used car dealership of the respondent, Automobiles Beresford Auto, where they met the respondent Comeau, who was responsible for all aspects of the dealership. The dealer was aware that the complainant was acting on behalf of the buyer. When the complainant posed some questions about a particular car, the dealer either ignored him or responded to him in a curt manner. At some point, the dealer raised his voice, pointed a finger at the complainant's face and said aggressively that he "should be in Africa." The complainant and the buyer were shocked by this remark and left the dealership immediately. The complainant lodged a complaint with the New Brunswick Human Rights Commission in which he alleged discrimination in the provision of services based on race, national origin, ancestry and place of origin. The matter was referred to the Labour and Employment Board to act in its capacity as a Board of Inquiry under the New Brunswick Human Rights Act.

The Board noted that s. 6 of the Act forbids any person, on a prohibited ground of discrimination, from denying anyone a service available to the public, or from discriminating with respect to such a service. Prohibited grounds of discrimination include race, national origin, ancestry and place of origin.

The Supreme Court of Canada has endorsed a test to determine if there has been unlawful discrimination. Complainants must show that they have a characteristic protected from discrimination, that they have experienced an adverse impact with respect to a service customarily

available to the public, and that the protected characteristic was a factor in the adverse impact. Once a *prima facie* case has been established, the burden shifts to the respondent to justify the conduct or practice. If it cannot be justified, discrimination will be found to have occurred. In addition, there are 5 principles which apply to cases of discrimination: (1) the protected characteristic must be a factor in the discrimination, even if it is not the only or most important factor, (2) the focus is on the effect of a respondent's action and, therefore, it is not necessary to prove that a respondent intended to discriminate, (3) the protected characteristic must be a factor in the discriminatory conduct, even if it is not the cause, (4) discrimination may be proven by circumstantial evidence or inference, and (5) racial stereotypes will usually result from unconscious and subtle beliefs and biases.

In this case, the complainant, as a black man of African origin, possessed characteristics protected from discrimination by the province's *Human Rights Act*. During his encounter with the respondent used car dealer, the complainant experienced 4 negative impacts. First, he was subjected to differential treatment as regards access to services. The respondent was aware that the complainant was acting as a representative for the buyer. Yet, he either ignored the complainant's questions or responded curtly. Moreover, by comparison to his treatment of the buyer, the respondent had been brusque and impolite towards the complainant. Second, there had been a denial of service to the complainant. The inspection of a used car to determine its condition is an essential aspect of the service of a used car dealership. Here, the respondent had told the complainant to cease his inspection of a certain used car. Third, the respondent made a prejudicial statement to the complainant when he raised his voice and told the complainant that he "should be in Africa." Fourth, the respondent acted aggressively when he pointed his finger at the complainant's face.

The complainant's race and place of origin were clearly factors in the prejudicial treatment he had received from the respondent. Indeed, during his testimony, the respondent dealer admitted that he did not like to deal with black people because, according to him, they negotiate more than white people and they gave him problems. He observed that black people had become more numerous than ever. The respondent's evidence revealed that he harboured racist attitudes towards black people, which caused him to make a racist statement to the complainant and to treat him in a brusque and impolite manner.

For these reasons, the Board concluded that the respondent used car dealer had discriminated against the complainant on the basis of race, ancestry, place of origin and national origin. The respondent endeavoured to justify his behaviour by reference to medications he had taken, but there was no medical evidence for such a justification. In any event, even if the respondent's behaviour could be attributed to medications, this would not justify the discrimination, although it could be taken into account in determining the remedy. The Board found that both respondents, the dealer and the dealership, had violated s. 6 of the Human Rights Act. As for the appropriate remedy under s. 23(7)(f) of the Act, the Board is empowered to compensate a person for "injury to dignity, feelings or self-respect" in such amount as it deems just and appropriate. An award should not be so low that it will act as a mere license fee for continued discrimination. Rather, the amount of general damages should be high enough to provide real redress, as well as to encourage respect for the law against discrimination. In addition, an award should bear a reasonable relationship to prior awards for discrimination. Taking into account the circumstances of the case as well as prior awards in similar cases, the Board ordered the respondents to pay the complainant $12,500 to compensate for the damage he suffered to his dignity, feelings and self-esteem as a result of

discrimination. The Board also required the dealer to take human rights training within 3 months from the date of its decision.

SUMMARY TABLES OF ALL MATTERS DEALT WITH BY THE BOARD

Industrial Relations Act

April 1, 2022 - March 31, 2023

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters			Total Matters Disposed	Number of cases Pending
				Granted	Dismissed	Withdrawn		
Application for Certification	3	20	23	11	1	5	17	6
Application for a Declaration of Common Employer	1	--	1	--	--	1	1	--
Intervener's Application for Certification	--	--	--	--	--	--	--	--
Application for Right of Access	--	--	--	--	--	--	--	--
Application for a Declaration Terminating Bargaining Rights	--	3	3	1	--	1	2	1
Application for a Declaration Concerning Status of Successor Rights (Trade Union)	--	4	4	4	--	--	4	--
Application for Declaration Concerning Status of Successor Rights (Sale of a Business)	--	1	1	--	--	--	--	1
Application for a Declaration Concerning the Legality of a Strike or a Lockout	1	1	2	--	1	--	1	1

