



2021 Annual Report

March 1, 2022

The Honourable David Eby
Attorney General of British Columbia
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Honourable Minister:

RE: Labour Relations Board 2021 Annual Report

I am pleased to forward to you the Labour Relations Board's annual report for the year ending December 31, 2021. This Report has been prepared for your review pursuant to Section 157(2) of the *Labour Relations Code*.

Yours truly,

A handwritten signature in black ink, appearing to read 'J. Blougie', is written in a cursive style.

Chair, Labour Relations Board

Enclosure

cc. The Honourable Harry Bains,
Minister of Labour

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Chair's Message

It is my great honour to have been appointed Chair of the BC Labour Relations Board, effective February 5, 2022. My predecessor, Jacquie de Aguayo, set an incredibly high standard in the execution of her role as Chair of the Board and I was privileged to work with her as associate chair throughout most of her term.

Jacquie's passion for – and dedication to – building sustaining and respectful relationships with the labour relations stakeholders will be a legacy of her term as Chair. The Board's relationship with its stakeholders is crucial to a healthy and functioning labour relations system and maintaining those relationships remains a key priority.

One of Jacquie's primary goals as Chair was to modernize the Board and its operations. Since 2019, the Board has completely revamped its case management system. In response to the COVID-19 pandemic, it began conducting hearings and mediations virtually and using an online voting platform to conduct representation votes where an in-person vote is not appropriate.

The Board continued its modernization initiatives in 2021. Recognizing that virtual hearings and mediations will outlast the pandemic, the Board continued to refine and improve on its use of virtual technologies. A project to convert physical meeting room space to allow hybrid hearings and mediations is underway. The Board launched its new website in May 2021, which provides information about rights and obligations under the Code and Board processes in a more accessible manner. The Board is also working with unions to develop electronic membership evidence to ensure it complies with the requirements set out in the regulations and Board policy. These initiatives will be discussed in greater detail later in the annual report.

My goal as Chair is to continue the modernization project that Jacquie started and to expand it to other aspects of the Board's operations and processes. With the website project complete, our next step is to revise and revamp our template letters and forms with the same plain language and accessibility principles in mind. We also have yet to fully realize the file processing efficiencies that our new case management system is capable of providing.

We continue to strive to make the Annual Report more informative and accessible to our stakeholders. This year, we reintroduced a section outlining statutory and regulatory amendments that potentially impact labour relations in British Columbia. We have also provided hyperlinks to the Board policies referred to in the annual report and to the decisions summarized in our case highlights section.

As with other organizations in BC, the Board continues to be impacted by the ongoing COVID-19 pandemic, particularly the Omicron variant that began its surge in late 2021. Staff continue to work primarily from home and the vast majority of hearings and

mediations are still being conducted virtually. The Board has also seen an influx of applications that raise pandemic-related issues, including those concerning the implementation of vaccine mandate policies (which we address in more detail later in the annual report).

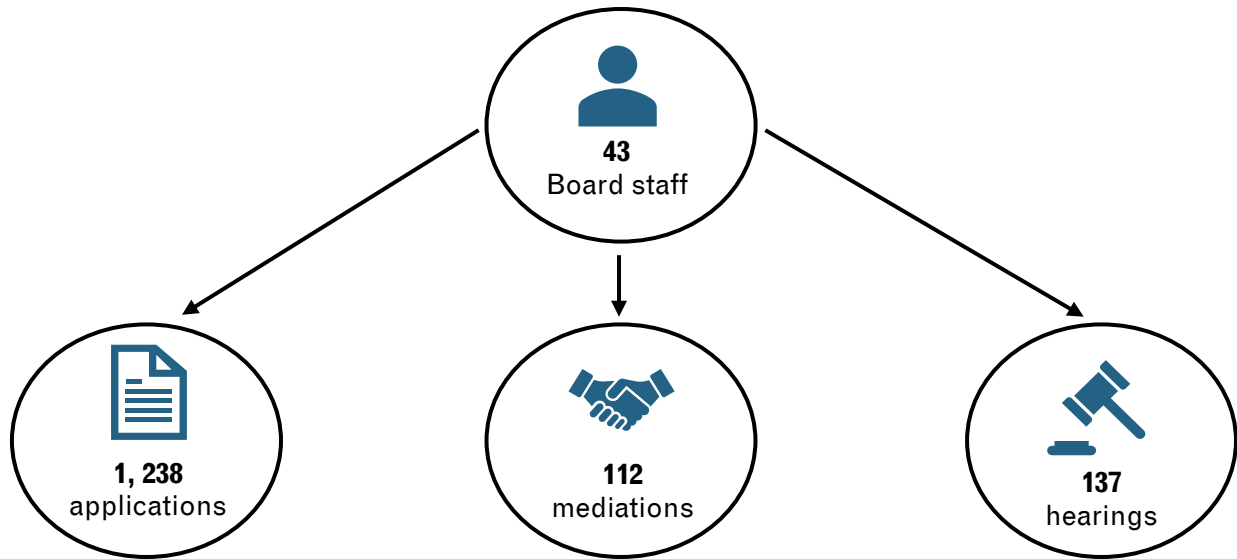
Through all of this, the Board's staff and Vice-Chairs continue to deliver the Board's services with enthusiasm and integrity. They continue to adapt to new ways of working – whether in response to the 2019 Code amendments, the case management system, or the pandemic. I thank each and every one of them for their dedication and service.

Finally, I also want to thank the members of our stakeholder groups for their ongoing and continued patience as we continue to navigate our way through these unprecedented times. It seems hard to imagine that we have been living in the shadow of a pandemic for more than two years. Our stakeholders have shown incredible flexibility and creativity in finding ways to resolve labour relations disputes despite these ongoing challenges. While the hope is that 2022 will allow a return to something approaching normal, experience shows that the important labour relations work in British Columbia will be done regardless.

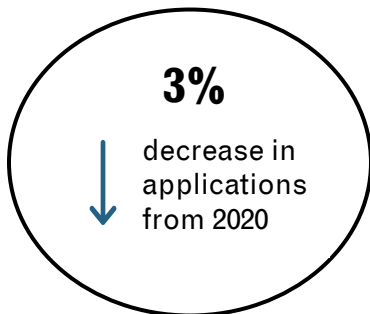
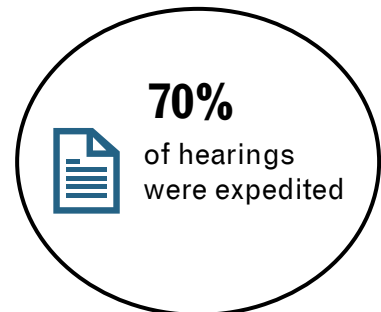
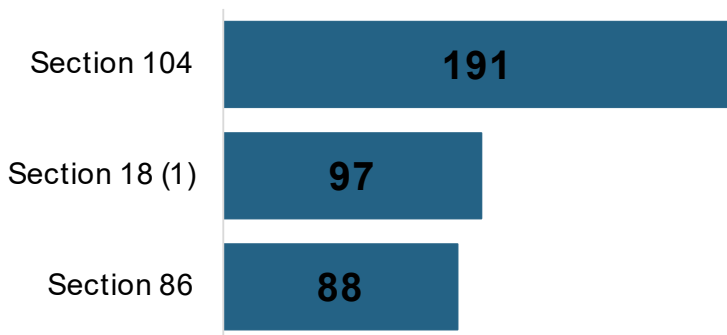


Jennifer Glougie
Chair, Labour Relations Board

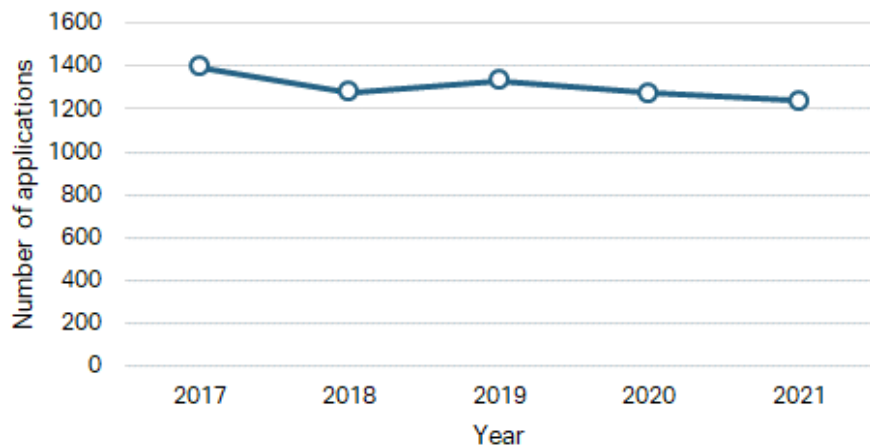
2021 at a Glance



Top three Sections applications under



Total applications filed



The Code and the Labour Relations Board

The *Labour Relations Code* (the "Code") establishes a comprehensive statutory framework for all aspects of collective bargaining for provincially-regulated employers, employees, and trade unions to whom the Code applies.

The Labour Relations Board has the exclusive authority to hear and decide applications made under the Code. The Board also provides a wide range of mediation and other dispute resolution services to assist in settling disputes. It also has a mandate to make information available to the public about rights and obligations under the Code.

The Board is organized into the Office of the Chair, the Registry, the Adjudication Division, the Mediation Division, the Information Officer, Legal Services, and Administration. The Board also houses the Collective Agreement Arbitration Bureau (CAAB). The Board employs 35 people and has 8 order-in-council appointees, including the Chair and 7 Vice-Chairs. The Chair has designated one Vice Chair as the Associate Chair of Adjudication and Mediation and one as the Registrar.

The Code covers a wide range of matters within the entire collective bargaining cycle. This includes how employees get access to trade union representation (certification); the process of collective bargaining between trade unions and employers; the rights, duties, and obligations of employees, trade unions, and employers; and the settlement and adjudication of unfair labour practices. The Code also establishes conditions for the exercise of the right to strike or lockout, and places limits on picketing and the use of replacement workers by employers during a labour dispute. During a labour dispute, it also provides for the maintenance of services that are essential for the health, safety, or welfare of the residents of British Columbia.

To assist parties in resolving collective bargaining and other disputes, the Code establishes access to a range of collective bargaining mediation, settlement, and alternate dispute resolution mechanisms.

The Code also requires that every collective agreement have a process for resolving disputes during its term, including access to arbitration. To support that objective, the Code establishes the Collective Agreement Arbitration Bureau (CAAB). CAAB is administered by a Director. The Director maintains a register of arbitrators and administers a process for the appointment of arbitrators for certain arbitration hearings and/or settlement meetings. The Director also chairs a joint advisory committee (JAC) comprised of arbitrator, employer, and union representatives who advise the Director on a range of matters.

Statutory and Regulatory Amendments

There were no amendments to the Code or the Labour Relations Regulations in 2021.

However, other legislation was introduced or amended which potentially impacts labour relations in British Columbia or the Board's operations, including the following.

Access to Services (COVID-19) Act

The *Access to Services (COVID-19) Act*, which took effect in November 2021, creates access zones around COVID-19 testing and vaccination sites, as well as hospitals, schools, and other prescribed facilities. The *Act* prohibits certain conduct within those access zones, including impeding access or egress to the facility, physically interfering with or otherwise disrupting the provision of services at the facility, or intimidating or attempting to intimidate an individual. However, conduct in relation to a strike, lockout, or picketing carried out in accordance with the Code is specifically exempted from that prohibition (Section 2(4)).

Amendments to the Freedom of Information and Protection of Privacy Act

The *Freedom of Information and Protection of Privacy Act* was amended in November 2021. Most importantly from an operational perspective, the amendments entitle the Board to continue to use videoconferencing platforms like Zoom to continue to hold virtual hearings and mediations.

Public Interest Disclosure Act

The Board is continuing to develop a process to support employees who come forward to report serious concerns about wrongdoing within the organization as required by the *Personal Interest Disclosure Act*, which will apply to the Board in April 2022.

Accessible British Columbia Act

The *Accessible British Columbia Act* is intended to make BC more inclusive for people with disabilities by supporting their capacity to meaningfully participate in their communities. The *Act* took effect in June 2021 and will apply to the Board in 2022. In anticipation of this, the Board began the process of establishing best practices and accessibility plans.

