

Manitoba Labour Board

**Annual Report  
2022-2023**



## Land Acknowledgement

We recognize that Manitoba is on the Treaty Territories and ancestral lands of the Anishinaabe, Anishinewuk, Dakota Oyate, Denesuline and Nehethowuk peoples.

We acknowledge Manitoba is located on the Homeland of the Red River Metis.

We acknowledge northern Manitoba includes lands that were and are the ancestral lands of the Inuit.

We respect the spirit and intent of Treaties and Treaty Making and remain committed to working in partnership with First Nations, Inuit and Metis people in the spirit of truth, reconciliation and collaboration.

## Reconnaissance du territoire

Nous reconnaissons que le Manitoba se trouve sur les territoires visés par un traité et sur les terres ancestrales des peuples anichinabé, anishinewuk, dakota oyate, dénésuline et nehethowuk.

Nous reconnaissons que le Manitoba se situe sur le territoire des Métis de la rivière Rouge.

Nous reconnaissons que le nord du Manitoba comprend des terres qui étaient et sont toujours les terres ancestrales des Inuits.

Nous respectons l'esprit et l'objectif des traités et de la conclusion de ces derniers. Nous restons déterminés à travailler en partenariat avec les Premières Nations, les Inuits et les Métis dans un esprit de vérité, de réconciliation et de collaboration.

### **Manitoba Labour Board**

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## Minister of Labour and Immigration

Minister responsible for The Workers Compensation Board

Legislative Building, Winnipeg, Manitoba R3C 0V8 CANADA

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Her Honour, the Honourable Anita Neville, P.C., O.M.  
Lieutenant-Governor of Manitoba  
Room 235 Legislative Building  
450 Broadway  
Winnipeg MB R3C 0V8

May it Please Your Honour:

I have the privilege of presenting, for the information of Your Honour, the Annual Report of the Manitoba Labour Board, for the fiscal year ended March 31, 2023.

Respectfully submitted,

“original signed by”

Honourable Malaya Marcelino  
Minister of Labour and Immigration





## Ministre du Travail et de l'Immigration

Ministre responsable de la Commission des accidents du travail

Palais législatif, Winnipeg, Manitoba R3C 0V8 CANADA

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Son Honneur l'honorable Anita Neville, P.C., O.M.  
Lieutenante-gouverneure du Manitoba  
Palais législatif, bureau 235  
450 Broadway  
Winnipeg (Manitoba) R3C 0V8

Votre Honneur:

J'ai le privilège de vous présenter, pour l'information de Votre Honneur, le rapport annuel de la Commission du travail du Manitoba pour l'exercice terminé le 31 mars 2023.

Je vous prie de recevoir l'expression de mes sentiments les plus distingués,

« Original signé par »

Honorable Malaya Marcelino  
Ministre du Travail et de l'Immigration





MANITOBA LABOUR BOARD

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The Honourable Malaya Marcelino  
Minister of Labour and Immigration  
Room 156 Legislative Building  
Winnipeg, MB R3C 0V8

Dear Minister:

It is my pleasure to present to you the Annual Report of the Manitoba Labour Board covering the period from April 1, 2022 to March 31, 2023.

Respectfully submitted,

“original signed by”

Colin S. Robinson  
Chairperson



COMMISSION DU TRAVAIL DU MANITOBA  
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L'honorable Malaya Marcelino  
Ministre du Travail et de l'Immigration  
Palais législatif, bureau 156  
Winnipeg (Manitoba) R3C 0V8

Madame la Ministre,

J'ai le plaisir de vous soumettre le rapport annuel de la Commission du travail du Manitoba pour l'exercice allant du 1<sup>er</sup> avril 2022 au 31 mars 2023.

Je vous prie de recevoir, Madame la Ministre, l'expression de mes sentiments les plus distingués.

« Original signé par »

Colin S. Robinson  
Président



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## Chairperson's Message

I am pleased to submit the 2022-23 Annual Report outlining the activities of the Manitoba Labour Board for the period of April 1, 2022 to March 31, 2023.

The Manitoba Labour Board once again successfully fulfilled its mandate and met its objectives. The Board continues to explore innovative ways to resolve matters effectively and efficiently within its expansive jurisdiction.

As this is my last message, I would like to acknowledge the people with whom I have worked during my 20 years with the Manitoba Labour Board. During that time, the Board has modernized its operations, enhanced its dispute resolution capacity, developed a successful mediation program, improved access to justice, and responsibly managed its budget. Our success as an organization is due to the combined efforts of an extraordinary group of hard-working public servants and Board members, both past and present.

I am particularly grateful for the leadership of former Chairpersons John Korpesho and William Hamilton. During his long tenure as Chairperson, Mr. Korpesho cemented the Board's reputation as an independent administrative tribunal known for its fairness and integrity. He encouraged a collegial approach to decision-making which continues to this day. His successor, Mr. Hamilton, was a highly regarded adjudicator whose thoughtful and erudite decisions enhanced our understanding of labour and employment law. His legacy endures in those decisions and through those of us whom he mentored during his long career.

I have been privileged to work with three outstanding Board Registrars – Janet Duff, Ruth Liwiski, and Ray MacIsaac. Remarkably experienced, hard-working, and resolutely dedicated to the Board and its mission, these individuals all helped navigate the Board through periods of challenge and change. They managed an extraordinary team of labour board officers who work on the front lines to mediate resolutions to labour disputes, conduct representation votes, and explain Board processes to the public. I wish to specifically acknowledge Charlene Jones, Brenda Grouette, Linda Cayer, and Dan Hodgert all of whom worked with me for many years. I would also like to thank Dale Paterson who served as the Board's Executive Director and was the leader of the Board's administrative modernization.

Throughout my time as Chairperson, I benefited from the sage advice and guidance of David Gisser, K.C. who has served as counsel to the Board for most of the past 35 years. His remarkable professionalism and knowledge of the law is matched only by his abiding good nature and warmth.

None of the Board's work would be possible without our administrative staff. We are privileged to work with highly skilled administrative professionals who maintain the Board's case management apparatus, develop and implement policy, prepare documentation and generally support the Board's activities. Two of those individuals - Anita Rondeau and Lee Oberg - retired

during this reporting period. In her role as office manager, Ms. Rondeau successfully coordinated the Board's administrative processes. Ms. Oberg had the daunting task of being my executive assistant. I genuinely valued their skill and experience, and I relied upon them both to keep me organized and the Board's operations running smoothly. Their ability and dedication to the Board was particularly evident during the pandemic, during which they provided extraordinary service.

To the members of the Board with whom I have worked over the years, I thank you for your enduring support of the Board and your dedication to labour and employment relations in the Province of Manitoba. Cases at the Board are typically adjudicated by a tripartite panel of members. All are leading experts in the field. I am struck by the ability of our Board members to synthesize evidence, analyze complex legislation, and forge reasonable decisions on difficult and emotionally charged cases. The consensual and cooperative way they decide cases is indeed a model for administrative tribunals. Nearly all Board decisions are unanimous. This reflects the collegial approach to decision making that has been cultivated by our members. Having participated in many decisions at the Board, I am particularly aware of our Board members' dedication, experience, and enduring desire for fairness.

I would be remiss if I did not express my sincere gratitude to the Board's longest serving Vice-Chairperson, Diane Jones, K.C. Her dedication to the Board and our community is truly remarkable. I have relied on her support, wise counsel, and great wisdom throughout my term as Chairperson.

As my tenure as Chairperson draws to a close, I am delighted to say that the Board's future is very bright. The single most important aspect of leadership is to ensure that future leaders are identified and encouraged. We have built a great team that strives to continuously improve while preserving the traditions and values that underpin the Board's success. Leading this team is Vice-Chairperson Karine Pelletier. I have had the great privilege to work with her for many years. Fuelled by her boundless energy and tremendous leadership abilities, the Board will undoubtedly thrive.

It was an honour to be Chairperson of the Board. I am profoundly grateful to my family, friends, and colleagues for your support and encouragement.