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters			Total Matters Disposed	Number of cases Pending
				Granted	Dismissed	Withdrawn		
Application for Consent to Institute a Prosecution	--	--	--	--	--	--	--	--
Miscellaneous Applications (s. 22, s. 35, s. 131)	--	10	10	1	1	3	5	5
Complaint Concerning Financial Statement	--	--	--	--	--	--	--	--
Complaint of Unfair Practice	4	9	13	2	1	7	10	3
Referral of a Complaint by the Minister of Post-Secondary Education, Training and Labour (s. 107)	1	3	4	--	--	1	1	3
Complaint Concerning a Work Assignment	--	--	--	--	--	--	--	--
Application for Accreditation	--	--	--	--	--	--	--	--
Application for Termination of Accreditation	--	--	--	--	--	--	--	--
Request pursuant to Section 105.1	--	3	3	3	--	--	3	--
Stated Case to the Court of Appeal	--	--	--	--	--	--	--	--
Reference Concerning a Strike or Lockout	--	--	--	--	--	--	--	--
TOTAL	**10**	**54**	**64**	**22**	**4**	**18**	**44**	**20**

Public Service Labour Relations Act

April 1, 2022 - March 31, 2023

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters			Total Matters Disposed	Number of cases Pending
				Granted	Dismissed	Withdrawn		
Application for Certification	--	--	--	--	--	--	--	--
Application for Revocation of Certification	--	--	--	--	--	--	--	--
Notice pursuant to s. 43.1 (Designation of Essential Services)	1	--	1	--	--	--	--	1
Application pursuant to s. 43.1(8)	3	2	5	1	--	--	1	4
Complaint pursuant to s. 19	11	9	20	2	1	5	8	12
Application for Declaration Concerning Status of Successor Employee Organization	--	--	--	--	--	--	--	--
Miscellaneous (s. 63)	--	--	--	--	--	--	--	--
Application pursuant to s. 29 (Designation of Position of Person employed in a Managerial or Confidential Capacity)	--	1	1	1	--	--	1	--
Application pursuant to s. 31	2	--	2	--	--	1	1	1
Application for Consent to Institute a Prosecution	--	--	--	--	--	--	--	--

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters			Total Matters Disposed	Number of cases Pending
				Granted	Dismissed	Withdrawn		
Reference to Adjudication (s. 92)	2	3	5	5	--	--	5	--
Application for Appointment of an Adjudicator (s. 100.1)	9	3	12	3	--	2	5	7
Application for Appointment of a Mediator (s. 16)	--	--	--	--	--	--	--	--
Application for Appointment of Conciliation Officer (s. 47)	2	5	7	6	--	--	6	1
Application for Appointment of Conciliation Board (s. 49)	--	3	3	1	1	--	2	1
Application pursuant to s. 17	--	--	--	--	--	--	--	--
Application for Reconsideration (s. 23)	--	--	--	--	--	--	--	--
Application for Appointment of Commissioner (s. 60.1)	--	--	--	--	--	--	--	--
Request for a Declaration of Deadlock (s. 70)	--	--	--	--	--	--	--	--
Notice pursuant to Section 44.1 of the Act	--	2	2	2	--	--	2	--
Request for the Appointment of an Arbitration Tribunal pursuant to s. 66	--	-	--	--	--	--	--	--

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters			Total Matters Disposed	Number of cases Pending
				Granted	Dismissed	Withdrawn		
TOTAL	**30**	**28**	**58**	**21**	**2**	**8**	**31**	**27**

Employment Standards Act

April 1, 2022 - March 31, 2023

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters						Total Matters Disposed	Number of cases Pending
				Affirmed	Settled	Vacated	Varied	Withdrawn	Dismissed		
Request to Refer Orders of the Director of Employment Standards	8	3	11	2	2	--	--	4	1	9	2
Request to Refer Notices of the Director of Employment Standards	2	7	9	1	--	--	--	1	1	3	6
Application for Exemption, s. 8	--	--	--	--	--	--	--	--	--	--	--
Request for Show Cause Hearing, s. 75	6	2	8	1	1	--	--	2	--	4	4
TOTAL	**16**	**12**	**28**	**4**	**3**	**--**	**--**	**7**	**2**	**16**	**12**

Human Rights Act

April 1, 2022 - March 31, 2023

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters				Total Matters Disposed	Number of cases Pending
				Granted	Dismissed	Settled	Withdrawn		
Complaint pursuant to s. 23(1)	7	6	13	3	--	--	1	4	9
TOTAL	**7**	**6**	**13**	**3**	**--**	**--**	**1**	**4**	**9**

Essential Services in Nursing Homes Act

April 1, 2022 - March 31, 2023

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters				Total Matters Disposed	Number of cases Pending
				Granted	Dismissed	Settled	Withdrawn		
Notice pursuant to s. 5(1)	66	--	66	--	--	--	--	--	66
TOTAL	**66**	**--**	**66**	**--**	**--**	**--**	**--**	**--**	**66**

Public Interest Disclosure Act

April 1, 2022 - March 31, 2023

Matter	Pending from Previous Fiscal	Matters Filed	Total	Disposition of matters				Total Matters Disposed	Number of cases Pending
				Granted	Dismissed	Settled	Withdrawn		
Complaint of Reprisal	--	1	1	--	--	--	--	--	1
TOTAL	**--**	**1**	**1**	**--**	**--**	**--**	**--**	**--**	**1**

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