Operational Changes

There are a number of key initiatives implemented or underway as the Board continues to review its operations to ensure that it is best able to meet its labour relations mandate on behalf of the public and the labour relations parties that appear before it.

COVID-19

The Board continued to operate under its [COVID-19 Safety Plan](#), which is available on its website, throughout 2021.

While in-person meetings have been available since summer of 2020, very few parties have expressed interest in them. As a result, all of the Board's hearings and the vast majority of mediations continued to be conducted virtually in 2021.

The Board continues to use Zoom as its platform for virtual hearings, mediations, and informal/settlement conferences. Zoom offers a number of features that make it appropriate for Board matters, including: the availability of a virtual waiting room, break-out rooms, and accessibility in terms of cost and convenience for parties and other participants.

The Board also continues to use an electronic voting platform for Board-administered votes. As a result, all of the representation votes held electronically in 2021 were conducted within the five-business day window required by the Code.

Finally, the Board continues to waive the requirement for sworn statutory declarations as set out in the *Labour Relations Board Rules*. Parties may file unsworn statements that contain the same information and documents as would otherwise be in a sworn format. A panel of the Board will exercise its discretion to require a sworn declaration on a case-by-case basis.

Staff changes

In early 2021, the Board's longstanding Financial & Resource Services Assistant, Deb Alton, retired after 32 years. Deb was a powerhouse with numbers and had the most meticulously organized office at the Board. We miss her smile, her laugh, and her daily latte runs. We extend our warmest wishes to Deb for a long, happy, and healthy retirement.

The Board welcomed three new staff members in the summer of 2021; Maree Matheson, Jeanne Woo, and Katie Shum. All three have quickly proven themselves to be valuable members of the Registry. The Board is incredibly lucky to have found such sharp, friendly, and dedicated additions to our team.

Access and transparency

The Board's processes must be fair, meet statutory requirements, and address its operational needs. They must also be accessible and transparent. Listed below are just some of the initiatives in place or underway.

The Website and rebranding

The Board launched its new website in May 2021. As indicated in last year's annual report, the new website was designed using a human-centered approach, both in terms of format and content. The goal was to have a website that provides information to members of the public and labour relations stakeholders in a way that is accessible and informative.

The material on the Board's website underwent a complete overhaul. The substantive information about the Code and Board processes is now presented in plain language and organized more intuitively. The material is presented in a way that is sensitive to accessibility needs, including: using fonts and colours that promote readability and providing a "read aloud" option for each page.

The new logo, font, and colour scheme developed for the new website are also being used on all Board communication, including the current annual report.

Access to Information and Privacy Policy

The Board's [privacy policy](#) is available on its website. It describes the information the Board collects in proceedings under the Code, how the information is used, and what information the public has access to.

The Policy also confirms that, in accordance with the open court principle, names and relevant personal information are published in Board decisions. However, in exceptional circumstances, a panel may exercise its discretion to anonymize the name of a party or omit certain personal information where the harm to a person's privacy or security outweighs the public interest in transparency, accountability, and intelligibility of Board decisions. The Policy sets out the process by which an applicant can ask the panel to consider exercising its discretion in that regard.

Timeline extensions

The Board continues to work through its backlog of cases, the causes of which were described in the 2020 annual report.

As a result of the significant staffing and caseload issues the Board has experienced since 2017, an additional order-in-council appointee was approved and the position was posted at the end of 2021. This additional position will bring the compliment of Vice-Chairs to six. Those six Vice-Chairs, along with the Registrar and Associate Chair, are responsible for making the Board's decisions at the original panel level.

Each of us is committed to ensuring the timely resolution of matters that come before the Board and we have worked, and continue to work, hard to address the backlog of cases. We are confident that the addition of another order-in-council appointee will allow us to continue to prioritize the adjudication of expedited matters, while clearing the backlog of non-expedited applications.

Collective agreements

As noted in last year's annual report, the 2019 Code amendments included an amendment to Section 51, which requires parties to a collective agreement to file a copy with the Board within 30 days after the agreement is executed. It also requires parties to file renewal agreements and ancillary documents that come within the meaning of the agreement.

One of the Board's goals in revamping its website was to provide better and easier access to collective agreements. The old website did not easily allow for collective

agreements to be uploaded on the back end, which resulted in significant delay and backlog in publishing collective agreements after they were filed.

The new website provides a much easier process for posting agreements and we have now uploaded all of the backlogged agreements. We are also able to post more regularly and efficiently as they are filed. The website also allows individuals to search for collective agreements by party name or industry, and the results page easily identifies the term, duration, and industry, where that information is known.

Diversity, inclusion, and Indigenous reconciliation

The Board has continued to take steps to ensure that it is open and inclusive both as a public body and as an employer, including those outlined below.

Pronouns and forms of address

As noted in last year's annual report, the Board implemented a gender-neutral policy for pronouns and forms of address in late 2020.

Where an individual has identified how they wish to be addressed, the Board will do its utmost to ensure that its correspondence and decisions reflect their pronouns and preferred form of address. Where an individual has not identified how they prefer to be addressed, the Board is committed to using gender-neutral language to refer to them.

In 2021, the Board revised Forms 10 and 12, which are the most commonly used by individuals to file applications under the Code, to ask applicants to identify their preferred pronouns. Because of a technical glitch in the Board's case management system, we are currently unable to request this information in our online forms. We are continuing to investigate how to work around this glitch to allow every applicant to make this information available as part of the application process.

Recruitment

The Board remains committed to improving the diversity of its order-in-council appointees and staff. In building a just and equitable society, we must act with intent and transparency to assist in eliminating systemic barriers and ameliorating the effects of discrimination. This includes discrimination based on a person's race, colour, descent, national or ethnic origin, disability, sexual orientation, gender identity or expression, and discrimination in relation to Indigenous peoples.

The Board is continuing to work with the Tribunals, Transformation, and Independent Offices Division of the Justice Services Branch and the Crown Agencies and Board Resourcing Office to develop and implement tools and strategies for increasing diversity and inclusion in its order-in-council appointees.

A diversity of voices and lived experience is critical to ensuring the Board can apply its labour relations expertise in addressing the range of issues and disputes that come before it. We encourage individuals to self-identify when applying for a position at the Board, whether for an order-in-council appointment or a staff position.

Indigenous reconciliation

On November 28, 2019, the *Declaration on the Rights of Indigenous Peoples Act* came into force. It implements the United Declaration on the Rights of Indigenous Peoples and sets out a path forward for reconciliation with Indigenous peoples in British Columbia.

The 2019-2020 Annual Report on the Act confirms that, while reconciliation will take time, we must begin to take important steps forward now in collaboration with Indigenous peoples. We must acknowledge and bring to an end persistent and systemic injustices, including the social, economic, and political marginalization of Indigenous communities.

Among other things, Section 3 of the Act states that, in consultation and cooperation with Indigenous peoples in British Columbia, the government must take all measures necessary to ensure the law of British Columbia are consistent with the Declaration.

The Board will continue to encourage and require cultural awareness training for its staff and order-in-council appointees to continue the important work of reconciliation. It is also moving towards work with government to review the application of the law and policy of the Code to ensure it aligns with the UN Declaration and the Act.

2021 Highlights

Electronic voting

Under Step 2 of BC's 2021 Restart Plan, in mid-June 2021, the Board announced that while it would continue to use an electronic voting platform as the default to conduct votes under the Code, it would gradually attempt to increase the number of in-person votes conducted in the Lower Mainland. The Board notified stakeholders that it would permit a party to request that the Board conduct an in-person vote where it could be done safely. In making such a request, parties were required to provide plan to demonstrate how an in-person vote could be conducted, notwithstanding the risk of certain in-person events that public health officials had identified and which the Board was attempting to mitigate through its practices and policies. A requesting party was required to identify what measures could be put in place to lower the risk of transmission of COVID-19. The Board established policies that provided its staff the ability to assess the safety of the voting conditions and, if necessary, postpone the vote and refer the questions regarding the safety of the vote to a Vice Chair for determination. In addition, the Board obtained personal protect equipment for its staff to facilitate in-person votes where they could be done safely.

Despite having the option to request an in-person vote, the Board received relatively few from parties. Many of the requests that were received did not address the Board's requirement to provide a plan that demonstrated how the vote could be held safely.

Only one request provided sufficient information to allow for an in-person vote to proceed safely. Consequently, during 2021, almost all the Board’s votes were conducted using its online electronic voting platform. The lack of requests, combined with anecdotal comments received by the Board from Unions and Employers confirms that online electronic voting is now a very well accepted method of obtaining the wishes of employee under the Code.

Moreover, as the statistical information below indicates, there continues to be a high level of voter turnout in online electronic votes. The Board has had very little difficulty obtaining email addresses to permit online electronic votes to be held. Consequently, in 2021, the Board conducted only one mail ballot vote.

Overall, average voter turnout of all online votes in 2021 was marginally lower than last year, down to 84% (over 151 votes), as compared to 86%. The charts below provide a statistical comparison of voter turnout in 2021, for each of the three types of votes the Board conducts under the Code (certification/variance, decertification and last offer). There was only a marginal difference in voter turnout as between certification/variance votes (84.5%) and decertification votes (85.2%). Last offer votes had the lowest average voter turnout (76%).

Online voter turnout - 2021

Vote type	Number of votes held	Average turnout
Certification/Variance	117	85%
Decertification	26	85%
Last offer	8	76%

Online certification/variance votes – votes cast by voter turnout percentile

Turnout percentile	Number of votes	Percent of total number of votes
100%	37	32%
90-99%	15	13%
80-89%	31	26%
Less than 80%	34	29%

Online decertification votes – votes cast by voter turnout percentile

Turnout percentile	Number of votes	Percent of total number of votes
100%	8	31%
90-99%	7	27%
80-89%	4	15%
Less than 80%	7	27%

Online last offer votes – votes cast by voter turnout percentile

Turnout percentile	Number of votes	Percent of total number of votes
100%	1	12%
90-99%	1	12%
80-89%	3	38%
Less than 80%	3	38%

In the Board's experience, online electronic votes have consistently produced relatively high levels of voter turnout. Consequently, stakeholders can expect that after public health measures are removed, the Board will continue to utilize online electronic voting, as necessary, as one tool to gauge the wishes of employees under the Code.

Electronic membership evidence

In 2016, the Board decided that, provided certain safeguards were in place, it would accept union membership evidence created using electronic platforms. The UFCW, Local 1518 was the first to do so (See: *Working Enterprises Consulting & Benefits Services Ltd.*, BCLRB No. B67/2016 ("Working Enterprises")). Following the issuance of *Working Enterprises*, few unions applied to the Board on the strength of electronic membership evidence. Those which did used platforms which generated an email to the recipient that included a hyperlink to access a membership card through a program such as Adobe Sign or DocuSign.

Recipients are required to complete certain mandatory fields and sign the card using their finger or stylus. Upon completion of the membership card, the platforms generate an audit trail allowing the Board to understand when and by whom the

electronic membership card has been created. The audit trail shows the date and time of the following:

- When the document was created by the originator;
- When the email to the recipient with hyperlink to the card was generated;
- When the recipient viewed the email;
- When the recipient completed and signed the membership card;
- The IP address from which the various communications were generated;
- The email addresses from and to which the various communications and activities were delivered.

All of the above information is system generated.

In order to rely on an electronic membership card, a union is required to provide, for each card, a copy of the audit trail created by the platform utilized to generate the membership card. The Board expects that colour copies of the membership cards and the audit trails will be provided when the application is filed. The Board also expects that membership cards and the audit trails will be submitted as a single pdf (not in portfolio format and without password protection), in alphabetical order by last name, with each card followed by its corresponding audit trail. The Board password protects the pdf when it is saved to its document management system.

Registry staff carefully review each electronic membership card to ensure that it meets the requirements set out in *Working Enterprises*. Cards that are not submitted in colour or which are not accompanied by a complete audit trail are not accepted by the Registry.

Over the past year, the number of trade unions utilizing electronically generated membership cards has significantly increased. While most unions continue to rely on the tried and tested method of obtaining physical cards, many unions are now turning to electronically generated membership evidence.

