



2022 Annual Report

March 1, 2023

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

Dear Honourable Minister:

RE: Labour Relations Board 2022 Annual Report

I am pleased to forward to you the Labour Relations Board's annual report for the year ending December 31, 2022. 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. Glougie', written in a cursive style.

Jennifer Glougie
Chair, Labour Relations Board

Enclosure

cc. The Honourable Harry Bains,
Minister of Labour

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Chair's Message

2022 was an incredibly busy year for the BC Labour Relations Board. For the first time since the COVID-19 lockdown, the number of applications filed with the Board met or exceeded pre-pandemic levels. This was true for all aspects of the Board's operation; applications for adjudication, applications for mediation, and applications under the Collective Agreement Arbitration Bureau.

While the Board continues to see applications filed that concern COVID-19 and, specifically, vaccine policies enacted in response to it, those applications are beginning to wane. Of the 38 decisions rendered under Section 12 in 2022, only six (approximately 16%) concerned COVID-19. Similarly, only one decision was issued under Section 99 (6%) that concerned an arbitrator's evaluation or interpretation of a vaccine policy.

While this arguably represents the beginning of a return to the status quo, from an operational perspective, the Board continues to make use of technologies that it and its stakeholders became accustomed to throughout the pandemic. Specifically, we continue to use electronic voting for Board-ordered votes. We continue to hold hearings and mediations virtually or in-person, depending on the parties' needs, and will continue to hold all certification hearings virtually. Finally, we converted the first of our hearing rooms to accommodate hybrid meetings, which we anticipate will become the norm in years to come. In our view, these technologies allow us to provide our services more efficiently and affordably, while reducing the environmental impact caused by the travel necessary to hold hearings and mediations exclusively in person. We expect that continued use of these practices and technologies represents the "new normal".

As you will also see from the information presented in this annual report, there has been a significant shift in the type of applications the Board was asked to adjudicate in 2022. The *Labour Relations Code Amendment Act, 2022* (Bill 10) was enacted in June 2022 and introduced single-step certification in cases where a union applies with 55% or more support among employees in the proposed unit. This required the Board to reconsider and revise its practice for receiving and processing applications for certification. We have included a section in this report describing our new process and reporting on changes we have seen since Bill 10 was enacted.

In 2022, 80% of applications referred to the Board's adjudication department were expedited files (that is, applications for certification and decertification, unfair labour practice complaints, applications filed under Part 5 of the Code, and stay applications). Two hundred and eight of the applications required oral hearings, resulting in 318 hearing days. Moreover, the cases summarized in the Highlights of Board and Court Decisions section of this report demonstrate the kinds of complex labour relations disputes the Board was asked to decide in 2022.

Finally, all of the major public sector collective agreements in British Columbia expired in 2022. Between November 2021 and April 2022, Board mediators worked with parties to the health, community social services, and public sector agreements to resolve essential service levels in the event of job action.

As always, I want to extend my heartfelt thanks to the Board's staff who continue to work tirelessly to maintain service levels at the highest standard, despite the rollercoaster they have experienced over the last half decade. I thank each and every one of them for their service to the labour relations community.

Over the last three years, the labour relations stakeholders in British Columbia have shown incredible resilience, adaptability, and collegiality as we have navigated a once-in-a-century event. While the pandemic may finally feel like it is coming to an end, I hope we continue to show each other the patience, professionalism, and grace that we have done throughout these unprecedented times.



Jennifer Glougie
Chair, Labour Relations Board

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 parties 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 Collective Agreement Arbitration Bureau (CAAB), the Information Officer, Legal Services, and Administration. It employs 35 people and has 9 order-in-council appointees, including the Chair and 8 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 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 strikes and lockouts, 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 other 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 appointing arbitrators to certain arbitration hearings and/or settlement meetings. The Director also chairs a joint advisory committee (JAC) comprised of arbitrators, employers, and union representatives who advise the Director on a range of matters.

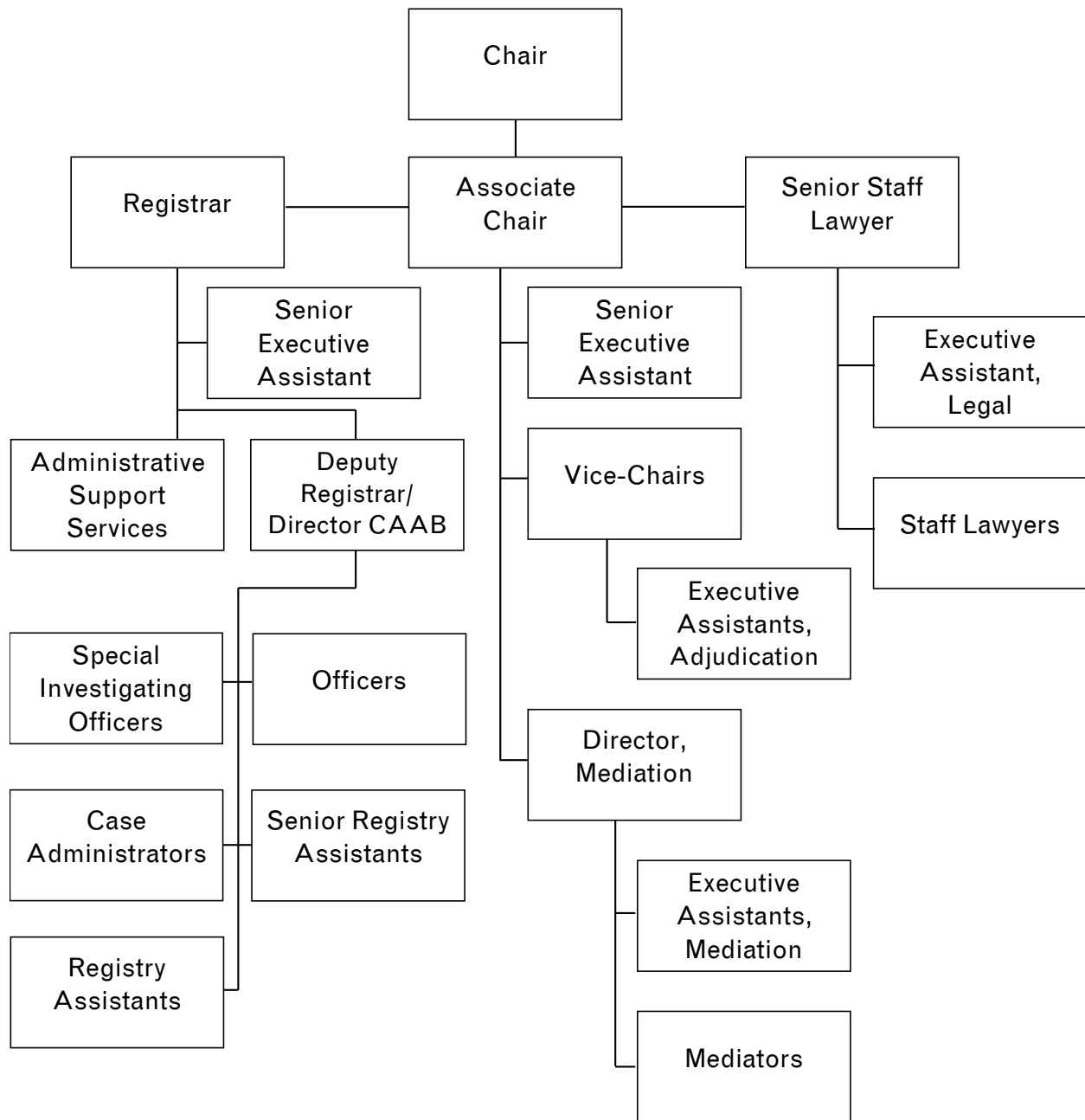


Figure 1: The structure of the Board

Statutory and Regulatory Amendments

The *Labour Relations Code Amendment Act, 2022* (Bill 10) resulted in several changes to the Code, particularly with respect to the certification process. This Act will be discussed in more detail in the section entitled [Impact of the Labour Relations Code Amendment Act 2022](#).

Other legislation was introduced or amended which potentially impacts labour relations in British Columbia or the Board's operations, including:

Public Interest Disclosure Act

The [Public Interest Disclosure Act](#) provides whistleblower protection to public service employees. PIDA, which has applied to the Board since April 2022, required the Board to develop a process for employees to report serious wrongdoings and to develop and deliver training to its staff to ensure they are aware of the process and the protections PIDA provides.

PIDA also requires the Board to report annually on all disclosures of wrongdoing made in that year. The Board's report will be made available to the public on its website on April 1 of each year. No disclosures were received between April 1, 2022 and the publication of this annual report.

Accessible British Columbia Act

The [Accessible British Columbia Act](#) is intended to make BC more inclusive for individuals with disabilities by supporting their capacity to meaningfully participate in their communities. The [Accessible British Columbia Regulation](#), which came into effect on September 1, 2022, requires institutions to which it applies to establish an Accessibility Committee, an Accessibility Action Plan, and a tool to receive feedback on Accessibility.

