

Ontario Labour Relations Board



The Ontario Labour Relations Board (OLRB) is an independent, quasi-judicial tribunal which mediates and adjudicates a variety of employment and labour relations related matters under various Ontario statutes.

Annual Report

2018-2019

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Chair's Message

Seventy five years ago on April 17, 1944, at 11 am, at the offices of the Minister of Labour at Queen's Park, Mr. Daley, the then Minister, Mr. Marsh, the then Deputy Minister, Mr. Jacob Finkelman, the then Chairman of the Board, Messrs. William J. Corbett, George R. Harvey, Edward J. Hopcraft, Harold J. Padgett, Clyde E. Shumaker, and Robert W. Teagle, Members and Mr. Arthur E. Langman, the Chief Executive Officer of the Board, met for the very first meeting of the Ontario Labour Relations Board.

It appears our predecessors had a relatively busy and productive meeting that day. They decided that hearings of applications before the Board should be conducted in public, that they should have formal rules of procedure for the conduct of business and struck a committee to draft proposed rules, get an official seal (How could the Board could function without one?), that meetings of the Board would be conducted on Tuesdays and Wednesdays at 10 o'clock in the morning and they scheduled the first certification application by the United Rubber Workers of America, Local 118 for employees of Seiberling Company of Canada. They even resumed the meeting at 2 pm so that they all could be sworn in by Mr. C.F. Bulner, the Clerk of the Executive Council, after which a group photograph of them was taken by a representative of the Toronto Evening Telegram.

So, not surprisingly, much has changed in 75 years - too much for me to describe in this short message. The Board now employs over 100 people, approximately 17 full time vice chairs and 16 part time vice chairs. It receives approximately 4000 new applications a year, ranging from not just the *Labour Relations Act* but also to matters and statutes our predecessors' meeting in Queens Park could not have envisaged 75 years ago. But one thing has not changed. The Ontario Labour Relations Board remains the largest and preeminent labour relations and employment tribunal in the country.

Despite all the other things that are different in today's world of changed politics, fiscal restraint and respect for taxpayer's money, I do not think this achievement, or put another way, 75 years of this achievement, should go unnoticed or unremarked upon. Moreover, I want not only to acknowledge this achievement but to recognize it could not have been done without the long line of expert and dedicated staff of the Board - knowledgeable and discerning adjudicators, perceptive and bright solicitors, talented and effective mediators, committed and agile administrators and a hardworking and enthusiastic support staff. As the person both privileged and fortunate to be Chair at this moment of time I wish to salute all of them.

2018-2019 has again been a very busy year for the Board with an increase in the number of applications received. The details of that increase and how it is composed are extensively elaborated and analyzed in the pages of this report that follow. There is also a "new look" to the Report this year - resulting from both the Board's own analysis of the data to formulate new metrics to better track, understand and improve the Board's performance, and to comply with new government directions concerning tribunals' annual reports.

Again, the Board bid farewell in the past year to many valued employees and members whose absence is already missed. The prodigious David McKee, one of the Board's longest serving Vice-Chairs, who indisputably left a significant mark on the Board's jurisprudence, retired. Part-time Vice-Chairs Tatiana Wacyk and Paulene Pasioka left the Board at the end of their terms after years of valued contributions. Leonard Marvy, one of the Board's solicitors also retired after many years of dedicated and exemplary service.

This past year, the Board also welcomed Johanne Cavé as a part-time Vice-Chair and Andrea Bowker, a senior and very well regarded member of the labour bar, as a solicitor.

More than ever, as I have come to increasingly appreciate over the years, none of the important work of the Board is possible without the efforts of the aforementioned expert and dedicated staff and adjudicators of the Board. Not only do I owe them all a huge debt of gratitude but it is because of them that the Board continues to enjoy its reputation as the country's largest and preeminent labour and employment tribunal. We all continue to work diligently to make the Board even better at what it does. As I have said at the close of each of these Chair's messages, in each of these annual reports, I encourage everyone to contact the Board (and me) with their comments, concerns or suggestions. I cannot promise that we will agree, but we will certainly listen.



Bernard Fishbein
Chair

Overview

The Ontario Labour Relations Board is an adjudicative agency of the Government of Ontario. As a tribunal operating at arm's length from the Ministry of Labour, the OLRB mediates and decides cases under more than 20 different workplace and employment-related laws. In addition to the primary responsibility that comes from its founding statute, the *Labour Relations Act, 1995*, a significant portion of the Board's work falls under the *Employment Standards Act, 2000* and the *Occupational Health and Safety Act*, as is described in more detail below.

Overall, the Board has varying degrees of jurisdiction assigned to it under the following statutes:

- *Ambulance Services Collective Bargaining Act, 2001*, S.O. 2001, c.10
- *Colleges Collective Bargaining Act, 2008* S.O. 1990. c.5
- *Crown Employees Collective Bargaining Act, 1993*, S.O. 1993, c.38
- *Education Act*, R.S.O. 1990, c.E.2
- *Employment Protection for Foreign Nationals Act, 2009*, S.O. 2009, c.32
- *Employment Standards Act, 2000*, S.O. 2000, c.41
- *Environmental Bill of Rights, 1993*, S.O. 1993, c.28
- *Environmental Protection Act*, R.S.O. 1990, c.E.19, which gives the Board jurisdiction under the following legislation:
 - *Environmental Assessment Act*, R.S.O. 1990, c.E.18
 - *Environmental Protection Act*, R.S.O. 1990, c.E.19
 - *Fisheries Act*, R.S.C. 1985, c.F-14
 - *Nutrient Management Act, 2002*, S.O. 2002, c. 4
 - *Ontario Water Resources Act*, R.S.O. 1990, c.O.40
 - *Pesticides Act*, R.S.O. 1990, c.P.11
 - *Safe Drinking Water Act, 2002*, S.O. 2002, c.32
 - *Toxics Reduction Act, 2009*, S.O. 2009, c.19
- *Fire Protection and Prevention Act, 1997*, S.O. 1997, c.4
- *Hospital Labour Disputes Arbitration Act*, R.S.O. 1990, c.H.14
- *Labour Relations Act, 1995*, S.O. 1995, c.1
- *Local Health System Integration Act, 2006*, S.O. 2006, c.4
- *Long Term Care Homes Act, 2007*, S.O. 2007, c.8
- *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1
- *Ontario College of Trades and Apprenticeship Act, 2009*, S.O. 2009, c. 22
- *Ontario Provincial Police Collective Bargaining Act, 2006*, S.O. 2006, c.35, Sch. B
- *Protecting Child Performers Act, 2015*, S.O. 2015, c.2
- *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sch. 6
- *Public Sector Dispute Resolution Act, 1997*, S.O. 1997, c.21, Schedule A
- *Public Sector Labour Relations Transition Act, 1997*, S.O. 1997, c. 21, Schedule B
- *Public Service of Ontario Act, 2006*, S.O. 2006, c.35, Schedule A
- *Retirement Homes Act, 2010*, S.O. 2010, c.11
- *School Boards Collective Bargaining Act, 2014*, S.O. 2014, c.5
- *Smoke-Free Ontario Act*, S.O. 1994, c.10

As an independent adjudicative tribunal, the Board's mandate is to mediate and adjudicate a broad variety of workplace disputes. Its staff are appointed under the *Public Service of Ontario Act, 2006*. Direction for its mission, mandate, service standards, governance and accountability are set out in the *Adjudicative Tribunal Accountability, Governance and Appointments Act, 2009*.

The Board is composed of a Chair, an Alternate Chair, Vice-Chairs, Board Members, a complement of Mediators, a Solicitors' Office and a Registrar's office. These individuals, aided by the Board's support staff, draw upon specialized expertise in the labour and employment field to settle and adjudicate cases before them. The Board strives to keep its procedures informal, expeditious and fair. However, it is important to recognize that legal rights are at issue, the statutory frameworks are sometimes complex, and parties are encouraged to seek independent legal advice, if not legal representation, to assist them in Board proceedings.

The Board is entitled to determine its own practices and procedures and has the authority to make rules and forms governing its practices and the conduct of those appearing before it. The Board's Rules, Forms and Information Bulletins are available on its website at www.olrb.gov.on.ca or from the Board's offices at 505 University Avenue, 2nd Floor, Toronto, Ontario, M5G 2P1.

The Board plays a fundamental role in the labour relations, employment standards, and health and safety regimes in Ontario. Board decisions are based on the evidence presented and submissions received, and on the adjudicator's interpretation of the facts in dispute, relevant legislation and jurisprudence. In keeping with the Ministry of Labour's overarching principles, the Board encourages harmonious relations among employers, employees and trade unions. It deals as expeditiously and fairly as reasonably possible in processing, settling or adjudicating all matters that come before it.

The Board's Principal Statutes

Labour Relations Act, 1995

The Ontario Labour Relations Board was established by section 2 of the *Labour Relations Act, 1948* and is continued by subsection 110(1) of the current *Labour Relations Act, 1995*.

The Board's work under the LRA is guided by the legislative policy set out in section 2 of the Act:

2. The following are the purposes of the Act:

1. To facilitate collective bargaining between employers and trade unions that are the freely designated representatives of the employees.
2. To recognize the importance of workplace parties adapting to change.
3. To promote flexibility, productivity and employee involvement in the workplace.
4. To encourage communication between employers and employees in the workplace.
5. To recognize the importance of economic growth as the foundation for mutually beneficial relations amongst employers, employees and trade unions.
6. To encourage cooperative participation of employers and trade unions in resolving workplace disputes.
7. To promote the expeditious resolution of workplace disputes.

With this policy as a basis, the Act confers on the Board the authority over many significant aspects of labour relations including the certification of unions to represent employees, termination of bargaining rights, the handling of unfair labour practices (including a union's duty of fair representation or fair referral of its members), successor bargaining rights, essential services, strikes, lock-outs, first contract direction, jurisdictional disputes, the relationship between parent/national/international unions and their subordinates, and a range of issues arising in the construction industry, including the arbitration of grievances.

Employment Standards Act, 2000

The ESA confers authority on the Board to hear applications for review of decisions made by Employment Standards Officers. Claims filed under the ESA with the Ministry of Labour (for wages, overtime, termination or severance pay, other violations of the Act) are investigated by Employment Standards Officers who direct payment of outstanding monies, issue orders for wages or compensation, or refuse to issue orders. Appeals of Employment Standards Officers' decisions or refusals to make orders are handled by the Board.

Mediation is attempted in all ESA matters before the Board. Where mediation is unsuccessful, the Board conducts what is in essence a fresh hearing of the workplace dispute. Parties to the dispute are expected to attend the hearing with their evidence and witnesses, and be able to persuade the Board of the correctness of their case.

Occupational Health and Safety Act

The OHSA is designed to ensure that every workplace is safe and every worker is protected against injury or harm. Enforcement of the OHSA is conducted by health and safety inspectors, who may enter workplaces to inspect or investigate working conditions, equipment and compliance with the Act. Orders or decisions of inspectors can be appealed to the OLRB.

There are also protections for workers who exercise their rights under the OHSA and are disciplined or discharged for doing so (reprisals). These applications can be brought directly to the Board or referred by a health and safety inspector.

School Boards Collective Bargaining Act, 2014

This legislation dramatically altered the structure for collective bargaining in the education sector. The parties now bargain their collective agreement on two tiers: central issues at a "central table", where the Crown is a party, and local issues at a "local table", where it is not. In the event the parties are unable to agree to this central/local split, disputes are decided by the Board upon the application of either party or the Crown, as well as any issues arising from the parties' agreement or Board order. In addition, the Board may be asked to decide whether a matter that is the

subject of central bargaining may prejudicially affect constitutionally-protected, denominational or linguistic rights and can exclude the issue from central bargaining, make it the subject of local bargaining and issue other orders as the Board determines are appropriate in the circumstances. The Crown or a party to central bargaining may also apply to the Board to decide if a local term in a collective agreement conflicts with or is inconsistent with a central term in the agreement.

Crown Employees Collective Bargaining Act

Any employer of Crown employees and the bargaining agent for Crown employees must make an essential services agreement when negotiating a collective agreement and prior to any strike or lockout being lawful. Either party may apply to the Ontario Labour Relations Board to determine any matter that is not resolved including the matters to be included in the essential services agreement and its terms. The Board may consult with the parties and/or inquire into any matter raised by the application. The Board also has jurisdiction under this Act to enforce or amend the agreement upon application, as well as to make a declaration that an agreement has prevented meaningful bargaining and to amend the number of positions or employees designated in the agreement.

Public Sector Labour Relations Transition Act

The *Public Sector Labour Relations Act* (PSLRTA) was passed in 1997 to cover mergers, amalgamations and other restructuring in three public sectors: municipalities and local boards, school boards and hospitals. In 2005, PSLRTA was expanded to include mergers of health services providers and health services integrations. The majority of applications before the OLRB since 2005 have involved the hospital sector and institutions that might fall under this expanded definition. The OLRB, upon application, holds a consultation with the affected unions and employers to determine if *PSLRTA* applies and what bargaining units and bargaining agents in the new workplace are appropriate. The Board occasionally directs representation votes to determine the successor bargaining agents.

Other Applications

The Board receives a smaller number of applications under the other legislation that we administer. Generally speaking, these are treated in a manner analogous to how we deal with the applications already described.