Technology has changed since *Working Enterprises* was decided. In addition to emailing membership cards, some unions are now creating web forms, which allow a union to create templates of their membership cards with mandatory fillable content, through a widget. Potential members are provided with a hyperlink to the widget and permitted to complete the membership card online. Completion of the web form membership card must create the same type of audit trail required by *Working Enterprises*. Where a union wishes to utilize electronic membership cards, the Board has taken steps to test the platform being utilized to ensure that the electronically generated cards comply with the Board's requirements for a proper audit trail and to ensure that there are no glitches that would permit a card to be started on one day and completed on another. The Board takes the administrative review of electronic membership cards very seriously and is confident that the measures it has put in

place ensures the integrity of the certification process. Where electronically generated membership cards do not meet the test set out in *Working Enterprises* or do not allow the Board to be satisfied that they are signed and dated in a single transaction with a certifiable date and author, the card is not accepted. However, where electronically generated membership cards satisfy the Board's requirements they will be, and have been, accepted in support of a certification application.

Adjustment Plans under Section 54 and COVID-19 Vaccine Policies

In 2021, the Board was faced with significant questions of law and policy arising from the imposition of mandatory COVID-19 vaccine policies.

Section 54 of the Code requires an employer to give notice to and consult with the union where it introduces or intends to introduce a measure, policy, practice, or change that affects the terms, conditions, or security of employment of a significant number of employees to whom the collective agreement applies. Since November 3, 2021, the Board has received 21 applications alleging an employer breached Section 54 with respect to the implementation of a mandatory COVID-19 vaccination policy.

Of the 21 applications filed, seven have since settled or withdrawn.

The Board has issued two decisions on this issue: *Insurance Corporation of British Columbia*, 2021 BCLRB 181, which dismissed the union's request for interim relief, and *BC Rapid Transit Company Ltd.*, 2021 BLCRB 185, which decided the issue on the merits. Both of these decisions are summarized in the case highlights, below. The decision in *BC Rapid Transit* is under active reconsideration and the majority of the remaining applications on this issue are being held in abeyance pending the reconsideration panel's decision.

K-12 Troubleshooter Process

As reported in last year's Annual Report, the Board received two applications in 2020 under Section 88 of the Code asking the Board to help the collective agreement parties find ways to address the risks of COVID-19 and operationalizing provincial health orders and guidelines. With respect to the kindergarten through grade 12 education system, the Board worked with the labour relations parties, BCPSEA and the BCTF, as well as the Minister of Education, to develop a structure to facilitate communication with respect to pandemic guidelines among a range of stakeholders.

Those discussions resulted in a process whereby a troubleshooter was available to assist the parties in resolving pandemic-related issues as they arose and, failing resolution, to issue non-binding recommendations. Board mediators, special investigating officers, and Vice-Chairs, and the Deputy Registrar all acted as troubleshooters under that process.

The K-12 Troubleshooter process concluded in July 2021. By the time it concluded, the Board had assisted in 26 troubleshooter applications. In half of those applications, the Troubleshooter was able to assist the parties in reaching agreement on their own, without the need for non-binding recommendations.

Highlights of Board and Court Decisions

In 2021, the Adjudication Division published 203 numbered decisions. The following are summaries of some noteworthy decisions issued during the year. These summaries are provided for interest only, and do not constitute legal or authoritative interpretations of the decisions in question. The full text of these and other Board decisions are available on the Board's website (<https://www.lrb.bc.ca/decisions>).

Board decisions

[Schindler Elevator Corporation, 2021 BCLRB 7](#)

The Union applied under Section 99 of the Code for review of an arbitration award on the basis that the Arbitrator's finding of estoppel was inconsistent with the principles expressed or implied in the Code. The panel noted that determinations about whether a party makes an unequivocal representation or acts to its detriment, or the manner in which an arbitrator assesses the equities, are factual and discretionary matters beyond the scope of review under Section 99. However, the Board will consider whether an arbitrator's analysis is underpinned by a correct understanding of the modern doctrine of estoppel. The panel found the Arbitrator departed from the modern law of estoppel because there was no finding the Union made an unequivocal representation. The panel remitted the matter to the Arbitrator to revisit the Employer's laches and estoppel argument.

[Certain Cancrew Employees, 2021 BCLRB 10](#)

Certain Employees, who were employed by the Employer to handle fish from finfish aquaculture or fish farming on a vessel that operated exclusively in British Columbia waters, applied for a declaration that an agreement between the Employer and the Fish Food and Allied Workers Union ("FFAW") was not a collective agreement under the Code. The panel found the employees were within provincial jurisdiction. However, the panel found the FFAW did not meet the definition of a "trade union" under the Code because the FFAW did not have an administrative body or local officials in British Columbia and thus did not satisfy the "provincial character" requirement. The panel therefore found the agreement between Certain Employees and the FFAW was not a collective agreement under the Code.

[Peri Formwork Systems Inc., 2021 BCLRB 31 \(Leave for Reconsideration of 2020 BCLRB 104\)](#)

The Union applied for leave and reconsideration of the Original Decision which dismissed the Union's application for a declaration that no collective agreement was in force between the Union and the Employer. The issue before the original panel was whether, as a matter of Board policy, a union's mistake in communicating the terms of a proposed collective agreement to its members means a collective agreement is not in force, notwithstanding the fact that the union may have properly conducted the

ratification vote and communicated the results to the Employer. The original panel noted the circumstances of this case did not involve a misunderstanding by the Union as to the content of the agreement it signed. Rather, employees were accidentally misled by the Union with respect to whether a performance bonus would be continued. The panel found that the circumstances did not establish the type of error that would warrant a finding that no ratification took place or that the Board should otherwise not hold the employees to the agreement the Union made. The reconsideration panel found the Union's bases for reconsideration reflected a disagreement with the labour relations judgment exercised by the original panel in response to the particular facts of this case. Accordingly, the application was dismissed.

[The Government of the Province of British Columbia \(Ministry of Public Safety\), 2021 BCLRB 32 \(Leave for Reconsideration of 2020 BCLRB 93\)](#)

The reconsideration panel confirmed that, under Section 99 of the Code, where the Board finds a claims review committee ("CRC") panel has denied a claimant a fair hearing for anything other than a failure to give reasons, the Board should presumptively remit the matter to a new CRC panel. The reconsideration panel noted the CRC context requires a different approach on remittal where a fairness breach has occurred given its unique nature, which includes an inquisitorial process rather than the traditional adversarial context in arbitration, and the role of the claimant.

[Hospitality Industrial Relations on behalf of Royal Canadian Legion White Rock \(Pacific No. 8\) Branch No. 179, 2021 BCLRB 35](#)

The Union alleged the Respondents breached Sections 6(1) and 11 of the Code by not providing certain wage rate information about its bargaining unit members that it said it required for collective bargaining. The Respondents argued they are only required to provide the employee information the parties have specifically negotiated in the collective agreement. In the alternative, the Employer argued the Union either received or was capable of indirectly calculating the information it was seeking. The panel found the Union had a *prima facie* right to the wage rate information and it was the type of information the Union required to fulfill its statutory obligations as the exclusive bargaining agent for the bargaining unit members. The panel allowed the application and ordered the Respondents to provide the Union with the wage rate information.

[GDI Integrated Facility Services Inc., 2021 BCLRB 39](#)

The Association of Bargaining Agents for SerVantage Services Corp (the "Association") applied pursuant to Section 35 of the Code for declarations that GDI was the successor employer to SerVantage at Surrey City Hall ("SCH") and that it retained bargaining rights over building cleaning employees at that location. The Service Employees International Union ("SEIU"), which holds a province-wide certification to represent GDI cleaning employees, opposed the application and asserted it should be declared the bargaining agent for those employees. The panel found that GDI took over the contract from SerVantage to provide contract building cleaning services at SCH through a retendering as defined in Section 35(2.2) of the

Code, and accordingly GDI was the successor to SerVantage. The panel found that granting the Association's application would result in a proliferation of bargaining units in relation to GDI's building cleaning employees, which would create serious concerns about industrial instability with respect to work stoppages and contract negotiations. The panel noted these concerns were furthered by the fact that GDI has a practice of integrating its employees. The panel also noted the Board's preference for single bargaining units in the building cleaning industry. The panel declared SEIU the bargaining agent for the SCH employees and that the SEIU collective agreement applied in the circumstances.

[Mark Anthony Buchanan, 2021 BCLRB 42 \(Leave for Reconsideration of a Letter dated March 8, 2021\)](#)

The Union applied for leave and reconsideration of the original panel's determination under Section 13(1)(b)(i) of the Code that the application disclosed a case that a contravention of Section 12 may have occurred. As a result of this determination, the original panel invited reply submissions from the Union and Employer. The Union argued the original panel's determination was inconsistent with principles expressed or implied in the Code and a breach of natural justice because the application was deficient. The reconsideration panel noted that Section 13 of the Code is an administrative process for dealing with Section 12 applications. When an original panel determines, pursuant to Section 13, that a Section 12 application discloses a case of an apparent breach, the panel is only required to provide notice and invite reply. There is no requirement to make a formal decision or provide reasons. On the fair hearing ground, the reconsideration panel noted the reply contemplated in Section 13(1)(b)(i) is the Union's opportunity to put its case forward in response to the application, including any objections to it. Alternatively, if the original panel's determination was subject to leave and reconsideration, the reconsideration panel stated it would decline to grant leave for reconsideration on the basis the finding is a preliminary or interlocutory ruling. Accordingly, the Union's application was dismissed.

[Ocean Pacific Hotels Ltd. \(Pan Pacific Vancouver\), 2021 BCLRB 52](#)

The Employer alleged the Union breached Section 70 of the Code by contacting the Employer's customers, communicating information the Employer said was false to those customers, and asking those customers not to do business with the Employer. The Union raised a preliminary objection to the Employer's complaint, arguing that Section 70 is not a provision that can be breached, and that Section 70 has no application to the type of communication alleged. The panel found that Section 70 is not a section of the Code that can be breached by the Union as it does not mandate that the Union must do or not do anything; rather, it provides the Board may issue a declaratory opinion and take steps to ensure the persons affected by the declaration are informed of its terms. The panel held that Section 70 does not give the Board the discretion to prohibit or prevent communications; rather it allows the Board, in certain

circumstances, to alter the legal effect of that communication by declaring it void or unenforceable. Accordingly, the panel dismissed the Employer's application.

[Jagdev Singh Dhillon, 2021 BCLRB 69 \(Leave for Reconsideration of 2021 BCLRB 36\)](#)

The Applicant sought leave and reconsideration of the Original Decision which found the Applicant had not established an apparent case, under Section 13 of the Code, that the Union had breached its duty of fair representation under Section 12. The reconsideration panel dismissed the application noting Section 12 does not require a union to conduct a "perfect investigation"; rather, it requires a union to take "reasonable measures" to ensure it is aware of relevant information. The reconsideration panel found the original panel did not err in concluding the Union sufficiently investigated the matter in this case, including by giving the Applicant a full opportunity to provide it with any information that could assist the Union. In these circumstances, the reconsideration panel determined the Union was not obliged to seek further disclosure from the Employer.

[Sukunka Natural Resources Inc., 2021 BCLRB 94](#)

The Employer applied to have an essential services order ("ESO") clarified to confirm it was not prohibited from terminating the employment of a large portion of the bargaining unit while the ESO was in effect. The Union argued the ESO contemplated the continuation of employment for the purposes of scheduling while the ESO was in effect and argued the Employer must obtain a variance of the ESO if it wished to dismiss its striking employees. The Union also asked the Board to declare that the parties' collective agreement continued to apply to the parties. The panel noted the circumstances of the essential services dispute were unique and the ESO had been tailored to meet the unusual dispute. The panel found the ESO did not prohibit the Employer from terminating employees, but noted the Employer must ensure that it was capable of meeting its obligations under the ESO. The panel also found that the relationship between the Employer and its employees was governed by the terms and conditions of the collective agreement last in force, but the question as to what rights the terminated employees have was left to the grievance and arbitration process.

