

# ONTARIO LABOUR RELATIONS BOARD

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



*ANNUAL REPORT  
2012-2013*

CHAIR – BERNARD FISHBEIN

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## Chair's Message

This is the third message I have had the privilege of writing for the Board's Annual Report since becoming its Chair. Hopefully by now I am starting to get it right.

Slowly but surely we have been moving to transform the way the OLRB administers and performs the statutory responsibilities entrusted to it. It is after all a public statutory tribunal funded by public resources – it will need to perform its duties in a more efficient, cost-effective and timely manner. As I have said before, this requires some changes in the way we do things and maybe some cultural changes both among the adjudicators and staff at the Board, the stakeholders we serve and the counsel who appear before us – for this I do not apologize. As I have also said before, I am frequently reminded of the words of the Chief Justice of Ontario, that of course everyone is entitled to their day in court – they are just not entitled to everyone else's.

As the construction industry continues to play a critical role in the economy of the Province (and stable labour relations in that sector accordingly become increasingly important), and as cases arising from that sector become an expanding and significant portion of the Board's caseload, we have turned our attention to improving and "fine tuning" our processing of the various applications from this crucial sector.

Last year I reported that effective January 1, 2012 every construction industry certification application was being sent to a Case Management Hearing (and no longer a regional certification meeting) within six weeks of the date of the application. Strict guidelines were imposed to identify issues and

parties' positions about them in some detail and produce documents before this Case Management Hearing. The Board deals with not only procedural issues at the Case Management Hearings (adequacy of production, scheduling hearings, etc.) but also substantive issues to the extent it can, without evidence. Certificates have been granted, or applications dismissed and certainly issues narrowed and determined at the Case Management Hearings. I will confess that notwithstanding the advance warning the Board gave, the change seemed to catch some stakeholders (and counsel) by surprise. But now everyone seems to have adjusted and the general consensus is that the system has been effective in eliminating issues and moving cases forward more quickly to conclusion.

Emboldened by our case management experience, the Board determined we needed to go further to deal with the triennial construction season "open period" which just concluded on April 30th of this year. The Board receives approximately 200 applications (either applications to terminate bargaining rights – decertifications – or displacement applications for certification – raids) in the 3-month "open period". Notwithstanding that these are representation applications which we regularly pledge to treat expeditiously in non-"open period" times, it would be an understatement to say that in the "open period" cases it inevitably is in some parties' interests not to expeditiously pursue an adjudicated outcome. The problem was becoming so severe that some 2010 "open period" applications were ultimately withdrawn because there was no chance of them being realistically concluded before the 2013 "open period" (and it was just easier to try again in

2013). In fact, at least a few 2013 applications were, if not held up, certainly impacted, awaiting decisions from 2010 applications. Notwithstanding what may have been the tactical glee of those parties opposing “open period” applications – institutionally that was unacceptable. So this past year, the Board introduced a “review” process, whereby the normal three rounds of pleadings in non-“open period” applications were compressed to two which had to be completed within 17 days of the date the vote took place, and, the Board promised an expedited hearing within 8 weeks of the vote. The Board issued relatively explicit instructions about what parties needed to plead about status disputes and indicated that general blanket assertions would likely be insufficient to guarantee any viva voce hearing. More importantly, the Board promised a “review” decision before that expedited hearing wherein the Board would determine what issues were still alive and worthy of hearing viva voce evidence at the hearing. Both in an Information Bulletin and in the decisions acknowledging each application, the Board gave explicit notice that standards for pleadings would be elevated.

So how did the Board do? Over the three-month “open period” between February 1 and April 30, 2013, the Board opened 202 “open period” files – 112 displacement applications and 90 decertifications. By the beginning of June, 110 files had been closed – so at least administratively the Board closed about 55% of the files in 4 months (which obviously includes files opened in the first 3 of those 4 months). The timing when these resolutions occur may suggest that it is not all attributable to the new review process (22% were resolved prior to the vote and about one-third were resolved after the vote) but about 31% were resolved by the case review

decision, about 13% at the expedited hearing, and a handful after the expedited hearing. Interestingly enough, of those 110 applications closed, 64 were dismissed and 40 granted. So although we cannot be 100% certain – the Board does not have any base figures of this type to make an actual comparison to the 2010 “open period” – it appears that from a case processing point of view, the review process was a success.