Other Tribunals

The Board also has administrative responsibility for a number of other tribunals whose reporting structures and activities may be described in other Annual Reports. The Board administers the Education Relations Commission (“ERC”) which is an agency of the Ministry of Education. The Board’s Chair is the Chair of the ERC and several Board Vice-Chairs sit as ERC Members. A Vice-Chair of the Board is the Presiding Officer of the Pay Equity Hearings Tribunal. Several Board Vice-Chairs and Members are also cross-appointed to the PEHT. Support services for all of these bodies are under the administration of the Director/Registrar.

Overview of Board Processes

Essentially, every application that is filed with the Board is first assigned to a Mediator. The Mediator is given an opportunity to contact or meet with the parties to explore the possibility of settlement. Parties are encouraged to mediate matters. Practically speaking, mediation is a less formal and often less costly process than a hearing. The settlement of a workplace dispute, worked out by the parties with the assistance of a mediator, gives the parties an agreement they can both live with and more responsibility and ownership of the agreed-to conditions. Roughly 90% of all disputes coming before the Board were resolved, including by mediation, prior to litigating the matter at a final hearing.

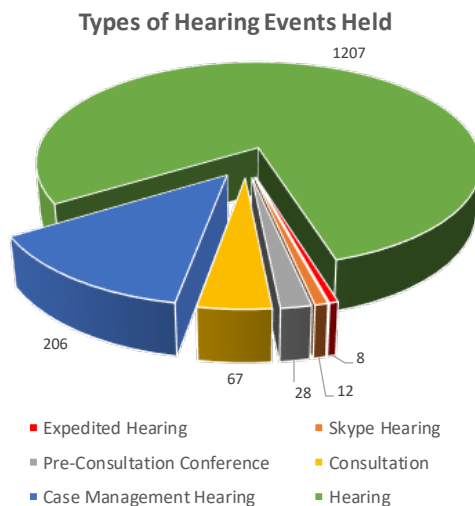
If an application cannot be mediated successfully, the matter is forwarded to the Registrar to review and schedule a consultation or hearing, where one has not already been scheduled. Some cases are sent for preliminary review to decide whether there is a *prima facie* case objection or preliminary matter which needs to be decided before scheduling.

A consultation is a less formal type of adjudication and may take on different forms. Primarily, it is a quick and pointed hearing with the parties, with the Vice-Chair (adjudicator) taking greater control over how the proceeding is conducted. Often, there is no need for sworn testimony. The Vice-Chair may ask questions of the parties or may direct that the questioning be limited in scope. A hearing is a formal adjudication, with opening statements, the examination and cross-examination of witnesses, presentation of relevant documentary evidence, and submission of final arguments.

To ensure an efficient and expeditious processing of cases, several types of cases are scheduled for a hearing or consultation when they are initially filed with the Board and the hearing date is sent out together with the Board's confirmation of filing, namely applications for certification/termination in the non-construction sector, unfair labour practices involving the discipline or discharge of alleged union supporters, construction industry grievances, reprisal complaints under OHSA, first contract direction applications. Case Management Hearings are scheduled upon application in all construction certification applications or in some other cases where the parties may request it or the Board deems it appropriate. Pre-hearing consultations and consultations for jurisdictional disputes in the construction industry are scheduled at the time the Board sends out its confirmation of filing.

During the construction open-period, hearings are set at the time of confirmation of the filing of each application and are given a name of "expedited hearing" in the Board's case management system to easily identify it as a hearing related to an open-period file. However, this is not the only hearing which is scheduled on an expedited basis. Applications for strike/lockout and some health and safety appeals are heard within a day or two, as circumstances require and hearings into applications for interim orders may be held within four to six days. Cases involving the discharge of employees are given priority scheduling.

Consultations, case management hearings and hearings (but not mediations) are open to the public, save for exceptional circumstances. Hearings are not recorded and no transcripts are produced. The Board issues written decisions that are sent to the parties and become public documents available for searching on public databases.



Organization

Vice Chairs, Members and Staff

The OLRB's operations and staff can be broadly divided into: Adjudication, Administration, Mediation Services and Legal Services.

The Board's adjudicators (the Chair, Alternate Chair, Vice Chairs and Board Members) are all appointed by the Lieutenant Governor in Council as Order in Council appointments for a fixed term. A chart of the OICs working in 2018/2019 and their appointment terms is attached at Appendix A.

The administrative, mediation and legal staff are public servants appointed under Part III of the *Public Service of Ontario Act, 2006*. The Board's Organizational Chart is attached at Appendix B.

Office of the Director and Registrar

The Director/Registrar is the chief administrative officer of the Board. She, along with the Deputy Director / Registrar, is responsible for the overall administration of the Board's business operations, mediation and adjudication. The Director/Registrar, along with the Deputy Director/Registrar, oversees the effective processing and scheduling of each case and communicates with the parties in matters relating to the mediation of cases, scheduling of hearings or on particular issues in the processing of any given case. Every application received by the Board enters the system through the Director/Registrar's office.

Manager of Administration

The Manager of Administration is responsible for the efficient operation of the Board through the effective coordination of the procurement and budget functions, human resources functions, client services, information technology, and the provision of administrative direction for all shared/common services.

Library Services

Comprised of the former Ontario Labour Relations Board Library, the Workplace Safety and Insurance Appeals Tribunal Library and the Pay Equity Commission Library, the Ontario Workplace Tribunals Library is situated at 505 University Avenue, Toronto on the 7th floor.

Library holdings related to the OLRB include all reported OLRB decisions from 1944 to date, all judicial reviews of OLRB decisions from 1947 to date, all bargaining unit certificates issued by the OLRB from 1962 forward. In addition, the Library has a collection of all Employment Standards review decisions from 1970 to date and all Occupational Health and Safety appeal decisions from 1980 to date. Textbooks, journals and case reports in the areas of labour, administrative and constitutional law are also held.

Mediation Services

The Board is a pioneer in the area of alternative dispute resolution. The Manager, Mediation Services and Senior Mediators/Mediators ("Mediators") are responsible for mediating settlements in all of the Board's cases. In addition to settling cases, Mediators assist parties in identifying issues and streamlining the cases that are adjudicated in order to avoid unnecessary litigation. They also, along with the Board's Labour Relations Conciliators, carry out the Board's pre- and post-vote mediation program and conduct representation and final offer votes.

Information Technology Support

Services in IT were centralized within the Ministry of Labour and are now provided to the Board by a central help desk. Business Support Specialists at the Board maintain the systems, website and reporting services and work on major IT projects within the Board.

Legal Services

Legal services to the Board are provided by the Solicitors' Office, which consists of two Board Solicitors. The Solicitors provide legal research, advice, opinions and memoranda to the Chair, Vice-Chairs, Board Members, Mediators and administrative staff.

They are extensively involved in changes to the Board's Rules of Procedure and forms and contribute to the continuing education of staff. The Solicitors are the Board's media spokespersons and handle all inquiries, investigations and complaints under freedom of information or human rights legislation and from Ombudsman Ontario. The Board's Solicitors also represent the Board in court proceedings, including applications for judicial review.

Key Activities

The Board can be described as engaging in two key activities: Mediation and Adjudication, generally but not exclusively in the realm of Labour Relations, Employment Standards, and Occupational Health and Safety. These two core functions are the foundation for the Board's vision of maintaining a reputation for adjudicative and dispute resolution excellence.

A. Achievement of Performance Measures

1. Program Effectiveness Measures

i. Meeting Legislated timelines

2018/2019 Commitment

- 90% industrial certification votes held within 5-7 days
- 95% held within 10 days
- 5% or less held within more than 10 days

2018/2019 Achievement

- 96% of industrial certification votes held within 5-7 days
- 98.2% held within 10 days
- 1.8% held within more than 10 days

ii. Mediation-Percentage of Cases Resolved Without Final Hearing

2018/2019 Commitment

- 80-85% of disputes settled without litigation at the Board
- LRA cases: 85%
- ESA (appeals): 75%
- OHSA (appeals): 75%
- OHSA (reprisal complaints): 75%

2018/2019 Achievement

- Actual: 89.2% of all cases settled without final litigation
- LRA cases: 87.8%
- ESA (appeals) cases: 90.6%
- OHSA (appeals) cases: 95.3%
- OHSA (complaints) cases: 95.4%

iii. Adjudication- Judicial Review - Percentage of decisions upheld:

- 2018-2019 Commitments: 90-100%
- 2018-2019 Achievements: 92%

iv. Fiscal Measures:

- 2018-2019 Commitments: Less than 2% variance between year-end allocation and expenditure.
- 2018-2019 Achievements: Actual variance: 2.4%
Approved budget: \$14.021M
Actual expenditure: \$13.688M

2. Time to Dispose of Cases

The Board is committed to better analyze and track the time to dispose of cases in a yet more sophisticated manner. 48.9% of cases were completed within approximately 90 calendar days of receipt of application and 68.4% were completed within five months (Figure 20). This compares with 41.3% and 56% respectively in the previous year. However, the Board is undertaking further analysis of the data in this regard so that a more refined and evolved analysis can be published in future annual reports. (See also charts on page 33)

3. Ombudsman Review

The Ombudsman's Office has the authority to investigate complaints about the Ontario Government and its agencies, including the Board. There were no new or outstanding investigations in 2018/19.

B. Electronic Voting

The Board conducted its first electronic vote in November 2017 and conducted a total of 2 in the 2017/2018 fiscal period.

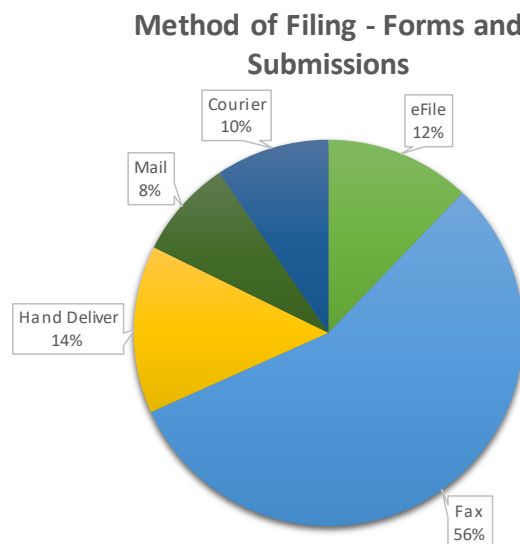
This increased in 2018/2019, when the Board conducted 12 certification votes, 1 termination vote and 1 last offer vote by electronic balloting (with a telephone ballot option). The decision to hold the votes electronically is made, sometimes over the objection of the parties, for one or more of a number of reasons, including, the workplaces were in disparate geographic locations, the shifts were 24 hours long, the employees had no dedicated workplace and/or the parties requested or agreed to it. More than 750 voters used the system, which was a 78.7% voter turnout on average.

In the spring of 2019, the Board sought to engage affected stakeholders and the public on electronic voting, by posting an information paper on electronic voting on its website and in its monthly publication Highlights. This information paper summarized the Board's experience with electronic votes and invited submissions on the process, which were directed to a number of particular issues the Board thought required consideration and input from the community. The Board is developing a formal Information Bulletin on electronic votes which is expected to be released in the next fiscal period.

C. IT Initiatives and Electronic Filing System

In late 2017, the Board launched its e-filing project with four forms. In 2018/2019, the Board concluded its e-filing project and all planned forms were made available electronically on the Board's website and are hosted by Ontario Shared Services on its electronic system. A total of 87 forms, in both French and English, are currently available to be submitted electronically. The e-filing project necessitated the modernization of the Board's forms, Notices, Information Bulletins, and Rules of Procedure. In November 2018, the Board completed the electronic filing of grievance referrals in the construction industry and Notices of Intend to Defend, both of which require online payment of fees.

In 2018/2019, the Board received 3044 electronically filed forms and submissions. This represents 12.1% of the total number of forms and submissions filed with the Board.



The Board also commenced a project to replace its older website with a new modernized website. Technology has advanced considerably since the current website was created. The Board is working toward a more user-friendly and accessible website for the public and the Board's stakeholders as well as an updated look. Progress will continue in 2019/2020 consistent with the availability of resources.

Caseload Processing

Case Numbers and Disposition

Overall, the Board received 3930 new applications this year. This number is higher than last year by 423 cases, a 12% increase in new applications. 1697 additional cases remained open from previous years and 116 cases were re-opened*, for a total number of files processed before the Board this year of 5743. (Figures 1 and 2) The number of cases which were re-opened was greatly decreased in 2018/2019 (by 1020 cases) following a new internal processing practice which prevents the re-opening of files for various administrative (and non-adjudicative) reasons.

Of the 5743 files before the Board, 4098 were disposed of** (with/without a hearing), for example, by final decision, settlement, withdrawal or abandonment and closed. Consequently, 1643 cases were carried into 2019/2020. The number of cases carried over was down 55 cases from the number carried over in 2017/2018. (The Board's case management system records cases which are adjourned sine die as "active" until the adjournment period expires and the file is then closed. In the past, the files were immediately closed when adjourned sine die.) The Board continues to work toward its goal to increase the number of cases disposed of in a year, and to that end, looks for more efficient ways to case manage, schedule, and deploy our resources.

Of disposed cases, 48.9% were completed within approximately 90 calendar days of application receipt and 68.4% were completed within five months (Figure 20).

The following pages and charts deal with the processing of cases by individual category and in greater detail.