Colin S. Robinson

## Message du président

J'ai le plaisir de présenter le rapport annuel 2022-2023 de la Commission du travail du Manitoba pour la période allant du 1er avril 2022 au 31 mars 2023.

La Commission du travail du Manitoba a une fois de plus rempli son mandat et atteint ses objectifs. La Commission continue d'explorer des moyens novateurs pour résoudre les questions qui relèvent de sa vaste compétence de façon efficace et efficiente.

Comme il s'agit de mon dernier message, j'aimerais remercier les personnes avec qui j'ai travaillé durant mes 20 années à la Commission du travail du Manitoba. Au cours de ces années, la Commission a modernisé ses activités, renforcé sa capacité de règlement des différends, mis en place un programme de médiation efficace, amélioré l'accès à la justice et géré son budget de façon responsable. Notre succès en tant qu'organisme est dû aux efforts combinés d'un groupe extraordinaire de fonctionnaires et de membres de la Commission, anciens et actuels, qui ne ménagent pas leurs efforts.

Je tiens particulièrement à souligner le leadership des anciens présidents, John Korpesho et William Hamilton. Au cours de son long mandat comme président, M. Korpesho a établi la réputation de la Commission en tant que tribunal administratif indépendant réputé pour son équité et son intégrité. Il a encouragé une approche collégiale de la prise de décision qui se poursuit encore aujourd'hui. Son successeur, M. Hamilton, était un arbitre hautement estimé dont les décisions réfléchies et érudites ont amélioré notre compréhension du droit du travail et de l'emploi. Son héritage perdure grâce à ces décisions et à travers ceux d'entre nous qu'il a encadrés au cours de sa longue carrière.

J'ai eu le privilège de travailler avec trois registraires exceptionnels : Janet Duff, Ruth Liwiski et Ray MacIsaac. Remarquablement expérimentées, travailleuses et résolument dévoués à la Commission et à sa mission, ces personnes ont tous aidé la Commission à traverser des périodes de défis et de changements. Ils ont dirigé une équipe extraordinaire de cadres de la Commission qui travaillent aux premières lignes pour résoudre les conflits de travail par l'entremise de la médiation, à organiser des votes de représentation et expliquer les procédures de la Commission au public. Je tiens à remercier tout particulièrement Charlene Jones, Brenda Grouette, Linda Cayer et Dan Hodgert qui ont travaillé avec moi pendant de nombreuses années. Je tiens également à remercier Dale Paterson, qui a occupé le poste de directeur général de la Commission, et dirigé la modernisation administrative de la Commission.

Tout au long de mon mandat comme président, j'ai bénéficié des sages conseils de David Gisser, c. r., qui a agi comme conseiller juridique de la Commission pendant la plus grande partie des 35 dernières années. Son professionnalisme et sa connaissance du droit n'ont d'égal que sa bonne nature et chaleureuse.

Le travail de la Commission ne serait pas possible sans notre personnel administratif. Nous avons le privilège de travailler avec des professionnels administratifs hautement qualifiés qui

gèrent l'appareil de gestion de la Commission, élaborent et mettent en œuvre des politiques, préparent la documentation et soutiennent d'une manière générale les activités de la Commission. Deux de ces personnes, Anita Rondeau et Lee Oberg, ont pris leur retraite au cours de la période couverte par le présent rapport. En tant que chef de bureau, Mme Rondeau a coordonné avec succès les processus administratifs de la Commission. Mme Oberg a eu la lourde tâche d'être mon adjointe administrative. Leurs compétences et expériences m'ont été des plus utiles, et j'ai pu compter sur elles pour m'organiser et assurer le bon fonctionnement de la Commission. Leur capacité et leur dévouement étaient particulièrement évidents pendant la pandémie, au cours de laquelle elles ont fourni un service extraordinaire.

Aux membres de la Commission avec qui j'ai travaillé au fil des années, je vous remercie pour votre soutien indéfectible à la Commission ainsi que pour votre dévouement aux relations de travail et de l'emploi dans la province du Manitoba. La Commission tranche habituellement les questions qu'elle reçoit en comité tripartite. Tous ses membres sont des experts de premier plan dans leur domaine. Je suis frappé par la capacité des membres de la Commission à synthétiser les preuves, à analyser des lois complexes et de prendre des décisions raisonnables concernant des causes difficiles et chargées d'émotivité. La manière consensuelle et coopérative par laquelle les décisions sont prises constitue un véritable modèle à suivre pour les tribunaux administratifs. Presque toutes les décisions de la Commission sont unanimes. Cela reflète bien l'approche collégiale de prise de décisions qui a été cultivée par nos membres. Ayant participé à de nombreuses décisions à la Commission, je suis particulièrement conscient du dévouement, de l'expérience et du désir constant de la recherche d'équité des membres de la Commission.

Je m'en voudrais de ne pas exprimer ma sincère gratitude à la vice-présidente de la Commission comptant le plus d'ancienneté, Diane Jones, c. r. Son dévouement à la Commission et notre communauté est simplement remarquable. J'ai pu compter sur son soutien, ses conseils avisés et sa grande sagesse tout au long de ma présidence.

Alors que mon mandat de président tire à sa fin, je suis heureux de pouvoir vous annoncer que l'avenir de la Commission est très prometteur. L'aspect le plus important du leadership est d'assurer que les futurs leaders sont identifiés et encouragés. Nous avons bâti une équipe formidable qui s'efforce toujours à s'améliorer tout en conservant les traditions et les valeurs qui sont à la base du succès de la Commission. À la tête de cette équipe est la vice-présidente Karine Pelletier. J'ai eu le grand privilège de travailler avec elle pendant de nombreuses années. Grâce à l'énergie débordante et aux formidables compétences de leadership de Karine, la Commission va sans doute prospérer.

Ce fut tout un honneur d'être président de la Commission. Je suis profondément reconnaissant de mes proches, mes amis et mes collègues pour leur soutien et leurs encouragements.

Colin S. Robinson

## Board Members

In the year under review, the Board consisted of the members listed below. Biographies of all current members are available on our website. Biographies of newly appointed members are included on page 30.