[Olympic Motors \(WC\) 1 Corporation \(Richmond Subaru\), 2021 BCLRB 97](#)

The parties disagreed as to the process the associate chair should direct them to use to resolve their collective bargaining dispute under Section 55(7) of the Code. The mediator recommended the parties engage in further mediation with a person empowered to arbitrate any issues not resolved by agreement. The mediator relied on the economic environment, COVID-19, the uncertainty of the supply chain, and the Employer's insistence on an agreement that reflects the status quo, in support of his recommendation that the parties be directed to resolve their dispute in a way that does not result in a strike or lockout. The Union accepted the mediator's recommendations and agreed the dispute should be resolved by way of further mediation/arbitration; however, the Employer disagreed and argued the dispute should be resolved by

allowing the parties to exercise their right to strike or lockout. The associate chair noted the policy of Section 55 is that terms and conditions of a first collective agreement are to be negotiated, not arbitrated, but agreed the Employer's strategy of insisting on a status quo agreement may have negatively impacted the parties' ability to achieve a collective agreement without further assistance. The associate chair also accepted the COVID-19 pandemic had a significant and unprecedented impact on the Employer's business. In these unique circumstances, the associate chair concluded that job action would exacerbate the ongoing hardships to both parties, and this was not an appropriate case to allow the parties to resolve their dispute through a strike or lockout. Accordingly, the associate chair accepted the mediator's recommendations and directed the parties to resolve their collective bargaining dispute by way of further mediation and, if necessary, arbitration, pursuant to Section 55(6)(b)(i).

[Canfor Pulp Ltd., 2021 BCLRB 104 \(Leave for Reconsideration of 2020 BCLRB 132\)](#)

The Union sought leave and reconsideration of the Original Decision which found the Employer had not breached Section 54 of the Code when it implemented a number of short-term temporary layoffs at two of its pulp mills without giving 60 days' notice in advance. The reconsideration panel noted that while temporary layoffs are not categorically excluded from the scope of Section 54, the nature of a layoff, including its impact on the employees and whether it is finite or indefinite, is relevant when determining whether a layoff constitutes a change warranting 60 days' notice and adjustment plan consultation under Section 54 of the Code. After considering the language and purpose of Section 54, the reconsideration panel found no error in the original panel's findings that the facts of this case did not suggest 60 days' notice and a formal adjustment plan were necessary to address the two and four week finite layoffs which occurred and that Section 54, therefore, did not apply. Accordingly, the Union's application was dismissed.

[Certain Employees of Terrapure Environmental Operating as Envirosystems Incorporated, 2021 BCLRB 111 \(Leave for Reconsideration of 2021 BCLRB 79\)](#)

The Employer and Certain Employees sought leave and reconsideration of the original panel's finding that two employees should be included on the list of employees for the purpose of a decertification application. The two employees were terminated prior to the date of the application for decertification, but the Union grieved each of the terminations and was seeking their reinstatement. The reconsideration panel noted that in determining threshold support, the Board generally uses the date of the application to determine the number of employees employed in the bargaining unit. However, this policy allows for narrow exceptions, including for individuals who are not employed on the date of the application, but whose employment status is the subject of a *bona fide* grievance. While it may be preferable in some circumstances to wait for the outcome of a grievance or arbitration, the Board's approach to deciding sufficient continuing interest is that as a matter of policy, it would be contrary to the purposes of the Code and the need for expedience and finality in the resolution of

labour relations disputes, to delay deciding a matter of union representation until the pending grievance has been resolved. The reconsideration panel found the original panel correctly applied the Board's long-standing approach of not waiting for the outcome of the termination grievances before deciding the question of sufficient continuing interest in the context of expedited representation matters under the Code. Accordingly, the application for leave for reconsideration was denied.

[Dean Coates, 2021 BCLRB 127](#)

The Applicant applied under Section 10 of the Code alleging CUPE National breached his right to natural justice and procedural fairness with respect to its handling of harassment complaints that employees of CUPE National filed against the Applicant. The Applicant was the president and a member of CUPE Local 441, but not an employee or officer of CUPE National. While CUPE National has local council or coordinators, it is not a local or provincial organization or an association of employees, or a local or provincial branch of a national union. Therefore, the panel found CUPE National did not meet the definition of "trade union" under the Code and therefore was not subject to Section 10 of the Code. In the alternative, if Section 10 did apply to the dispute, the panel found the Applicant did not establish CUPE National breached the requirements of Section 10. The panel found CUPE National did not apply "discipline" within the meaning of Section 10(1)(c) as the Applicant's membership status in Local 441 was not changed and he continued to act as president. The panel found that CUPE National gave the Applicant sufficient notice of the complaints and an adequate opportunity to respond to them. Finally, the panel was not persuaded CUPE National imposed a "penalty" to the Applicant within the meaning of Section 10(2)(a), as the requirements imposed on the Applicant with respect to interacting with CUPE National's staff did not affect his status as a member of Local 441 or as its president.

[Alicia Ferri, 2021 BLCRB 128 \(Leave for Reconsideration of 2021 BCLRB 48\)](#)

The Union and the UA Piping Industry College of BC ("UAPICBC") jointly applied under Section 141 of the Code for leave and reconsideration of the Original Decision which found the Union contravened Section 10(2)(a) of the Code when it refused Ferri's application for membership. The original panel ordered the Union to approve Ferri's application for membership and to pay her a sum of money. No order was sought or made against UAPICBC. The reconsideration panel found the original panel did not deny either applicant a fair hearing. The panel found that the Union was given notice of the application and had a full opportunity to be heard and to respond to it. The panel noted the Original Decision only ordered remedies against the Union. To the extent the Union believed any remedies sought affected UAPICBC such that it should have standing to make submissions in its own right, the panel noted the Union should have raised that before the original panel. Having failed to do so, it cannot argue on reconsideration that the original panel breached natural justice. The reconsideration panel also declined to consider new evidence submitted on reconsideration on the basis that the Union had not established that it could not have been obtained earlier and, in any event, the panel found the evidence was not likely to

have a determinative effect on the outcome of the Original Decision. The reconsideration panel further found the Original Decision was correct to look at the circumstances as a whole in deciding whether the Union's decision to refuse Ferri membership was arbitrary or unreasonable. The panel was not persuaded the Original Decision erred in finding the Union's decision was made on an arbitrary and unreasonable basis. In the context of a trade union's exclusive bargaining agency under the Code, Section 10 requires that a union's membership decisions be made for reasons that are not discriminatory, which means they cannot be made on an arbitrary or unreasonable basis.

[Vancouver Ready-Mix Inc., 2021 BCLRB 147 \(Leave for Reconsideration of 2021 BCLRB 75\)](#)

The Union applied for leave and reconsideration of the Original Decision, which dismissed the Union's application alleging the Employer had committed an unfair labour practice in terminating an employee after a certification vote. The Union alleged the Original Decision erred in finding that the dismissal was not tainted by anti-union motivation. The reconsideration panel noted that, under Section 6(3)(a) of the Code, an employer is not required to prove proper cause for terminating an employee but instead an employer is required to advance a credible explanation for its decision that is not tainted by anti-union animus. The reconsideration panel found the original panel applied the correct law and policy in deciding whether the Employer's actions were tainted by anti-union motivation under Section 6(3)(a) and the Union's application reflected its disagreements with the original panel's assessment of the evidence, findings of fact and inferences drawn from the facts, which are not an established ground for leave and reconsideration. Accordingly, the Union's application was dismissed.

[West Coast Medical Imaging Inc., 2021 BCLRB 160 \(Leave for Reconsideration of 2021 BCLRB 80\)](#)

The Union applied for reconsideration of the Original Decision, which found the Employer's decision to lay off employees in response to COVID-19 restrictions was compelled by circumstances outside its control and, as such, it did not "introduce" a change within the meaning of Section 54 of the Code. The reconsideration panel held that, under the Board's law and policy, the correct approach is to ask whether an employer implemented a change within the meaning of Section 54. If so, an employer is required to provide 60 days' notice and engage in good faith discussions. If the change was implemented without giving the required 60 days' notice, the Board decides whether the employer should be relieved of the notice obligation, in whole or in part, due to circumstances outside the employer's control. The Board does not inquire into the reasons why an employer decides on a particular change or assess the degree of agency it exerts in deciding whether Section 54 applies. Accordingly, reconsideration was allowed and the matter was remitted to the original panel.

[Edward III, 2021 BCLRB 176 \(Leave for Reconsideration of 2021 BCLRB 134\) \(petition for judicial review filed\)](#)

The Applicant applied for leave and reconsideration of the Original Decision, which dismissed an application for certification of a bargaining unit of the Employer's Special Provincial Constables ("SPCs") in BC's Legislative Assembly on the basis that parliamentary privilege precluded the application of the Code to the Employer's SPCs. The reconsideration panel found that applying the Code to the SPCs would not impede the Legislative Assembly's functions. On that basis, the reconsideration panel concluded it was not necessary to exclude the Employer's management of its SPCs from the Code, finding any constitutional principles at issue could be reconciled without denying the SPCs access to meaningful collective bargaining, and other constitutional protected association rights, under the Code. The panel found, while the Board's authority over labour relations and employment matters under the Code is broader than the authority of a labour arbitrator, the facts of this case did not show that applying the Code to the SPCs would conflict with the Legislative Assembly's ability to perform its constitutional functions. Accordingly, the reconsideration panel allowed the application, set aside the Original Decision, and issued a declaration that parliamentary privilege does not preclude the Code's application to the Employer's SPCs.

[Health Employers Association of British Columbia on behalf of Northern Health Authority \(Lakes District Hospital and Health Centre\), 2021 BCLRB 178 \(Leave for Reconsideration of 2021 BCLRB 1\)](#)

The B.C. Government and Service Employees' Union ("BCGEU") applied for leave and reconsideration of the Original Decision, which found a newly created dietician position at the Lakes District Hospital and Health Centre ("LDHHC") fell within the scope of the Health Sciences Association of British Columbia ("HSABC") certification, and not the BCGEU's certification. The reconsideration panel held that to determine the scope of a union's bargaining rights, the Board must assess the "core business" in respect of which the union's certification was granted. After considering the express wording of the certifications and applying a sophisticated analysis to assumptions underlying them, the reconsideration panel found the BCGEU certification covered the Dietitian II position.

[Insurance Corporation of British Columbia, 2021 BCLRB 181](#)

The Union applied under Section 133(5) of the Code for interim orders suspending the operation of the Employers' mandatory COVID-19 vaccination policies. The Union argued that because of the permanent nature of the vaccine and other consequences of non-compliance, an adequate remedy would not be available to it and the affected employees if the Employers were entitled to apply the policy before its applications under Section 54 could be adjudicated on their merits. The panel noted the Board's decision on the merits of the Section 54 applications is not a decision on the reasonableness of the policies themselves; rather the Board's role under Section 54 is to evaluate whether the Employers implemented the policies in a manner consistent

with the notice and consultation obligations set out in Section 54. The panel also noted that while the Board has broad remedial discretion, remedies for a breach of Section 54 normally include a declaration, an order that the parties meet in good faith to discuss an adjustment plan, or damages for lost wages. The panel was not persuaded that an interim order was necessary to ensure an adequate remedy was available to the Union to compensate it for the lost opportunity to discuss an adjustment plan if its Section 54 applications were successful on the merits.

[Board of Education of School District No. 5 \(Southeast Kootenay\), 2021 BCLRB 184 \(Leave for Reconsideration of 2021 BCLRB 82\) \(petition for judicial review filed\)](#)

The Southeast Kootenay Principals' and Vice-Principals' Association (the "Association") applied for leave and reconsideration of the Original Decision, which dismissed the Association's application for certification, finding the members of the proposed bargaining unit are not "employees" within the meaning of the Code because they perform functions of a manager. In light of that finding, the original panel concluded it was unnecessary to address the Employer's argument that the members of the proposed bargaining unit are expressly excluded from the Code's definition of "employee" by a provision of the *School Act*, or the Association's argument that this provision of the *School Act* is unconstitutional. The reconsideration panel held the original panel was correct in determining it was unnecessary to address the constitutionality of the *School Act* given it had concluded the Association's members fell within the Code's managerial exclusion. The reconsideration panel also found the original panel did not deny the Association a fair hearing by declining to consider certain evidence it found was irrelevant. Finally, the reconsideration panel held the original panel was correct in concluding it was unnecessary to reconsider the Board's policy on managerial exclusions in light of recent caselaw on *Charter* values.