*Files are re-opened for various reasons including when an application for reconsideration is received or a dispute arises regarding the implementation of a settlement. The category of "re-opened" files is a result of the case management system.

**In Figure 1, the Total Closed column reflects the activity on a file: a file may have been closed more than once. In Figure 3, the Total Closed column reflects the final disposition of an individual case before hearing. Each unique case is only recorded as closed once.

Case Type Description	Total Received				Total Closed				Total Caseboat				Total Closed				Total Caseboat				Total Closed				Total Caseboat			
	Totals:	3,930	116	1,697	5,743	4,098	948	555	150	2,299	2	2	95	45	1,643	4,098	948	555	150	2,299	2	2	95	45	1,643			
Accreditation (Construction)	7	0	4	11	8	8	0	0	0	0	0	0	0	0	3	8	8	0	0	0	0	0	0	0	3			
Certification	641	23	363	1,027	767	476	99	8	181	0	0	2	0	260	641	23	363	1,027	767	476	99	8	181	0	2	260		
Certification (Construction - Card Based)	269	14	207	490	335	209	30	4	91	0	0	1	0	155	269	14	207	490	335	209	30	4	91	0	1	155		
Certification (Construction)	23	1	28	52	26	6	9	0	11	0	0	0	0	26	23	1	28	52	26	6	9	0	11	0	0	26		
Certification (Construction - Open Period)	19	0	2	21	1	0	1	0	0	0	0	0	0	20	19	0	2	21	1	0	1	0	0	0	0	20		
Certification (Industrial)	280	8	113	401	342	217	58	4	62	0	0	1	0	59	280	8	113	401	342	217	58	4	62	0	1	59		
Certification (Specified Industries)	50	0	13	63	63	44	1	0	18	0	0	0	0	0	50	0	13	63	63	44	1	0	18	0	0	0		
Colleges Collective Bargaining Act	2	0	3	5	2	1	0	0	1	0	0	0	0	3	2	0	3	5	2	1	0	0	1	0	0	3		
Certification	0	0	2	2	1	1	0	0	0	0	0	0	0	1	0	0	2	2	1	1	0	0	0	0	0	1		
College Vote	1	0	0	1	0	0	0	0	0	0	0	0	0	1	1	0	0	1	0	0	0	0	0	0	0	1		
Violation of Colleges Collective Bargaining Act	1	0	1	2	1	0	0	0	1	0	0	0	0	1	1	0	1	2	1	0	0	0	0	0	0	1		
Construction Grievance	769	43	323	1,135	827	225	35	3	500	0	0	64	0	308	769	43	323	1,135	827	225	35	3	500	0	0	64	308	
Employment Standards	1,189	17	391	1,597	1,170	75	182	94	772	0	0	1	45	425	1,189	17	391	1,597	1,170	75	182	94	772	0	0	1	425	
Employment Standards - Appeal (Director)	52	0	16	68	45	5	5	7	28	0	0	0	0	21	52	0	16	68	45	5	5	7	28	0	0	0	21	
Employment Standards - Appeal (Employee)	303	2	109	414	295	10	40	20	225	0	0	0	0	119	303	2	109	414	295	10	40	20	225	0	0	0	119	
Employment Standards - Appeal (Employer)	833	13	263	1,109	824	58	137	66	517	0	0	1	45	285	833	13	263	1,109	824	58	137	66	517	0	0	1	45	285
Referral under Employment Standards Act	0	2	3	5	5	2	0	1	2	0	0	0	0	0	0	2	3	5	5	2	0	1	2	0	0	0	0	
Void Settlement made by ESO	1	0	0	1	1	0	0	0	1	0	0	0	0	0	1	0	0	1	1	0	0	0	0	0	0	0	0	
Essential Services	4	0	1	5	4	3	0	0	1	0	0	0	0	1	4	0	1	5	4	3	0	0	1	0	0	0	1	
Essential Services Agreement - Ambulance	4	0	1	5	4	3	0	0	1	0	0	0	0	1	4	0	1	5	4	3	0	0						

Applications Received and Disposed of - 5 Year Comparison (Figure 2)

The majority of cases filed in 2018/19 fall under five main categories:

1. Under the *Labour Relations Act*, Certification and Termination of bargaining rights - 641 applications for certification (which includes 50 applications under the Bill 148 provisions for specified industries which were repealed in November 2018) and 88 applications for termination of bargaining rights (which includes 19 termination applications filed in the first month of the triennial construction industry Open Period).
2. Contraventions of the LRA (520), the *Colleges Collective Bargaining Act* (1) and the *Public Service of Ontario Act* (1).
3. Under the LRA, Referrals of Construction Industry Grievances - 769.
4. Under the ESA, Appeals of decisions of Employment Standards Officers - 1189.
5. Under the OHSA, Complaints under s. 50 and Appeals of Inspector's orders - 361.

The number of applications for certification and termination of bargaining rights was 729 which is higher this year over last by 29 cases.

Complaints of the contravention of the *Labour Relations Act* (section 96) rose by 5 applications.

The number of construction grievances filed (769) was down from last year by 74 and down from 2016/2017 by 28, marginally the lowest number in the last 5 years. (Figures 2 and 10)

The number of Employment Standards appeals received in 2018/2019 was 1,189, an increase of 360 cases from 2017/2018. The total number of ESA files received is also an increase of 467 cases from the caseload in 2016/2017. This represents an increase of almost 44% from 2017/2018 and an increase of 65% from 2016/2017. (Figures 2 and 13)

Complaints under the *Occupational Health and Safety Act* with respect to reprisals in the workplace increased from 231 last year to 296 - in 2016/2017 the number was 219, showing a steady increase in the number of this type of application by 28% in one year and 35% over the last two years. (Figures 2 and 16) Of the 296 applications filed this year, 18 were referred by inspectors (Figure 1). Appeals (including suspension applications) of health and safety inspectors' orders increased by 2 from the previous year.

Further analysis of these and other individual case types may be found in sections of this Report which follow.

Fiscal Years 2014-15 to 2018-19	Number Received, Fiscal Year						Number Disposed of, Fiscal Year					
	Total	2014-15	2015-16	2016-17	2017-18	2018-19	Total	2014-15	2015-16	2016-17	2017-18	2018-19
Type of Case	17,913	3,791	3,411	3,274	3,507	3,930	21,063	3,983	3,964	4,336	4,682	4,098
Accreditation (Construction)	28	2	4	8	7	7	26	-	3	7	8	8
Breach of Settlement under section 105 or 141 of	1	-	-	-	-	1	1	-	-	-	-	1
Certification	3,249	632	684	643	649	641	4,759	901	818	1,044	1,228	768
College Vote	5	2	-	-	2	1	5	3	-	-	2	-
Consent to Institute Prosecution	5	-	1	1	2	1	4	-	1	1	1	1
Construction Grievance	4,259	996	854	797	843	769	5,008	1,072	948	970	1,191	827
Duty of Fair Referral	37	9	12	8	2	6	37	2	12	12	8	3
Duty of Fair Representation	922	167	174	183	201	197	999	152	184	220	223	220
Early Termination of Collective Agreement	26	8	3	3	7	5	30	9	4	2	10	5
Employee Status	30	7	8	4	5	6	33	8	10	6	6	3
Employment Standards (Appeal)	4,490	977	773	722	829	1,189	4,715	816	1,044	919	766	1,170
Essential Services - Crown Employees	6	4	2	-	-	-	11	1	5	1	-	4
Essential Services Agreement - Ambulance	17	3	3	3	4	4	13	4	2	3	4	-
Failure to Comply with Settlement	79	15	11	18	18	17	86	16	12	19	24	15
Failure to Furnish Financial Statement	9	-	2	4	1	2	8	1	1	2	3	1
First Agreement Arbitration Direction	53	6	13	10	6	18	64	13	9	13	11	18
Foreign Nationals - Appeal	6	1	-	3	-	2	8	4	-	2	1	1
Health and Safety - Appeals	359	105	73	53	63	65	383	83	92	80	64	64
Health and Safety - Inspector Referrals	109	14	15	37	25	18	115	16	12	40	29	18
Health and Safety - Reprisals	996	168	162	182	206	278	1,028	161	170	191	247	259
Inadequate Financial Statement	2	-	1	-	-	1	1	-	1	-	-	-
Interim Order	147	31	25	30	27	34	159	31	22	45	27	34
Jurisdictional Dispute	267	75	61	38	53	40	406	91	62	123	82	48
Last Offer Vote	65	14	6	16	14	15	74	16	8	14	17	19
List of Employees	69	-	-	-	16	53	73	-	-	-	10	63
Ministerial Referrals	25	4	6	2	5	8	30	7	3	6	6	8
Ontario College of Trades	2	-	-	-	1	1	2	-	-	-	-	2
Project Agreement	9	1	1	3	3	1	12	2	2	2	3	3
Public Sector Labour Relations Transition Act	52	17	6	10	12	7	57	13	7	10	14	13
Religious Exemption	2	2	-	-	-	-	3	2	1	-	-	-
Reprisal - Environmental Bill of Rights Act	3	1	1	-	-	1	3	1	-	1	-	1
Reprisal - Environmental Protection Act	2	-	1	1	-	-	2	-	-	1	1	-
Reprisal - Long Term-Care Homes Act	1	-	-	-	-	1	1	-	-	-	-	1
Reprisal - Retirement Homes Act	1	-	-	-	-	1	1	-	-	-	-	1
Review of Structure of Bargaining Units	15	-	-	-	2	13	12	-	-	-	1	11
Sale of Business/Related Employer	648	150	118	95	155	130	752	150	153	142	177	130
School Board Collective Bargaining Act	8	7	-	1	-	-	8	4	3	1	-	-
Sector Dispute (Construction)	13	1	3	2	1	6	11	2	3	1	2	3
Successor Trade Union	20	2	11	4	1	2	29	11	11	3	1	3
Termination	373	70	74	89	52	88	427	83	79	98	88	79
Unfair Labour Practice	1,429	290	293	279	281	286	1,589	297	273	339	401	279
Unlawful Lockout	10	-	4	3	2	1	13	1	3	5	3	1
Unlawful Reprisal - Long Term-Care Homes Act	1	-	-	1	-	-	1	-	-	-	1	-
Unlawful Reprisal - Public Inquiries Act	2	-	-	2	-	-	2	-	-	2	-	-
Unlawful Reprisal - Public Service of Ontario Act	4	2	-	2	-	-	4	1	1	2	-	-
Unlawful Reprisal - Smoke-Free Ontario Act	3	1	1	1	-	-	4	1	-	3	-	-
Unlawful Strike	41	7	5	5	11	13	41	8	5	5	11	12
Violation of Colleges Collective Bargaining Act	13	-	-	11	1	1	13	-	-	1	11	1

Figure 2

Cases Resolved Without a Final Hearing

Mediators are assigned to virtually every application filed with the Board and the majority of all files disposed of are resolved without the need for litigation at a hearing before the Board. This past year, almost 90% of all individual files closed were resolved without a final hearing including those settled or withdrawn through mediation.

Case Type Description	Total Closed	Settled	% of Cases Settled	To Final Hearing/ Consultation
Totals:	4,071	3,632	89.2%	439
Certification	767	656	85.5%	111
Certification (Construction - Card-Based)	335	265	79.1%	70
Certification (Construction)	26	16	61.5%	10
Certification (Construction - Open Period)	1	0	0.0%	1
Certification (Industrial)	342	313	91.5%	29
Certification (Specified Industries)	63	62	98.4%	1
Colleges Collective Bargaining Act	2	1	50.0%	1
Certification	1	0	0.0%	1
Violation of Colleges Collective Bargaining Act	1	1	100.0%	0
Construction Grievance	827	759	91.8%	68
Employment Standards	1,170	1,060	90.6%	110
Employment Standards - Appeal (Director)	45	43	95.6%	2
Employment Standards - Appeal (Employee)	295	260	88.1%	35
Employment Standards - Appeal (Employer)	824	753	91.4%	71
Referral under Employment Standards Act	5	3	60.0%	2
Void Settlement made by ESO	1	1	100.0%	0
Essential Services	4	3	75.0%	1
Essential Services Agreement - Ambulance	4	3	75.0%	1
Health & Safety Appeals	64	61	95.3%	3
Interim Order	34	26	76.5%	8
Jurisdictional Dispute	48	31	64.6%	17
Jurisdictional Dispute (Construction)	43	26	60.5%	17
Jurisdictional Dispute (Industrial)	5	5	100.0%	0
List of Employees	63	61	96.8%	2
Ministerial Referrals	8	8	100.0%	0
Ministerial Referral (General)	2	2	100.0%	0
Ministerial Referral (HLDAA)	6	6	100.0%	0
Ontario College of Trades	2	1	50.0%	1
Public Sector Labour Relations Transition Act	13	11	84.6%	2
PSLRTA (Other)	2	2	100.0%	0
PSLRTA (Bargaining Units/Bargaining Agents)	11	9	81.8%	2
Review of Structure of Bargaining Units	11	9	81.8%	2
Sale of Business/Related Employer	130	112	86.2%	18
Termination	79	67	84.8%	12
Termination - Non-Construction Employer	1	1	100.0%	0
Termination - Other (Non Vote-Based)	10	8	80.0%	2
Termination (Construction - Open Period)	5	4	80.0%	1
Termination (Construction)	8	7	87.5%	1
Termination (Industrial)	55	47	85.5%	8
Unfair Labour Practices	531	469	88.3%	62
Breach of Settlement under section 105 or 141 of PSOA	1	1	100.0%	0
Duty of Fair Referral	3	3	100.0%	0
Duty of Fair Representation	220	200	90.9%	20
Failure to Comply with Settlement	15	14	93.3%	1
Unfair Labour Practice	270	237	87.8%	33
Unfair Labour Practice (Bad Faith)	9	8	88.9%	1
Unlawful Lockout	1	0	0.0%	1
Unlawful Strike	12	6	50.0%	6
Unlawful Reprisals	280	267	95.4%	13
Health and Safety - Inspector Referral	18	17	94.4%	1
Health and Safety - Reprisal	259	247	95.4%	12
Reprisal - Environmental Bill of Rights Act	1	1	100.0%	0
Reprisal - Long Term-Care Homes Act	1	1	100.0%	0
Reprisal - Retirement Homes Act	1	1	100.0%	0
Misc	38	30	78.9%	8
Consent to Institute Prosecution	1	1	100.0%	0
Early Termination of Collective Agreement	5	5	100.0%	0
Employee Status	3	3	100.0%	0
Failure to Furnish Financial Statement	1	1	100.0%	0
First Agreement Arbitration Direction	18	12	66.7%	6
Foreign Nationals - Appeal	1	1	100.0%	0
Project Agreement	3	3	100.0%	0
Sector Dispute (Construction)	3	1	33.3%	2
Successor Trade Union	3	3	100.0%	0