There are specific rules about who can sit on the Accessibility Committee: at least half of the committee must be comprised of persons with disabilities (or individuals who support persons with disabilities) and at least one member must be Indigenous. The Regulation will apply to the Board effective September 1, 2024.

Anti-Racism Data Act

The [Anti-Racism Data Act](#), which was enacted on June 2, 2022, allows public bodies, including administrative tribunals, to collect disaggregated information in order to identify barriers to justice among racialized communities. At this point, the Act permits the Board to collect such data, but does not require it. The Board is reviewing its processes as well as its commitments as a signatory to [Access to Justice Triple Aim](#) to determine what next steps it may take with respect to the Act.

Freedom of Information and Protection of Privacy Act

Effective February 1, 2023, amendments to the [*Freedom of Information and Protection of Privacy Act*](#) and Regulation require public bodies, including the Board, to have in effect a privacy management program and a process for handling privacy breaches. The Board is reviewing these requirements and will have a Privacy Management Policy as well as a Privacy Breach Policy in place by February 1, 2023 as required.

Impact of the *Labour Relations Code Amendment Act, 2022*

On June 2, 2022, the *Labour Relations Code Amendment Act, 2022* (Bill 10) was enacted. Bill 10 introduced single-step certification where a union applies to the Board with support of 55% or more of employees in the bargaining unit sought. A representation vote is still required where: a union applies with between 45-55% support; where an employer objection, if allowed, would result in a level of support that falls between 45-55%; where the Board believes a vote is necessary to determine employee support; and in all applications for decertification.

While Bill 10 also amended the raiding period in the construction industry, the Board received only five applications under Section 19 in 2022. As a result, this update will focus on the results of introducing single-step certification.

The case numbers in this update section will look different than the numbers in Table 1 below. The difference arises because of how we are reporting alternate applications. In many cases, a union will simultaneously apply to the Board for certification under Section 18(1) of the Code and, in the alternative, for an expanded bargaining unit under Section 142 (or vice versa). Regardless of how many alternate applications a union may simultaneously file, at most one will ever be granted. If the primary application under Section 18(1) is successful, the Section 142 will necessarily be dismissed. If the alternative application under Section 142 is granted, the Section 18(1) application must necessarily be dismissed.

For the purposes of Table 1, each of the applications is reported separately. For example, if a union applies for a stand-alone bargaining unit under Section 18(1) and, alternatively, to expand a pre-existing unit under Section 142, and the primary application is granted, this will show as two applications filed, one Section 18(1) application granted, and one Section 142 application dismissed. If the reader is unaware of how this information is reported, they may mistakenly believe the Board is granting only 50% of the applications for certification filed.

For the purposes of this section, we count primary applications along with any alternate applications as a single application. In other words, we are counting as a single file all of the applications which are filed together and, assuming any one of them is granted, will result in a new (or expanded) bargaining unit.

On the other hand, if a union applies for certification, withdraws that application, and then re-applies either under a different Code section or with additional membership support, we continue to count as separate applications. This will show as two

applications received, one withdrawn, and one granted. In our view, this manner of reporting better represents the work of the Board.

As shown in the table below, the Board saw an increase in applications for certification filed after Bill 10 was enacted.

Applications for certification filed			
	Jan 1 – Jun 1, 2022 (Pre-Bill 10)	Jun 2 – Dec 31, 2022 (Post-Bill 10)	Total
Filed	58	114	172
Withdrawn	8	15	23
Granted	43	87	130
Dismissed	5	5	10
Carried over to 2023	2	7	9

While the Board must always be satisfied with the membership evidence submitted in support of an application for certification, evidence submitted in support of single-step certification warrants even further scrutiny. Therefore, in response to Bill 10, the Board introduced new measures for investigating applications for certification to ensure confidence in the membership evidence on which unions rely to support their applications. This means that, on a regular and consistent basis, Board Officers will conduct a confidential membership audit in which individuals are provided an opportunity to confirm with the Board whether they did or did not sign a membership card.

The Board holds certification hearings, usually on the third or fourth day after an application for certification is received. The assigned panel may grant the application at the certification hearing if the union has at least 55% support of the employees in the proposed bargaining unit and if there are no objections to the application.

For the reasons articulated in *Starbucks Coffee Canada, Inc.*, [2022 BCLRB 107](#), the Board does not disclose the level of membership support on any specific application for certification. However, on an aggregate basis, unions applied for single-step certification in 2022 with an average of 74% membership support.

Since Bill 10 was enacted, Board Officers have audited 74 of the 114 certification applications filed (65%). The results of those audits are shown in the table below.

Membership audit results		
Responded	Indicated signed a card	Indicated didn't sign a card
569 (42 %)	565 (99.3%)	4 (0.7%)

On average, 44% of the individuals contacted responded. Of the 569 individuals who responded to a membership audit, only 4 indicated they did not sign a card or were

unsure whether they signed a card. In each case, the Officer conducted a follow up investigation and reported the results to the panel assigned to decide the certification application. In all four cases, the follow up investigation provided sufficient explanation that the Board was able to satisfy itself there was no issue with the veracity of the union’s application or the membership evidence submitted in support of it.

Officers make every effort to complete the confidential membership audit before the certification hearing. However, adjudication of an application may be delayed where the Officer is unable to contact the individuals in the proposed bargaining unit in order to conduct the audit or where the audit discloses an issue that requires further investigation before a certification can be granted.

If a representation vote is (or may be) necessary, the panel will order the vote so that it occurs within the five business days mandated by Section 24(2) of the Code and, if necessary, order that the ballot box be sealed pending adjudication.

Only five applications for certification were determined on the basis of a representation vote since Bill 10 was enacted; one of those was successful and four were not. All of the other applications were either granted on the basis of single-step certification or were dismissed, either for lack of threshold or because an employer objection to the bargaining unit was upheld.

The Board has been able to adjudicate certification applications much more quickly since Bill 10 was enacted.

Time to disposition for certification applications (pre and post Bill 10)			
		Average time to disposition	Median Time to disposition
2022 pre Bill 10	Applications granted	30 days	14 days
	Applications dismissed	24 days	14 days
2022 post Bill 10	Applications granted	8 days	5 days
	Applications dismissed	19 days	13 days

Finally, we provide a breakdown of the industries for which certifications were granted in 2022, pre and post Bill 10’s enactment.

Certification applications granted – By industry		
Type of industry	2022 pre Bill 10	2022 post Bill 10
Accommodation and food services	0	3
Administrative and support, waste management and remediation services	6	10
Agriculture, forestry, fishing and hunting	2	0
Arts, entertainment and recreation	2	4
Construction	3	11
Educational services	3	3
Health care and social assistance	14	25
Information and cultural industries	2	2
Manufacturing	1	4
Mining, quarrying, and oil and gas extraction	0	2
Other services (except public administration)	4	4
Professional, scientific, and technical services	0	2
Public administration	1	1
Real estate and rentals leasing	0	2
Retail trade	3	9
Transportation and warehousing	5	3
Utilities	2	1
Wholesale trade	0	1
Total	48	87

We note the table above indicates that 48 certifications were granted, whereas the Applications for Certification Filed table on page 8 shows 43. The difference is that the earlier table considers only applications filed and granted in 2022. The five additional certifications reported here were applied for in 2021.

Operational Updates

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 labour relations parties that appear before it.

Technological Update

As noted in the Chair's message, 2022 saw a return to pre-pandemic numbers in terms of applications filed. While this arguably represents a return to status quo, the Board's operations continue to make use of technologies that it and its stakeholders became accustomed to using during the COVID-19 pandemic. In our view, those technologies make meetings and hearings more efficient, expeditious, and affordable to the parties that appear before it. We intend to continue using these technologies where it is appropriate to do so.

The Board continues to conduct representation votes (where ordered or required) and final offer votes electronically using Simply Voting. While in-person votes remain available in appropriate circumstances, votes ordered by the Board will presumptively be held electronically.

The Board continues to accept electronic membership evidence in support of applications filed under Part 3 of the Code, provided it meets the requirements set out in *Working Enterprises Consulting & Benefits Services Ltd.*, BCLRB No. [B67/2016](#). The Registrar continues to be available to unions to review electronic card templates for compliance with these requirements.

While in-person hearings and mediations have been available since July 2020, for the most part, parties continued to prefer virtual meetings throughout 2022. As a result, the Board continued to conduct mediations, informal dispute resolution meetings, and hearings virtually.

The Board installed its first hybrid hearing room in August 2022. The hybrid hearing room allows the Board to conduct meetings and hearings where one or more parties are present in-person at the Board's offices, but other parties or witnesses attend virtually. Three more hybrid rooms will be installed in early 2023.

Staff Changes

The Board saw significant staff turnover in 2022.