[British Columbia Rapid Transit Company Ltd., 2021 BCLRB 185 \(application for leave for reconsideration filed\)](#)

The Union alleged the Employer breached Section 54 of the Code by failing to give 60 days' notice of its vaccination policy and by failing to approach the Union to devise an adjustment plan. The Employer argued Section 54 does not apply to the introduction of the policy. In the alternative, the Employer argued the application was premature, or that it should be relieved of the notice obligation in the circumstances. The panel found the Employer's vaccine policy constituted a change such that the obligations in Section 54 of the Code applied. The panel further found the Employer breached Section 54 by failing to provide sufficient notice of the change. The panel found the vaccine policy is distinguishable from other policies imposing discipline because it is not directed at individual behaviour assessed against a measure of performance, but instead requires employees to both undertake a form of medical procedure which the parties know some will be fundamentally opposed to, and to communicate confidential medical information to the Employer. The panel also found the policy created organizational change by temporarily, and likely permanently, removing employees

who did not meet a new requisite qualification in the form of “fully vaccinated” status. The panel found the requirements of the policy and consequences for non-compliance are rationally connected to the provisions in Section 54(1)(b). The panel found the application was not premature and declined to relieve against the notice requirement.

[Certain Employees of Envirosystems, 2021 BCLRB 186](#)

Certain Employees applied, pursuant to Section 142 of the Code, to remove a group of employees from a voluntarily recognized unit of the Employer’s employees. The Union argued the Board has no ability under Section 142 of the Code to partially decertify a voluntarily recognized unit. The Employer argued that if the Board lacks jurisdiction under Section 142 of the Code, it should consider the application under Section 34 of the Code. The panel dismissed the application, finding that Section 142 does not apply where there is no certification. The panel was also not persuaded that it should consider the application under Section 34 because the application was seeking to remove a group of employees less than all employees in the unit, which is not available under Section 34.

[Lantic, Inc., 2021 BCLRB 192](#)

The Private and Public Workers of Canada, Local No. 8 (“PPWC”) applied under Section 19 of the Code to replace the Retail Wholesale Union, Local 517 (“RWU”) as the certified bargaining agent for the bargaining unit. The RWU argued the PPWC had misled the bargaining unit members with respect to the continuation of their pension and benefits plan, and it asserted these representations rendered the PPWC’s membership evidence tainted and invalid. In the alternative, the RWU argued that retired members had a sufficient continuing interest in the bargaining unit due to the reduction in their pension that would result from a successful raid and should be included for the purpose of calculating threshold membership support and/or a representation vote. The panel dismissed the RWU’s allegations noting that inaccurate representations made by unions during organizing drives do not necessarily vitiate employees’ freedom of choice to select union membership. Here, the RWU had the opportunity to correct any inaccuracies in statements made by the PPWC. The panel further found the retired members were not employees for the purposes of the Section 19 application, and that any potential consequence on them resulting from a raid did not change the nature of the relationship between the Employer and the retired members, nor did it render the retired members employees pursuant to the Code for the purposes of calculating threshold membership support or a representation vote.

Court decisions

[Canadian Union of Public Employees, Local 403 v. Langley \(Township\), 2021 BCSC 5](#)

The Union applied for judicial review of a Board decision denying its application for review of an arbitration award under Section 99 of the Code. The Union argued the arbitrator had improperly concluded that his discretion was fettered by a previous

decision of the Board, and the Board's decision, which found this was not the case, was patently unreasonable. The Court noted its role was not to determine the correct interpretation of the arbitrator's analysis or to determine whether the Board's decision was wrong. The Court found the Board's decision was well-reasoned, acknowledged the different possible interpretations of the arbitrator's award, and reached a rational and justifiable conclusion. Accordingly, the Court dismissed the petition.

[Vernon \(City\) v. Vernon Professional Firefighters' Association, I.A.F.F. Local 1517, 2021 BCSC 277](#)

The Employer applied for judicial review of a Board decision denying its application for review of an arbitration award under Section 99 of the Code. The Court noted the high level of deference it must provide to Board decisions reviewing arbitration awards as these matters fall within the Board's exclusive jurisdiction to decide. The Employer argued the Board's decision was patently unreasonable for two reasons: first, because it contradicted Code principles on whether arbitration awards must expressly consider whether employment relationships are restorable when grievors are dishonest; and second, because it did not find the arbitration panel had denied the Employer a fair hearing. The Court disagreed, finding the Board's decision was not patently unreasonable because it included rational and tenable lines of analysis on both issues.

[Almachar v. British Columbia Government and Service Employees' Union, 2021 BCSC 1609](#)

The Petitioner sought judicial review of a Board decision which dismissed her application under Section 12 of the Code alleging the Union breached its duty of fair representation when it declined to take her grievances to arbitration. The Board found the Petitioner's application was untimely and dismissed it on that basis. The Court concluded the Board's finding was not patently unreasonable, stating the Board was well-equipped to assess timeliness in the labour relations context. The Board also dismissed the Petitioner's application on the merits. The Court found the Board's decision on the merits was not patently unreasonable. In dismissing the petition, the Court noted its role was not to review the Employer's conduct or the Union's handling of the Petitioner's grievances. Rather, the Court's only role on judicial review was to determine whether the Board's decision was patently unreasonable.

[Team Transport Services Ltd. v. Unifor, Local No. VCTA, 2021 BCCA 211](#)

The Appellants appealed the decision of the chambers judge denying their petition for judicial review of a Board decision granting an application for a common employer declaration under Section 38 of the Code. The Appellants argued that Section 38 could not be interpreted to allow the Board to issue a common employer declaration that applied retroactively on a company which had since declared bankruptcy. The Court of Appeal disagreed, stating it could not find the Board's decision patently unreasonable absent a legislative provision limiting the Board's discretion to make retroactive determinations. The Court of Appeal found that Section 38 allows for a common employer declaration and remedy to be effective on a date earlier than the date of the

decision and, absent a provision that would limit retroactive determinations, the Board's interpretation was not unreasonable. Accordingly, the appeal was dismissed.

[Red Chris Development Company Ltd. v. United Steelworkers, Local 1-1937, 2021 BCCA 152 \(appeal to SCC dismissed, No. 39668\)](#)

The Employer appealed a decision of the chambers judge granting a petition for judicial review. On judicial review, the chambers judge found the Board's decisions were patently unreasonable because they did not address inconsistencies between the bargaining unit description on the application for certification, and an accompanying letter providing further particulars on employees included in the unit. Only the bargaining unit description from the application for certification was provided to the employees prior to the certification vote.

The Court of Appeal allowed the appeal, set aside the judicial review decision, and restored the Board's decisions. On appeal, the Court noted there were two issues before the Board: whether the bargaining unit was appropriate; and whether there was sufficient support among employees for union representation. The Court of Appeal noted these are matters which are squarely within the Board's jurisdiction to decide. Consistent with the deferential standard that courts must take, the Court of Appeal found it was not open to the Court to interfere with the Board's determination that employees had an opportunity to vote on their desire for union representation. The Court found the chambers judge failed to give the Board the necessary degree of deference as required in the Code. The Court noted the Board's decisions were replete with labour policy considerations and were not ones with which the Court could interfere.

On September 29, 2021, the Supreme Court of Canada denied the Employer's application for leave to appeal the Court of Appeal's decision.

[International Longshore and Warehouse Union - Canada, Local 400 v. Ledcor Resources & Transportation Limited Partnership, 2021 BCSC 2077](#)

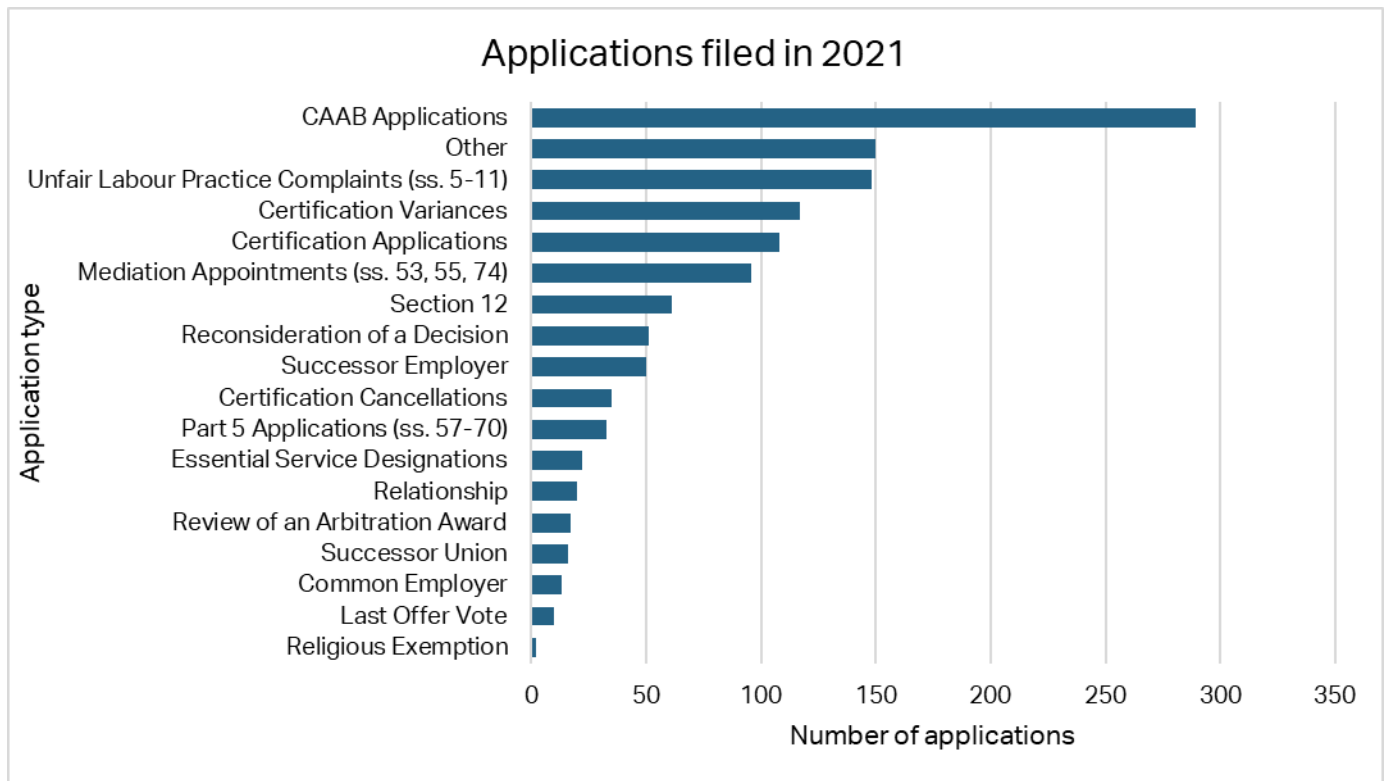
The Union applied for judicial review of a Board decision, which denied its application under Section 19 of the Code to replace an existing union as the certified bargaining agent for the Employer's marine unit. The Union argued the Board erred first, by concluding the Union provided inadequate particulars of the alleged unfair labour practices and, second, by improperly reversing the onus for establishing a voluntary recognition agreement was in place. The Court noted the Board found the alleged unfair labour practices were too stale to allow for a fair evaluation, regardless of whether they were properly particularized, and found no fault with the Board's analysis with respect to the timeliness of the unfair labour practices. The Court noted the Board has exclusive jurisdiction over the assessment of alleged unfair labour practices and the Court should respect the Board's views as to what level of detail is required to make a claim unless the Board's decision is clearly irrational. The Court found it was not clearly irrational. Finally, the Court found the Board had not improperly reversed the

burden of proof – any argument otherwise was an example of the “line-by-line” search for error that courts on judicial review must avoid.

The Work of the Board in 2021

Summary of Applications Filed in 2021

A total of 1,238 applications were filed with the Board in 2021. The general distribution of applications filed, by type, is set out in the chart below.



The Board prioritizes its adjudication, mediation, and settlement resources to deal with expedited matters.

Generally, applications dealt with on an expedited basis include:

- certification, decertification, and variance applications that require a representation vote;
- unfair labour practice complaints, including applications under Section 5(2);
- applications for stay of proceedings; and
- applications involving strikes or lockouts, picketing, replacement workers and/or essential services.