Figure 3

Certification and Termination of Bargaining Rights Cases under the Labour Relations Act

Non-construction certification applications before the Board are decided by way of a representation vote, as are all termination applications, whether in the construction sector or not. Bill 148 amendments to the *Labour Relations Act* established, as of January 1, 2018, that in specified industries, namely the building services industry, home care and community services industry and the temporary help agency industry, certification could be achieved through a “card check” and not a vote. From April 1, 2018, the Board received 50 applications for certification in the specified industries before the provisions were repealed effective November, 2018. Similarly, the vast majority of construction certification applications are decided by a “card-check” process and not by vote. As such, the statistics shown about certification votes apply almost exclusively to non-construction sectors and to termination applications.

The Board received a total of 641 applications for certification. While the number is almost the same as the previous year, the breakdown is somewhat different. (Figure 4). Of the construction certification applications, 269 were card-based applications which was 45 down from 314 in 2017/2018, and 19 were filed in the construction open period.

The Board received a total of 88 applications for termination of bargaining rights. In 2017/2018 there were 34 applications in industrial settings, while in 2018/2019 this increased by 17 to 51.

The Board held a total of 305 votes in 2018/2019, with 10,092 ballots cast and counted. The vast majority of these votes relate to certification files; the remainder are representational votes in termination applications, under the successor employer/related employer provisions of the *Labour Relations Act* or are votes related to Hospital, School Board and Municipal re-organization under PSLRTA. Of cases disposed of during 2018/2019, the majority of certification applications were successful, as were the majority of termination applications (Figure 5).

Case Type Description	Total Received	Re-Opened	Pending April 1, 2018	Total Caseload	Total Closed	Granted / Partially	Dismissed	Terminated	Settled, Withdrawn, Abandoned	Pending	Pending March 31, 2019
Totals:	729	26	379	1,134	846	505	130	13	193	4	288
Certification	641	23	363	1,027	767	476	99	8	181	2	260
Certification (Construction - Card Based)	269	14	207	490	335	209	30	4	91	1	155
Certification (Construction)	23	1	28	52	26	6	9	0	11	0	26
Certification (Construction - Open Period)	19	0	2	21	1	0	1	0	0	0	20
Certification (Industrial)	280	8	113	401	342	217	58	4	62	1	59
Certification (Specified Industries)	50	0	13	63	63	44	1	0	18	0	0
Termination	88	3	16	107	79	29	31	5	12	2	28
Termination - Non-Construction Employer	0	0	1	1	1	0	0	0	1	0	0
Termination - Other (Non Vote-Based)	12	1	5	18	10	2	2	1	4	1	8
Termination (Construction - Open Period)	19	0	1	20	5	1	4	0	0	0	15
Termination (Construction)	6	1	2	9	8	0	7	0	1	0	1
Termination (Industrial)	51	1	7	59	55	26	18	4	6	1	4

Figure 4

	Representation Cases Disposed			Representation Votes Conducted*		Representation Ballots Cast and Counted		
	Totals	Granted	Not Granted	Votes Conducted	Employees on Employers List	Total	In Favour of	Against
Totals	771	468	303	305	13,804	10,092	55.5%	44.5%
Certifications:	707	442	265	273	12,881	8,846	58.0%	42.0%
Construction:	363	229	134	21	246	114	32.5%	67.5%
One Union	306	202	104	11	100	94	29.8%	70.2%
Two Unions	51	24	27	10	146	20	45.0%	55.0%
Three Unions	6	3	3					
Industrial:	344	213	131	252	12,635	8,732	58.3%	41.7%
One Union	286	176	110	232	10,606	7,499	62.3%	37.7%
Two Unions	55	36	19	20	2,029	1,233	34.1%	65.9%
Three Unions	3	1	2					
Termination:								
One Union	64	26	38	32	923	1,246	37.9%	62.1%

* Refers to all representation votes conducted and the results counted during the fiscal year, regardless of whether or not the case was disposed of during the year

Figure 5

Of the 457 cases in which certificates were issued, 231 bargaining units were composed of 2 - 9 employees (163 of those were in the construction industry), and at the other extreme 7 were bargaining units of over 200 employees (only in the industrial setting) (Figure 6). The total number of certificates issued in the construction industry decreased from 259 in 2017/2018 to 190 in 2018/2019. The number of certificates issued in the industrial setting increased by 76 from the previous year - from 191 to 267.

Employees	Total		Construction		Industrial	
	Cases	Employees	Cases	Employees	Cases	Employees
Total:	457	10,283	190	1,610	267	8,673
2-9	231	1,312	163	933	68	379
10-19	72	1,149	20	406	52	743
20-39	43	1,215	5	140	38	1,075
40-99	90	2,937	2	131	88	2,806
100-199	14	1,804	-	-	14	1,804
200-499	7	1,866	-	-	7	1,866
500 +	0	0	-	-	-	-

Figure 6

Of the non-construction certification applications, the majority related to the broader public sector, service and non-manufacturing industries (Figure 7).

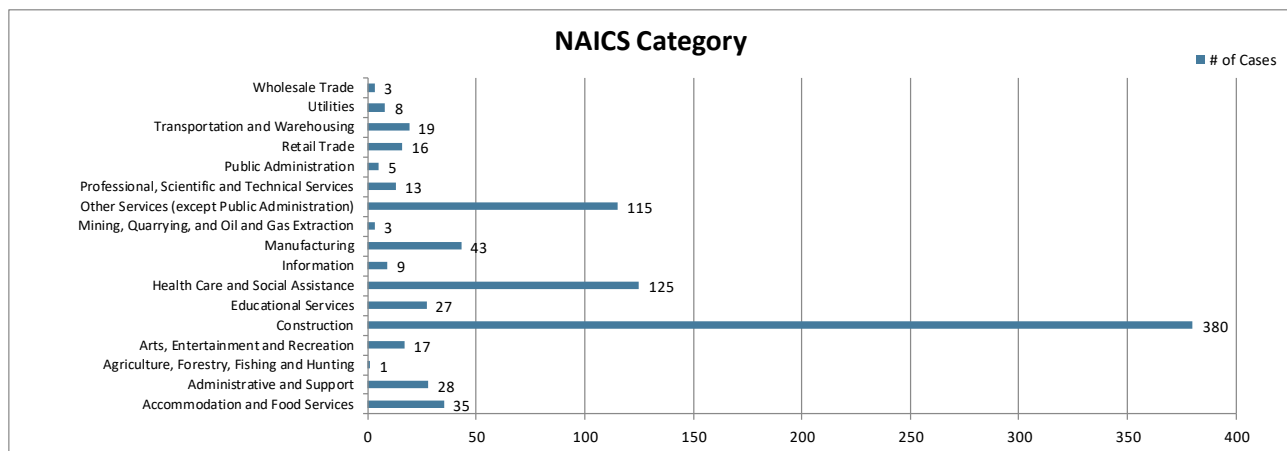


Figure 7

88.3% of all non-construction certification votes were held within five working days of application and 96% were held within seven days. Non-construction termination applications took slightly longer, largely because of bargaining unit and notice issues: 82.2% were held within five days of application, and 91.1% were held within seven days of application (Figure 8). **

Number of Days	Certification						Termination					
	Total		Industrial		Construction		Total		Industrial		Construction	
	Cases	% of	Cases	% of	Cases	% of	Cases	% of	Cases	% of	Cases	% of
	298		273		25		58		45		13	
< 5	1	0.3%	1	0.4%	0	0.0%	2	3.4%	2	4.4%	0	0.0%
5	245	82.6%	240	88.3%	5	20.0%	41	77.6%	35	82.2%	6	46.2%
6	21	89.6%	13	93.0%	8	52.0%	9	89.7%	3	88.9%	6	92.3%
7	17	95.3%	8	96.0%	9	88.0%	2	93.1%	1	91.1%	1	100.0%
8	3	96.3%	3	97.1%	0	88.0%	1	94.8%	1	93.3%	0	100.0%
9	2	97.0%	2	97.8%	0	88.0%	0	94.8%	0	93.3%	0	100.0%
10	1	97.3%	1	98.2%	0	88.0%	1	96.6%	1	95.6%	0	100.0%
11-15	0	97.3%	0	98.2%	0	88.0%	0	96.6%	0	95.6%	0	100.0%
16-20	0	97.3%	0	98.2%	0	88.0%	0	96.6%	0	95.6%	0	100.0%
21+	8	100.0%	5	100.0%	3	100.0%	2	100.0%	2	100.0%	0	100.0%

Figure 8

*Under the Board's Rules of Procedure, construction certification applications may be delivered to the employer two days after the date of application. In those cases, the vote occurs five days after delivery to the employer.

**The cumulative number in non-construction certification and termination votes includes electronic votes, applications in which a second vote was later held on agreement of the parties or by order of the Board or where the Board directed submissions before the ordering of a vote.

Contravention of the Labour Relations Act

Complaints alleging contravention of the *Labour Relations Act* may be filed with the Board under section 96 of the Act.

In 2018/2019, the Board received 520 complaints under this section. In complaints against employers, the principal charges were alleged illegal discharge of or discrimination against employees for union activity in violation of section 70 and 72 of the Act, illegal changes in wages and working conditions contrary to section 86, and failure to bargain in good faith under section 17. These charges were made mostly in connection with applications for certification. The principal charge against trade unions was alleged failure to represent employees fairly in grievances against their employer.

Of 531 files closed on a final basis, approximately 88% were resolved without a final hearing (Figure 3).

Duty of Fair Representation / Referral

Complaints against trade unions for a breach of the duty to provide fair representation or referral (ss. 74 and 75 LRA) numbered 203. One was granted, 95 were dismissed and 12 were terminated. Of 220 individual duty of fair representation files closed, 90.9% were resolved without a final hearing (Figure 3). Of 3 duty of fair referral files closed, 100% of closed duty of fair referrals were resolved without a final hearing (Figure 3). Only 20 of both case types proceeded to a final consultation/hearing (Figure 3).

Declaration/Direction of Unlawful Strike/Lock-out

In 2018/2019, the Board received 13 applications and one file was carried over seeking a declaration under section 100 regarding an alleged unlawful strike by employees. Five cases settled without a final hearing, four were granted, three were dismissed and two were pending on March 31, 2019. (Figure 9)

One application for a declaration under section 101 regarding an alleged unlawful lock-out by an employer was received in 2018/2019, which was dismissed (Figure 9).

Case Type Description	Total Received	Re-Opened	Pending April 1, 2018	Total Caseload	Total Closed	Granted / Partially	Dismissed	Terminated	Settled, Withdrawn, Abandoned	Pending	Pending March 31, 2019
Unfair Labour Practices	521	13	304	838	531	19	127	21	354	10	307
Breach of Settlement under section 105 or 141 of PSOA	1	0	0	1	1	0	1	0	0	0	0
Duty of Fair Referral	6	0	1	7	3	0	1	0	2	0	4
Duty of Fair Representation	197	4	113	314	220	1	94	12	112	1	94
Failure to Comply with Settlement	17	0	8	25	15	5	0	1	9	0	10
Unfair Labour Practice	276	7	179	462	270	9	26	8	219	8	192
Unfair Labour Practice (Bad Faith)	10	2	2	14	9	0	1	0	7	1	5
Unlawful Lockout	1	0	0	1	1	0	1	0	0	0	0
Unlawful Strike	13	0	1	14	12	4	3	0	5	0	2

Figure 9

Construction Industry Grievances

Grievances over alleged violations of the provisions of a collective agreement in the construction industry may be referred to the Board for resolution under section 133 of the Act.

In 2018/2019, the Board received 769 cases under this section (Figure 1), which is (marginally) the lowest number in the last 5 years (Figure 10). The principal issues in these grievances were alleged failure by employers to make required contributions to health and welfare, pension and vacation funds, failure to deduct union dues, and alleged violation of the subcontracting and hiring arrangements in the collective agreement.