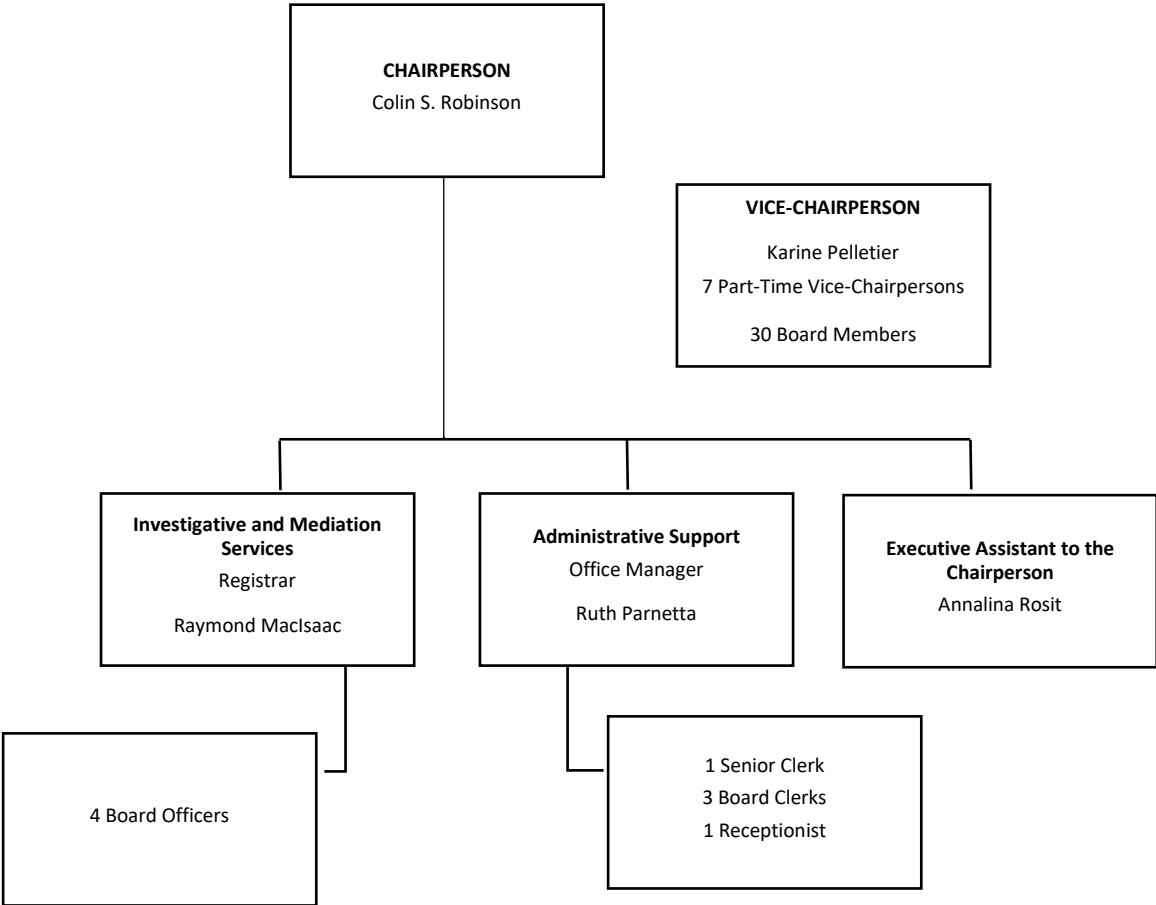
Chairperson
Colin S. Robinson

Full Time: Vice-Chairperson
Karine Pelletier

Part Time: Vice-Chairpersons
Kristin L. Gibson
A. Blair Graham, K.C.
Dennis Harrison (to 2023-01-21)
Diane E. Jones, K.C.
David Lewis (retired 2023)
Janet Mayor (appt 2023-01-18)
Kathy McIlroy (appt 2023-01-18)
Michael D. Werier, K.C.
Gavin M. Wood

Employer Representatives	Employee Representatives
James H. Baker	George Bouchard
Elizabeth M. Black	Marie Buchan
Christiane Y. Devlin	Abstinencia Diza
Tom Goodman (to 2022-12-31)	Greg Flemming
Scott Jocelyn (appt 2022-04-06)	Dee Gillies
Paul J. LaBossiere	Tom Henderson
Chris Lorenc	Janet Kehler
Jane MacKay	Nancy Kerr
Yvette Milner	Marc Lafond
Sean Naldrett (appt 2023-01-01)	Diane Mark
René Ouellette	Sandra Oakley
Brian Peto (to 2022-04-17)	Tom Paci (appt 2022-04-06)
Darcy Strutinsky	Rik A. Panciera (to 2022-04-17)
Denis Sutton	Tony Sproule
Andrea Thomson	Roland Stankevicius
Peter Wightman	Glen Tomchak
James (Jim) Witiuk	

# Organization Chart



(as of March 31, 2023)

## Introduction

### Role

The Manitoba Labour Board is an independent and autonomous specialist tribunal of the Manitoba Government. It is responsible for the fair and efficient administration and adjudication of responsibilities assigned to it under the following Acts:

The Labour Relations Act	The Employment Standards Code	The Workplace Health & Safety Act
The Remembrance Day Act	The Elections Act	The Essential Services Act (Government and Child and Family Services)
The Pay Equity Act	The Construction Industry Wages Act	The Essential Services Act (Health Care)
The Public Schools Act	The Apprenticeship and Certification Act	The Public Interest Disclosure (Whistleblower Protection) Act
The Worker Recruitment and Protection Act	The Victims Bill of Rights	

### Report Structure

The Board's 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.”

### Values and Mission

As an independent and autonomous specialist tribunal, the Manitoba Labour Board's mission is to support the fair and equitable application of the labour and employment statutes under which it has jurisdiction. The values that guide Board activities include impartiality, efficiency, timeliness and consistency. Through its activities, the Board aims to enhance the public's understanding of the statutory rights and responsibilities in the legislation. The Board is dedicated to providing mediation to parties in an effort to help them resolve their differences where possible, while providing fair and impartial adjudication when necessary.

## Rôle

La Commission du travail du Manitoba est un tribunal spécialisé indépendant et autonome du gouvernement du Manitoba. Elle est chargée d'administrer et de juger de manière équitable et efficace les responsabilités qui lui sont confiées en vertu des lois suivantes:

Loi sur les relations du travail	Code des normes d'emploi	Loi sur la sécurité et l'hygiène du travail
Loi sur le jour de Souvenir	Loi électorale	Loi sur les services essentiels (services gouvernementaux et services à l'enfant et à la famille)
Loi sur l'égalité des salaires	Loi sur les salaires dans l'industrie de la construction	Loi sur les services essentiels (soins de santé)
Loi sur les écoles publiques	Loi sur l'apprentissage et la reconnaissance professionnelle	Loi sur les divulgations faites dans l'intérêt public (protection des divulgateurs d'actes répréhensibles)
Loi sur le recrutement et la protection des travailleurs	Déclaration des droits des victimes	

## Structure du rapport

Le rapport annuel de la Commission est rédigé conformément au paragraphe 138(14) de la Loi sur les relations du travail:

«Le rapport contient un compte rendu des activités de la Commission, le texte ou le résumé intégral de ses décisions et des décisions judiciaires importantes reliées aux attributions que la présente et toute autre loi de la Législature lui confère ainsi que le texte complet des lignes directrices ou notes de pratique qu'elle a établies au cours de l'exercice. »

## Valeurs et mission

En tant que tribunal spécialisé, indépendant et autonome, la Commission du travail du Manitoba a pour mission de favoriser l'application juste et équitable des lois en matière de travail et d'emploi qui relèvent de sa compétence. Les valeurs qui guident les activités de la Commission sont l'impartialité, l'efficacité, la rapidité et la cohérence. Par ses activités, la Commission vise à mieux faire comprendre au public les responsabilités et les droits prévus dans la loi. La Commission du travail du Manitoba s'engage à offrir des services de médiation aux parties afin de les aider à résoudre leurs différends dans la mesure du possible, tout en rendant une décision juste et impartiale lorsque cela est nécessaire.



## 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.

## Highlights

In 2022 - 23, the Manitoba Labour Board continued to pursue activities designed to improve and enhance the service we provide to the public. Highlights of our achievements include:

- Renewed community engagement to identify and address evolving needs and to provide information to stakeholders regarding the Board and its activities.
- New training programs for Board members including enhanced orientation and ongoing professional development, as well as the introduction of a new Lunch and Learn program for Board members and staff.
- Consultation with the labour relations community regarding Board projects relating to modernizing services and enhancing access to justice.
- Incorporating successful programs developed during the pandemic into the Board's regular processes. Amongst these initiatives is a comprehensive case management program, enhanced electronic communication, use of videoconference technology to reduce costs and improve access to justice, and offering online voting to give employees a secure and convenient way to cast their votes.

## Financial Information

<b>Expenditures by Sub-Appropriation</b>	<b>Actual 2022/23 (\$000s)</b>	<b>FTE</b>	<b>Estimate 2022/23 (\$000s)</b>	<b>Variance Over/(Under) \$(000s)</b>
Total Salaries	1,385	14.5	1,317	68
Total Other Expenditure	135		190	(-55)
<b>Total Expenditures</b>	<b>1,520</b>	<b>14.5</b>	<b>1,507</b>	<b>13</b>

## Objectifs

- s’acquitter de ses responsabilités législatives de manière impartiale, efficiente, bien informée, respectueuse et cohérente, et en temps opportun;
- encourager et faciliter le règlement de différends par le biais de mécanismes alternatifs de résolution des différends, dans la mesure du possible, tout en rendant des décisions lorsque cela est nécessaire;
- favoriser la compréhension des droits, des responsabilités et des procédures énoncés dans les dispositions législatives que la Commission doit appliquer;
- établir des règles, des pratiques et des procédures actuelles et efficaces, qui sont claires, accessibles, justes et impartiales.