Jurisprudentially, the assessment may still be premature and a little less clear. To be candid, when the process was designed, the Board envisaged that virtually all of the disputes that would arise would be those that could be charitably described as less legally challenging. By and large, that assumption proved to be correct. However, what perhaps was not fully anticipated is that a small number of the cases raised arcane issues (and I describe them as arcane not to dismiss their significance or importance but only to say they would be issues only the most experienced of construction labour lawyers could discern) about construction industry bargaining unit descriptions and bargaining rights. In the past, those issues would likely have been “ducked” by the parties and the cases in which they might have arisen likely disposed of without necessarily litigating such issues (even if just by dying a long slow death) – however, the review process forced those questions “up front” in an expedited, quick, largely written submission-based process. To the extent we have drawn some criticism, it is that the process is not appropriate for such issues. I am not sure I share that view yet but it is certainly worthy of more consideration and thought. Certainly if one expected that most or any difficult issues would merely be referred on to expedited hearings by the case

review process, that was not the experience – and again that has drawn some criticism.

Of course, the real test will be how the other 92 remaining “open period” applications are processed – how fast and how quickly they reach conclusion. That obviously remains to be seen – but the objective is to see that their outcome is not determined solely by the passage (or less charitably the waste) of time until the arrival of the next “open period” in 2016.

The Board will reflect more upon the “open period” experience and accumulate and analyze the statistics more to determine whether this should be the shape of the next “open period”, and whether there are lessons from it we can apply elsewhere in the Board. We will welcome any comments from any of you about any of this – although I am not prepared to promise that we will necessarily agree. If nothing else, what is indisputable about the “open period” experience is that very many people at the Board (and I am prepared to readily concede also both in the community and among my former friends in the bar) worked very hard during the “open period” and certainly everyone is happy that it is now over.

Independent of this “open period” trial, this past year overall has again been a busy one for the Board, as a review of the statistics in this Report will readily demonstrate. Although the total number of cases fell slightly, that decrease was almost entirely in the number of Employment Standards appeals which fell more than 40% but was almost completely offset by significant increases in representation applications (perhaps not surprisingly in a year with

the “open period”) and Occupational Health and Safety complaints (perhaps due to the increased power of OHS Inspectors to refer reprisal complaints). Of interest is that the number of outstanding or pending cases at the outset of the fiscal year continues to decline (and decline more than twice the percentage that the caseload fell) which we attribute to, inter alia, more expedited processing of cases. Greater detail and scrutiny is provided throughout the Report.

We continue to seek out and make (at least in my assessment) high caliber appointments to the Board. Highly respected and experienced labour relations counsel such as Jesse Nyman, Matthew Wilson, and Gail Misra (returning after a too-long absence) were appointed as full-time Vice-Chairs, as well as Robert Kitchen and Maurice Green as part-time Vice Chairs. The Board welcomed the appointment of Brian McLean, as Alternate Chair, who is proving himself indispensable to the thoughtful administration of the Board.

Lastly, if I may be permitted the self-indulgence to repeat what I have said in previous Reports, I continue to be amazed at the expertise and dedication that the staff of the Board bring to their jobs day-in and day-out – which I have come to even more appreciate and admire. A team of knowledgeable and discerning adjudicators ensure that the Board maintains its reputation as Canada’s largest and pre-eminent labour and employment tribunal. By way of further example, no annual report could be complete without once again noting how spectacularly effective the Board’s mediation efforts prove to be. Mediators are assigned to virtually

every application filed with the Board and approximately 85% of all cases before the Board are settled or are withdrawn – only 15% need to be directed by way of hearing or consultation. The complement of Labour Relations Officers at the Board is too often unheralded but frequently a valuable resource.

As we continue to work diligently to make changes and seek improvements so the Board can be even better at what it does, as I have said before, I welcome everyone to contact the Board (and me) with their comments or concerns.



Bernard Fishbein  
Chair – Ontario Labour Relations Board



# Organizational Overview

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

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

- *Ambulance Services Collective Bargaining Act, 2001*, S.O. 2001, c.10
- *Colleges Collective Bargaining Act*, R.S.O. 1990, c.15
- *Colleges Collective Bargaining Act, 2008*, S.O. 2008, c.15
- *Crown Employees Collective Bargaining Act, 1993*, S.O. 1993, c.38
- *Education Act*, R.S.O. 1990, c.E.2
- *Employment Protection for Foreign Nationals Act (Live-In Caregivers and Others), 2009*, S.O. 2009, c.32
- *Employment Standards Act, 2000*, S.O. 2000, c.41
- *Environmental Bill of Rights Act, 1993*, S.O. 1993, c.28
- *Environmental Protection Act*, R.S.O. 1990, c.E.19  
Including jurisdiction for:
  - *Environmental Assessment Act*, R.S.O. 1990, c.E.18
  - *Environmental Protection Act*, R.S.O. 1990, c.E.19
  - *Fisheries Act*, R.S.C. 1985, c.F-14
  - *Nutrient Management Act*, S.O. 2002, c. 4
  - *Ontario Water Resources Act*, R.S.O. 1990, c.O.40
  - *Pesticides Act*, R.S.O. 1990, c.P.11
  - *Safe Drinking Water Act, 2002*, S.O. 2002, c.32
  - *Toxics Reduction Act, 2009*, S.O. 2009, c.19
- *Fire Protection and Prevention Act, 1997*, S.O. 1997, c.4
- *Hospital Labour Disputes Arbitration Act*, R.S.O. 1990, c.H.14
- *Labour Relations Act, 1995*, S.O. 1995, c.1, Sch. A
- *Local Health System Integration Act, 2006*, S.O. 2006, c.4
- *Long Term Care Homes Act, 2007*, S.O. 2007, c.8
- *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1
- *Ontario Provincial Police Collective Bargaining Act, 2006*, S.O. 2006, c.35, Sch. B
- *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sch. 6
- *Public Sector Labour Relations Transition Act, 1997*, S.O. 1997, c. 21
- *Public Service of Ontario Act, 2006*, S.O. 2006, c.25, Sch. A
- *Smoke-Free Ontario Act*, S.O. 1994, c.10