In November 2018, the Board finalized its e-filing project and permitted grievance referrals to be filed and responded to electronically with online payment. Since November 2018, 113 grievance referrals, 62 forms indicating intents to defend (both with online payment) and 28 response forms have been filed electronically. Electronic filing was also made available for file-related correspondence, documents and other material. Of the files closed, 91.8% were resolved without a final hearing. (Figure 3).

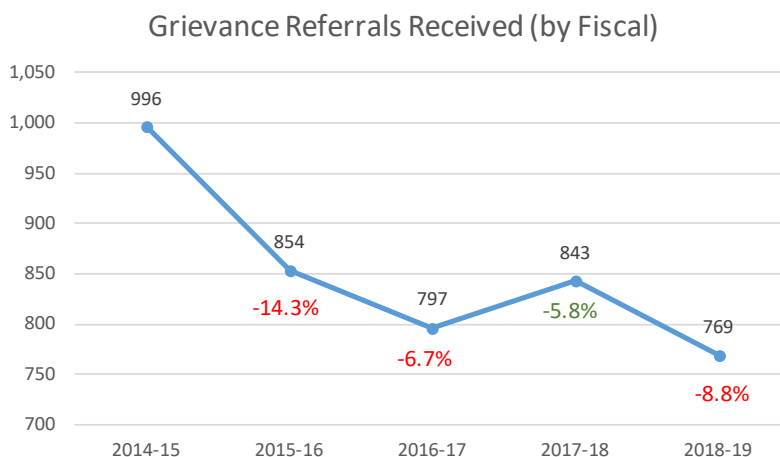


Figure 10

Appeals under the Employment Standards Act

The *Employment Standards Act* deals with workplace rights such as minimum wage, hours of work, overtime, vacation or public holiday pay, violations of pregnancy or reprisal provisions, termination issues, and severance pay. Bill 148 enacted a number of new amendments to the *Employment Standards Act*, which came into force on January 1, 2018, some of which were then repealed with Bill 47 which received Royal Assent on November 21, 2018.

In response to the 15% increase in cases from 2016/2017 to 2017/2018, the Board reviewed and revised its processing of appeals in 2018/2019 to expedite the process. In certain circumstances, the Registrar now issues a letter with a deadline to properly complete the application. In the event that the applicant does not meet the requirements within the deadline, the file is closed with a Registrar's letter indicating that the file is not being processed. 45 files were closed in this manner with a final disposition of "not processed", which alleviated the requirement for review by an adjudicator.

Additionally, the Board revised its Information Bulletin for Employment Standards cases outlining the steps for properly filing an appeal. As of the beginning of 2019, a copy of the Board's Information Bulletin is included with the Employment Standards Officer's decision in an effort to avoid duplication of material available and to streamline the appeal process.

The Board received 43% more cases in 2018/2019 from the previous year. The Board dealt with 1,597 cases during 2018/2019, which includes 1,189 new cases filed, 391 cases from the previous year and 17 re-opened files. Of the 1,170 case closures, 75 were granted, 182 were dismissed, and 94 were terminated. (Figure 11). Of the appeals received, 70% were filed by the employer (Figure 12). 90.6% or 1060 of individual cases closed were resolved without a hearing and 110 cases went to a final hearing (Figure 3).

Case Type Description	Total Received	Re-Opened	Pending April 1, 2018	Total Caseload	Total Closed	Granted / Partially	Dismissed	Terminated	Settled, Withdrawn, Abandoned	Pending	Not Processed	Pending March 31, 2019
Employment Standards	1,189	17	391	1,597	1,170	75	182	94	772	1	45	425
Employment Standards - Appeal (Director)	52	0	16	68	45	5	5	7	28	0	0	21
Employment Standards - Appeal (Employee)	303	2	109	414	295	10	40	20	225	0	0	119
Employment Standards - Appeal (Employer)	833	13	263	1,109	824	58	137	66	517	1	45	285
Referral under Employment Standards Act	0	2	3	5	5	2	0	1	2	0	0	0
Void Settlement made by ESO	1	0	0	1	1	0	0	0	1	0	0	0

Figure 11

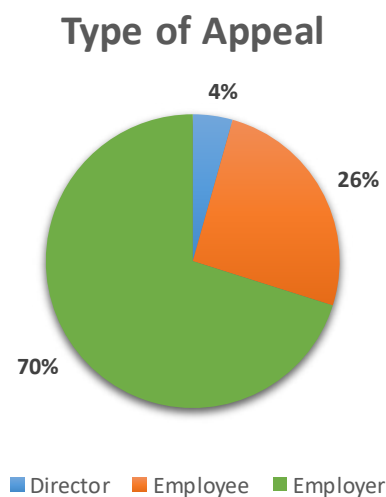


Figure 12

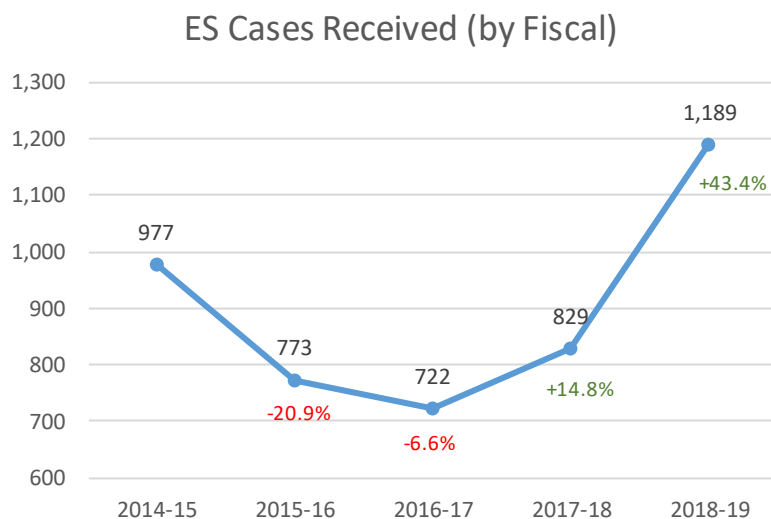


Figure 13

Occupational Health and Safety Act

Appeals under the *Occupational Health and Safety Act*

The *Occupational Health and Safety Act* and its regulations ensure that workers' health and safety in the workplace is protected. Violations of the Act are investigated by health and safety inspectors from the Ministry of Labour; orders or decisions of inspectors are the subject of appeals to the Ontario Labour Relations Board.

One hundred and thirteen appeals, including applications for suspensions, were dealt with by the Board in 2018/2019. Of 64 individual files closed, 95% were resolved prior to a hearing and only three were scheduled for final hearing (Figure 3).

Case Type Description	Total Received	Re-Opened	Pending April 1, 2018	Total Caseload	Total Closed	Granted / Partially	Dismissed	Terminated	Settled, Withdrawn, Abandoned	Pending	Pending March 31, 2019
Health & Safety Appeals	65	0	48	113	64	2	6	2	52	2	49
Appeal of Inspector's Order	55	0	43	98	51	0	3	1	46	1	47
Suspension of Order	10	0	5	15	13	2	3	1	6	1	2

Figure 14

Unlawful Reprisals

Health and Safety Reprisals

In 2018/2019, the Board received 296 complaints under Section 50 of the *Occupational Health and Safety Act* alleging wrongful discipline or discharge for acting in compliance with the Act. Eighteen of the applications filed in 2018/2019 were referred by health and safety inspectors (Figure 15).

Of the total 280 individual cases closed, 267 cases (95.4%) were resolved by the parties prior to a final hearing (Figure 3).

Complaints under the *Occupational Health and Safety Act* with respect to reprisals have increased by 28% in one year and by 35% over the last two years.

Case Type Description	Total Received	Re-Opened	Pending April 1, 2018	Total Caseload	Total Closed	Granted / Partially	Dismissed	Terminated	Settled / Withdrawn / Abandoned	Pending	Pending March 31, 2019
Unlawful Reprisals	299	4	48	351	280	2	24	11	242	1	71
Health and Safety - Inspector Referral	18	0	3	21	18	1	0	1	16	0	3
Health and Safety Reprisal	278	4	45	327	259	1	24	9	224	1	68
Reprisal - Environmental Bill of Rights Act	1	0	0	1	1	0	0	1	0	0	0
Reprisal - Long Term-Care Homes Act	1	0	0	1	1	0	0	0	1	0	0
Reprisal - Retirement Homes Act	1	0	0	1	1	0	0	0	1	0	0

Figure 15

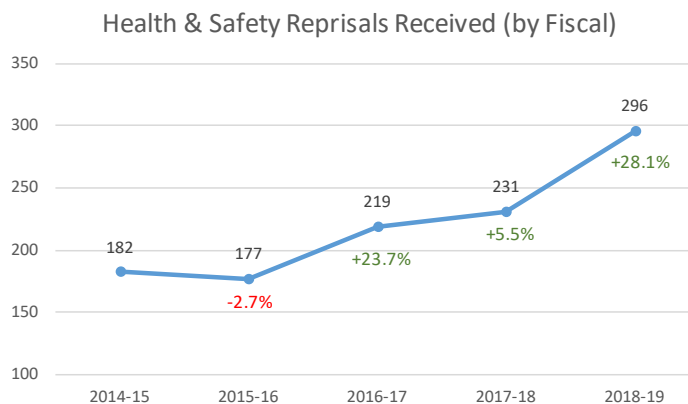


Figure 16

Other Applications

Applications for Interim Order

Where a proceeding is pending, the Board, on application under the *Labour Relations Act* and the *Occupational Health and Safety Act*, may make interim orders. With the enactment of Bill 148, the circumstances where an interim order can be sought and directed by the Board were expanded.

In 2018/2019, the Board received 34 applications for interim orders, and two were pending from the previous year. During the year, three interim orders were granted, four were dismissed and one was terminated. Twenty-six files were resolved without a final hearing (Figure 3). Two were pending on March 31, 2019 (Figure 1).

Applications for List of Employees

The enactment of Bill 148 introduced a new provision permitting a union to apply to the Board for a list of employees of the employer. This came into effect on January 1, 2018 and was repealed by Bill 47 as of November 21, 2018. The procedure established by the Board for the adjudication of these cases did not contemplate an actual hearing. There were 53 applications received in 2018/2019. Forty-one were granted and 13 were dismissed (Figure 1).

Applications for Review of Structure of Bargaining Units

Bill 148 enacted new provisions in the *Labour Relations Act* as of January 1, 2018, which permitted the Board to review the structure of bargaining units in certain circumstances and to consolidate a newly certified bargaining unit with other existing bargaining units at the same employer, where those units are represented by the same union. In addition, the parties could jointly agree to review the structure of the bargaining units and make a joint application for consent of the Board to consolidate bargaining units. These provisions were repealed by Bill 47 as of November 21, 2018.

In 2018/2019, the Board received 12 applications for review of the structure of bargaining units. Four were granted, six were disposed of without a hearing and three remained pending as at March 31, 2019 (Figure 1).

The Board received one joint application for review of the structure of bargaining units, which was granted.

Jurisdictional Disputes

There were 91 applications were before the Board under section 99 of the Act involving union work jurisdiction. Thirty-one individual cases closed were resolved prior to a final hearing date (Figure 3).

Case Type Description	Total Received	Re-Opened	Pending April 1, 2018	Total Caseload	Total Closed	Granted / Partially	Dismissed	Terminated	Settled, Withdrawn, Abandoned	Work Upheld	Pending	Pending March 31, 2019
Jurisdictional Dispute	40	3	48	91	48	4	10	1	28	2	3	43
Jurisdictional Dispute	0	0	1	1	0	0	0	0	0	0	0	1
Jurisdictional Dispute (Construction)	36	1	39	76	43	4	10	1	25	2	1	33
Jurisdictional Dispute (Industrial)	4	2	8	14	5	0	0	0	3	0	2	9

Figure 17

Sale of Business/Related Employer Applications

The Board received 130 applications alleging that two or more businesses were related and therefore should be treated as one employer under section 1(4) of the *Labour Relations Act* or that there had been a sale of a business or part of a business which has affected the representation rights of the employees (section 69 of the *Labour Relations Act*). This number was down 25 applications from 130 in the previous year (Figure 18).

The Board re-opened 7 applications and had 107 pending from the previous year for a total caseload of 244 cases. In 2018/2019, of the 130 cases closed, 31 were granted, 12 were dismissed, one was terminated and 112 were resolved without a final hearing or 86.2% (Figure 3). 114 applications were pending as of March 31, 2019.

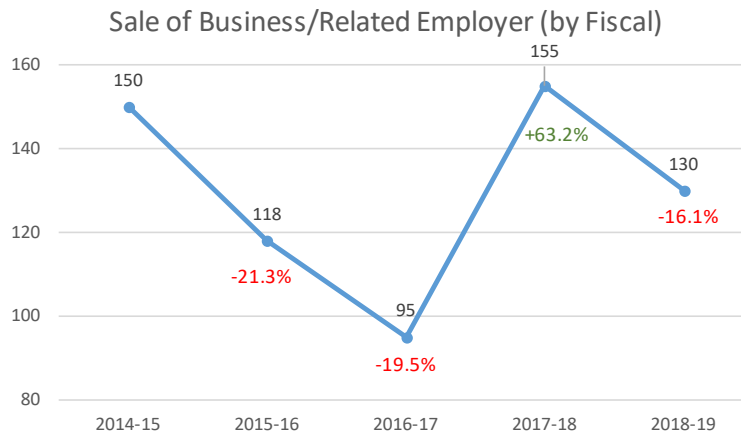


Figure 18

Essential Services

No applications were received under the *Crown Employees Collective Bargaining Act* in 2018/2019.