## Points saillants

En 2022-2023, la Commission du travail du Manitoba a poursuivi ses activités visant à améliorer et à renforcer les services offerts au public. Parmi les points saillants de nos réalisations, notons:

- un engagement communautaire renouvelé pour identifier et répondre à l'évolution des besoins et pour fournir des informations aux parties prenantes concernant la Commission et ses activités;
- de nouveaux programmes de formation pour les membres de la Commission, notamment une meilleure orientation et un perfectionnement professionnel continu, y compris la mise en place d'un nouveau programme de formation à l'heure du midi pour les membres et le personnel de la Commission;
- la consultation avec la communauté des relations du travail concernant les projets de la Commission relatifs à la modernisation des services et à l'amélioration de l'accès à la justice;
- l'intégration de programmes fructueux élaborés pendant la pandémie dans les processus courants de la Commission. Parmi ces initiatives figurent un programme complet de gestion des causes, l'accroissement de la communication électronique, l'utilisation de la technologie de vidéoconférence pour réduire les coûts et améliorer l'accès à la justice, et la possibilité de voter en ligne pour donner aux employés un moyen sûr et pratique de voter.

## Information financière

Dépenses par	Dépenses réelles 2022-2023 (en milliers de dollars)	ETP	Estimation 2022-2023 (en milliers de dollars)	Écart Positif/(négalif) (en milliers de dollars)
Sous-crédit				
Total des salaires	1 385	14,5	1 317	68
Total des autres dépenses	135		190	(-55)
<b>Total des dépenses</b>	<b>1 520</b>	<b>14,5</b>	<b>1 507</b>	<b>13</b>

# Operational Overview

## **Adjudication**

During 2022 - 23, the Board was comprised of a full-time chairperson, a full-time vice-chairperson, seven part-time vice-chairpersons and 30 board members with an equal number of employer and employee representatives. The chairperson is the presiding officer of the Board pursuant to the provisions of The Labour Relations Act. 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 Manitoba Labour Board does not retain legal counsel on staff; legal services are provided through Legal Services Branch of Manitoba Justice.

## **Investigative and Mediation Services**

Investigative and mediation services is comprised of the registrar and four board officers. The registrar, who reports to the chairperson, is the official responsible for the supervision of the day-to-day investigative and mediation activities of the Board. The primary responsibility of the registrar is the development and execution of the administrative workload as it relates to the various Acts under which the Board derives its adjudicative powers. The registrar, in conjunction with the chairperson and board members, is involved in the establishment of Board practice and policy. The registrar, together with the board officers, communicates with all parties and with the public regarding Board policies, procedures and jurisprudence.

Reporting to the registrar are four board officers who are responsible for the day-to-day administration and processing of the applications, appeals, and referrals filed with the Board, under the legislation. They are appointed to act as Board representatives to attempt to resolve issues between parties, reducing the need for hearings. They act as returning officers in Board conducted representation votes, attend hearings and assist the registrar in the processing of various applications. They assist parties in concluding a first or subsequent collective agreement and they act as mediators during the dispute resolution process.

## **Administrative Services**

Administrative services is comprised of the office manager and clerical support staff. Reporting to the chairperson, the office manager is responsible for the day-to-day administrative support of the Manitoba Labour Board, fiscal control and accountability of operational expenditures and the development and monitoring of office systems and procedures.

## Aperçu opérationnel

### **Arbitrage**

Au cours de la période 2022-2023, la Commission était composée d'un président à temps-plein et d'une vice-présidente à temps plein, de sept vice-présidents à temps partiel et de trente membres de la Commission, avec un nombre égal de représentants des employeurs et des employés. Le président préside la Commission conformément aux dispositions de la Loi sur les relations du travail. Les membres de la Commission sont nommés par décret et rémunérés en fonction du nombre de réunions et d'audiences tenues au cours de l'année. La Commission du travail du Manitoba ne compte pas de conseiller juridique parmi son effectif; les services juridiques sont fournis par la Direction des services juridiques du ministère de la Justice Manitoba.

### **Services des enquêtes et de la médiation**

Les services d'enquête et de la médiation sont composés du registraire et de quatre agents de la Commission. Le registraire, qui rend compte au président, est le fonctionnaire chargé de superviser les activités quotidiennes d'enquête et de médiation de la Commission. La principale responsabilité du registraire est l'élaboration et l'exécution de la charge de travail administrative liée aux différentes lois en vertu desquelles la Commission exerce ses pouvoirs décisionnels. Le registraire, en collaboration avec le président et les membres de la Commission, participe à l'élaboration des pratiques et des politiques de la Commission. Le registraire, ainsi que les cadres de la Commission, communiquent avec toutes les parties et le public concernant les politiques, les procédures et la jurisprudence de la Commission.

Sous l'autorité du registraire, quatre cadres de la Commission sont responsables de l'administration quotidienne et du traitement des demandes, des appels, et des renvois à la Commission en vertu de la législation. Ceux-ci sont nommés pour agir en tant que représentants de la Commission afin de tenter de résoudre les différends entre les parties, réduisant ainsi la nécessité de tenir des audiences. Ils font office de directeurs de scrutin lorsque la Commission organise des scrutins de représentation, assistent aux audiences et aident le registraire à traiter les différentes demandes. Ils aident les parties à conclure une première convention collective ou une convention subséquente, et agissent comme des médiateurs dans le cadre du processus de résolution de conflits.

### **Services administratifs**

Les services administratifs comprennent le gestionnaire de bureau et le personnel de soutien administratif. Sous la responsabilité du président, le gestionnaire de bureau est chargé du soutien administratif quotidien de la Commission du travail du Manitoba, du contrôle fiscal et de l'obligation de rendre des comptes concernant les dépenses de fonctionnement, ainsi que de l'élaboration et de la surveillance des systèmes et des procédures de bureau.

## Communications/Resources

### Library Collection

Copies of these documents can be made available in accordance with the fee schedule by calling 204-945-3783 or by emailing [MLB@gov.mb.ca](mailto:MLB@gov.mb.ca).

- 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.

### Website

Visit the Board's website at <http://www.gov.mb.ca/labour/labbrd> to find:

- Copies of the Acts
- Guide to the Labour Relations Act
- What to expect at your hearing
- Forms
- Information Bulletins
- Written Reasons for Decision and Substantive Orders

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

## Ressources en matière de communication

Collection de la bibliothèque

Des copies de ces documents sont accessibles conformément au barème des droits en téléphonant au 204 945-3783 ou en écrivant à [MLB@gov.mb.ca](mailto:MLB@gov.mb.ca).

- Décisions arbitrales
- Conventions collectives
- Certificats
- Statuts et règlements des syndicats
- Motifs écrits des décisions et ordonnances importantes

Publications

Rapport annuel de la Commission du travail du Manitoba – une publication qui présente les effectifs et les membres de la Commission ainsi que les points saillants des décisions importantes rendues par la Commission et les tribunaux ainsi que des statistiques concernant les diverses affaires traitées au cours de la période couverte par le rapport.