This prioritization is reflected in the average time to disposition figures:

Average Time to Disposition

Application Type	Count of Applications ¹	Average (Days)	Median (Days)
Unfair Labour Practice Complaints Under s.6 of the Code Where a Dismissed Employee is Involved	67	114	79
Complaints Regarding Duty of Fair Representation (s.12)	50	217	165
Certification Applications (ss.18, 19, 28)	118	56	14.5
Certification Cancellations (s.33(2))	29	46	15
Declaration of Successor Employer (s.35)	47	102	65
Common Employer (s.38)	10	235	133
Review of Arbitration Award (s.99)	22	215	168
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s.139)	24	224	152
Reconsideration of a Decision (s.141)	51	118	96

¹ Excludes applications not proceeded with (NPW) due to incorrect or insufficient application information.

Breakdown of Certification and Decertification Applications for 2021

Certification applications and certification cancellations under Section 33(2) granted in 2021 – By industry

Type of industry	Certification applications		Certification cancellations ²	
	Applications granted	Number of employees ³	Applications granted	Number of employees ⁴
Accommodation and food services	6 (8%)	571	5 (25%)	48
Administrative and support, waste management and remediation services	4 (5%)	213	0	0
Agriculture, forestry, fishing and hunting	1 (1%)	33	1 (5%)	20
Arts, entertainment and recreation	1 (1%)	4	1 (5%)	31
Construction	11 (14%)	124	3 (15%)	14
Educational services	2 (3%)	89	0	0
Health care and social assistance	19 (25%)	1047	2 (10%)	79
Information and cultural industries	1 (1%)	50	1 (5%)	5
Management of companies and enterprises	1 (1%)	26	0	0
Manufacturing	6 (8%)	211	0	0
Other services (except Public administration)	2 (3%)	18	1 (5%)	7
Public administration	5 (7%)	109	2 (10%)	13
Retail trade	7 (9%)	101	1 (5%)	37
Transportation and warehousing	8 (11%)	112	0	0
Utilities	2 (3%)	58	0	0

² To accurately reflect the number of employees per granted application, only certification cancellation applications brought by employees under Section 33(2) are included in this table. Therefore, the total number of applications granted may not equal applications granted listed in the [Applications filed and disposed of in 2021](#) table.

³ The number of employees on an application for certification is based on the information supplied by the union on the application form. Variances may occur between the time of application and the time of disposition of the application.

⁴ The number of employees on an application to cancel a certification is based on the number of eligible voters on the Return of Poll signed by the returning officer.

Certification applications and certification cancellations under Section 33(2) granted in 2021 – By industry

Wholesale trade	0	0	3 (15%)	34
Total	76	2766	20	288

Certification applications and certification cancellations under Section 33(2) filed and granted in 2021 – By union

Trade union	Certification applications		Certification cancellations ⁵	
	Filed ⁶	Granted	Filed	Granted
ACWU-IATSE	1	1	0	0
BC Union Workers Union	0	1	0	0
BCGEU	11	5	1	1
Canada West Construction Union	1	1	0	0
Canadian Media Guild	1	0	0	0
Canadian Union of Skilled Workers – CUSW	1	0	0	0
Carpenters	2	2	1	2
CLAC	2	1	0	0
COPE	5	4	2	0
CUPE	7	7	3	3
Electrical Workers - IBEW	5	3	0	0
Food and Commercial Workers (UFCW)	8	6	3	3
Hospital Employees - HEU	13	9	0	0
Labourers	1	1	0	0
Machinists	3	3	0	0
Operating Engineers - IUOE	11	8	1	0
Painters	1	1	1	1
Police Association	1	1	0	0
PPWC	2	2	0	0
PSAC	1	1	0	0
Refrigeration	1	0	0	0
SEIU (Brewery)	9	4	0	0
SMART	2	2	0	0
Steelworkers	6	3	5	2
Surrey Police Union	1	1	0	0
Teamsters	8	4	3	1
Unifor	1	2	3	2
UNITE HERE	1	1	4	5
Single Employer Employees' Association	2	2	0	0
Total	108	76	27	20

⁵ To accurately reflect the number of employees per granted application, only certification cancellation applications brought by employees under Section 33(2) are included in this table. Therefore, the total number of applications granted may not equal applications granted listed in the [Applications filed and disposed of in 2021](#) table.

⁶ Excludes applications not proceeded with (NPW) due to incorrect or insufficient application information.

Certification applications and certification cancellations under Section 33(2) filed/decided in 2021

Type of application		Filed ⁷	Granted	Dismissed	Total decided
Total certification applications	Number of applications	108	76	20	96
	Number of employees ⁸	3635	2766	840	3606
Certification applications for previously unorganized employees	Number of applications	106	74	20	94
	Number of employees	3481	2612	840	3452
Certification applications for organized employees	Number of applications	2	2	0	2
	Number of employees	154	154	0	154
Total applications to cancel a certification brought by employees under s. 33(2) ⁹	Number of applications	27	20	4	24
	Number of employees	1171 ¹⁰	288	88	376

⁷ Excludes applications not proceeded with (NPW) due to incorrect or insufficient application information.

⁸ The number of employees on an application for certification is based on the information supplied by the union on the application form. Variances may occur between the time of application and the time of disposition of the application. The estimate could include some multiple counting where more than one union applied to cover the same group of employees, or where the same union made alternative applications to cover the same group of employees.

⁹ Only certification cancellation applications brought by employees under Section 33(2) are included in this table. Therefore, the total number of applications granted may not equal applications granted listed in the [Applications filed and disposed of in 2021](#) table.

¹⁰ The number of employees on an application to cancel a certification is based on the number of eligible voters on the Return of Poll signed by the returning officer. The number of employees on an application for which a Return of Poll is either not available or not applicable (in particular, for the number of applications Filed) is based on the bargaining unit size listed in the report of the officer. This may include some multiple counting where more than one application is received to cancel the same certification.

Certification applications and certification cancellations under Section 33(2) granted in 2021 - By size of bargaining unit

Number of Employees	Certification Applications		Certification Cancellations ¹¹	
	Number of Applications	Percentage of Applications	Number of Applications	Percentage of Applications
1 to 10	24	32%	12	60%
11 to 20	14	18%	3	15%
21 to 30	7	9%	1	5%
31 to 40	11	14%	3	15%
41 to 50	6	8%	0	0%
51 to 60	2	3%	1	5%
61 to 70	2	3%	0	0%
71 to 80	1	1%	0	0%
81 to 90	1	1%	0	0%
91 to 100	1	1%	0	0%
101 to 200	6	8%	0	0%
Over 200	1	1%	0	0%
Total	76	100%	20	100%

¹¹ Only certification cancellation applications brought by employees under Section 33(2) are included in this table. Therefore, the total number of applications granted may not equal applications granted listed in the [Applications filed and disposed of in 2021](#) table.

Certification applications granted between 1995 and 2021 - By size of the bargaining unit

Year	Number and percentage of certification applications						
	1 to 20 Employees		21 to 50 Employees		Over 50 Employees		Total
1995	253	64.4%	100	25.4%	40	10.2%	393
1996	312	72.5%	80	18.6%	38	8.9%	430
1997	285	69.6%	71	17.4%	53	13.0%	409
1998	233	67.0%	65	18.7%	50	14.3%	348
1999	239	65.8%	65	17.9%	59	16.3%	363
2000	169	64.3%	45	17.1%	49	18.6%	263
2001	105	58.0%	40	22.1%	36	19.9%	181
2002	62	70.4%	13	14.8%	13	14.8%	88
2003	54	72.0%	11	14.7%	10	13.3%	75
2004	58	65.9%	17	19.3%	13	14.8%	88
2005	170	63.9%	62	23.3%	34	12.7%	266
2006	58	65.2%	21	23.6%	10	11.2%	89
2007	72	59.5%	26	21.5%	23	19.0%	121
2008	62	64.6%	13	13.5%	21	21.9%	96
2009	43	48.9%	20	22.7%	25	28.4%	88
2010	42	58.3%	13	18.1%	17	23.6%	72
2011	34	58.6%	15	25.8%	9	15.5%	58
2012	37	55.2%	15	22.4%	15	22.4%	67
2013	78	63.5%	30	24.4%	15	12.1%	123
2014	38	50.7%	19	25.3%	18	24.0%	75
2015	37	60.7%	15	24.6%	9	14.7%	61
2016	28	50.9%	11	20.0%	16	29.1%	55
2017	34	58.6%	12	20.7%	12	20.7%	58
2018	32	55.2%	17	29.3%	9	15.5%	58
2019	43	50.6%	22	25.9%	20	23.5%	85
2020	30	45.0%	17	26.0%	19	29.0%	66
2021	38	50.0%	24	31.6%	14	18.4%	76

Applications to cancel certifications disposed of in 2020 and 2021

Type of applicant (and application)	Year	Granted	Dismissed	Not Proceeded With	Withdrawn	Total
Filed by employee(s) (s. 33)	2021	20	4	5	5	29
	2020	17	2	2	5	24
Filed by employee(s) (s. 142 - partial decertification) ¹²	2021	1	3	0	1	5
	2020	2	0	0	0	2
Filed by employer(s)	2021	1	0	0	1	2
	2020	0	0	0	0	0
Filed by union(s)	2021	2	0	0	0	2
	2020	2	0	0	1	3
Filed jointly by employer(s) and union(s)	2021	0	0	0	0	0
	2020	1	0	0	0	1
Total	2021	24	7	5	7	43
	2020	21	2	2	6	31

¹² Counted under Certification Variances in the [Applications filed and disposed of in 2021](#) table.

**Requests and dispositions between 2011 and 2021:
Remedial certification pursuant to Section 14(4.1) of the Code**

(Previously s. 14(4)(f) and s. 8(4)(e) of the *Labour Relations Code* and the *Industrial Relations Act*)

Year	Requested	Granted
2011	9	0
2012	9	3
2013	11	0
2014	18	1
2015	5	1
2016	5	0
2017	3	0
2018	6	0
2019	14	2
2020	10	1
2021	9	0
TOTAL	99	8

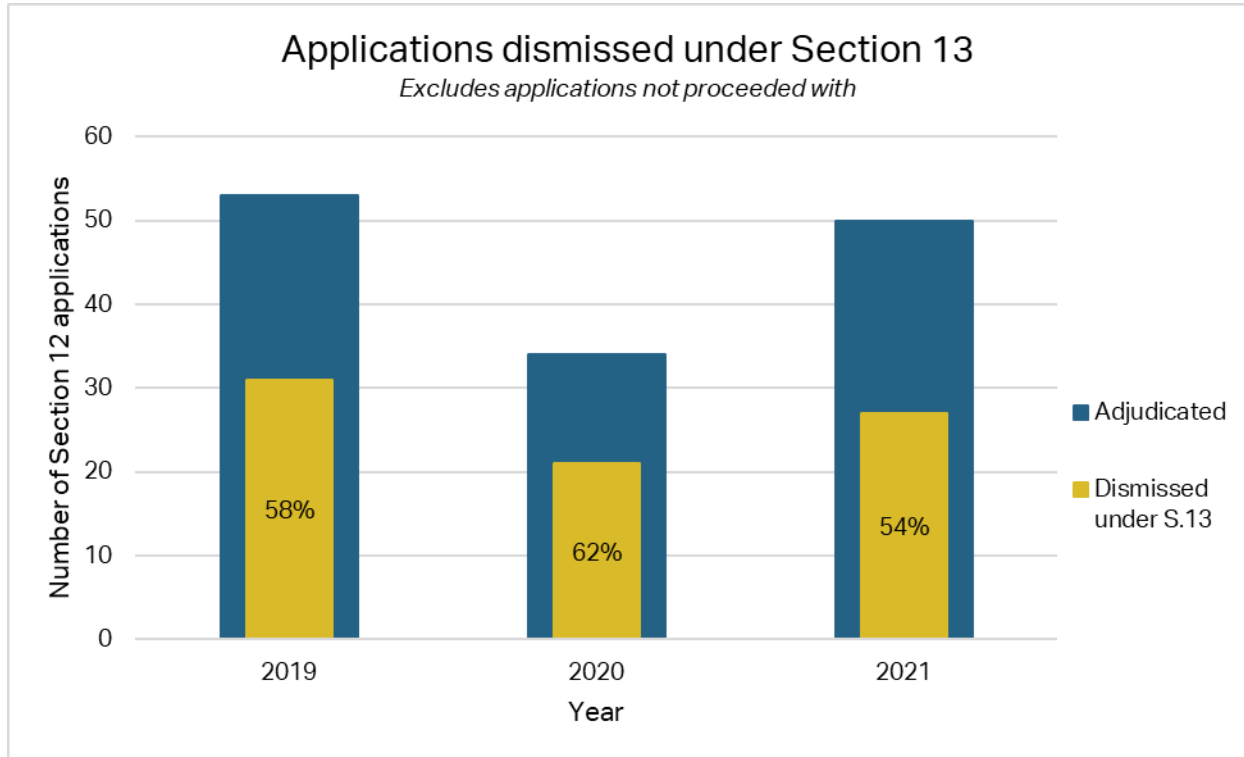
Applications under Section 12 between 2011 and 2021 – Alleging arbitrary, discriminatory, or bad faith conduct by a trade union

Year	Total applications disposed of	Not proceeded with	Settled	Final decision rendered	Granted	Dismissed
2011	74	17	1	56	4	52
2012	75	24	2	49	2	47
2013	55	10	0	45	1	44
2014	67	25	1	41	1	40
2015	77	26	4	47	1	46
2016	77	32	6	39	0	39
2017	94	42	4	48	2	46
2018	79	32	6	41	2	39
2019	96	42	2	52	2	50
2020	53	19	5	29	0	29
2021	71	21	8	42	1	41

Section 13 of the Code requires the Board to determine whether or not an application filed under Section 12 discloses an apparent breach. Where it does, the Board will

seek submissions from the respondent union and employer. Where it does not, the application will be dismissed.