Four cases were received under the *Ambulance Services Collective Bargaining Act* and one was pending from the previous year. Three cases were granted, one remained pending at the end of the year and one was resolved without a final hearing (Figure 19).

Colleges Collective Bargaining Act

The *Colleges Collective Bargaining Act, 2008* extended collective bargaining to part-time and sessional employees of Colleges of Applied Arts and Technology. The CCBA, 2008 addresses certifications and terminations of bargaining rights, unfair labour practice complaints and provides for collective negotiation, conciliation and mediation processes that are similar to those set out in the *Labour Relations Act, 1995*.

The Board received no applications for certification in 2018/2019 and one was granted and one is pending as of March 31, 2019.

Pursuant to the *Colleges Collective Bargaining Act*, votes to ratify a proposed collective agreement or memorandum of settlement (section 16) and strike votes (section 17(1)) are to be conducted under the supervision of the Board. The Board supervised one ratification vote under the *Colleges Collective Bargaining Act* in 2018/2019. (Figure 19).

Pursuant to section 17(2) of the *Colleges Collective Bargaining Act*, the College Employer Council may request the Board to conduct a vote of employees to accept or reject the last offer of the Council. The Board did not receive such a request under the CCBA in 2018/2019.

In 2018/2019, there was one unfair labour practice complaint filed under CCBA, one case was closed without a final hearing, and one remained pending as of March 31, 2019 (Figure 19).

Last Offer Votes

The Minister of Labour requests the Board to conduct votes among employees on employers' last offers for settlement of a collective agreement dispute under section 42(1) of the Act. Although the Board is not responsible for the administration of votes under that section, the Board's Mediators and Labour Relations Conciliators are assigned by the Registrar to conduct these votes because of their expertise and experience in conducting representation votes under the Act.

The Board received 15 requests during the fiscal year for a total caseload of 19. The employees voted to reject the collective agreement in eight cases. Seven cases were settled or withdrawn, four accepted. (Figure 19).

Declaration of Successor Trade Union

Two applications for declaration of successor trade union was received and one was pending from the previous year. Two applications were granted or partially granted and one case was dismissed. (Figure 19).

Early Termination of Collective Agreement

Five applications were received under section 58(3) of the *Labour Relations Act*, seeking early termination of collective agreements in 2018/2019. These are joint applications by employers and trade unions and consent was granted in all 5 cases (Figure 19).

Referral on Employee Status

The Board had nine applications before it under section 114(2) of the Act, seeking decisions on the status of individuals as employees under the Act. Three cases closed, two of which were resolved by the parties before a final hearing, and six cases were pending on March 31, 2019 (Figure 19).

Referrals by Minister of Labour

In 2018/2019, the Board dealt with 10 cases including 8 new cases referred by the Minister under section 115 of the LRA for opinions or questions related to the Minister's authority to appoint a conciliation officer under section 18 of the LRA, under sections 48 or 49 of the LRA for authority to appoint an arbitrator, or under s.3 (2) of the *Hospital Labour Disputes Arbitration Act*. Four applications were resolved without a hearing. Advice was provided in two cases, two were terminated and two remained pending on March 31, 2019 (Figure 19).

First Agreement Arbitration

In 2018/2019, the Board processed 20 applications for directions to settle first agreements by arbitration and two remained pending on March 31, 2019. Eighteen applications were filed, which was the highest number in 5 years. Nine files were resolved without a final hearing and nine cases were granted. (Figure 19). There was a period from January 1, 2018 to November 21, 2018 where the Bill 148 provisions allowed for an application to the Board for mediation with a Vice Chair of the Board before litigation of a direction to settle first agreements by arbitration, but these were repealed with Bill 47.

Applications under the *Public Sector Labour Relations Transition Act*

The *Public Sector Labour Relations Transition Act, 1997* established a separate regime of successor rights governing matters that arise out of restructuring and amalgamations in the broader public sector. The Act gives the Board the power to determine new bargaining unit configurations, to appoint new bargaining agents, and to address other collective bargaining issues that may arise from municipal amalgamations, school board changes and hospital restructuring.

In 2018/2019, the Board processed 20 applications under the *Public Sector Labour Relations Transition Act, 1997* including 7 new applications. Two applications were granted, one was dismissed, and 11 individual files or almost 85% were disposed of without a final hearing. Seven cases were pending on March 31, 2019 (Figures 19 and 3).

Appeals under the *Ontario College of Trades and Apprenticeship Act*

The *Ontario College of Trades and Apprenticeship Act* provides that applications for review may be made to the Board in respect of Notices of Contravention issued by the Registrar and Inspector under that Act. It came into effect in June 2017. In 2018/2019, the Board received one application for review. One application was dismissed and one was settled. (Figure 19).

Case Type Description	Total Received	Re-Opened	Pending April 1, 2018	Total Caseload	Total Closed	Granted / Partially	Dismissed	Terminated	Settled, Withdrawn, Abandoned	Advice Provided	Work Upheld	Pending	Pending March 31, 2019
Totals:	1,087	53	479	1,619	1,159	341	76	8	658	2	0	74	460
Accreditation (Construction)	7	0	4	11	8	8	0	0	0	0	0	0	3
Colleges Collective Bargaining Act	2	0	3	5	2	1	0	0	1	0	0	0	3
Certification	0	0	2	2	1	1	0	0	0	0	0	0	1
College Vote	1	0	0	1	0	0	0	0	0	0	0	0	1
Violation of Colleges Collective Bargaining Act	1	0	1	2	1	0	0	0	1	0	0	0	1
Construction Grievance	769	43	323	1,135	827	225	35	3	500	0	0	64	308
Essential Services	4	0	1	5	4	3	0	0	1	0	0	0	1
Essential Services Agreement - Ambulance	4	0	1	5	4	3	0	0	1	0	0	0	1
Interim Order	34	0	2	36	34	3	4	1	26	0	0	0	2
List of Employees	53	1	9	63	63	41	13	0	9	0	0	0	0
Ministerial Referrals	8	1	1	10	8	0	0	2	4	2	0	0	2
Ministerial Referral (General)	2	0	0	2	2	0	0	0	2	0	0	0	0
Ministerial Referral (HLDAA)	6	1	1	8	6	0	0	2	2	2	0	0	2
Ontario College of Trades	1	0	1	2	2	0	1	0	1	0	0	0	0
Public Sector Labour Relations Transition Act	7	0	13	20	13	2	1	1	9	0	0	0	7
PSLRTA (Other)	3	0	1	4	2	0	0	0	2	0	0	0	2
PSLRTA (Bargaining Units/Bargaining Agents)	4	0	12	16	11	2	1	1	7	0	0	0	5
Review of Structure of Bargaining Units	12	0	1	13	10	4	0	0	6	0	0	0	3
Review of Structure of Bargaining Units (Joint)	1	0	0	1	1	1	0	0	0	0	0	0	0
Sale of Business/Related Employer	130	7	107	244	130	31	12	1	77	0	0	9	114
Votes	15	0	4	19	19	4	8	0	7	0	0	0	0
Last Offer Vote	15	0	4	19	19	4	8	0	7	0	0	0	0
Misc.	44	1	10	55	38	18	2	0	17	0	0	1	17
Consent to Institute Prosecution	1	0	1	2	1	0	1	0	0	0	0	0	1
Early Termination of Collective Agreement	5	0	0	5	5	5	0	0	0	0	0	0	0
Employee Status	6	0	3	9	3	0	0	0	2	0	0	1	6
Failure to Furnish Financial Statement	2	0	1	3	1	0	0	0	1	0	0	0	2
First Agreement Direction	18	1	1	20	18	9	0	0	9	0	0	0	2
Foreign Nationals - Appeal	2	0	0	2	1	0	0	0	1	0	0	0	1
Inadequate Financial Statement	1	0	0	1	0	0	0	0	0	0	0	0	1
Project Agreement	1	0	2	3	3	0	0	0	3	0	0	0	0
Sector Dispute (Construction)	6	0	1	7	3	2	0	0	1	0	0	0	4
Successor Trade Union	2	0	1	3	3	2	1	0	0	0	0	0	0

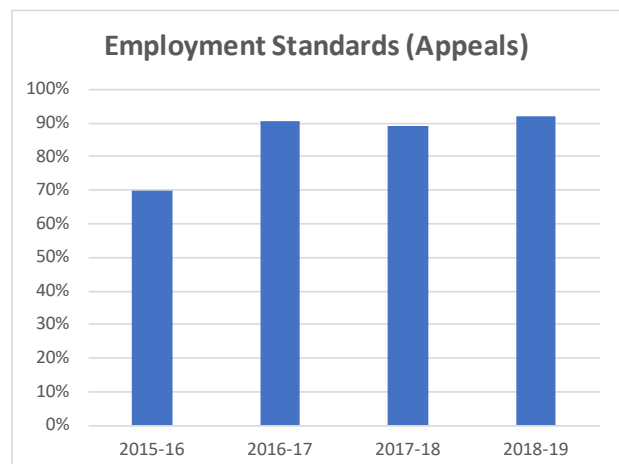
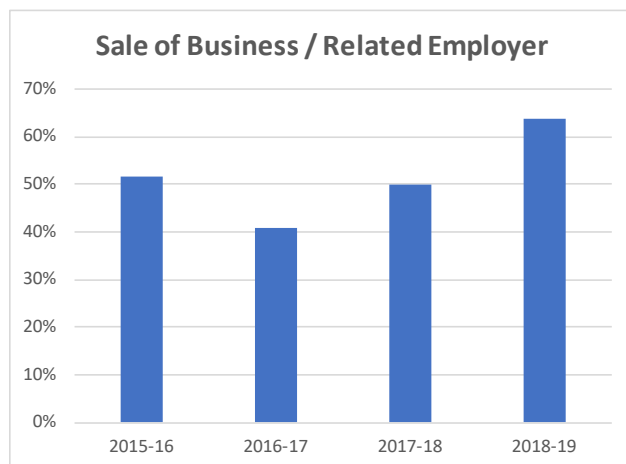
Figure 19

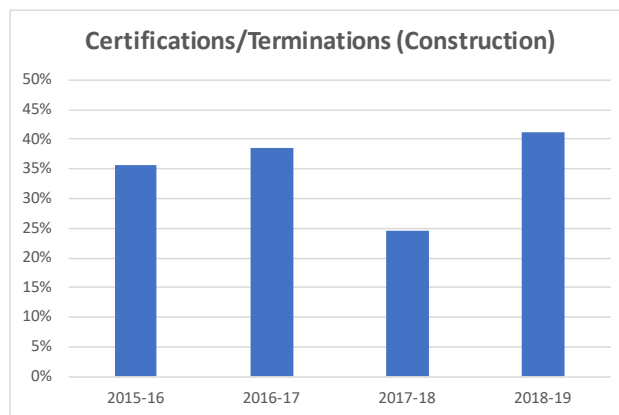
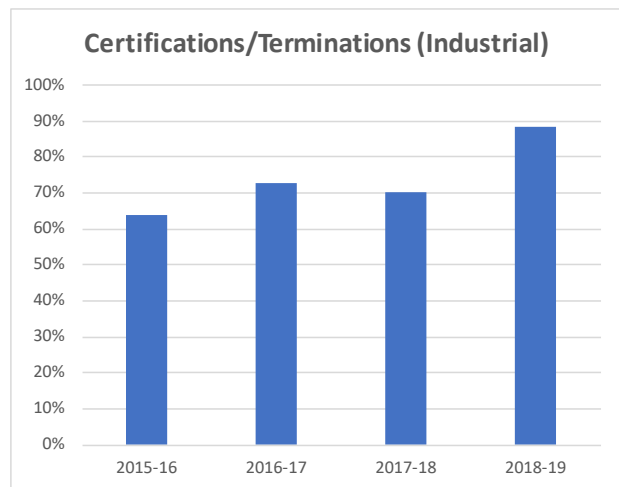
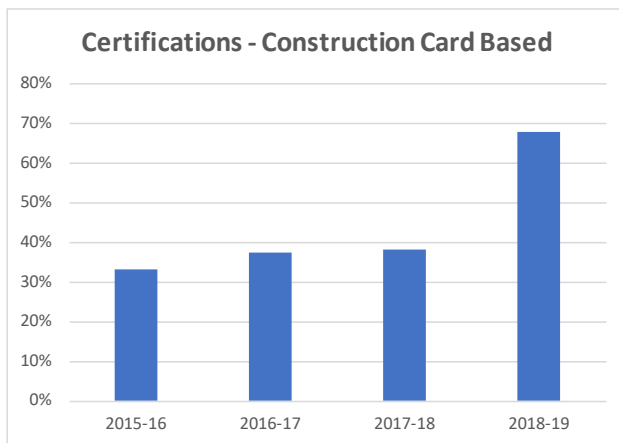
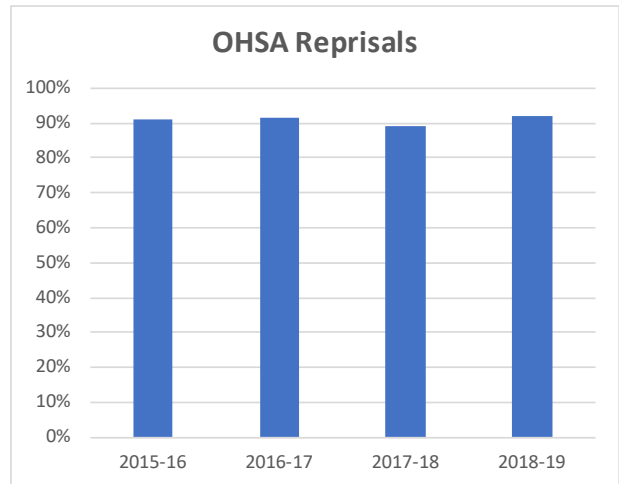
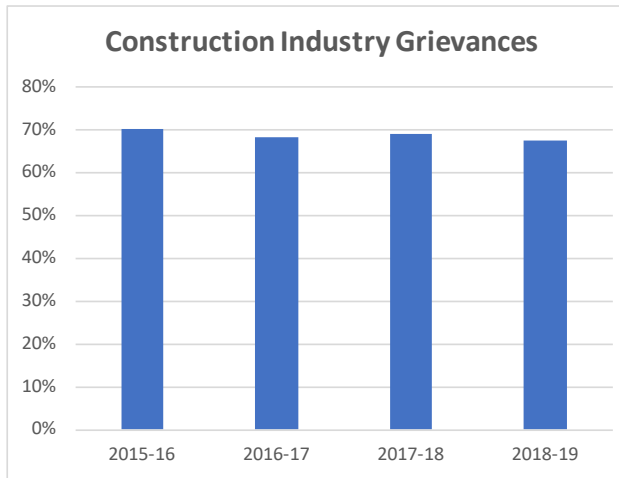
Time Required to Disposed of Applications, by Major Case Type