Site Web

Consultez le site Web de la Commission à l'adresse [www.gov.mb.ca/labour/labbrd/index.fr.html](http://www.gov.mb.ca/labour/labbrd/index.fr.html) pour trouver:

- Copies des lois
- Guide à la Loi sur les relations du travail
- Comment vous préparer pour votre audience
- Formulaires
- Bulletins d'information
- Motifs écrits des décisions et ordonnances importantes

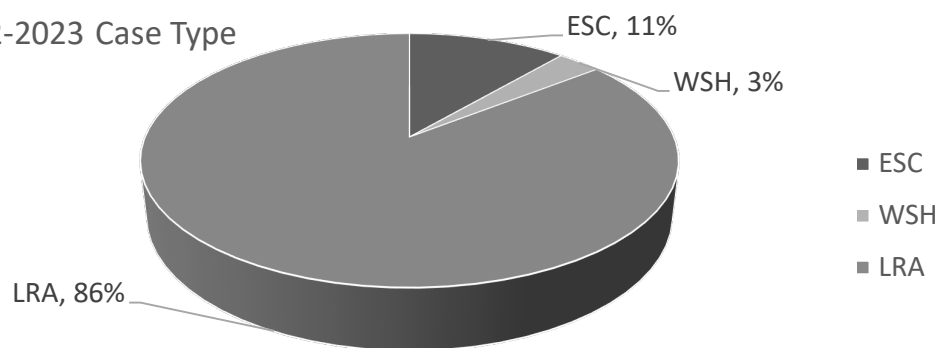
La Commission distribue des copies en texte intégral des motifs de décision écrits et des ordonnances de fond à divers éditeurs, y compris CanLII, pour qu'ils les sélectionnent et les reproduisent dans leurs publications ou sur leurs sites Web.

## Performance Reporting

### 256 CASES OPENED

	22-23	21-22	20-21	19-20	18-19
LRA	219	209	143	235	213
ESC	29	19	27	23	19
WSH	8	12	12	9	10
ELECT	0	0	0	1	0
<b>TOTAL</b>	<b>254</b>	<b>240</b>	<b>182</b>	<b>268</b>	<b>242</b>

2022-2023 Case Type



**40**

Cases narrowed or resolved after the appointment of a board representative.

**48**

Case Management Conferences

**61**

Cases Scheduled for Hearing

**18**

Cases Proceeded to Hearing

**121**

Written Reasons / Substantive Orders issued

### 13 VOTES CONDUCTED

**533** Employees Affected

**18** Certificates and Decertifications issued

### 47 EXPEDITED ARBITRATION APPLICATIONS

### 25 CONCILIATORS AND GRIEVANCE MEDIATORS APPOINTED

## Statistics

Type of Application	Cases Carried Over	Cases Filed	Total	Disposition of Cases					Number of Cases Closed	Number of Cases Pending
				Granted	Dismissed	Withdrawn	Did Not Proceed	Declined to Take Action		
<b>LABOUR RELATIONS ACT</b>										
Certification	6	23	29	13	2	4	-	-	19	10
Revocation	-	9	9	5	2	1	-	-	8	1
Amended Certificate	3	19	22	17	-	-	-	-	17	5
Unfair Labour Practice	9	18	27	1	8	10	-	-	19	8
Board Ruling	-	5	5	-	-	1	-	-	1	4
Review and Reconsideration	3	22	25	-	23	-	-	-	23	2
Changes in Work Conditions (Sec. 10)	1	6	7	6	-	1	-	-	7	-
Duty of Fair Representation (Sec. 20)	56	43	99	-	74	3	-	-	77	22
Subsequent agreement (Sec. 87.1(1))	1	1	2	1	-	1	-	-	2	-
Appoint Arbitrator (Sec. 115(5))	-	2	2	-	-	2	-	-	2	-
Request to Appoint a Conciliator	-	24	24	22	1	1	-	-	24	-
Referral for Expedited Arbitration	5	47	52	47	-	-	-	-	47	5
Sub Totals	84	219	303	112	110	24	-	-	246	57
<b>Employment Standards Code</b>										
ESC referrals and appeals	10	29	39	5	8	9	-	-	22	17
Sub Totals	10	29	39	5	8	9	-	-	22	17
<b>Workplace Safety and Health Act</b>										
WSHA referrals and appeals	5	8	13	-	3	6	-	-	9	4
Totals	99	256	355	117	121	39	-	-	277	78



## Summaries of Significant Board Decisions

<b>Labour Relations Act</b>	
<p><b>United Food &amp; Commercial Workers Canada, Local 832 and Diageo Canada Inc. and All Affected Members of the Bargaining Unit</b></p> <p>Case No. 69/21/LRA May 31, 2022</p>	<p><b>Section 6, 27 and 66 – Employer Interference – Failure to Disclose</b></p> <p>The Applicant alleged the Employer failed to engage in good faith information sharing constitutes a breach of Section 66 of the Act. The Applicant alleges the failure to provide information interfered with its ability to administer the collective agreement contrary to Sections 6 and 27.</p> <p>The Board must conduct a two-part analysis that it is satisfied there has been <i>prima facie</i> interference by the Employer in the Union’s ability to represent its members. Once established onus then shifts to the Employer to demonstrate there has been no interference and the refusal to disclose is rooted in sound business reasons.</p> <p><b>Decision:</b> The Board found the Employer in breach of Section 66(1)(c) as there was a collective agreement in place and more than a year had passed since the Union’s last Section 66 request which is a violation of Section 27. The Board also determined that the Union had established that the Employer interfered with the Union’s ability to represent its members contrary to Section 6. The Board ordered the Employer to disclose requested information.</p>
<p><b>The River East Transcona Teachers’ Association of the Manitoba Teachers’ Society and The River East Transcona School Division</b></p> <p>Case No. 106/21/LRA June 28, 2022</p>	<p><b>Section 6(1) – Employer’s Interference with Union</b></p> <p>The Applicant alleged that correspondence sent by the Employer to employees in the bargaining unit about a retirement incentive program was improper interference with the Union and its membership contrary to Section 6.</p> <p><b>Decision:</b> The Board was satisfied that the correspondence in question did not constitute direct bargaining with the Union’s membership, that it did not disparage the Union or its leadership, nor did it seek to drive a wedge between the Union and its members. The employer’s correspondence to the membership of the bargaining unit did not violate Subsection 6(1) of the Act.</p>

<b>Labour Relations Act</b>	
<p><b>Amalgamated Transit Union, Local 1505 and AB Transit Inc.</b></p> <p>Case No. 127/22/LRA August 4, 2022</p>	<p><b>Bargaining in Bad Faith</b></p> <p>The Union alleges the Employer delayed the bargaining process in a deliberate attempt to undermine the Union’s efforts. The Employer said that the delays were “normal and reasonable” and based upon <i>bona fide</i> business reasons.</p> <p>The Board found that the Union did not plead sufficient facts to establish a <i>prima facie</i> violation of the Act and looked at the overall tone and content of interactions between the parties. The Board found there was no indication the Employer engaged in a pattern of behaviour or conduct intended to thwart the bargaining process, such that it would constitute an unfair labour practice.</p> <p><b>Decision:</b> The Application was dismissed as the Union had not established a <i>prima facie</i> case.</p>
<p><b>The International Association of Bridge, Structural, Ornamental &amp; Reinforcing Ironworkers, Local Union 728 and Cobalt Industries Ltd. and L.A. and L.E., O.H., U.L., C.O., H.U., and T.Y.</b></p> <p>Case No. 259/22/LRA December 23, 2022</p>	<p><b>Unfair Labour Practice – Interim Relief</b></p> <p>The Applicant alleged the Employer committed unfair labour practices, including interference with an organizing drive by terminating several employees. The Applicant sought interim remedies under ss. 31(2) of the Act. The Employer denied the allegations and opposed the request for interim remedies.</p> <p><b>Decision:</b> The Board determined that granting the interim relief was not necessary to protect the interests of the Applicant or the affected employees as the Board had the power to issue adequate remedies following a full hearing if it was satisfied that any unfair labour practice had transpired.</p>
<p><b>International Union of Operating Engineers, Local 987 and Rural Municipality of Springfield</b></p> <p>Case No. 180/22/LRA August 12, 2022</p>	<p><b>Section 87.1(1) – Dispute About Subsequent Agreements</b></p> <p>The Union filed an application for settlement of a subsequent collective agreement pursuant to Section 87.1(1) of <i>The Labour Relations Act</i> indicating that the preconditions for filing the Application had been met. It alleged that the Employer was not bargaining in good faith, and that a collective agreement would not be concluded if bargaining continued for an additional 30 days. The Employer maintained that the Applicant failed to bargain sufficiently and seriously as required by the Act. The Employer submitted that the parties were likely to conclude a collective agreement within 30 days if bargaining continued.</p> <p><b>Decision:</b> The Board determined that the conditions for filing the Application outlined in 87.1(1) of the Act had been met and that for the purposes of Section 87.1(3) the parties were bargaining in good faith and that they were unlikely to conclude a collective agreement within 30 days.</p> <p>Pursuant to 87.3(1) the Board ordered termination of the strike, reinstatement of the striking employees.</p>