Jacque de Aguayo's term as Chair of the Board ended on February 4, 2022 and she opted not to seek reappointment. Jacque was an incredible leader and her time at the Board will be remembered as a one of renewal and reinvigoration. She has moved on to hang out her shingle as a labour arbitrator and is already thriving in that role, as you will know if you've tried to schedule dates with her.

Also in February 2022, we lost our dear friend and colleague, Karen Jewell. Karen was appointed to the Board as a Vice-Chair in June 2018, as another step in a long and illustrious labour relations career. Karen had an incredible legal brain and appreciated (and could implement) a prank like nobody's business. The Board misses the joy she brought to our workplace.

A number of longtime Board staff retired in 2022. In November, both Donna Leche and Grant McArthur retired after more than four combined decades of service. As the Executive Assistant to the Mediators, Donna was responsible for maintaining the mediators' calendars, booking their travel, and providing invaluable administrative support. Katie Shum has replaced Donna in this role.

As Director of Mediation Services, Grant oversaw the Board's Mediation Department. Regardless of his administrative responsibilities in that regard, however, he never passed up an opportunity to work directly with parties. He loved having the opportunity to work through tricky issues and was incredibly effective at doing so. Dave Schaub was designated as the Director of Mediation Services after Grant's retirement.

Joe Leblanc's last day of active work was December 24, 2022. Whether it was as an Employment Standards Officer, an Industrial Relations Officer, or a Returning Officer, Joe spent decades working with the Board's community investigating applications filed under Part 3 of the Code and arranging for, and conducting, Board-ordered votes. We will miss Joe both as a colleague and as an incredible source of institutional knowledge. Chrissie Robinson assumed the Officer role to fill the vacancy Joe's retirement created.

The Board welcomed seven new staff members and appointees in 2022. Mellany Pascual, Nicole Harron, and Chikako Kuramoto all joined the Board's Registry, Fazal (Fuzz) Bhimji joined the Mediation Department, and Rene-John Nicolas, Gurleen Singh Sahota, and Carmen Hamilton were all appointed as Vice-Chairs, each with a four-year term.

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.

As noted in the Statutory and Regulatory Amendment section above, the Board is reviewing its obligations and will have a privacy management program and a privacy breach policy in place by February 1, 2023.

Timeline Extensions

The Board is required to process and adjudicate certain types of applications within statutorily mandated timelines. For example, applications filed under Section 5(2) must be heard within three days of filing, continue without interruption, and have a decision rendered within two days of the hearing concluding.

Applications for certification and decertification must also proceed expeditiously. While the Code now provides for single-step certification in certain circumstances, a representation vote may still be required if there is a question about either threshold or employee support. Where a representation vote is ordered, it must be held within five business days. In the case of decertification applications, a representation vote must always be held within five business days.

Even where there is no statutorily mandated timeline to process or decide an application under the Code, the Board proceeds with certain types of applications expeditiously; specifically, applications for stays of proceedings, unfair labour practice complaints, and applications under Part 5 of the Code. In this way, the Board prioritizes applications that potentially impact its stakeholders most urgently. In 2022, 80% of the applications filed adjudicated by the Board were expedited files.

The [*Prescribed Time Periods For Decisions Regulation*](#) requires that the Board render a decision on an application within 180 days after it is accepted for filing, although it provides discretion to extend that time period in specific circumstances. In 2022, 90% of the Board's decisions were rendered within the 180 days mandated by the Regulation.

Where the Chair extends a time period on a specific case, it is usually for one of four reasons. First, the Vice-Chair's ability to render a decision within 180 days may be impacted by party availability in circumstances where an oral hearing is required. To put this in context, 208 applications filed with the Board in 2022 required an oral hearing resulting in 318 days of hearing. Second, parties may ask that the Board hold the file in abeyance pending settlement discussions or attempts to resolve the issues in another forum. Third, the parties may ask the Board to hold a file in abeyance pending resolution of another application on the same or a related issue. For example, the Board held and continues to hold a number of files concerning the application of Section 54(1) of the Code to COVID-19 vaccine policies in abeyance pending judicial review of its decision in *British Columbia Rapid Transit Company Ltd.*, [2022 BCLRB 84](#). Finally, the Vice-Chair may require an extension of time because of workload issues.

The Board added an additional order-in-council appointee in August 2022, which will help process the backlog of cases it has experienced since 2017.

Diversity, Inclusion, and Indigenous Reconciliation

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

All Board Vice-Chairs and lawyers were registered in The Path: Your Journey Through Indigenous Canada, a course offered through the Canadian Bar Association and designed as an introduction to the history of Indigenous peoples and their relationship with European Settlers, the British Crown, and the Dominion of Canada. This training must be completed by April 2023.

All Board Vice-Chairs, lawyers, and mediators, as well as special investigating officers and the information officer were also registered in Trauma Informed Practice training, developed specifically for administrative tribunals through the Tribunals, Transformation and Independent Offices Division (TTIOD) of the Justice Services Branch of the Ministry of the Attorney General. That training will take place in early 2023.

The Board is a signatory to the Access to Justice Triple Aim and remains committed to its principles. The Board has undertaken a review of its application forms for readability and accessibility. The forms that are primarily used by self-represented litigants have already been revised to request information to ensure applicants are not misgendered. As noted above, we continue to evaluate the requirements of the *Anti-Racism Data Act* as part of our form review project.

In implementing its new registry practices in response to the enactment of Bill 10, the Board completely rewrote the documents included in the notice package it provides in response to applications for certification or decertification for readability and accessibility. In applications for certification, this package includes a Notice to Employers, Notice to Employees, Information Sheet, and a Questionnaire and employee list that helps employers identify information the Board will require from them. The Board also makes ballots available in languages other than English, where a representation vote is required, to ensure that individuals participating in a Board-ordered vote are able to understand what they are voting on.

The Board is also in the process of creating a navigation document for self-represented individuals who apply under Section 12 of the Code. This document will help explain how the Board processes applications under Section 12 and what the next steps will be. We anticipate this document will be ready for use in early 2023.

In late 2022, the TTIOD announced that it intended to review all administrative tribunal websites for readability and accessibility. While we are confident the Board's new website is consistent with the factors the TTIOD will be reviewing, we welcome any suggestions to improve accessibility arising out of the process.

Highlights of Board and Court Decisions

In 2022, the Adjudication Division published 146 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 (www.lrb.bc.ca/decisions).

Board Decisions

***Sobeys Capital Incorporated*, [2022 BCLRB 6](#) (Leave for Reconsideration of an interim decision dated November 18, 2021)**

The reconsideration panel dismissed Sobeys's application for leave and reconsideration of an interim decision which ordered the Sobeys to unredact information in documents that the Board had ordered disclosed. The reconsideration panel found the Sobeys had not established exceptional circumstances justifying reconsideration of the interim decision. The reconsideration panel was not persuaded the original panel denied the Sobeys a fair hearing in issuing the interim decision, or that the interim decision could result in irreparable harm. The panel noted the disclosed documents were subject to strict confidentiality conditions, which addressed the Sobeys's concerns about exposing sensitive information.

***Everclean Facility Services Ltd.*, [2022 BCLRB 14](#) (Leave for Reconsideration of [2021 BCLRB 143](#))**

The Union applied for leave and reconsideration of an original decision, which dismissed the Union's application alleging the successor contractor breached Sections 35(2.2) and 32 of the Code when it did not offer employment to three employees of the predecessor contractor. This case addressed a matter of first impression involving the interpretation and application of Sections 35(2.2) and 32 in the context of a pending application for certification.

The majority held that because successorship protection under Section 35(2.2) is not expressly limited to collective agreement obligations, employees have the right to protection under Section 32 through successorship regardless of whether a collective agreement is in place prior to the successorship. As such, the employees of the predecessor contractor who were working at the time of the successorship were presumptively entitled to continue their employment under the contract with the successor contractor, unless the successor contractor had proper cause for declining to do so.

***Sarbrinder Lalli*, [2022 BCLRB 16](#)**

The Applicant alleged the BCTF breached Section 40(1) of the Code by excluding him from two provincial votes because he was on leave from his teaching position and working for the BCTF as administrative staff. The BCTF argued the Applicant's BCTF staff position placed him in a conflict of interest for the purpose of voting as a BCTF member, and the Applicant was not an "employee" for the purposes of Section 40(1).

The panel found that there was no conflict of interest preventing the Applicant from voting in the circumstances of this case. There was no dispute the Applicant remained a member of the bargaining unit. The Applicant's duties as BCTF administrative staff did not require him to negotiate collective agreements or recommend ratification; and there was no "clear nexus" between the act of voting and the duties the Applicant performed such that voting would impact his ability to perform these duties in a neutral way.

***Canadian Forest Products Ltd. (Mackenzie Wood Products Division)*, [2022 BCLRB 31](#) (application for reconsideration filed)**

The panel ordered compensation to employees for wages lost as a result of the Employer's failure to provide adequate notice of a mill shutdown under Section 54 of the Code. The panel further concluded that group termination pay the employees had received pursuant to Section 64 of the *Employment Standards Act* should not be deducted from the Section 54 compensation, finding the group termination pay did not, on its face, compensate for lost earnings during the Section 54 notice period.

