

*H*IGHLIGHTS

Ontario Labour Relations Board

Editors: Aaron Hart, Solicitor
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November 2021

New Full-Time Vice-Chair

The Board welcomes a new full-time Vice-Chair, **Lindsay Lawrence**.

Lindsay Lawrence joined the Ontario Labour Relations Board in 2020 as Board Solicitor, after many years in private practice at a prominent labour law firm. While in private practice, she regularly appeared before the Board, as well as at the Human Rights Tribunal, and in private labour arbitration matters. She was also a contributing editor for the leading text Ontario Labour Relations Board Law and Practice. She has an undergraduate degree from McGill University and a law degree from the University of Toronto, where she graduated with the bronze medal.

NOTICES TO THE COMMUNITY

Holiday Season Board Schedule

The Board's Holiday operations schedule is attached and can be found on the Board's website.

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in October of this year. These decisions will appear in the September/October issue of the OLRB Reports. The full text of recent OLRB

decisions is available on-line through the Canadian Legal Information Institute www.canlii.org.

Construction Industry – Grievance Referrals – Application for Certification – Non Construction Employers – Board heard preliminary argument concerning three grievance referrals and an application for certification – As a result of Bill 66, *Restoring Ontario's Competitiveness Act, 2019*, responding parties were deemed non construction employers – Effect was to make construction provisions of the *Labour Relations Act, 1995* and the provincial collective agreements in the construction industry no longer statutorily binding on the responding parties – Unions challenged the constitutionality of Bill 66 pursuant to section 2(d) of the *Canadian Charter of Rights and Freedoms* – Board concluded there was no breach of section 2(d) of the *Charter* – Board considered *Independent Electricity Market Operator ("IESO")* decision (2012 ONCA 293), and concluded that it was binding on the Board, not materially distinguishable and determinative of the question before it – Although the Board's ruling based on *IESO* was dispositive, the Board further concluded that *Charter* should fail based on section 2(d) jurisprudence and principles enunciated by Supreme Court of Canada – Grievance referrals and certification application dismissed.

CITY OF HAMILTON; RE: REGION OF WATERLOO; RE: THE CORPORATION OF THE CITY OF SAULT STE. MARIE; RE: UNIVERSITY OF TORONTO; RE:

CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; RE: THE ATTORNEY GENERAL OF ONTARIO; RE: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46; RE: THE GOVERNING COUNSEL OF THE UNIVERSITY OF TORONTO; OLRB Case Nos.: 1299-19-G, 1303-19-G, 1304-19-G, 1523-19-G; Dated October 22, 2021; Panel: Bernard Fishbein, Chair (60 pages)

Displacement Application – Unfair Labour Practice – Ballot Count – Board considered a request by the employer to open the ballot boxes and have the votes counted in two displacement applications – Employer argued the interests of efficiency and expediency, a lack of prejudice and that particulars in two related unfair labour practice complaints did not justify keeping ballot boxes sealed – Board concluded ballot box should remain sealed – Board satisfied potential prejudice to incumbent union outweighed any benefits in terms of efficiency and expediency, which were uncertain – Board unable to conclude that the allegations in the unfair labour practices could not vitiate the results of the vote – Request to open boxes and count ballots denied – Matters continue.

MICHAEL GARRON HOSPITAL; RE: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1 CANADA; RE: NATIONAL ORGANIZED WORKERS UNION; OLRB Case Nos.: 1797-20-U, 1805-20-U, 2238-20-R, 2241-20-R, Dated October 25, 2021; Panel: Adam Beatty (15 pages)

Employment Standards Act – Application for Review – Practice and Procedure – Application for review under the *Employment Standards Act* of the refusal of an Employment Standards Officer to issue an order – Employee made claim to termination and severance pay – ESO determined employer did not terminate employee, rather the provisions of Ontario Regulation 228/20, *Infectious Disease Emergency Leave* (“IDEL”) applied – Board decision addressed order of proceeding and

onus of proof under this new regulation – Board deferred consideration of onus to final argument, if necessary, having received submissions as requested from only one party to the application – Board determined employer would call evidence first – Since employer was in possession and control of the relevant documents, requiring it to proceed first served the interests of fairness and efficiency – Matter continues.

1768247 ONTARIO LIMITED O/A WEATHER SEAL WINDOWS & DOORS; RE: JOSE ARIAS-BENITEZ; RE: DIRECTOR OF EMPLOYMENT STANDARDS; OLRB Case No. 0138-21-ES; Dated October 18, 2021; Panel: Peigi Ross (9 pages)

Occupational Health and Safety Act – Appeal of Inspector’s Order – Mootness – Inspector issued order concerning use of personal protective equipment on various hospital units where patients with COVID-19 were being cared for – Inspector subsequently rescinded order – Union appealed the rescission – Hospital argued application was moot, noting circumstances around the rescission of the order had changed such that there was no longer a tangible and concrete dispute – Union argued that, although outbreaks occurring at time of the order and its rescission had resolved, the workplace risks involving COVID-19 remained – Board held the dispute at the core of the application was not moot, with the parties continuing to disagree about appropriate measures and procedures with respect to personal protective equipment – Board further noted that, even if there was no tangible and concrete dispute between the parties, this would nonetheless be an appropriate case for the Board to exercise its discretion to hear the matter, as it could provide the parties with future guidance and “the threat posed by COVID-19 will continue to be present, in particular in health care settings, for the foreseeable future” – Matter continues.