<b>Labour Relations Act</b>	
<p><b>P.F. and Teamsters Local Union 979 and Viscount Gort Motor Hotel Ltd.</b></p> <p>Case No. 132/22/LRA July 6, 2022</p>	<p><b>Subsections 49(2) and 49(3) – Untimely Application for cancellation of certificate</b></p> <p>The Applicant sought cancellation of a certificate.</p> <p>The Union submitted that the Application was untimely, because although the collective agreement had expired, it remained in force and accordingly Subsection 35(2) of the Labour Relations Act applied.</p> <p><b>Decision:</b> The Board found that the Application was untimely, as an application could only be filed during the three months immediately preceding any anniversary of the date on which the collective agreement became effective pursuant to Subsection 35(2)(d).</p> <p>The Board also determined Subsection 49(3) did not apply as it was not satisfied that the employees would “suffer substantial and irremediable damage or loss” if the Board did not allow the application to proceed.</p>
<p><b>S.C. and International Brotherhood of Electrical Workers, Local 2085 and Gower Electric &amp; Heating Ltd.</b></p> <p>Case No. 151/22/LRA July 14, 2022</p>	<p><b>Subsections 49(2) and 49(3) – Untimely Application for cancellation of certificate</b></p> <p>The sole employee in the bargaining unit filed an application for cancellation of a certificate. The Application was not contested by the Certified Bargaining Agent.</p> <p><b>Decision:</b> The Board determined that the Application was untimely pursuant to Subsection 49(2) and Section 35 of the Labour Relations Act, however it found that this was an appropriate case to apply Subsection 49(3) as there is only one employee in the bargaining unit who no longer wished to be represented by the Union and the Certified Bargaining Agent did not oppose the Application.</p> <p>The certificate was revoked.</p>

<b>Labour Relations Act</b>	
<p><b>D.E. and Manitoba Government and General Employee's Union and University College of the North</b></p> <p>Case No 137/22/LRA September 22, 2022</p>	<p><b>Section 20 – Duty of Fair Representation</b></p> <p>The Applicant filed a duty of fair representation complaint regarding the Union's handling of her grievance. The Employer had denied a request of the Applicant to work remotely as a medical accommodation, on the basis that in person contact was a fundamental philosophy of the program in which the Applicant taught, and that allowing the Applicant's request would create an undue hardship for the students and the Employer. The Union filed a grievance, which was denied at Step 2. The Union then conducted a screening hearing after which it advised the grievance would not proceed to arbitration. The Applicant then appealed that decision to the Union's Grievance and Arbitration Committee, which upheld the decision to not proceed to arbitration. The Applicant subsequently resigned their employment after they rejected a further attempt at accommodation proposed by the Employer.</p> <p><b>Decision:</b> The Board considered how the Union handled the Applicant's request for accommodation. The Board noted that it is not its role to judge the merits of the grievance, nor to consider whether the Union was right or wrong in its conclusion that the grievance would not be successful. Rather the Board must determine whether the Union came to its decision on the merits of her grievance in a manner that was not arbitrary, discriminatory or in bad faith.</p> <p>The Board determined that the Applicant pled no facts that suggested the Union had acted in an arbitrary, discriminatory or in a bad faith manner, and accordingly had not established a <i>prima facie</i> case.</p>
<p><b>J.N. and Lisa McGifford and The University of Winnipeg Faculty Association and the University of Winnipeg and the University of Winnipeg Collegiate</b></p> <p>Case No. 172/22/LRA October 7, 2022</p>	<p><b>Section 20 – Duty of Fair Representation</b></p> <p>The Applicant resigned in 2018 following the Employer initiating an investigation into unprofessional conduct and inappropriate interactions with students, and a second investigation pursuant to its Sexual Violence Prevention Policy.</p> <p>The Association offered the Applicant legal representation, who recommended that the Applicant resign in lieu of a likely termination from employment and to avoid participating in an investigation that may potentially incriminate him in criminal or other investigations. The Applicant sought independent legal advice and subsequently resigned from his employment. This application was filed more than 3 years after the Applicant's last contact with the Association.</p> <p><b>Decision:</b> The Board determined that the delay was extreme and excessive. Further The Board was not satisfied with the Applicant's explanations for his extreme delay in filing the Application, noting that he managed to commence several proceedings in the courts between October 2020 and September 2021.</p>

<b>Labour Relations Act</b>	
<p><b>U.M. and Manitoba Association of Health Care Professionals and Shared Health Inc.</b></p> <p>Case No. 5/21/LRA January 31, 2023</p>	<p><b>Section 20 – Duty of Fair Representation</b></p> <p>The Applicant alleged that the Union failed to take reasonable care to represent her interests and acted in a manner which is arbitrary, discriminatory and in bad faith regarding her request for medical accommodation and change of work location.</p> <p>The Employer reassigned her to a position in another town and her equivalent full-time hours were reduced. The Union advised her to accept the position, or she might lose her employment and they would continue to work with her doctor to provide the medical information to get a permanent workplace accommodation. She ultimately accepted the position and asked the Union to file a grievance.</p> <p><b>Decision:</b> The Board noted that the Applicant failed to notify the Union that a final determination had been made denying her accommodation request. The Board acknowledged that the Union could have been more aggressive in pursuing the Applicant’s claim but maintained that perfection is not the standard. The Application was dismissed.</p>
<p><b>L.T. and Manitoba Association of Health Care Professionals and Shared Health – Pathology HSC</b></p> <p>Case No. 255/22/LRA February 16, 2023</p>	<p><b>Section 20 – Duty of Fair Representation</b></p> <p>An Employee was released from employment during the probationary period. The Union sought legal advice on the strengths of a potential grievance but concluded the Employer had cause to terminate the Applicant during the probationary period.</p> <p><b>Decision:</b> Unions must still make inquiries into a probationer’s allegations to determine if an employer has improperly exercised its contractual right to terminate. There was no evidence of arbitrary, discriminatory, or bad faith conduct nor evidence of a failure to exercise reasonable care by Union.</p>
<p><b>Q.D. and Mountain View School Division</b></p> <p>Case No. 128/22/LRA October 24, 2022</p>	<p><b>Section 7</b></p> <p>The Applicant was placed on an unpaid leave after being warned in writing that their continued refusal to either be vaccinated against COVID-19 or to undergo regular testing as per a Public Health Order and the Employer’s policy, would result in termination of their employment.</p> <p>The Employee filed an application alleging an unfair labour practice contrary to a number of Sections including 7 of the Act.</p> <p><b>Decision:</b> The Board found that Sections 13, 17 and 23 did not apply in the circumstances and that there was no evidence the Employee asserted rights protected by Section 7(h) and found no <i>prima facie</i> breach by the Employer.</p>