***Civeo Premium Services Employees LP*, [2022 BCLRB 49](#) (Leave for Reconsideration of [2021 BCLRB 164](#) and [2022 BCLRB 3](#)) (petition for judicial review filed)**

The reconsideration panel considered six applications for leave and reconsideration of two original decisions. The original panel found the Employer interfered with employees' selection of a trade union contrary to Section 6(1) of the Code by negotiating a voluntary recognition agreement with BCRCC after it received Local 40's access request. The original panel declined Local 40's request for a remedial certification and instead cancelled the BCRCC voluntary recognition agreement with the Employer, ordered the Employer to provide Local 40 with employee contact information, and required the Employer to provide Local 40 access to the camps. On reconsideration, the Employer and BCRCC argued the original panel erred in finding an unfair labour practice, while Local 40 argued the original panel erred in finding that remedies other than remedial certification were appropriate in the circumstances of this case.

The reconsideration panel found the Employer's and BCRCC's applications for leave and reconsideration were moot because BCRCC had since successfully applied for certification to represent the employees. With respect to Local 40's application, the

reconsideration panel was not persuaded the original panel erred in exercising its discretion not to order remedial certification when considering the unique facts of this case. The reconsideration panel noted that even under the amended Section 14(4.1), remedial certification is not a foregone consequence in every case where an employer breaches the Code.

British Columbia Rapid Transit Company Ltd., [2022 BCLRB 84](#) (Leave for Reconsideration of [2021 BCLRB 185](#)) (petition for judicial review filed)

The Employer and the Union applied for leave and reconsideration of the original decision which found the Employer breached Section 54(1)(a) of the Code by failing to give 60 days' notice before introducing a mandatory vaccination policy. The Employer argued the original decision erred in concluding Section 54 applied to the Employer's introduction of the policy. The Union argued the original decision erred in finding the Employer gave notice for purposes of Section 54(1)(a) and in finding the Employer did not breach Section 54(1)(b).

The majority of the reconsideration panel acknowledged that the language of Section 54(1) is broad enough that it could, in the abstract, be read to include any employer policy that affects the terms, conditions or security of employment of a significant number of employees to whom a collective agreement applies. However, the majority noted the Board interprets Section 54 purposively and contextually to give effect to the legislative intent underlying the wording of the provision. The majority noted the Board has consistently interpreted Section 54 as applying to circumstances where a structural change to the workplace, such as a full or partial closure, contracting out of work, or restructuring, affects the job security of a significant number of employees. The Board considers whether the change is of such a nature that 60 days' notice is required to allow for good faith discussion to develop an adjustment plan as described in Section 54(1)(b). If it is not, then the change will not engage Section 54, notwithstanding that the language of Section 54(1), read literally and in isolation, may on its face be broad enough to encompass it.

In this case, the policy was directed towards individual employee behaviour regarding COVID-19 vaccination, assessed against a measure of expected performance, much like any other workplace policy that would not require Section 54 notice. The majority noted the types of provisions enumerated in Section 54(1)(b) are ones which would ameliorate the effect of a policy change on all of the employees to whom it applies, not just those who fail or refuse to comply with the obligations the policy imposes. Accordingly, while the adjustments the Union sought to negotiate may protect employees against the consequences of non-compliance with an employer policy, they are not the kinds of provisions contemplated by Section 54(1)(b). As such, the original decision was set aside.

Certain Employees of Baran Steel Placing Rebar Inc., [2022 BCLRB 93](#)

Certain Employees applied under Section 34 of the Code seeking to revoke the Union's voluntarily recognized collective bargaining rights with the Employer. The Union alleged improper interference by the Employer in Certain Employees' application and asserted the Employer breached Section 6(1) of the Code by continuing to employ employees who were not members in good standing with the Union. The Union asked the Board to exercise its discretion under Section 33(6) of the Code to refuse to cancel its bargaining rights without regard to a representation vote.

The panel found the Employer had been maintaining a workforce of employees doing bargaining unit work who were not Union members and who had made almost no effort to become members, and had also transferred them between projects contrary to the collective agreement. The panel found the effect of the Employer's conduct was to interfere with the administration of the Union in a manner that breached Section 6(1) of the Code. While the panel accepted the employees played a role in the decision not to become Union members, the Employer's facilitation of this decision by continuing to employ the employees in situations prohibited by the collective agreement meant the employees continued to pay union dues while being deprived of the advantages of membership. The panel found this was sufficient to reasonably draw an inference that the true wishes of the employees were unlikely to be disclosed by a vote and accordingly exercised the Board's discretion under Sections 33(6)(a) and 33(6)(b) of the Code to refuse to cancel the Union's voluntarily recognized bargaining rights.

SerVantage Services Corp., [2022 BCLRB 99](#) (applications for reconsideration filed)

The Association applied under Section 35 of the Code for, among other things, a declaration that Bee-Clean was the successor employer to SerVantage with respect to a retendered contract for building cleaning services at Bentall Centre. While the parties agreed that a partial successorship had occurred within the meaning of Section 35(2.2), the parties disagreed about the bargaining unit and agent structure to apply following the partial successorship. The Association sought to remain the bargaining agent for a bargaining unit of Bee-Clean employees at Bentall Centre. Bee-Clean and SEIU sought to have those employees included in SEIU's existing bargaining unit with Bee-Clean.

After analyzing the *IML* factors, the panel exercised the Board's discretion under Section 35 to preserve the existing bargaining unit at Bentall Centre and the Association's representation of that bargaining unit following the successorship. The panel noted its conclusion was further buttressed by the special weight the Board gives to the preservation of existing bargaining units in the successorship context.

Starbucks Coffee Canada Inc., [2022 BCLRB 107](#)

The panel denied the Employer's request that the Board disclose the number of membership cards the Union submitted during a certification proceeding under

Section 18 of the Code. The panel was not satisfied that disclosure of the number of cards submitted by the Union with its certification application would advance the public interest in the proper administration of justice. The panel noted the precise number of cards submitted by an applicant union (once the Board is satisfied that the Union has met the 55% threshold), adds nothing material to the Board's decision to grant a certification. The panel was also not persuaded that disclosing this information would add to the transparency or integrity of the Board's process, or provide any additional confidence that the decision was made in a fair and lawful manner, particularly where the Employer did not take issue with the Board's process, and raised no reason to question whether the Board accurately calculated that at least 55% of employees in the unit were Union members in good standing.

***Civeo Corporation*, [2022 BCLRB 110](#)**

The Union applied under Section 99 of the Code for review of the arbitrator's conclusion that he had jurisdiction to determine a dispute about whether statements published by the Union were defamatory. The panel found the Arbitrator heard the parties' arguments, considered the relevant collective agreement provisions, and engaged in the type of analysis typical in collective agreement interpretive disputes. While the Union asserted the Arbitrator created obligations where none existed, the panel found the form of analysis engaged in by the Arbitrator was consistent with an attempt to interpret and apply the parties' rights and obligations as bargained within the collective agreement, as opposed to containing the Arbitrator's own judgment of what obligations the parties should have or how they should conduct themselves. The panel also found the Arbitrator's conclusions were not divorced from the language of the collective agreement, and therefore the panel could not conclude that, rather than interpreting the collective agreement, the Arbitrator disregarded the bargained language in favour of inserting his own opinions of what the collective agreement should say. The panel also noted the Arbitrator found the parties' duty of good faith in contractual performance, the terms of the collective agreement between the parties, the purpose for which the impugned Union statements were made, and the need to scrutinize the parties' collective agreement in order to fully assess the grievance allegations, meant the dispute, in its essential character, arose from the interpretation, application, administration, or violation of the collective agreement. Accordingly, the panel found there was no error in the Award and the Arbitrator properly took jurisdiction over the dispute.

***Sodexo Canada Limited*, [2022 BCLRB 119](#) (application for reconsideration filed)**

USW alleged Local 40 breached the 10-month statutory time bar in Section 33(10) of the Code by organizing employees after the Board cancelled the USW's bargaining rights. Local 40 argued it was permitted to organize during the time bar under Section 33(10) and was only prohibited from filing an application for certification during that period.

The panel noted the purposes of the time bar in Section 33(10) include providing for a period of calm and stability for employees and employers so that a recently decertified union can attempt to address the concerns which led employees to apply to have their bargaining rights revoked. The panel acknowledged that while competing organizing drives can cause some unwelcome disruption for employees and employers, Section 33(10) prevents applications for certification by a union other than the recent incumbent for a specified period of time but does not bar organizing. While USW argued Local 40's activities amounted to a disguised raid, the panel found the timing of these activities alone was insufficient to conclude Local 40 was involved in a campaign to remove USW as the bargaining agent.