## The Board

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

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

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

The Board plays a fundamental role in the labour relations, employment standards, and health and safety regimes in Ontario. Board decisions are based on the evidence presented and submissions received, and on the adjudicator's interpretation of the facts in dispute, relevant legislation and jurisprudence. In keeping

with the Ministry of Labour's overarching principles, the Board encourages harmonious relations between employers, employees and trade unions. It deals as expeditiously and fairly as reasonably possible in processing, settling or adjudicating all matters that come before it.



# The Board's Principal Statutes

## ***Labour Relations Act, 1995***

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

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

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

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

## ***Employment Standards Act, 2000***

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

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

## ***Occupational Health and Safety Act***

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

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

## ***Other Applications***

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

The Board also has administrative responsibility for a number of other adjudicative tribunals whose reporting structures and activities may be described in other Annual Reports. The Board administers the Education Relations Commission and the Colleges Relations Commission; a Vice-Chair of the Board is also Chair of the

Pay Equity Hearings Tribunal (an agency of the Ministry of Labour) and the Public Sector Compensation Restraint Board (an agency of the Ministry of Finance). Support services for all of these bodies are under the administration of the Director/Registrar. Some of the Board's Vice-Chairs also sit on review panels for the College of Trades and the Board is reimbursed for their time.

## Board Processes

Essentially, every application that is filed with the Board is first assigned to a Mediator (called a Labour Relations Officer). The Mediator is given an opportunity to contact or meet with the parties to explore the possibility of settlement. Parties are encouraged to mediate matters. Practically speaking, mediation is a less formal and often less costly process than a hearing. The settlement of a workplace dispute, worked out by the parties with the assistance of a mediator, gives the parties an agreement they can both live with and more responsibility and ownership of the agreed-to conditions. Roughly 80 - 85% of all disputes coming before the Board are settled by the parties.

If an application cannot be mediated successfully, the matter is forwarded to the Registrar to schedule a consultation or hearing. A consultation is a less formal type of adjudication, and may take on different forms. Primarily, it is a quick and pointed hearing with the parties, with the Vice-Chair (adjudicator) taking greater control over how the proceeding is conducted. Often, there is no need for sworn testimony. The Vice-Chair may ask questions of the parties, or may direct that the questioning be limited in scope.

A hearing is a formal adjudication, with opening statements, the examination and cross-examination of witnesses, presentation of relevant documentary evidence, and submission of final arguments.

Consultations and hearings (but not mediations) are open to the public unless the Vice-Chair or panel decides that a public airing of the dispute could be damaging to one of the parties. Hearings are not recorded and no transcripts are produced. The Board issues

written decisions that are sent to the parties, and become public documents available for searching on public databases.

## Order in Council Appointments

The Board's adjudicators (the Chair, Alternate Chair, Vice-Chairs and Board Members) are all appointed by the Lieutenant Governor in Council as Order in Council appointments (OICs), for a fixed term. Following is a chart as to who worked as an OIC in 2012 - 2013 and the term of their appointment.