<b>Labour Relations Act</b>	
<p data-bbox="87 239 399 411"><b>R.Z. and River East Transcona Educational Assistant Association and River East Transcona School Division</b></p> <p data-bbox="87 453 344 520">Case No. 190/21/LRA April 21, 2022</p>	<p data-bbox="444 239 938 268"><b>Section 20 – Duty of Fair Representation</b></p> <p data-bbox="444 310 1425 588">The Applicant was a Youth Care Worker at a middle school. Following the issuance of warnings and a suspension, the Applicant was dismissed by the Employer for wilful disobedience, dereliction of duty, and insubordination in relation to its COVID vaccination and testing policy. Prior to her termination, the Association informed the Applicant of the preliminary legal advice provided by its counsel which was that the Employer’s policy would “likely be upheld by an arbitrator as reasonable”. The Applicant complained that the Association violated Section 20 of the Act.</p> <p data-bbox="444 630 1425 1121"><b>Decision:</b> The Applicant failed to establish a <i>prima facie</i> violation of Section 20 of the Act. She did not ask the Association to file a grievance. However, even if such a request had been made, the Association had been advised by its legal counsel that a grievance challenging the reasonableness of the Employer’s policy was unlikely to succeed. The Association provided capable and caring representation to the Applicant with respect to her concerns about the Employer’s policy and the disciplinary consequences that flowed from her repeated failure to comply. The Association offered assistance and advice to the Applicant and sought legal advice with respect to challenging the Employer’s policy through the grievance and arbitration process. The Respondent also sought legal advice regarding the Applicant’s specific situation and whether the disciplinary consequences which flowed from her continued failure to comply with the policy could be successfully challenged. Despite the Applicant’s failure to cooperate with the Association, she received clear, direct, and professional advice.</p>

<b>Labour Relations Act</b>	
<p><b>T.S. and Unifor Local 191 and Lord Selkirk School Division</b></p> <p>Case No. 176/21/LRA May 6, 2022</p>	<p><b>Section 20 – Duty of Fair Representation</b></p> <p>The Applicant was terminated by the Employer for reasons that included engaging in off-duty conduct that violated a Public Health Order during the pandemic. He posted about his participation in that activity and about the Employer’s decision to “suspend” him on social media. When questioned about his actions, he failed to take responsibility and expressed the view that what he did on his own time was his own business. The Union filed a grievance on behalf of the Applicant and negotiated a resolution of the grievance with the Employer. Following a series of offers and counteroffers, the Union determined that the Employer’s offer to settle was fair based on its reasonable assessment that the grievance would not likely be upheld at arbitration. Therefore, the Union accepted the Employer’s offer and proceeded to conclude a Memorandum of Settlement. The Applicant did not execute the Memorandum of Settlement and filed a complaint with the Board alleging a violation of Section 20 of the Act.</p> <p><b>Decision:</b> The Application was dismissed. The Union’s decision to resolve the grievance was made having seriously turned its mind to the matter and followed a proper consideration of the circumstances, including the legal context. The fact that the Applicant did not agree with the decision did not establish a <i>prima facie</i> violation of Section 20 of the Act. The Board rejected the Applicant’s submission that the Union was obligated have legal counsel review his grievance and the settlement offers. The fact that legal counsel was not engaged by the Respondent did not constitute a <i>prima facie</i> violation of Section 20 of the Act. In addition, the Board held that the Applicant failed to cooperate with the Union and that his excessive delay in responding to the request for his position regarding the Memorandum of Settlement was unreasonable.</p>
<p><b>G.D. and Manitoba Government and General Employees’ Union and Manitoba Liquor and Lotteries</b></p> <p>Case No. 134/22/LRA and two additional cases November 23, 2022</p>	<p><b>Section 20 – Duty of Fair Representation</b></p> <p>This is the first of three similar applications received by the Board from unionized employees of Manitoba Liquor and Lotteries and represented by Manitoba Government and General Employees’ Union. The Applicants were laid off from their jobs as a result of the COVID pandemic. The Union and the Employer negotiated a memorandum of agreement (MOA) regarding the recall of employees which, among other things, set forth the order of recall of laid off employees. Prior to the Applicant’s being recalled to work the Employer deleted their classification for business reasons. The Applicants were advised to exercise their bumping rights, but refused unless they were returned to their original classifications. The Union refused to file a grievance as it believed the Employer had not violated the Collective Agreement or the MOA.</p> <p><b>Decision:</b> The Board determined that the Applicants had failed to establish a <i>prima facie</i> breach of the Act. It was not deemed appropriate for the Board to “second guess” the Union’s negotiations of or reasons for entering into the MOA.</p>

<b>Labour Relations Act</b>	
<p><b>S.M. and Winnipeg Police Association and Winnipeg Police Service</b></p> <p>Case No. 29/22/LRA and 19 additional cases April 22, 2022</p>	<p><b>Section 20 – Duty of Fair Representation</b></p> <p>This is the first of 20 similar applications received by the Board from unionized employees of the Winnipeg Police Service and represented by the Winnipeg Police Association. The Applicants allege that the Association has breached its duty of fair representation when it failed to grieve the Employer’s policies developed in regard to COVID 19 including issues of masking and vaccinations. The Association advised that it reached its decision regarding not filing a grievance based on a thoughtful canvassing of the issues, including receiving several legal opinions and proceeding with certain grievances when the situation warranted.</p> <p><b>Decision:</b> The Board determined in all cases that the Applicants had not pled any facts that established that the Union acted in a manner that was arbitrary, discriminatory or in bad faith.</p>
<p><b>J.Q. and Manitoba Nurses’ Union and Prairie Mountain Health Authority</b></p> <p>Case 184/21/LRA and eight additional cases with Various Health Care Employers</p>	<p><b>Section 20 – Duty of Fair Representation</b></p> <p>This is the first of nine similar applications received by the Board from unionized employees of various Health Care Employers and represented by Manitoba Nurses’ Union claiming that the Union violated Section 20 of the Act by failing to provide representation with respect to consequences arising from their failure or refusal to provide proof of being fully vaccinated against COVID-19 or agreeing to participate in regular COVID-19 testing, as required by a Public Health Order.</p> <p><b>Decisions:</b> The Applications were all dismissed without a hearing on the basis that the Applicants failed to establish a <i>prima facie</i> case. The Board determined that the Union took the Applicants’ concerns seriously and fully considered the merits of the issues. It diligently sought legal advice regarding the concerns and acted in accordance with that advice. The Union did not act in a hostile or dishonest manner towards the Applicants. Rather it provided them with a frank and professional assessment of the matter without any suggestion of bad faith. Furthermore, there was no suggestion that the Applicants were treated in a discriminatory manner. Section 20 of the Act does not require unions to file any or all grievances requested by members, or to advance all grievances to arbitration. There is no question that unions may (and should) evaluate potential grievances to determine whether or not they have any chance of success. Nothing in the Act requires a union to file a grievance (or proceed to arbitration) if there is little chance of success. To do so would be a waste of a union’s time and resources (as well as the time and resources of employers). Moreover, in making such decisions, it is open to a union to consider whether a grievance is in the interests of the membership as a whole.</p>



<b>Labour Relations Act</b>	
<p><b>S.C.S. and The University of Winnipeg Faculty Association, Collegiate Division, and The University of Winnipeg</b></p> <p>Case No. 12/22/LRA and two additional cases July 27, 2022</p>	<p><b>Section 20 – Duty of Fair Representation</b></p> <p>This the first of three applications received by the Board from unionized employees of the University of Winnipeg and represented by the University of Winnipeg Faculty Association, Collegiate Division that were filed together where the Applicants allege that the Association breached the duty of fair representation while dealing with their complaints about the Employer’s COVID 19 Vaccination and testing policies. The Applicants alleged, among other concerns, that the involuntary leave of absence they were placed on by the Employer was disciplinary and should be grieved. The Association outlined its reasons for disagreeing with the Applicants positions in writing, sought a legal opinion, and followed the legal opinion in its actions.</p> <p><b>Decision:</b> The Board noted that the bulk of the complaints in the applications were not about the Bargaining Agent’s conduct, but rather the Employer’s policies, and that a duty of fair representation case is not the forum for debating or complaining about vaccination in general. The Board found that the Applicants had not established any arbitrary, discriminatory, or bad faith actions by the Association.</p>
<p><b>A.L. and Salem Home Support Association and Salem Home Inc.</b></p> <p>Case No. 48/22/LRA and five additional cases January 10, 2023</p>	<p><b>Section 20 – Duty of Fair Representation</b></p> <p>This is the first of six applications received by the Board from unionized employees of Salem Home Inc. and represented by Salem Home Support Association. The Applicants were each part of a group of employees who alleged that the Association acted contrary to Section 20 of the Act when it decided not to pursue their complaints regarding the Employer’s response to the COVID-19 pandemic. The Applicants were part of a group of employees who had first sent correspondence to the Employer regarding their concerns, and then a second letter described as “Employee Grievance Notice” was sent to the Employer and the Association. The Association subsequently submitted the letter to the Employer as a grievance, which the Employer ultimately denied.</p> <p>The Association submitted that it fully considered the issues raised in the grievance and did not advance it to arbitration as it had concluded the Employer’s policy was consistent with its legal obligations and reasonable in its terms. The Employer submitted that the allegations in the applications are directed primarily at the Employer, and that a Section 20 complaint is not the appropriate forum for those allegations.</p> <p><b>Decision:</b> The Board, noting a lack of detail in both the applications and the replies, advised that it was unable to properly determine whether or not the Applicant had established a <i>prima facie</i> case, and sought further submissions on that particular issue. Following receipt of those submissions, the Board determined that the applicant has not pled any facts that would establish a <i>prima facie</i> case.</p>