The Government of the Province of British Columbia (Liquor Distribution Branch), [2022 BCLRB 128](#)

The panel found a trucking company was not an ally of the Employer under Section 65 of the Code. The trucking company had transported cargo for the Employer while the Union was in a legal strike position. The panel noted that not every form of assistance to a struck employer renders a third party an ally. A third party is not obligated to sever its customary relationship with a struck employer. A third party may be found to be an ally where it engages in unusual actions in the course of a strike, such as markedly changing its normal manner of doing business to avoid the impact of a union's lawful strike and picketing. The Board will make a practical judgment about the degree and significance of a third party's assistance to a struck employer.

Dexterra Group Inc., [2022 BCLRB 129](#)

After the retendering of a contract for building cleaning services, SEIU applied for a declaration under Section 35(2.2) of the Code that SerVantage was the successor employer to Dexterra, as well as for an order that it continue representing the employees at that location in a separate bargaining unit. The panel found that a rational and defensible line could not be drawn around the unit of employees, who were to be thoroughly intermingled with SerVantage's other employees. The panel noted that SerVantage's practice is to intermingle new employees into the Association's single bargaining unit following successful contract bids, and the use of a casual labour pool and the collective agreement terms demonstrate the unified and integrated nature of the bargaining unit. The panel found the presumption against a proliferation of bargaining units was not rebutted. The panel also acknowledged the special weight to be given to employee choice following a successorship, but found employee choice could not overcome an inappropriate bargaining unit.

Gate Gourmet Canada Inc., [2022 BCLRB 130](#) (application for reconsideration filed)

The Union applied under Sections 68(1) and 6(3)(e) of the Code, alleging the Employer used unlawful replacement workers during a strike. The Union alleged the Employer used its employees in Alberta and Ontario to cater flights travelling between British Columbia and other provinces.

The Employer argued the Code does not have extraterritorial application and the Board does not have jurisdiction to apply the Code outside British Columbia. The Employer also argued the Union had not demonstrated that the Employer breached Sections 68(1) and 6(3)(e) of the Code. The panel found the conduct at issue occurred during a strike; the Employer was a single corporate entity located in all three provinces and not simply the division in British Columbia; the Employer used the services of persons employed at another of the Employer's places of operations to perform work the bargaining unit would have performed but for the strike; that the phrase "places of operations" in Section 68(1)(b) did not exclude locations outside of British Columbia; the Code definition of "person" does not exclude employees located outside of British Columbia; and that services were therefore performed by persons the Employer was prohibited from using under Section 68(1). Accordingly, the panel found all elements of Section 68(1) were established and declared the Employer breached Sections 68(1) and 6(3)(e) of the Code.

***Mazzei Electric Ltd.*, [2022 BCLRB 132](#)**

The Employer alleged the Union breached Section 7(1) of the Code by attempting to persuade employees to join the Union at the Employer's place of business during working hours. A Union organizer sent Instagram and text messages to employees during working hours on their work cell phones. The Employer said employees were required to check messages on their work cell phones immediately during working hours, and not during breaks. The Union argued employees were responsible for determining whether, and when, to engage with a Union organizer during a workday. Alternatively, the Union argued Section 7(1) is unconstitutional because it breaches Sections 2(b), 2(c), and 2(d) of the *Charter*.

The panel found sending messages to an employee's Instagram account or text messages to work cell phones was not a breach of Section 7(1) in the circumstances of this case. It was not disputed that employees had some flexibility to choose when to take their breaks. The panel found the short messages were simply an invitation from the Union organizer to engage and it was incumbent on the employees to disengage from the messages if they did not want to take a break from work. The panel also noted the fact the messages were sent to work cell phones did not change this outcome as the fact that the Employer owned and provided the cell phones to employees for work use was akin to the fact that the Employer owned or rented the workplace and provided it for work use by employees. The panel thus dismissed the application, finding it unnecessary to decide whether Section 7(1) is unconstitutional.

***Surrey Police Board (Surrey Police Service)*, [2022 BCLRB 140](#)**

The Union alleged the Employer breached Section 45(1)(b) of the Code by implementing a mandatory COVID-19 vaccination policy during the statutory freeze period. The panel held the vaccination policy was not a change that could be perceived as a penalty for the Union members' decision to engage in collective bargaining. The panel was also not persuaded the vaccination policy would disrupt the period of

stability during bargaining that Section 45(1) contemplates. Rather, the vaccination policy was implemented as a health and safety measure and was "business as usual".

Ruth Menekerios, [2022 BCLRB 143 \(Leave for Reconsideration of 2022 BCLRB 96\)](#)

The Applicant applied for leave and reconsideration of an original decision dismissing her application under Section 12 of the Code. The Applicant alleged the Union breached Section 12 by refusing to file a grievance challenging the Employer's COVID-19 vaccination policy. The reconsideration panel dismissed the application, noting the original panel was not assessing the merits of the policy, the way it was implemented, or the Union's decision not to challenge the policy. While the Union had decided not to challenge the policy, it had decided to grieve aspects of the policy it found unreasonable and work with members who had filed legitimate requests for accommodation. The reconsideration panel agreed with the original panel that the application did not disclose an apparent case that the Union's conduct was arbitrary, discriminatory or in bad faith. In addition, the reconsideration panel dismissed the Applicant's request to be anonymized in the original and reconsideration decisions, noting the decisions did not reveal the Applicant's medical information, including vaccination status. To the extent the Applicant argued that readers may infer or make assumptions about the Applicant's vaccination status from the decisions, the panel found the Applicant has not established that this possibility gave rise to exceptional circumstances where harm to a person's privacy or security interest outweighs the public interest in applying the "open court" principle.

Vancouver Shipyards Co. Ltd., [2022 BCLRB 144](#)

The Employer alleged the Union authorized a strike in breach of Part 5 of the Code by refusing to work on materials supplied by a non-unionized third party. The panel was not persuaded by the Union's argument that the collective agreement clearly and unambiguously exempted Union members from doing this work. While the panel acknowledged the relevant collective agreement provisions could be interpreted in the way the Union argued, the panel found this issue should be determined by an arbitrator. Accordingly, the panel made interim orders referring the matter to expedited arbitration and directing the Union and its members to refrain from refusing to work on the materials pending the outcome of the expedited arbitration.

Vancouver Shipyards Co. Ltd., [2022 BCLRB 146 \(Leave for Reconsideration of 2022 BCLRB 108\)](#)

The issue before the reconsideration panel was whether the Code expressly excludes the act of honouring a picket line "that is permitted under this Code" from the definition of "strike". The Employer argued the Poly-Party members' refusal to cross a federal picket line did not fall within the exemption because a federal picket line is not "picketing that is permitted under this Code". The Poly-Party argued the strike exemption applied to all picket lines which the Code does not expressly prohibit. The

reconsideration panel noted Section 66 of the Code limits parties from bringing court actions for certain torts arising out of “picketing permitted under this Code”, which must be read to exclude federal picketing. Considering the phrase in the definition of strike in its entire context and in its grammatical and ordinary sense harmoniously with the scheme and objects of the Code, and the intention of the Legislature, the reconsideration panel held that, for the purpose of the strike definition, “picketing” could only include picketing that the Code expressly authorizes. It found that the strike exemption does not apply to picketing that falls outside of the scope of the Code. As such, the reconsideration panel found that the concerted refusal of the Unions to cross the Guild's picket line and go to work constituted an illegal strike.