In 2021, 54% of Section 12 application files adjudicated were dismissed under Section 13.



Applications for leave and reconsideration

A party that seeks to challenge an original decision of the Board must do so by applying for leave and reconsideration under Section 141 of the Code.

Reconsideration applications disposed of in 2021

Type of original application	Leave denied	Dismissed	Granted	Withdrawn	Not proceeded with	Total
Internal Union Affairs (s. 10)	0	1	0	0	0	1
Complaints Regarding Duty to Bargain in Good Faith	2	0	0	0	0	2
Duty of Fair Representation (s. 12)	20	0	0	0	0	20
Other Unfair Labour Practice Complaint (ss. 5-9)	2	0	1	0	0	3
Certification	4	0	1	0	0	5
Cancellation of a Voluntary Recognition (s. 34)	2	0	0	0	0	2
Declaration of Employer Successor Status	0	0	1	0	0	1
Common Employer	2	1	6	0	0	9
Adjustment Plan (s. 54)	1	0	1	0	0	2
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s. 139)	0	1	1	0	0	2
Review of Arbitration Award	0	2	2	0	0	4
TOTAL	33	5	13	0	0	51

Reconsideration applications – by applicant type and disposition

Applicant	Leave denied	Dismissed	Granted	Withdrawn	Not proceeded with	Total
Employer(s)	3	3	5	0	0	14
Union(s)	10	2	8	0	0	17
Employee(s)	20	0	0	0	0	20
TOTAL	33	5	13	0	0	51

Reconsideration outcomes from 2011 to 2021

Year	Total applications disposed of	Withdrawn/Not proceeded with	Processed to a final decision	Resulted in a revision of the original decision
2011	45	2	43	6 (14%)
2012	59	2	57	15 (26%)
2013	47	3	44	14 (32%)
2014	57	2	55	14 (25%)
2015	55	0	55	9 (16%)
2016	43	0	43	6 (14%)
2017	40	0	40	7 (18%)
2018	46	2	44	7 (16%)
2019	31	1	30	4 (13%)
2020	35	3	32	3 (9%)
2021	51	0	51	13 (25%)

Judicial Review Proceedings

Once a party has exhausted internal appeals under Section 141, their only further recourse is to apply to the BC Courts for judicial review.

Judicial Review petitions and appeals

Title of Proceeding	Applied to	Status	Judgment
<p><i>Sarbjeeet Maan v. British Columbia Labour Relations Board, The Government of the Province of British Columbia (Ministry of Children), B.C. Government and Service Employees' Union</i> Vancouver Registry No. S-201563</p>	BCSC	Active	
<p><i>Michelle Ferguson v. British Columbia Labour Relations Board, Health Sciences Association of British Columbia, and Fraser Health Authority</i> Chilliwack Registry No. S-38843</p>	BCSC	Active	
<p><i>Jagdev Singh Dhillon v. The British Columbia Labour Relations Board; Retail Wholesale Union, Local 517; and Damco Distribution Canada Inc.</i> Vancouver Registry No. S-216136</p>	BCSC	Active	
<p><i>Corinne Pereira v. British Columbia Labour Relations Board, Unite Here Local 40, Horizon North Camp & Catering Inc. Managing Partner of Horizon North Camp & Catering Partnership</i> Terrace Registry No. S-21180</p>	BCSC	Active	

Collective Agreement Arbitration Bureau

Applications filed requesting an appointment through CAAB:

Percentage change over 2021 and percentage change from previous four years

Section	% change 2020 v. 2021	% change 2021 v. 2020-2016 average
Section 86 (Appointment of Arbitrator)	-13%	41%
Section 87 (Appointment of Settlement Officer)	43%	-25%
Section 104 (Appointment of Arbitrator)	-18%	7%
Combined CAAB Sections	-15%	3%

Review of arbitration award outcomes from 2011 to 2021

Year	Total applications disposed of	Withdrawn/Not proceeded with	Processed to a final decision	Allowed
2011	35	8	27	2 (7%)
2012	59	4	55	7 (13%)
2013	15	1	14	1 (7%)
2014	33	4	29	1 (3%)
2015	28	2	26	5 (19%)
2016	17	0	17	5 (29%)
2017	25	1	24	2 (8%)
2018	26	1	25	3 (12%)
2019	28	1	27	3 (11%)
2020	16	2	14	1 (7%)
2021	22	0	22	3 (14%)

Mediation Division

Board mediators continued to meet with parties to facilitate collective bargaining mediation virtually throughout 2021, although some in-person meetings were sought and held. Mediators will accommodate requests for in-person meetings where the Board's COVID-19 Safety Policy can be complied with.

As noted in last year's annual report, requests for the appointment of a mediator under Section 74 of the Code were down significantly in 2020 over previous years. That trend began to correct itself in 2021; applications under Section 74 increased significantly in 2021 (69) as compared to 2020 (46).

The number of applications for first collective agreement mediation jumped significantly in 2020. That trend continued in 2021; there were 18 applications filed under Section 55 in 2021 compared to 15 in 2020.

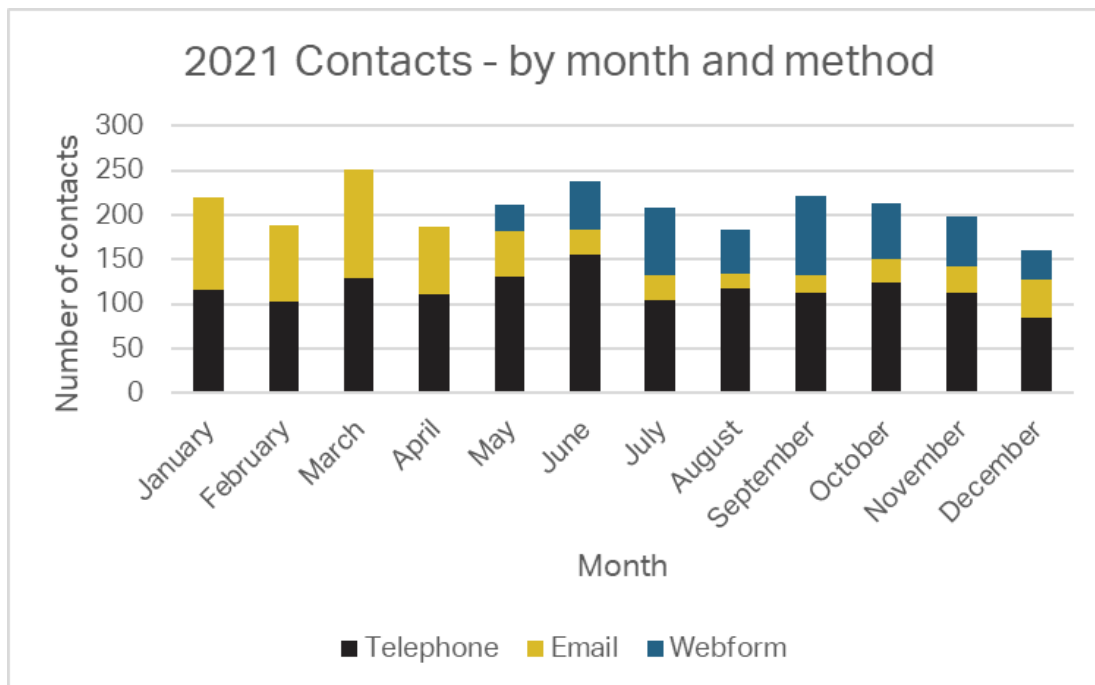
Mediators also worked with parties to assist in developing adjustment plans under Section 54(2.2) (5 applications filed) and to facilitate relationship enhancement under Section 53(5) (9 applications filed).

All of the major health sector, public service, and public school teachers collective agreements will expire in 2022. In the fall of 2021, Board mediators began working with the health care bargaining parties to develop and implement a process for resolving essential service levels in advance of health sector collective agreement bargaining.

Information Officer

The role of the Information Officer is to provide broad information about the *Labour Relations Code*, Board processes, and the Board in general. In 2021, the Information Officer responded to over 2,000 contacts from stakeholders and members of the public.

With the launching of the Board's website, a Contact Us webform was introduced, which allows individuals to select their reason for contacting the Board. Based on the reason selected, the email generated by the webform gets diverted to the correct department to address. For example, requests for copies of certifications are directed to the Registry, while questions related to Board processes are directed to the Information Officer.



The majority of individuals contacting the Information Officer (73%) were employees (73%) or were calling on behalf of employees (3%). The vast majority of individuals contacting the Information Officer (72%) were calling for issues that did not fall within the Board's purview.

Of the 2,481 people who contacted the Information Officer in 2021, an average of 9% disclosed they were referred to the Board, usually by another public agency. Of all the people who disclosed they were referred to the Board (215), only three were contacting the Board with something that fell within its purview.

The Information Officer received a number of contacts from individuals asking about COVID-related issues; as the Provincial Health Office (PHO) and employers announced vaccine mandates in the workplace, the Information Officer saw a spike in calls related to COVID-19. Although overall, 10% of people were contacting the

Information Officer for issues that related to COVID-19, this increased greatly starting in July. The peak of COVID-related contacts was in November, with 24% of people contacting the Information Officer with issues around COVID-19. Of those, 81% were calling directly in relation to vaccine mandates in their workplace.

Of the individuals contacting the Board about vaccine mandates (the vast majority being employees), most were requesting:

- The Board represent them with the employer as they were facing termination
- The Board direct the union to support them
- Information on the legality of: the PHO implementing a vaccine mandate, being placed on a leave of absence or terminated due to a vaccine mandate, or of the employer implementing a workplace vaccine mandate outside of the PHO mandate
- Information on their severance eligibility for being terminated due to a vaccine mandate

The Board is regularly contacted by individuals who express frustration accessing their employment and labour rights. This has only increased in the context of PHO directives, COVID-19 restrictions generally, and COVID-19 vaccine passports and employer policies. Some of these contacts have been, at best, aggressive and, at worst, outright threatening.

Statistical Information

General statistical table

The general statistical table provides an overview of all applications filed with the Board in 2021 and includes 2020 as a comparator.

General notes

For the convenience of users, the following is a brief description of some of the disposition codes used in general statistical table.

- Applications and complaints granted include those where an order is issued, whether a regular order or a consent order. If an application is partially granted, it is included in this category.
- Applications and complaints dismissed include those where no violation is deemed to have occurred, where the application does not conform to statutory or regulatory time limits or where it is determined no further action is warranted.
- Applications and complaints not proceeded with include only those where the applicant has not supplied the Board with sufficient information to process the application. The application is returned but the applicant is free to reapply.
- Applications and complaints that do not require a decision from the Board are designated settled including cases for which the applicant submits a withdrawal.