SOUTHLAKE REGIONAL HEALTH CENTRE; RE: ONTARIO NURSES’ ASSOCIATION; RE: A DIRECTOR UNDER THE *OCCUPATIONAL HEALTH AND SAFETY ACT*; OLRB Case No. 2573-20-HS; Dated October 28, 2021; Panel: Adam Beatty (6 pages)

COURT PROCEEDINGS

Judicial Review – Jurisdictional Dispute – Jurisdictional dispute application filed in the construction industry – Board assigned scaffolding tending work to the Carpenters, rather than the Labourers – Work involved was “general tending” in connection with the Stator Rewind and Rotor Swap Project at the Bruce Power nuclear generating station, work in the Electrical Power Systems sector of the construction industry – On judicial review, Court concluded the Board’s decision was “not inconsistent with the case law on area practice” and “did not misapprehend evidence relating to economy and efficiency” – Court concluded the Board’s decision was reasonable, having particular regard to the Board as an expert tribunal, “a tribunal that has specialized expertise in labour relations, but, even more importantly, an individual decision maker who is part of a subgroup at the Board that specializes in construction industry labour relations” – Application dismissed.

ALUMA SYSTEMS INC.; RE: LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE: LABOURERS’ INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059; RE: BRUCE POWER LP; RE: GENERAL ELECTRIC CANADA INC.; RE: CARPENTERS’ DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; RE: ONTARIO LABOUR RELATIONS BOARD; Divisional Court File No. 456/20; Dated October 19, 2021; Panel: Swinton, D. Edwards and Matheson JJ. (15 pages)

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Holland, L.P. Divisional Court No. 673/21	2059-18-R 2469-18-R 2506-18-R 2577-18-R 0571-19-R 0615-19-R	June 21, 2022
Ontario Catholic School Trustees' Association Divisional Court No. 650/21	2067-20-M	May 24, 2022
Ontario Catholic School Trustees' Association Divisional Court No. 645/21	2067-20-M	May 24, 2022
PipeFlo Contracting Corp. Divisional Court No. 625/21	0170-21-G	Pending
Mammoet Canada Eastern Ltd. Divisional Court No. 609/21	2375-19-G	April 20, 2022
Candy E-Fong Fong Divisional Court No.	0038-21-ES	Pending
Eugene Laho Divisional Court No. 336/21	1869-20-U	February 9, 2022
Symphony Senior Living Inc. Divisional Court No. 394/21	1151-20-UR 1655-20-UR	Pending
AWC Manufacturing LP Divisional Court No. 304/21	1320-20-ES	October 21, 2021
Bomanite Toronto Ltd. Divisional Court No. 271/21	2057-19-G	February 3, 2022
Cambridge Pallet Ltd. Divisional Court No. 187/21	0946-20-UR	May 16, 2022
Kaydian Carney Divisional Court No. 110/21	1583-18-UR	October 7, 2021
Mir Hashmat Ali Divisional Court No. 275/20	0629-20-U	Pending
Guy Morin Divisional Court No. 20-DC-2622	2845-18-UR 0892-19-ES	Pending
Paul Gemme Divisional Court No. 332/20	3337-19-U	November 25, 2021
Aluma Systems Inc. Divisional Court No. 456/20	2739-18-JD	Dismissed
Capital Sports & Entertainment Inc. Divisional Court No. 20-DC-2593	1226-19-ES	Pending

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Joe Mancuso Divisional Court No. 28291/19 (Sudbury)	2499-16-U – 2505-16-U	Pending
Daniels Group Inc. Divisional Court No. 018/20	0279-16-R	Pending
The Captain's Boil Divisional Court No. 431/19	2837-18-ES	Pending
EFS Toronto Inc. Divisional Court No. 205/19	2409-18-ES	Pending
RRCR Contracting Divisional Court No. 105/19	2530-18-U	Pending
AB8 Group Limited Divisional Court No. 052/19	1620-16-R	Pending
Tomasz Turkiewicz Divisional Court No. 262/18, 601/18 & 789/18	2375-17-G 2375-17-G 2374-17-R	Leave to Appeal to CA granted – M52577
China Visit Tour Inc. Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending
Front Construction Industries Divisional Court No. 528/17	1745-16-G	Pending
Enercare Home Divisional Court No. 521/17	3150-11-R 3643-11-R 4053-11-R	Leave to Appeal to CA granted – M52413
Ganeh Energy Services Divisional Court No. 515/17	3150-11-R 3643-11-R 4053-11-R	Leave to Appeal to CA granted – M52413
Myriam Michail Divisional Court No. 624/17 (London)	3434-15-U	Pending
Peter David Sinisa Sesek Divisional Court No. 93/16 (Brampton)	0297-15-ES	Pending
Byeongheon Lee Court of Appeal No. M48402	0095-15-UR	Pending
Byeongheon Lee Court of Appeal No. M48403	0015-15-U	Pending
R. J. Potomski Divisional Court No. 12/16 (London)	1615-15-UR 2437-15-UR 2466-15-UR	Pending
Qingrong Qiu Court of Appeal No. M48451	2714-13-ES	Pending
Valoggia Linguistique Divisional Court No. 15-2096 (Ottawa)	3205-13-ES	Pending