	All Cases		Certification		Contravention		Health & Safety		Employment Standards		Construction Industry Grievances		Sale of Business		Termination		All Other Cases	
Time Taken (Calendar Days)	Cumulative %		Cumulative %		Cumulative %		Cumulative %		Cumulative %		Cumulative %		Cumulative %		Cumulative %		Cumulative %	
	Dispositions		Dispositions		Dispositions		Dispositions		Dispositions		Dispositions		Dispositions		Dispositions		Dispositions	
Total	3940		695		529		340		1165		828		129		78		176	
0-7	99	2.5	15	2.2	19	3.6	2	0.6	2	0.2	36	4.3	1	0.8	14	17.9	10	5.7
8-14	272	9.4	17	4.6	13	6.0	7	2.6	9	0.9	198	28.3	4	3.9	4	23.1	20	17.0
15-21	171	13.8	32	9.2	17	9.3	12	6.2	9	1.7	76	37.4	4	7.0	11	37.2	10	22.7
22-28	137	17.2	4	9.8	15	12.1	31	15.3	31	4.4	37	41.9	6	11.6	1	38.5	12	29.5
29-35	130	20.5	7	10.8	17	15.3	42	27.6	37	7.6	20	44.3	3	14.0	2	41.0	2	30.7
36-42	133	23.9	12	12.5	23	19.7	28	35.9	42	11.2	21	46.9	5	17.8	0	41.0	2	31.8
43-49	132	27.3	4	13.1	15	22.5	28	44.1	58	16.1	14	48.6	9	24.8	0	41.0	4	34.1
50-56	162	31.4	43	19.3	16	25.5	21	50.3	49	20.3	17	50.6	7	30.2	3	44.9	6	37.5
57-63	155	35.3	52	26.8	15	28.4	18	55.6	49	24.5	6	51.3	4	33.3	4	50.0	7	41.5
64-70	155	39.2	56	34.8	15	31.2	6	57.4	57	29.4	9	52.4	1	34.1	8	60.3	3	43.2
71-77	161	43.3	45	41.3	6	32.3	13	61.2	86	36.8	5	53.0	0	34.1	4	65.4	2	44.3
78-84	116	46.3	24	44.7	18	35.7	6	62.9	50	41.1	6	53.7	2	35.7	1	66.7	9	49.4
85-91	102	48.9	29	48.9	12	38.0	6	64.7	47	45.2	3	54.1	1	36.4	2	69.2	2	50.6
92-98	112	51.7	18	51.5	13	40.5	6	66.5	61	50.4	5	54.7	2	38.0	2	71.8	5	53.4
99-105	85	53.9	18	54.1	13	42.9	5	67.9	38	53.6	8	55.7	0	38.0	0	71.8	3	55.1
106-126	230	59.7	33	58.8	27	48.0	13	71.8	132	65.0	20	58.1	2	39.5	0	71.8	3	56.8
127-147	185	64.4	26	62.6	43	56.1	12	75.3	86	72.4	6	58.8	3	41.9	4	76.9	5	59.7
148-168	156	68.4	23	65.9	31	62.0	6	77.1	71	78.5	12	60.3	5	45.7	2	79.5	6	63.1
168+	1247	100.0	237	100.0	201	100.0	78	100.0	251	100.0	329	100.0	70	100.0	16	100.0	65	100.0

Figure 20

Percentage of Cases Closed Within 9 Months of Application Date





Key Decisions

The Board publishes its significant decisions every two months in its series of reports called Ontario Labour Relations Board Reports. In addition, it sends out an email to subscribers of a monthly newsletter called Highlights, which is also posted on its website monthly, and summarizes significant decisions in the preceding month(s). All decisions released by the Board are available on CanLii.

A summary of some of the Board's most significant cases in 2018/2019 follows, and the full text of these decisions is available on CanLii.

Related Employer - Sale of Business - This decision held that the *Bankruptcy and Insolvency Act* did not preclude a Receiver appointed by the Court to operate, manage and carry on the business of an employer from being found to be a successor employer under the *Labour Relations Act*.

ROSE OF SHARON (ONTARIO) COMMUNITY COB AS ROSE OF SHARON KOREAN LONG-TERM CARE HOME; RE: UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 175; RE: DELOITTE RESTRUCTURING INC.; RE: DELOITTE AND TOUCHE INC., 2018 CanLII 32988 (ON LRB); Dated April 12, 2018

Interim Order - Unfair Labour Practice - This was the Board's first substantive decision on the interpretation of section 98 of the *Labour Relations Act* as amended by Bill 148. The Board held that given the broad authority conferred upon it under the amended section 98 of the Act, it should adopt a test that could be applied in the wide variety of labour relations circumstances which the Board may face. The Board held that the fundamental question is: "does the making of an interim order, of whatever kind, make labour relations sense in all of the circumstances". In making this determination, the Board held that it would consider a number of factors including: the purpose of the Act, the nature of the interim order sought, the urgency of the matter, the apparent strength of the applicant's case, the balance of convenience/inconvenience, the balance of labour relations and other harm, whether the damage is irreparable, delay and any other labour relations consideration.

NATIONAL JUDICIAL INSTITUTE; RE: THE SOCIETY OF ENERGY PROFESSIONALS, IFPTE LOCAL 160; 2018 CanLII 51312 (ON LRB); Dated May 31, 2018

Certification - Construction Industry - The issue addressed in this decision was whether the Board could rely on membership evidence signed by an individual using a fake name when that was the only irregularity alleged about the signing of the membership evidence and there was no issue of the identity of the person in question. The Board noted that it was not practical to require a union to formally verify the identity of every card signer each time a card was signed. The Board found that the Union's organizer engaged in no improper conduct that might otherwise undermine the card. The Board relied on the membership card as the individual signed the card (albeit with a fake name).

2279667 ONTARIO INC. O/A NEW AMHERST HOMES; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE: NEW AMHERST HOMES; RE: NEW AMHERST LTD.; 2018 CanLII 53326 (ON LRB); Dated June 6, 2018

Certification - Constitutional Law - Construction Industry - This issue in this decision was whether the employment of individuals by AMEC charged with removing and relocating radioactive waste were federally or provincially regulated. The Board's analysis confirmed that labour relations are presumptively within provincial jurisdiction. AMEC was only subject to federal jurisdiction if it is a federal work or undertaking or if it is vital or integral to a federal undertaking. The Board concluded that AMEC itself is not a federal undertaking. The Board held that Section 71 of *Nuclear Safety and Control Act* did not constitute AMEC as a work or undertaking for the general advantage of Canada. The Board further determined that AMEC is not vital or integral to a federal undertaking. The Board held that there is a need for clear, easily ascertainable and predictable criteria to establish constitutional jurisdiction. The Board held that the presumption of provincial jurisdiction had not been overcome and that AMEC was covered by provincial legislation.

AMEC FOSTER WHEELER AMERICAS LIMITED; RE: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; 2018 CanLII 60461 (ON LRB); Dated June 27, 2018

Unfair Labour Practice - In this decision, the Board considered whether the section 86 freeze provision of the *Labour Relations Act* applied where the terms of employment were established following a federal certification and subsequent ratification of a collective agreement. The Board found that terms and conditions of the collective agreement pursuant to the federal certificate were observed and in place at all material times and formed the *status quo ante* prior to the provincial application. The collective agreement terms became a part of the individual contract of employment. If termination only for cause was not a right, the Board alternatively found the term as a privilege, and that it remained protected by section 86. The Board held that a refusal to inquire into termination complaints on discretionary grounds amounts to refusal of the Board to exercise its jurisdiction in circumstances where there is no effective alternative remedy. Accordingly, the Board found that the complaint was timely and properly the subject of an application under section 96.

ANISHINABEK POLICE SERVICE; RE: PUBLIC SERVICE ALLIANCE OF CANADA; 2018 CanLII 81987 (ON LRB); Dated August 28, 2018

Practice and Procedure - This is an early decision where the Board was asked by a non-party to disclose pleadings and documents in an existing ongoing Board file. The Board ordered only documents that had entered the public domain be disclosed to the requesting party.

MODIS CANADA INC.; RE: PUBLIC SERVICE ALLIANCE OF CANADA; 2018 CanLII 81993 (ON LRB); Dated August 28, 2018

List of Employees - Constitutional Law - In this decision the Board considered whether an employer was entitled to raise a Charter challenge to section 6.1 of the *Labour Relations Act* (the provision of an employee list to a requesting union) on behalf of its employees. (Note: This section of the Act has since been repealed.) The Board concluded that the employer did not have standing to raise the *Charter* question on behalf of its employees. The Applicant failed to make out a case for public interest standing, even when adopting a liberal and generous approach to the *Downtown Eastside Sex Workers* factors for determining standing. The Board found that the employer did not have a genuine interest in the outcome of the constitutional question and found no reason to assume the employees were incapable of asserting their privacy rights on their own.

THE ORIGINAL CAKERIE LTD.; RE: UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION (UFCW CANADA); 2018 CanLII 77175 (ON LRB); Dated August 13, 2018

Public Sector Labour Relations Transition Act - Unfair Labour Practice - The Board determined that section 15 of the *Public Sector Labour Relations Transition Act* did not create a freeze in employment terms and sections 15 and 18 did not prevent parties from engaging in collective bargaining, ratifying a collective agreement and implementing its terms during an ongoing PSLRTA application.

PROVIDENCE ST. JOSEPH'S AND ST. MICHAEL'S HEALTHCARE; RE: CANADIAN NATIONAL FEDERATION OF INDEPENDENT UNIONS (LIUNA LOCAL 3000); RE: CANADIAN UNION OF PUBLIC EMPLOYEES; RE: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1 CANADA; 2018 CanLII 115719 (ON LRB); Dated November 27, 2018

Application for Certification - Bargaining Unit - Construction - This decision considered whether individuals not scheduled to work but who attended work and performed work would not be considered to be employees on the basis that their presence at work was alleged to have been to facilitate the application for certification. The Board rejected the impropriety theory that was advanced by the employer to explain the presence of two employees at worksite on the Application Date. The Board was satisfied that the instant certification application was not a fraud and that the work performed by labourers on the Application Date was not a scam. The Board held that there was no attempt to manipulate the percentage of employees in the bargaining unit who were members of the Applicant.

GRAHAM BROS. CONSTRUCTION LIMITED; RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; 2018 CanLII 124325 (ON LRB); Dated December 20, 2018

Appeal of an Inspector's Order - Time limit under section 61(1) of the Occupational Health and Safety Act - This decision considered whether the Board has discretion to relieve from the 30-day time limit imposed by section 61(1) of

the *Occupational Health and Safety Act* when seeking to appeal an Inspector's Order. The Board held that the legislature did not preclude the Board from relieving against the section 61(1) time limit and that the 30-day time limit for an appeal is not mandatory.

MINISTRY COMMUNITY SAFETY CORRECTIONAL SERVICES VANIER CENTRE FOR WOMEN; RE: ONTARIO PUBLIC SERVICE EMPLOYEES UNION LOCAL 234; RE: DIRECTOR UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT; 2019 CanLII 14451 (ON LRB); Dated February 21, 2019

Court Activity

On April 1, 2018, there were 30 Board matters pending before the Courts.

During the 2018-2019 fiscal year there were thirteen new applications for judicial review of Board decisions filed with the Divisional Court.

Thirteen applications for judicial review were disposed of by the Divisional Court. Ten were dismissed on the merits, one was granted and two were abandoned.

Twenty-seven applications for judicial review remained outstanding at the Divisional Court on March 31, 2019.