<b>Employment Standards Code</b>	
<p><b>Top Dog Courier Inc. and D.M. and Director, Employment Standards Division</b></p> <p>Case No. 104/21/ESC April 20, 2022</p>	<p><b>Wages in Lieu of Notice</b></p> <p>The Employer appealed a decision of the Employment Standards Division that the Employee was entitled to wages in lieu of notice for the termination. The Employer asserted that the 30-day probation period in <i>The Employment Standards Code</i> was to count only working days and not calendar days, and that in any case they had just cause to terminate the employment. The Director of Employment Standards participated in the hearing and asserted that the reference to day in Section 62(1)(a)(ii) of the Code is to be interpreted as calendar days. The Director took no position on the issue of just cause.</p> <p><b>Decision:</b> The Board determined that the reference to day in Section 62(1)(a)(ii) of the <i>Code</i> is interpreted as calendar days, and that the Employee was not a probationary employee. The Board also determined that the Employer had not established just cause for the termination.</p>
<p><b>L.C and S &amp; J Construction L.T.D.</b></p> <p>Case No. 148/22/ESC Date: November 3, 2022</p>	<p><b>Protected Leaves</b></p> <p>The Employee appealed a Employment Standards dismissal order on the basis that he alleged he had been terminated while on a protected leave following a workplace accident.</p> <p><b>Decision:</b> The Board determined that the Employee was not on a protected leave at the time of his termination. Further the Board accepts that the Employer made reasonable efforts to reach the Employee without response. The Board is satisfied that the Employer genuinely had no knowledge of the Employee’s condition, and was therefore untainted by a protected ground when it made the decision to terminate.</p>

<b>Employment Standards Code</b>	
<p><b>L.Y. and Go Oil Canada Inc.</b></p> <p>Case Nos. 151/21/ESC and two additional cases November 18, 2022</p>	<p><b>Independent Contractor – Employee</b></p> <p>This is the first of three similar applications referred to the Board by the Employment Standards Branch regarding former employees of Go Oil Canada Inc. The Appellants appealed a decision of the Employment Standards Branch that they were Independent Contractors pursuant to Subsection 2(3) of <i>The Employment Standards Code</i> and accordingly their claim for wages and vacation wages were dismissed.</p> <p>The Employer confirmed that Appellants were employees from November 2019 until October 16, 2020, when it alleged the relationship changed due to the end of an external funding relationship, which resulted in the Appellants being Independent Contractors.</p> <p><b>Decision:</b> The Board determined the Appellants had remained employees as the evidence did not establish that there was a common understanding between the parties that the employment relationship would end upon the funding ceasing or exhausting other sources of funding. Accordingly, the Board granted the appeals and awarded wages and vacation wages to the Appellants.</p>

<b>Workplace Safety and Health Act</b>	
<p><b>Fun Tyme Foods Ltd. and D.I. and Director, Workplace Safety and Health</b></p> <p>Case No. 214/22/WSH February 6, 2023</p>	<p><b>Section 39(7) Request For Stay And Suspension Of Safety And Health Officer Reprisal Decision</b></p> <p>The Employer appealed the Workplace Safety and Health reprisal decision which would have required the Employer to pay a substantial reprisal award to the Employee until the appeal could be heard and a decision issued by the Board.</p> <p>The Board applied the requirement in <i>Re Tolko Industries Ltd.</i>, [2006] M.L.B.D. No. 4 and required that the Employer satisfy the Board on two counts. First that worker safety would not be compromised if the Order was suspended and second that it would suffer substantial prejudice if its request were to be denied. The Board also considered whether there was a persuasive case that the Order was likely to be successfully appealed.</p> <p><b>Decision:</b> The Board found worker safety would not be compromised by the suspension of the Order and the Employee would not suffer prejudice as a result of the suspension. The Board found the Employer had presented plausible errors in the Officer’s Order. The request to suspend operation of the Order was granted.</p>

## Workplace Safety and Health Act

**Riverview Health Centre  
Inc. and M.T. and  
Director, Workplace  
Safety and Health**

Case No. 121/21/WSH  
June 9, 2022

### **Untimely Appeal - Leave to Withdraw**

An Employer filed an appeal of a decision of the Director of Workplace Safety and Health, and the Employee filed an untimely cross-appeal seeking an increase in the amount awarded for lost wages.

The Employee sought an extension of time to file an appeal. The Board denied the extension on the basis that the Employee knew or ought to have known the time limit to appeal and found a delay of 3 months to be excessive.

The Employer then sought leave to withdraw its appeal, which was opposed by the Employee because she wanted the Board to rule on the sufficiency of the Director's award.

**Decision:** The Board would not place conditions on an appellant's request for leave to withdraw. The Board granted the Employer leave to withdraw its appeal. The Employee's request for an extension to file an appeal was denied.

## Biographies

In the year under review, the following Board Members were appointed.

### **Janet Mayor**

Appointed January 2023 as Vice-Chairperson on a part-time basis, Janet Mayor holds a Bachelor of Laws degree obtained in 1988 from the University of Manitoba. She practiced labour and employment law and civil litigation for several years, both in private practice and as in-house counsel at Manitoba Hydro. She is currently the Director of Human Resources at the Crown Corporation.

### **Kathy McIlroy**

Appointed January 2023 as Vice-Chairperson on a part-time basis, Kathy McIlroy obtained her Bachelor of Laws degree from the University of Manitoba. She has practiced exclusively in labour and employment law since 1993.

### **Scott Jocelyn**

Appointed in 2022 as a Board Member, Scott Jocelyn is currently the President & CEO of Manitoba Hotel Association, representing the concerns of hoteliers all across the province. Previously, he worked for over 30 years in the hospitality industry. Mr. Jocelyn is an appointed member of the provincial Accessibility Advisory Council and sits on hospitality advisory boards for Red River College Polytechnic and Assiniboine Community College.

### **Sean Naldrett**

Appointed in 2023 as a Board Member, Sean Naldrett is currently the Director of Labour Relations for Sobeys Incorporated based in Winnipeg. Mr. Naldrett represents the Employer throughout Manitoba and the rest of Canada in collective bargaining and other labour relations matters. Mr. Naldrett is a member of the Manitoba Labour Management Review Committee, Manitoba Employers Council, and an Employer Trustee on several multi-employer health and welfare, dental and pension trust funds based in Manitoba, Saskatchewan and British Columbia.

### **Tom Paci**

Appointed in 2022 as a Board Member, Mr. Paci is currently an independent labour relations consultant with a career in collective bargaining spanning thirty-seven years. Until his retirement in 2021, he was employed by the Manitoba Teachers' Society (MTS) and held various positions ranging from Economic Analyst to Assistant General Secretary. He represented numerous MTS locals in collective bargaining, as well as through conciliation and interest arbitration, and has acted as an advocate for individual members in personnel matters. Mr. Paci was also employed by the Manitoba Medical Association. He holds a Master of Arts degree in Economics from the University of Manitoba.