It is important to note when using these statistics that the work content embodied in individual applications varies widely, both among different categories of applications and among applications in the same category. The work content of the administrative, investigative, and decision-making functions can vary widely as well, from category to category and from application to application.

Statistical Tables Definitions

Report Period: Calendar Year – January 1 to December 31, 2021

Application / Complaint: a section or subsection of the Labour Relations Code. A 'case' may be comprised of more than one application or complaint (section)

Filed in Previous Year(s): count of applications / complaints received sometime prior to the report period and not yet disposed of by January 1, 2022

Filed in Current Year: count of applications / complaints received in the report period

Disposed of - Current: count of applications / complaints with a final disposition in the report period (includes applications / complaints Not Proceeded With, Withdrawn, Settled, Granted, Dismissed and Other)

Open at Year End: count of applications / complaints received sometime during or prior to the report period and open (not yet disposed of) at the end of the report period. These applications / complaints may be counted as Filed in Current Year or Filed in

Previous Year(s), as applicable (same as column heading for 2005-2007 reports: Remainder Active).

Changes have been made over time to the counting methods used in the statistical tables. Historically, applications filed under Section 54 have been included in the 'Miscellaneous' category for the purposes of Table 1. In 2019, the Code was amended to provide for a second type of application under Section 54; an application for the appointment of a mediator under Section 54(2.2). These two application types (for adjudication, under Section 54(1), and for mediation, under Section 54(2.2)) are now being reported on explicitly. No further changes to counting methods and the statistical tables have been made this year. For a list of historical changes, contact the Board.

Applications filed and disposed of in 2021											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of - Current							Open at Year End
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
Unfair Labour Practices Internal Union Affairs (s. 10)											
	2021	7	7	9	1	0	0	1	7	0	5
	2020	4	7	4	2	0	1	0	1	0	7
Duty to Bargain in Good Faith (s. 11)	2021	8	20	20	0	0	13	2	5	0	8
	2020	17	20	29	0	0	20	4	5	0	8
Arbitrary, Discriminatory, Bad Faith Representation by a Union (s. 12)	2021	29	61	71	21	0	8	1	41 ¹³	0	19
	2020	19	63	53	19	0	5	0	29 ¹⁴	0	29
Other Unfair Labour Practices (ss. 5,6,7 and 9)	2021	42	121	127	2	0	96	6	23	0	36
	2020	26	156	140	1	0	108	17	14	0	42
Religious Exemption (s. 17)	2021	1	2	3	1	0	0	1	1	0	0
	2020	0	1	0	0	0	0	0	0	0	1

¹³ 27 of the 41 dismissed complaints filed under the *Labour Relations Code* were dismissed because no *prima facie* case was found.

¹⁴ 21 of the 29 dismissed complaints filed under the *Labour Relations Code* were dismissed because no *prima facie* case was found.

Applications filed and disposed of in 2021											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of - Current							Open at Year End
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
Certification Applications (ss. 18, 19 and 28)	2021	21	108	118	0	22	0	76	20	0	11
	2020	8	130	117	1	28	0	66	22	0	21
Certification Variances (ss. 28 and 142)	2021	37	112 ¹⁵	119 ¹⁶	6	9	0	94	10	0	30
	2020	41	128 ¹⁷	132 ¹⁸	5	14	0	107	6	0	37
Certification Cancellations (ss. 33 and 142) ¹⁹	2021	8	35	38	5	6	0	23	4	0	5
	2020	3	32	27	2	6	0	17	2	0	8
Cancellation of a Voluntary Recognition (s. 34)	2021	2	5	4	0	1	0	1	2	0	3
	2020	0	7	4	2	1	0	0	1	0	3
Permission to Alter Conditions of Employment (ss. 32 and 45)	2021	0	1	0	0	0	0	0	0	0	1
	2020	0	3	2	0	0	0	2	0	0	1

¹⁵ Includes six partial decertification applications.

¹⁶ Includes five partial decertification applications. See [Applications to cancel certifications disposed of in 2020 and 2021](#).

¹⁷ Includes three partial decertification applications.

¹⁸ Includes two partial decertification applications. See [Applications to cancel certifications disposed of in 2020 and 2021](#).

¹⁹ See [Applications to cancel certifications disposed of in 2020 and 2021](#).

Applications filed and disposed of in 2021											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of - Current							Open at Year End
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
Alleged Unlawful Alteration of Employment Terms and Conditions (ss. 32 and 45)	2021	7	18	20	0	1	16	1	2	0	5
	2020	3	22	18	0	0	12	4	2	0	7
Declaration of Successor Status Successor Employer (s. 35)	2021	25	50	47	0	3	0	42	2	0	28
	2020	68	56	99	3	8	0	85	3	0	25
Successor Union (s. 37) ²⁰	2021	4	16	10	1	0	0	8	1	0	10
	2020	10	7	13	1	0	0	12	0	0	4
Common Employer (s. 38)	2021	13	13	10	0	7	0	1	2	0	16
	2020	8	25	20	0	7	0	11	2	0	13
Accreditation Applications (s. 43)	2021	0	0	0	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0	0	0	0

²⁰ The workload required to process applications in this category varies widely. The Board may receive one application per collective bargaining relationship or one application covering several collective bargaining relationships. This report reflects the number of applications filed and disposed of regardless of the number of collective bargaining relationships affected by those applications.

Applications filed and disposed of in 2021											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of - Current							Open at Year End
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
Accreditation Variances (ss. 43 and 142)	2021	2	5	7	0	0	0	7	0	0	0
	2020	1	5	4	0	0	0	4	0	0	2
Accreditation Cancellations (s. 142)	2021	0	0	0	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0	0	0	0
Alleged Failure to Execute or Comply with a Collective Agreement (s. 49)	2021	6	4	6	0	0	1	0	5	0	4
	2020	4	6	4	0	0	2	1	1	0	6
Adjustment Plan Adjudication (s.54 (1))	2021	18	29	22	0	4	18	1	1	0	25
	2020	9	25	16	0	2	10	2	2	0	18
Adjustment Plan Mediation (s.54(2.1))	2021	1	5	3	0	0	2	n/a	n/a	1 ²¹	3
	2020	0	5	4	0	1	3	n/a	n/a	0	1

²¹ No agreement reached.

Applications filed and disposed of in 2021											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of - Current							Open at Year End
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
Facilitator (s. 53(5))	2021	6	9	8	0	0	0	n/a	n/a	8 ²²	7
	2020	0	15	9	0	0	8	n/a	n/a	1 ²²	6
First Collective Agreement (s. 55)	2021	4	18	18	0	0	14	n/a	n/a	4 ²³	4
	2020	0	15	10	0	2	4	n/a	n/a	4 ²⁴	5
Appointment of a Mediation Officer (s. 74)	2021	26	69	70	8	2	54	n/a	n/a	6 ²⁵	25
	2020	12	46	32	0	1	30	n/a	n/a	1 ²⁶	26
Collective Agreement Arbitration Bureau (CAAB)											
Section 86 (Appointment of Arbitrator)	2021	32	88	84	0	18	10	n/a	n/a	56 ²⁷	36
	2020	9	101	78	0	31	11	n/a	n/a	36 ²⁷	32

²² Facilitator appointed.

²³ For three cases, the parties were allowed to exercise their right to strike or lockout and, for one, they were directed to further mediation/arbitration.

²⁴ For three cases, the parties were allowed to exercise their right to strike or lockout and, for one, they were directed to further mediation/arbitration.

²⁵ For one case, the parties were directed to further mediation, for one case, the parties were directed to arbitration, for three cases the business closed, and for one further case, no collective agreement was reached.

²⁶ No collective agreement was reached.

²⁷ Arbitrator appointed.

Applications filed and disposed of in 2021											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of - Current							Open at Year End
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
Section 87 (Appointment of Settlement Officer)	2021	1	10	11	0	0	8	n/a	n/a	3 ²⁸	0
	2020	1	7	7	0	2	3	n/a	n/a	2 ²⁸	1
Section 104 (Appointment of Arbitrator)	2021	27	191	183	0	62	38	n/a	n/a	83 ²⁹	35
	2020	0	233	205	3	36	47	n/a	n/a	119 ²⁹	27
Section 105 (Appointment of Mediator-Arbitrator)	2021	0	0	0	0	0	0	n/a	n/a	0	0
	2020	0	0	0	0	0	0	n/a	n/a	0	0
Combined CAAB Sections	2021	60	289	278	0	80	56 ³⁰	n/a	n/a	142	71
	2020	8	341	289	3	69	61 ³¹	n/a	n/a	156	60
Part 5 Applications (Strikes, Lockouts, Picketing, etc.) (ss. 57-67 and ss.69-70)	2021	4	21	24	3	0	14	4	3	0	1
	2020	3	8	7	0	0	5	1	1	0	4

²⁸ Matter referred back to the parties under Section 87(3).

²⁹ Arbitrator appointed. For 24 cases in 2021 and 19 cases in 2020, a Settlement Officer was appointed in addition to an Arbitrator.

³⁰ A Settlement Officer was appointed for 83 CAAB applications disposed of in 2021: 56 disposed of as Settled and 27 disposed of as Other. Of these 83 applications, 56 (67%) resulted in full and final settlement.

³¹ A Settlement Officer was appointed for 44 CAAB applications disposed of in 2020: 23 disposed of as Settled and 21 disposed of as Other. Of these 44 applications, 26 (60%) resulted in full and final settlement.

Applications filed and disposed of in 2021											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of - Current							Open at Year End
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
Replacement Workers (s. 68)	2021	0	12	8	0	0	7	1	0	0	4
	2020	0	2	2	0	0	2	0	0	0	0
Essential Service Designations (s. 72)	2021	3	22	10	0	1	3	6	0	0	15
	2020	2	6	5	0	0	5	0	0	0	3
Last Offer Vote (s. 78)	2021	0	10	10 ³²	0	0	0	8	2	0	0
	2020	0	6	6 ³³	0	0	0	3	3	0	0
Review of Arbitration Award (s. 99)	2021	15	17	22	0	0	0	3	19	0	10
	2020	8	23	16	0	2	0	1	13	0	15
Interim Order (s. 133(5))	2021	1	12	12	1	6	0	0	5	0	1
	2020	0	2	1	0	1	0	0	0	0	1

³² In six cases the final offer was rejected; and in four cases the application was withdrawn prior to the ballots being counted.

³³ In four cases the final offer was rejected and in two cases the offer was accepted.

Applications filed and disposed of in 2021											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of - Current							Open at Year End
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
File an Order in Supreme Court (s. 135)	2021	3	12	14	0	8	0	6	0	0	1
	2020	3	4	4	0	3	0	1	0	0	3
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s. 139)	2021	18	20	26	0	9	0	0	0	17 ³⁴	12
	2020	11	30	23	1	11	0	0	2	9 ³⁴	18
Reconsideration of a Decision (s. 141)	2021	16	51	51	0	0	0	13	38 ³⁵	0	16
	2020	15	36	35	0	3	0	3	29 ³⁶	0	16
Declaratory Opinion (excluding Declaratory Opinions Pertaining to Part V of the Legislation) (s. 143)	2021	1	2	3	0	3	0	0	0	0	0
	2020	1	3	3	0	1	0	1	1	0	1

³⁴ Ruling made.

³⁵ Leave to apply denied in 33 applications.

³⁶ Leave to apply denied in 22 applications.

Applications filed and disposed of in 2021											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of - Current							Open at Year End
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
Miscellaneous	2021	17	62 ³⁷	61 ³⁸	1	8	9	24	19	0	18
	2020	12	40 ³⁹	35 ⁴⁰	1	3	12	13	5	1	17
Total	2021	405	1238	1249	50	170	309	330	212	178	394
	2020	294	1275	1164	41	163	288	355	144	173	405

Note: The sections quoted are from the *Labour Relations Code* unless otherwise indicated.

³⁷ Includes six stay applications.

³⁸ Includes five stay applications (four were dismissed and one was withdrawn).

³⁹ Includes three stay applications.

⁴⁰ Includes three stay applications (two were dismissed and one was withdrawn).