Three motions to stay Board decisions were filed pending judicial review. All three motions were dismissed.

Three motions for leave to the Court of Appeal were filed during the fiscal year. One was dismissed, one was granted and one is pending.

There was no activity at the Supreme Court of Canada.

Type of Case	Caseload			Disposed of				Pending March 31, 2019
	Total	Pending April 1, 2018	Received	Total	Granted	Dismissed	Abandoned	
Total	49	30	19	18	2	14	2	32
Divisional Court (Merits)	40	27	13	13	1	10	2	27
Divisional Court (Stay)	3	0	3	3	0	3	0	0
Ontario Court of Appeal (Seeking Leave)	6	3	3	2	1	1	0	4
Ontario Court of Appeal (Merits)	0	0	0	0	0	0	0	1
Supreme Court of Canada (Seeking Leave)	0	0	0	0	0	0	0	0
Supreme Court of Canada (Merits)	0	0	0	0	0	0	0	0

Figure 21

Key Activities with Stakeholder Groups

Advisory Committee: The Ontario Labour Relations Board has established an Advisory Committee whose mandate is to function as a consultative group for the Board. The Committee is composed of members of the labour and management side bar, Director of Legal Services (MOL), representatives from the Ontario Bar Association Labour & Employment Law Section (plus OLRB Chair, Alternate Chair, Director/Registrar and Solicitor) and acts as a resource to the Board for consultation/feedback. The Committee meets at least three times per year, and more often if necessary. Committee membership and minutes of meetings are posted on the Board's website.

Internship Programs: Collaborative external partnership programs with client labour law firms and postsecondary institutions continue. The program provides opportunities for students currently articling and recent graduates (and/or current students of MIR and Labour Studies programs) to put their academic training to practical use with a hands-on professional learning experience at the OLRB.

Outreach: Regular community outreach by the Chair, Alternate Chair, Director and Deputy Director/Registrar at consultations held with client and stakeholder groups and Town Hall and community meetings where advisable.

These individuals are invited to and routinely speak at professional and stakeholder conferences, conventions, seminars, continuing education programs and meetings. Upcoming events may include:

- Representation at Labour Board conferences
- Conference of Labour Board Chairs and Senior Administrators
- Association of Labour Relations Agencies (ALRA)
- Council of Canadian Administrative Tribunals (CCAT)
- Canadian Institute of Administrative Justice (CIAJ)
- Society of Ontario Adjudicators and Regulators
- Ontario Bar Association
- Canadian Institute of Administrative Justice
- Law Society of Upper Canada

The OLRB provides services in both official languages, including the publication of forms, information bulletins, website messages etc., and strives to ensure the accessibility of our websites and the conduct of hearings. The ability of our clients and stakeholders to readily communicate with the Board in an accessible manner in either French or English - from reception through to adjudication continues to be a priority.

Financial Position

The Board's annual operating budget is part of the Ministry's estimates and allocation process and the Board is required to report regularly on its expenditures and planned commitments.

The Deputy Minister of Labour has delegated authority for specific financial and administrative transactions to the Chair of the Board, the Director and Managers.

The OLRB is subject to audit review and expenditure constraints and its managers are accountable for following established management practices and using public resources for authorized purposes.

Salary expenditures were less than expected due to staff vacancies and consequent recruitment initiatives. Travel expenditures resulted in a savings due to staff vacancies within mediation services. Throughout the budget year, services expenses were higher than expected largely due to increased IT costs related to the Board's IT initiatives and the continued utilization of tri-partite panels in adjudicative hearings. The total annual remuneration for all OIC appointees was \$2,789,346.

All figures in \$000.0 thousand

Account	Year-end Budget incl. lease	Year-end Actuals	Variance	% Variance
Salaries & Wages	8,978.4	8,519.5	458.9	5.1%
Benefits	1,044.6	1,267.4	-222.8	-21.3%
ODOE:				
Transportation & Communication	448.9	274.0	174.9	39.0%
Services	3,466.9	3,555.5	-88.6	-2.6%
Supplies & Equipment	82.2	72.3	9.9	12.0%
Total ODOE	3,998.0	3,901.9	96.1	2.4%
Total	14,021.0	13,688.8	332.2	2.4%

Figure 22

Non-Tax Revenue	Revenue
Construction Grievance	\$475.3
Publications	
Subscriptions	\$8.2
Total	\$483.5

Figure 23

Appendix A

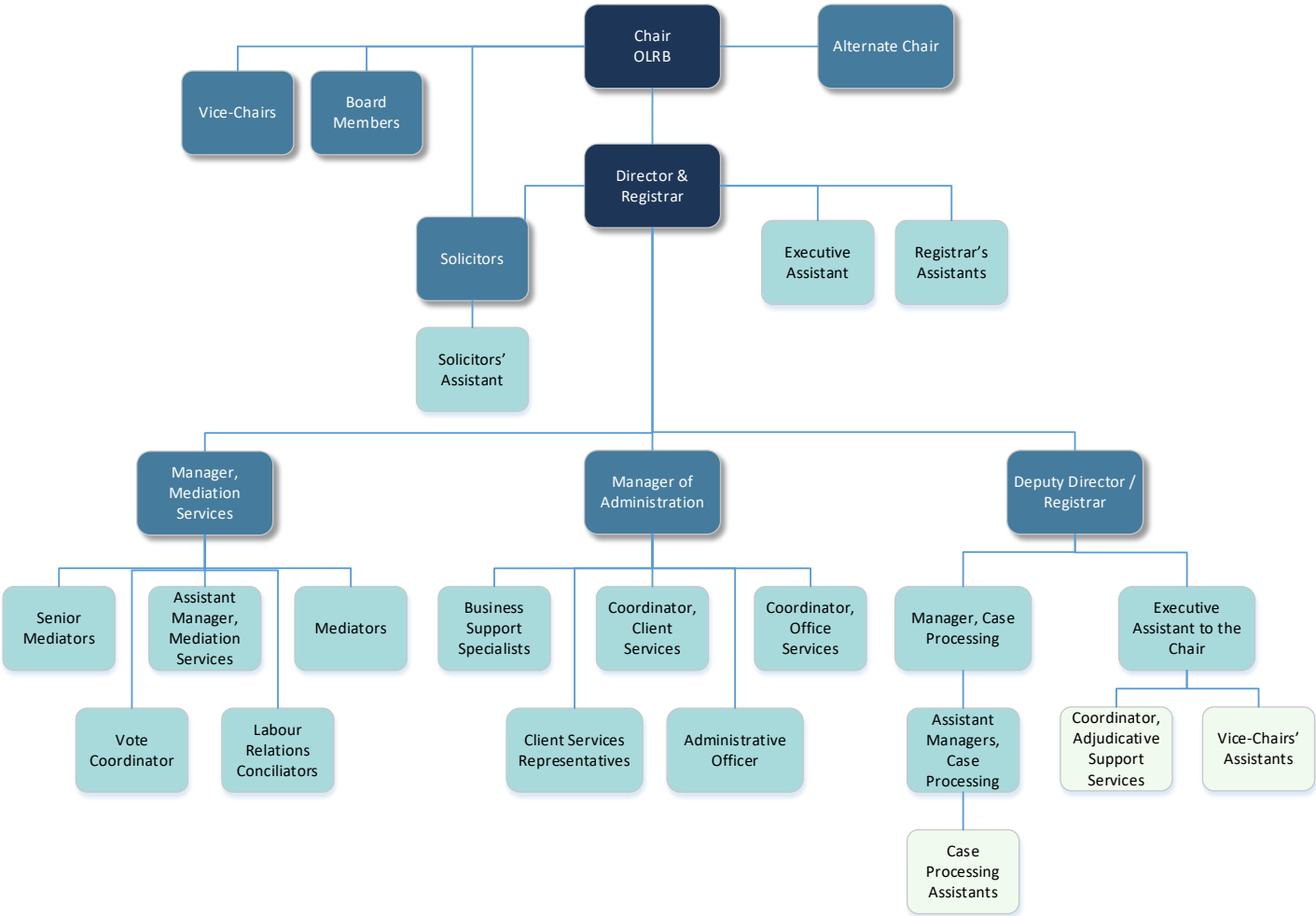
Order in Council Appointments

The Board's adjudicators (the Chair, Alternate Chair, Vice-Chairs and Board Members) are all appointed by the Lieutenant Governor in Council as Order in Council appointments (OICs), for a fixed term. Following is a chart of OICs working in 2018 - 2019 and their appointment terms.

Name	First Appointed	Term of Appointment
Chair		
Fishbein, Bernard	February 28, 2011	February 27, 2021
Alternate Chair		
Wilson, Matthew	August 29, 2012	August 28, 2022
Full Time VCs		
Anand, Gita	January 15, 2016	January 14, 2021
Beatty, Adam	June 30, 2016	December 31, 2021
Debané, Geneviève	June 30, 2016	December 31, 2021
Kelly, Patrick M.	May 17, 1999	May 17, 2021
Lewis, John D.	March 11, 2009	March 10, 2024
McFadden, Michael	November 5, 2014	November 4, 2019
McGilvery, Roslyn	September 9, 2013	October 30, 2023
McKee, David	April 29, 1999	June 30, 2018
McKellar, Mary Anne	January 24, 2001	January 23, 2022
Mitchell, C. Michael	July 22, 2015	February 27, 2021
Ross, David	November 15, 2017	November 14, 2019
Rowan, Caroline	May 6, 1999	May 6, 2021
Seveny, Yvon	May 25, 2015	May 26, 2020
Shouldice, Ronald K. (Lee)	May 30, 2007	May 29, 2022
Slaughter, Jack J.	February 3, 2003	February 2, 2021
Turtle, Paula	July 22, 2015	July 21, 2020
Waddingham, Kelly A.	April 7, 2004	December 31, 2022
Wilson, Matthew	August 29, 2012	August 28, 2022
Part Time VCs		
Beresford, Harvey	October 5, 2016	October 30, 2021
Cavé, Johanne	March 7, 2019	March 6, 2021
Clarke, Graham	November 2, 2016	November 1, 2021
Gedalof, Eli	October 30, 2013	June 30, 2019
Gee, Diane L.	August 1, 2008	July 31, 2019
Gray, Owen V.	May 8, 2013	September 16, 2022
Green, Maurice	May 16, 2012	July 8, 2022
Kitchen, Robert W.	May 30, 2012	July 8, 2022
Kuttner, Thomas	September 11, 2013	October 30, 2023
McDermott, Edward T.	May 17, 2011	May 16, 2021
McIntyre, Elizabeth	August 31, 2017	August 30, 2019
McLean, Brian C.	July 8, 1998	July 7, 2022
Nyman, Jesse	February 1, 2016	December 20, 2020
Pasieka, Paulene	December 20, 2016	December 19, 2018
Rogers, Derek	August 28, 2013	October 30, 2023
Wacyk, Tatiana	May 28, 2003	September 16, 2018

Name	First Appointed	Term of Appointment
Members (Employer)		
Bolton, Lori	March 11, 2015	March 10, 2020
Cook, William S.	March 18, 2015	March 17, 2020
LeChien, Robert	April 15, 2015	April 14, 2020
Martin, Ron	March 25, 2015	March 24, 2020
St. Louis, David	February 18, 2015	February 17, 2020
Sullens, John (Jack)	February 18, 2015	February 17, 2020
Taylor, Margaret	November 29, 2017	November 28, 2019
Zachar, Wayne	June 22, 2016	December 31, 2021
Members (Employee)		
Chudak, Edward	April 1, 2015	March 31, 2020
Collins, Thomas	April 1, 2015	March 31, 2020
Cronkright, Steven	June 22, 2016	June 21, 2018
Dagg, Alexandra Miriam	June 30, 2016	June 29, 2018
Dowding, John	June 22, 2016	December 31, 2021
Gairey, Jawara	October 19, 2016	October 30, 2021
MacDonald, Brian	June 22, 2016	December 30, 2021
Nicholls, William	May 6, 2015	May 5, 2020
Nielsen, Heino	June 30, 2016	December 31, 2021
Phillips, Carol	January 14, 2009	January 13, 2022
Petroni, Robert	June 22, 2016	June 21, 2018

Organizational Chart



Accountability Statement

The OLRB's Annual Report for the fiscal year ending March 31, 2019 was prepared under my direction for submission to the Minister of Labour in accordance with the Agencies and Appointments Directive as issued by Management Board of Cabinet.

The Public Accounts of Ontario are the annual financial statements that are prepared in compliance with the requirements of Section 13 of the *Ministry of Treasury and Economics Act*. The Public Accounts consist of the financial report of the Government of Ontario and the financial reports of each ministry. In accordance with the Ministry of Labour's Delegation of Financial Authority Framework, financial authority is delegated to the agency. Each year the OLRB verifies that all its transactions are reflected accurately and completely in the Public Accounts through the execution of a Certificate of Assurance.

As an agency of the Ministry of Labour, the OLRB's Annual Report is subject to the minimum reporting requirements established in the Agencies and Appointments Directive, including:

- Financial statements that have been audited or subject to the appropriate level of external assurance;
- Analysis of operational performance;
- Analysis of financial performance;
- Names of appointees and term of appointments
- Performance measures, targets achieved/not achieved and action to be taken.

This report covers the fiscal year April 1, 2018 to March 31, 2019.

For More Information

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