Court Decisions

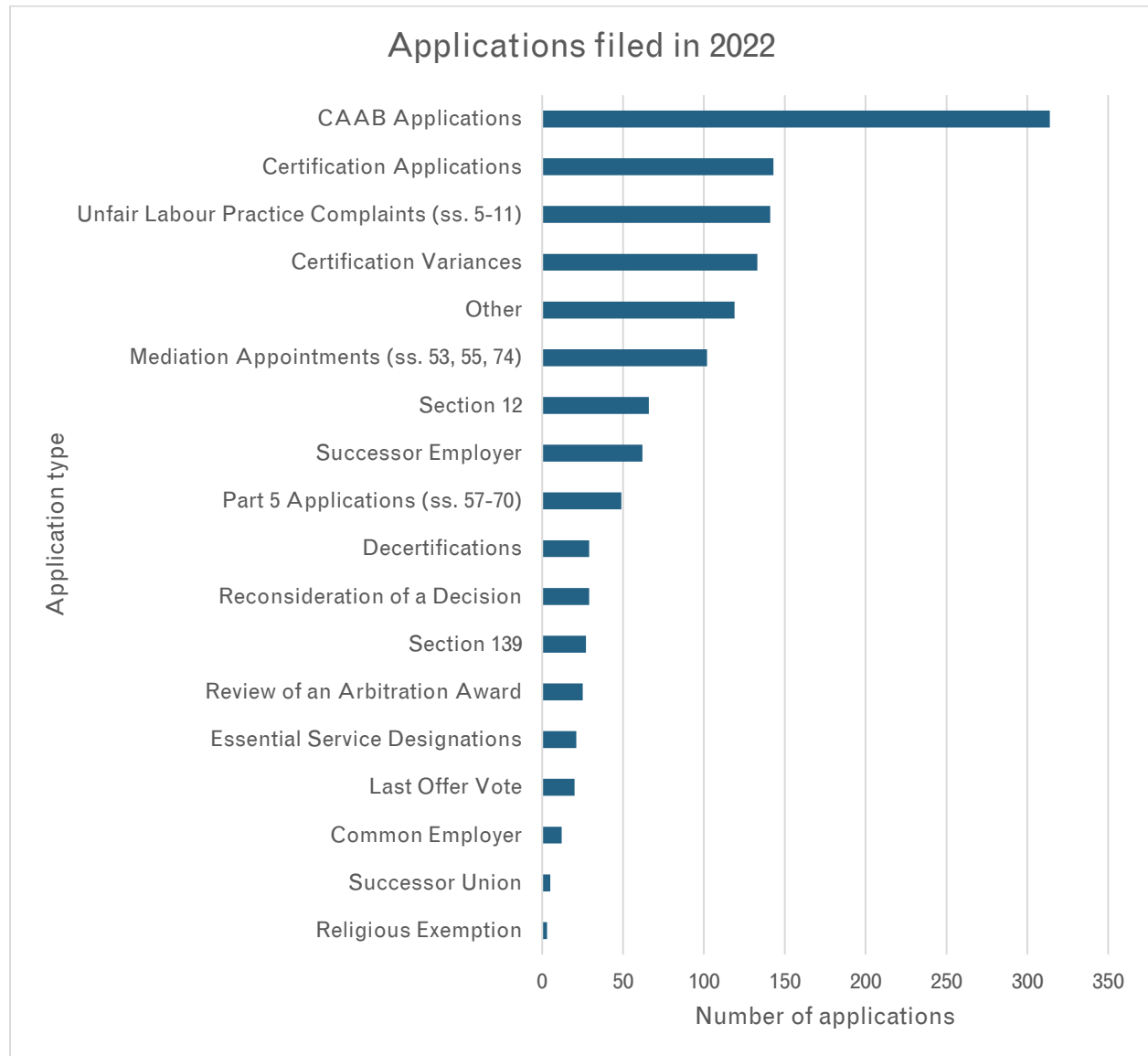
***Pereira v. British Columbia Labour Relations Board*, [2022 BCSC 1205](#)** (Notice of Appeal filed)

The petitioner filed two petitions for judicial review of two reconsideration decisions of the Board which had dismissed her applications under Section 12 of the Code respecting her discipline and termination grievances. On judicial review, the petitioner alleged the Board was biased, that her counsel was incompetent, and that the Board had failed to consider all her submissions.

The Court found that the petitioner had failed to provide convincing, cogent evidence to support her bias allegations. The Court found the petitioner had not demonstrated that her counsel was incompetent, but rather that the petitioner had disagreed with her counsel's advice and arguments. Finally, the Court found that, while the Board has no obligation to address every argument made by an applicant, the Board had considered the petitioner's submissions and provided a reasoned analysis of the arguments raised in her applications. Accordingly, the petitions for judicial review were dismissed.

The Work of the Board in 2022

While the statistical information section at the end of this report sets out a comprehensive table (Table 1) of the applications the Board received in 2022, we focus here on specific applications and outcomes of the more common application types.



The Registry and Adjudication Divisions

The freedom to belong to a trade union and to participate in its lawful activities and the freedom not to do these things are fundamental rights recognized both in Section 4 of the Code and in the *Canadian Charter of Rights and Freedoms*. Employees access these rights through applications for certification, filed by the union they want to represent them, and applications for decertification. To that end, applications for

certification and decertification are fundamental to the labour relations regime the Code regulates.

The tables below show the number of applications for certification filed with the Board in 2022. The numbers here will not match those given in the Impact of the Labour Relations Code Amendment Act 2022 section, for the reasons explained there. Here, we report primary and alternate applications for certification separately, as we have historically done in Table 1. However, the data given here includes only applications for certification which the Board decided (i.e., either granted or dismissed). Applications that were not proceeded with or withdrawn are not counted in any of the following tables.

The decertification applications reported here include only those filed under Section 33(2) (that is, those filed by employees). It does not include decertification applications filed by unions or employers under Sections 33(1) or (11). To the extent these numbers do not exactly mirror those given in Table 1, that is why.

The tables that follow show applications for certification and decertification, broken down by industry and by bargaining unit size.

Certification applications and decertification applications decided in 2022				
Type of application		Decided	Granted	Dismissed
Total certification applications	Number of applications	155	135	20
	Number of employees ¹	4694	4222	472
Certification applications for previously unorganized employees	Number of applications	150	133	17
	Number of employees	4526	4134	392
Certification applications for organized employees	Number of applications	5	2	3
	Number of employees	168	88	80
Total applications to cancel a certification brought by employees under s. 33(2)	Number of applications	20	17	3
	Number of employees	283 ²	259	24

¹ 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.

² 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 decertification applications – By industry				
Type of industry	Certification applications		Decertification applications	
	Applications granted	Number of employees³	Applications granted	Number of employees⁴
Accommodation and food services	3	45	2	23
Administrative and support, waste management and remediation services	16	360	0	0
Agriculture, forestry, fishing and hunting	2	28	0	0
Arts, entertainment and recreation	6	65	2	21
Construction	14	496	3	49
Educational services	6	75	0	0
Health care and social assistance	39	1852	1	1
Information and cultural industries	4	32	0	0
Manufacturing	5	55	3	37
Mining, quarrying, and oil and gas extraction	2	23	0	0
Other services (except Public administration)	8	159	0	0
Professional, scientific, and technical services	2	38	0	0
Public administration	2	194	0	0
Real estate and rentals leasing	2	34	1	6
Retail trade	12	170	4	117
Transportation and warehousing	8	340	0	0
Utilities	3	252	0	0
Wholesale trade	1	4	1	5
Total	135	4222	17	259

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 decertification applications - By size of bargaining unit				
Number of Employees	Certification Applications		Decertification Applications	
	Number of Applications	Percentage of total applications granted	Number of Applications	Percentage of total applications granted
1 to 10	52	39%	7	41%
11 to 20	33	24%	6	35%
21 to 30	11	8%	2	12%
31 to 40	7	5%	2	12%
41 to 50	7	5%	0	0%
51 to 60	9	7%	0	0%
61 to 70	4	3%	0	0%
71 to 80	0	0%	0	0%
81 to 90	1	1%	0	0%
91 to 100	3	2%	0	0%
101 to 200	6	4%	0	0%
Over 200	2	2%	0	0%
Total	135	100%	17	100%

Certification applications granted between 1995 and 2022 - 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
2022	42	51.2%	20	24.4%	20	24.4%	82

Pursuant to Section 141(4.1), the Board may order a remedial certification where certain requirements are met.

Requests and dispositions:		
Remedial certification pursuant to Section 14(4.1) of the Code		
<i>(Previously s. 14(4)(f) and s. 8(4)(e) of the Labour Relations Code and the Industrial Relations Act)</i>		
Year	Requested	Granted
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
2022	10	5
TOTAL	100	13

The following table shows the average (and median) number of days the Board takes to render decisions, broken down by application type.

Average Time to Disposition			
Application Type	Decided	Average Time (days)	Median (days)
Unfair Labour Practice Complaints Under s. 6 of the Code Where a Dismissed Employee is Involved	4	55	17
Complaints Regarding Duty of Fair Representation (s. 12)	38	167	177
Certification Applications (ss. 18, 19, 28)	98	24	6
Expanded Bargaining Unit Applications (ss. 142)	57	32	9
Decertification Applications (s. 33(2))	20	19	16
Declaration of Successor Employer (s. 35)	39	72	46
Common Employer (s. 38)	5	85	90
Review of Arbitration Award (s. 99)	16	19	179
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s. 139)	13	220	190
Reconsideration of a Decision (s. 141)	31	102	93

Applications under Section 12 between 2012 and 2022 – 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
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
2022	47	6	3	38	1	37

Review of arbitration award outcomes from 2012 to 2022				
Year	Total applications disposed of	Withdrawn/Not proceeded with	Processed to a final decision	Allowed
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%)
2022	17	1	16	1 (6%)

Section 141 of the Code empowers the Board to reconsider its own decisions. Applications for leave and reconsideration are generally adjudicated by three-member panels.

For the purpose of the tables that follow, we list each application received, not each original decision reconsidered. In 2022, there were a number of instances where more than one party sought leave and reconsideration of a single original decision.

Reconsiderations disposed of in 2022						
Type of original application	Leave denied	Dismissed	Granted	Withdrawn	Not proceeded with	Total
Unfair Labour Practice Complaints Under s. 6 of the Code Where a Dismissed Employee is Involved	3	1	4	0	0	8
Duty to Bargain in Good Faith (s. 11)	1	0	0	0	0	1
Complaints Regarding Duty of Fair Representation (s. 12)	8	0	0	0	0	8
Certification Applications (ss. 18, 19, 28)	1	0	1	0	0	2
Certification Variances (ss. 28 and 142)	1	0	0	0	0	1
Alleged Unlawful Alteration of Employment Terms and Conditions (ss. 32 and 45)	0	0	1	0	0	1
Declaration of Successor Employer (s. 35)	2	0	0	0	0	2
Adjustment Plan Adjudication (s. 54 (1))	0	0	2	0	0	2
Part 5 Applications (Strikes, Lockouts, Picketing, etc.) (ss. 57-67 and ss. 69-70)	0	0	1	0	0	1
Review of Arbitration Award (s. 99)	3	0	0	0	0	3
Miscellaneous	1	1	0	1	0	3
TOTAL	20	2	9	1	0	32

Reconsideration applications – by applicant type and disposition						
Applicant	Leave denied	Dismissed	Granted	Withdrawn	Not proceeded with	Total
Employer(s)	4	0	4	0	0	8
Union(s)	6	1	4	1	0	12
Employee(s)	9	0	0	0	0	9
Other	1	1	1	0	0	3
TOTAL	20	2	9	1	0	32

Reconsideration outcomes from 2012 to 2022

Year	Total applications disposed of	Withdrawn/Not proceeded with	Processed to a final decision	Resulted in a revision of the original decision
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%)
2022	32	1	31	9 (21%)

The Legal Department

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
<i>CUPE Local 7000 v. BCLRB and BC Rapid Transit Company Ltd.</i> (Vancouver Registry No. S-227915)	BC Supreme Court		
<i>Corinne Pereira v. BCLRB, UNITE HERE, Local 40 and Horizon North Camp & Catering Inc.</i> (Terrace Registry No. 21180)	BC Supreme Court	Dismissed	<i>Pereira v. British Columbia Labour Relations Board, 2022 BCSC 1205</i>
<i>Corinne Pereira v. BCLRB, UNITE HERE, Local 40 and Horizon North Camp & Catering Inc.</i> (Terrace Registry No. 21167)			
<i>Corinne Pereira v. BCLRB, UNITE HERE, Local 40 and Horizon North Camp & Catering Inc.</i> (Court of Appeal No. CA48412)	BC Court of Appeal		
<i>Corinne Pereira v. BCLRB, UNITE HERE, Local 40 and Horizon North Camp & Catering Inc.</i> (Court of Appeal No. CA48687)			
<i>UNITE HERE, Local 40 v. Civeo Premium Services Employees LP et al.</i> (Vancouver Registry No. S-225212)	BC Supreme Court		
<i>Timothy Moorley v. BCLRB and Teamsters 31 and Coast 2000 Terminals Ltd.</i> (Vancouver Registry No. S-214965)	BC Supreme Court		
<i>Pan Pacific Vancouver v. UNITE HERE, Local 40 and BCLRB</i> (Vancouver Registry No. S-222312)	BC Supreme Court		
<i>Southeast Kootenay Principals' and Vice-Principals' Association v. BCLRB and School District No. 5</i> (Vancouver Registry No. S-220446)	BC Supreme Court		
<i>Legislative Assembly of BC v. Edward Illi and BCLRB</i> (Victoria Registry No. 213941)	BC Supreme Court		
<i>Richard Ryoo v. BCLRB, CUPE 116 and University of British Columbia</i> (Courtenay Registry No. S-10286)	BC Supreme Court		

The Mediation Division

Collective agreements in all of the major health sectors, the public service, and public schools in the province in expired in 2022. Board mediators assisted with the establishment of essential service levels in the health care and public service sectors. For most of early 2022, Board mediators were working with parties in health care, community social services, and the public service to establish essential services in the event job action occurred.

Meanwhile, Board mediators continued to meet with parties to facilitate collective bargaining mediation virtually and in-person throughout 2022. Requests for in-person meetings increased from mid year through to December.

As noted in last year's annual report, requests to appoint a mediator under Section 74 of the Code were trending upward. This trend continued in 2022 with eighty-six (86) appointments being made compared to sixty-nine (69) in 2021.

Requests to appoint a mediator under Section 55 of the Code to assist with first collective agreement negotiations were down slightly in 2022 with ten (10) applications in comparison with eighteen (18) in 2021.

In 2022, there were six applications to appoint a mediator under Section 53(3) for Relationship Enhancement Programs. Mediators are continually reviewing, developing and tailoring programmes that will meet the needs of the applicants.

Similarly, since the 2019 Code amendments, parties may apply to have a mediator appointed under Section 54(2.1) of the Code to assist them in developing an adjustment plan. The Board received four applications under this section in 2022.

Mediator appointments under the Code				
Code Section	Filed 2021	Filed 2022	Total disposed of	Total mediation days
Facilitator - s. 53 (5)	7	7	6	21
Adjustment Plan – s. 54 (2.1)	3	4	5	6
First Collective Agreement – s. 55	4	11	10	46
Appointment of a Mediation Officer – s.74	22	84	81	176

Finally, Board mediators also provided assistance to the parties bargaining the provincial teachers' collective agreement. The parties agreed that any issues that remained unresolved at local table bargaining could be brought to the Board under a troubleshooter process. Local table bargaining was scheduled to conclude in early 2022. In January and February of 2022, the Board received 11 applications under the troubleshooter program, and spent 32 days working with the parties to help resolve these issues.

Collective Agreement Arbitration Bureau

Applications filed requesting an appointment through CAAB: Percentage change over 2022 and percentage change from previous four years						
Section	% change 2021 v. 2022			% change 2022 v. 2021-2017 average		
	2021	2022	% change	2022	2021-2017 average	% change
Section 86 (Appointment of Arbitrator)	88	121	38%	121	71	69%
Section 87 (Appointment of Settlement Officer)	10	13	30%	13	12	10%
Section 104 (Appointment of Arbitrator)	191	178	-7%	178	212	-16%
Combined CAAB Sections	289	314	9%	314	295	6%

Information Officer

In accordance with Section 122(3) of the Code, the Information Officer's role is to provide general information about the Code, Board processes, and the Board as an organization. In 2022, the Information Officer responded to over 2,000 contacts. The vast majority of contacts (80%) were from employees or someone calling on behalf of an employee.

The majority of individuals (71%) contacted the Board about issues that didn't fall under the Board's scope. Typically, people contacting the Information Officer are looking for advice or guidance on their specific situation (38%) or legal advice in the form of interpretation/applicability of a law or collective agreement provision (22%). For example, in 2022, the Information Officer was asked to:

- advise how to address issues in the workplace, such as being bullied or harassed at work,
- advise how to address issues with the union that falls outside of the scope of the Code, such as filing a freedom of information request with the union,
- tell them, based on the individual circumstances they described, which section of the Code they should apply under,
- interpret what Section of the Code has been breached, based on their circumstances,

- clarify if their situation constitutes illegal conduct, such as determining if their termination amounts to wrongful dismissal, or
- interpret eligibility for terms and conditions of employment such as benefits, vacation, pay, leaves of absence, or severance.

Another common topic was the five days of paid sick leave introduced in the *Employment Standards Act* in early 2022. People contacting the Information Officer had questions or concerns around if the changes to the *Employment Standards Act* applied to their workplace/collective agreement or the eligibility of sick leave. Although the majority of people asking about the five days of sick leave were employees, union representatives and employers were also directing these questions to the Information Officer.

It is common for people contacting the Information Officer to be frustrated that she can't answer their questions or address their issues as they don't fall within the Board's purview. This is especially the case when people have been specifically referred to the Board for assistance. Overall, 7% of people contacting the Information Officer disclosed they had been referred to the Board. Of those 7%, the majority (63%) were referred to the Board by another public agency. Only seven of the 158 people referred to the Board were contacting the Information Officer about an issue that fell within its scope.

Statistical Information

General statistical table

The general statistical table provides an overview of all applications filed with the Board in 2022 and includes 2021 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

Reporting Period: Calendar Year – January 1 to December 31, 2022

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. There were no changes to data compilation and reporting this year. For a list of historical changes, contact the Board.

Applications filed and disposed of in 2022											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of – Current							Remainder Active
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
Unfair Labour Practices Internal Union Affairs (s. 10)	2022	5	5	6	0	0	2	2	2	0	4
	2021	7	7	9	1	0	0	1	7	0	5
Duty to Bargain in Good Faith (s. 11)	2022	7	16	16	0	0	15	0	1	0	7
	2021	8	20	20	0	0	13	2	5	0	7
Arbitrary, Discriminatory, Bad Faith Representation by a Union (s. 12)	2022	19	66	47	6	2	1	1	37 ⁵	0	38
	2021	29	61	71	21	0	8	1	41 ⁶	0	19
Other Unfair Labour Practices (ss. 5,6,7,8 and 9)	2022	36	120	105	10	0	73	14	8	0	51
	2021	42	121	127	2	0	96	6	23	0	36
Religious Exemption (s. 17)	2022	0	3	3	0	0	0	3	0	0	0
	2021	1	2	3	1	0	0	1	1	0	0

⁵ 31 of the 37 dismissed complaints filed under the *Labour Relations Code* were dismissed because no *prima facie* case was found.

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

Applications filed and disposed of in 2022											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of – Current							Remainder Active
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
Certification Applications (ss. 18, 19 and 28)	2022	11	143	138	8	32	0	82	16	0	16
	2021	21	108	118	0	22	0	76	20	0	11
Certification Variances (ss. 28 and 142)	2022	32	128 ⁷	129 ⁸	14	15	0	92	8	0	31
	2021	37	112 ⁹	119 ¹⁰	6	9	0	94	10	0	31
Certification Cancellations (ss. 33 and 142) ¹¹	2022	4	29	30	2	4	0	19	5	0	3
	2021	8	35	38	5	6	0	23	4	0	4
Cancellation of a Voluntary Recognition (s. 34)	2022	2	5	7	1	0	0	3	3	0	0
	2021	2	5	4	0	1	0	1	2	0	2
Permission to Alter Conditions of Employment (ss. 32 and 45)	2022	1	3	4	0	0	0	2	2	0	0
	2021	0	1	0	0	0	0	0	0	0	1

⁷ Includes six partial decertification applications.

⁸ Includes seven partial decertification applications. See [Applications to cancel certifications disposed of in 2021 and 2022](#).

⁹ Includes six partial decertification applications.

¹⁰ Includes five partial decertification applications. See [Applications to cancel certifications disposed of in 2021 and 2022](#).

¹¹ See [Applications to cancel certifications disposed of in 2021 and 2022](#).

Applications filed and disposed of in 2022											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of – Current							Remainder Active
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
Alleged Unlawful Alteration of Employment Terms and Conditions (ss. 32 and 45)	2022	5	24	20	1	0	18	0	1	0	9
	2021	7	18	20	0	1	16	1	2	0	5
Declaration of Successor Status Successor Employer (s. 35)	2022	30	62	48	4	5	0	33	6	0	44
	2021	25	50	47	0	3	0	42	2	0	28
Successor Union (s. 37) ¹²	2022	11	5	4	3	0	0	1	0	0	12
	2021	4	16	10	1	0	0	8	1	0	10
Common Employer (s. 38)	2022	16	12	11	0	6	0	3	2	0	17
	2021	13	13	10	0	7	0	1	2	0	16
Accreditation Applications (s. 43)	2022	0	0	0	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0	0	0	0

¹² 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 2022											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of – Current							Remainder Active
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
Accreditation Variances (ss. 43 and 142)	2022	1	5	5	0	0	0	5	0	0	1
	2021	2	5	7	0	0	0	7	0	0	1
Accreditation Cancellations (s. 142)	2022	0	0	0	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0	0	0	0
Alleged Failure to Execute or Comply with a Collective Agreement (s. 49)	2022	4	3	3	0	0	2	1	0	0	4
	2021	6	4	6	0	0	1	0	5	0	4
Adjustment Plan Adjudication (s.54 (1))	2022	26	2	19	0	4	11	1	3	0	9
	2021	18	29	22	0	4	18	1	1	0	26
Adjustment Plan Mediation (s.54(2.1))	2022	3	4	5	0	0	3	n/a	n/a	2 ¹³	2
	2021	1	5	3	0	0	2	n/a	n/a	1	3
Facilitator (s. 53(5))	2022	7	7	6	0	2	3	n/a	n/a	2 ¹⁴	8
	2021	6	9	8	0	0	0	n/a	n/a	8 ²²	7

¹³ No agreement reached.

¹⁴ Facilitator appointed.

Applications filed and disposed of in 2022											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of – Current							Remainder Active
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
First Collective Agreement (s. 55)	2022	4	11	10	0	0	8	0	0	2 ¹⁵	5
	2021	4	18	18	0	0	14	n/a	n/a	4 ¹⁶	4
Appointment of a Mediation Officer (s. 74)	2022	22	84	81	0	1	72	0	0	8 ¹⁷	23
	2021	26	69	70	8	2	54	n/a	n/a	6 ¹⁸	22
Collective Agreement Arbitration Bureau (CAAB)											
Section 86 (Appointment of Arbitrator)	2022	36	121	92	0	57	8	n/a	n/a	27 ¹⁹	65
	2021	32	88	84	0	18	10	n/a	n/a	56 ²⁷	36
Section 87 (Appointment of Settlement Officer)	2022	0	13	11	0	1	7	n/a	n/a	3 ²⁰	2
	2021	1	10	11	0	0	8	n/a	n/a	3 ²⁸	0

¹⁵ For one case, the parties were allowed to exercise their right to strike or lockout and, for one, they were directed to further mediation/arbitration.

¹⁶ 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.

¹⁷ For seven cases, no collective agreement was reached and, for one, they were directed to further arbitration.

¹⁸ 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.

¹⁹ Arbitrator appointed.

²⁰ Matter referred back to the parties under Section 87(3).

Applications filed and disposed of in 2022											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of – Current							Remainder Active
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
Section 104 (Appointment of Arbitrator)	2022	31	178	183	2	72	31	n/a	n/a	78 ²¹	26
	2021	27	191	183	0	62	38	n/a	n/a	83 ²⁹	31
Section 105 (Appointment of Mediator-Arbitrator)	2022	0	2	2	0	1	0	n/a	n/a	1 ²²	0
	2021	0	0	0	0	0	0	n/a	n/a	0	0
Combined CAAB Sections	2022	67	314	288	2	131	46 ²³	n/a	n/a	109	93
	2021	60	289	278	0	80	56 ²⁴	n/a	n/a	142	67
Part 5 Applications (Strikes, Lockouts, Picketing, etc.) (ss. 57-67 and ss. 69-70)	2022	1	41	41	0	0	29	9	3	0	1
	2021	4	21	24	3	0	14	4	3	0	1
Replacement Workers (s. 68)	2022	4	8	10	0	0	4	2	4	0	2
	2021	0	12	8	0	0	7	1	0	0	4

²¹ Arbitrator appointed. For 31 cases in 2022 and 24 cases in 2021, a Settlement Officer was appointed in addition to an Arbitrator.

²² Mediator-Arbitrator appointed.

²³ A Settlement Officer was appointed for 155 CAAB applications disposed of in 2022: 46 disposed of as Settled and 109 disposed of as Other. Of these 155 applications, 46 (30%) resulted in full and final settlement.

²⁴ 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.

Applications filed and disposed of in 2022											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of – Current							Remainder Active
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
Essential Service Designations (s. 72)	2022	14	21	12	0	4	0	8	0	0	23
	2021	3	22	10	0	1	3	6	0	0	14
Last Offer Vote (s. 78)	2022	0	20	20 ²⁵	3	0	0	16	1	0	0
	2021	0	10	10 ²⁶	0	0	0	8	2	0	0
Review of Arbitration Award (s. 99)	2022	10	25	17	0	1	0	1	15	0	18
	2021	15	17	22	0	0	0	3	19	0	10
Interim Order (s. 133(5))	2022	1	5	5	0	2	0	2	1	0	1
	2021	1	12	12	1	6	0	0	5	0	1
File an Order in Supreme Court (s. 135)	2022	2	17	18	0	15	0	2	1	0	1
	2021	3	12	14	0	8	0	6	0	0	2

²⁵ In 12 cases the final offer was rejected; in four cases the final offer was accepted; and in one case the application was dismissed prior to the ballots being counted.

²⁶ In six cases the final offer was rejected; and in four cases the application was withdrawn prior to the ballots being counted.

Applications filed and disposed of in 2022											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of – Current							Remainder Active
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s. 139)	2022	10	27	21	1	7	0	0	0	13 ²⁷	16
	2021	18	20	26	0	9	0	0	0	17 ³⁵	9
Reconsideration of a Decision (s. 141)	2022	15	29	32	0	1	0	9	22 ²⁸	0	12
	2021	16	51	51	0	0	0	13	38 ²⁹	0	15
Declaratory Opinion (excluding Declaratory Opinions Pertaining to Part V of the Legislation) (s. 143)	2022	0	0	0	0	0	0	0	0	0	0
	2021	1	2	3	0	3	0	0	0	0	0
Miscellaneous	2022	18	56 ³⁰	53 ³¹	1	3	14	29	6	0	23
	2021	17	62 ³²	61 ³³	1	8	9	24	19	0	18

²⁷ Ruling made.

²⁸ Leave to apply denied in 20 applications.

²⁹ Leave to apply denied in 33 applications.

³⁰ Includes five stay applications.

³¹ Includes five stay applications (four were allowed and one was dismissed).

³² Includes six stay applications.

³³ Includes five stay applications (four were dismissed and one was withdrawn).

Applications filed and disposed of in 2022											
Type of Application / Complaint	Year	Filed Previous	Filed Current	Disposed of – Current						Remainder Active	
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed		Other
Total	2022	388	1300	1214	56	235	300	340	147	136	474
	2021	405	1238	1249	50	170	309	330	212	178	383

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