Name	Position	First Appointed	Term Expires / Incumbent Resigns
<b>Fishbein, Bernard</b>	Chair	February 28, 2011	February 27, 2016
<b>McLean, Brian C.</b>	Alternate Chair	July 8, 1998	September 11, 2015
<b>Anderson, Ian B.</b>	Vice-Chair	March 24, 2004	March 23, 2017
<b>Freedman, Harry</b>	Vice-Chair	July 8, 1998	July 7, 2017
<b>Gee, Diane L.</b>	Vice-Chair	August 1, 2008	July 31, 2013
<b>Kelly, Patrick M.</b>	Vice-Chair	May 17, 1999	May 17, 2013
<b>Lewis, John D</b>	Vice-Chair	March 11, 2009	March 10, 2014
<b>McKee, David A.</b>	Vice-Chair	April 29, 1999	April 29, 2013
<b>McKellar, Mary Anne</b>	Vice-Chair	January 24, 2001	January 23, 2017
<b>Misra, Gail</b>	Vice-Chair	April 18, 2012	April 17, 2015
<b>Nyman, Jesse</b>	Vice-Chair	December 21, 2012	December 19, 2014
<b>Rowan, Caroline</b>	Vice-Chair	May 6, 1999	May 6, 2013
<b>Serena, Susan J.</b>	Vice-Chair	May 28, 2003	May 27, 2014
<b>Shouldice, Lee</b>	Vice-Chair	May 30, 2007	May 29, 2017
<b>Slaughter, Jack J.</b>	Vice-Chair	February 3, 2003	February 2, 2014
<b>Wacyk, Tanja</b>	Vice-Chair	May 28, 2003	May 27, 2014
<b>Waddingham, Kelly A.</b>	Vice-Chair	April 7, 2004	December 31, 2017
<b>Wilson, Matthew</b>	Vice-Chair	August 29, 2012	August 28, 2014
<b>Albertyn, Christopher J.</b>	Part-Time Vice-Chair	September 1, 2004	August 30, 2015
<b>Cummings, Mary Ellen</b>	Part-Time Vice-Chair	August 1, 2008	July 31, 2013
<b>Green, Maurice</b>	Part-Time Vice-Chair	May 16, 2012	May 16, 2014
<b>Hayes, James</b>	Part-Time Vice-Chair	June 30, 2011	September 30, 2015
<b>Jesin, Norman</b>	Part-Time Vice-Chair	August 25, 2004	August 24, 2015
<b>Kanee, Lyle</b>	Part-Time Vice-Chair	February 25, 2009	February 24, 2014
<b>Kitchen, Robert</b>	Part-Time Vice-Chair	May 30, 2012	May 30, 2014
<b>McDermott, Edward T.</b>	Part-Time Vice-Chair	May 17, 2011	May 16, 2013
<b>Mohamed, Yasmeena</b>	Part-Time Vice-Chair	June 6, 2012	June 6, 2014
<b>Murray, Corinne F.</b>	Part-Time Vice-Chair	February 3, 2009	February 2, 2014
<b>Schmidt, Christine</b>	Part-Time Vice-Chair	December 10, 2010	December 9, 2015
<b>Silverman, Marilyn</b>	Part-Time Vice-Chair	February 1, 2011	January 31, 2016
<b>Steinberg, Larry</b>	Part-Time Vice-Chair	April 18, 2011	April 17, 2013
<b>LeMay, R. D. Paul</b>	Member (Employer) FT	December 15, 2005	December 14, 2013
<b>O'Connor, Richard J.</b>	Member (Employer) FT	November 6, 2002	November 5, 2013
<b>O'Rourke, Roy</b>	Member (Employer) FT	June 1, 2011	May 31, 2013
<b>Rundle, Judith A.</b>	Member (Employer) PT	July 17, 1986	July 16, 2017
<b>Schel, John</b>	Member (Employer) PT	June 15, 2010	December 18, 2015
<b>Baxter, Richard A.</b>	Member (Employee) FT	April 3, 2006	April 2, 2014
<b>Haward, Alan</b>	Member (Employee) PT	March 25, 1998	March 24, 2017
<b>McManus, Shannon R. B.</b>	Member (Employee) FT	December 15, 2005	December 14, 2013
<b>Patterson, David A.</b>	Member (Employee) PT	April 2, 1986	April 1, 2017
<b>Phillips, Carol</b>	Member (Employee) FT	January 14, 2009	January 13, 2014

# Board Staff and Key Activities

*The OLRB's operations and staff can be broadly divided into: The Board's Adjudicators (OIC appointments), Administration, Field Services (mediation), and Legal Services. The administrative, field, and legal staff are public servants appointed under Part III of the Public Service of Ontario Act, 2006.*

## **Office of the Director and Registrar**

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

## **Manager of Administration**

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

## **Library Services**

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

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

## **Field Services (Mediation)**

The Board is a pioneer in the area of alternative dispute resolution. The Manager of Field Services, Labour Relations Specialists, and Labour Relations Officers, are responsible for mediating settlements in all of the Board's cases. In addition to settling cases, Labour Relations Officers assist parties in identifying issues and streamlining the cases that do get adjudicated in order to avoid unnecessary litigation. They also, along with the Board's Conciliation Officers, carry out the Board's pre and post vote phone mediation program and conduct representation and final offer votes.

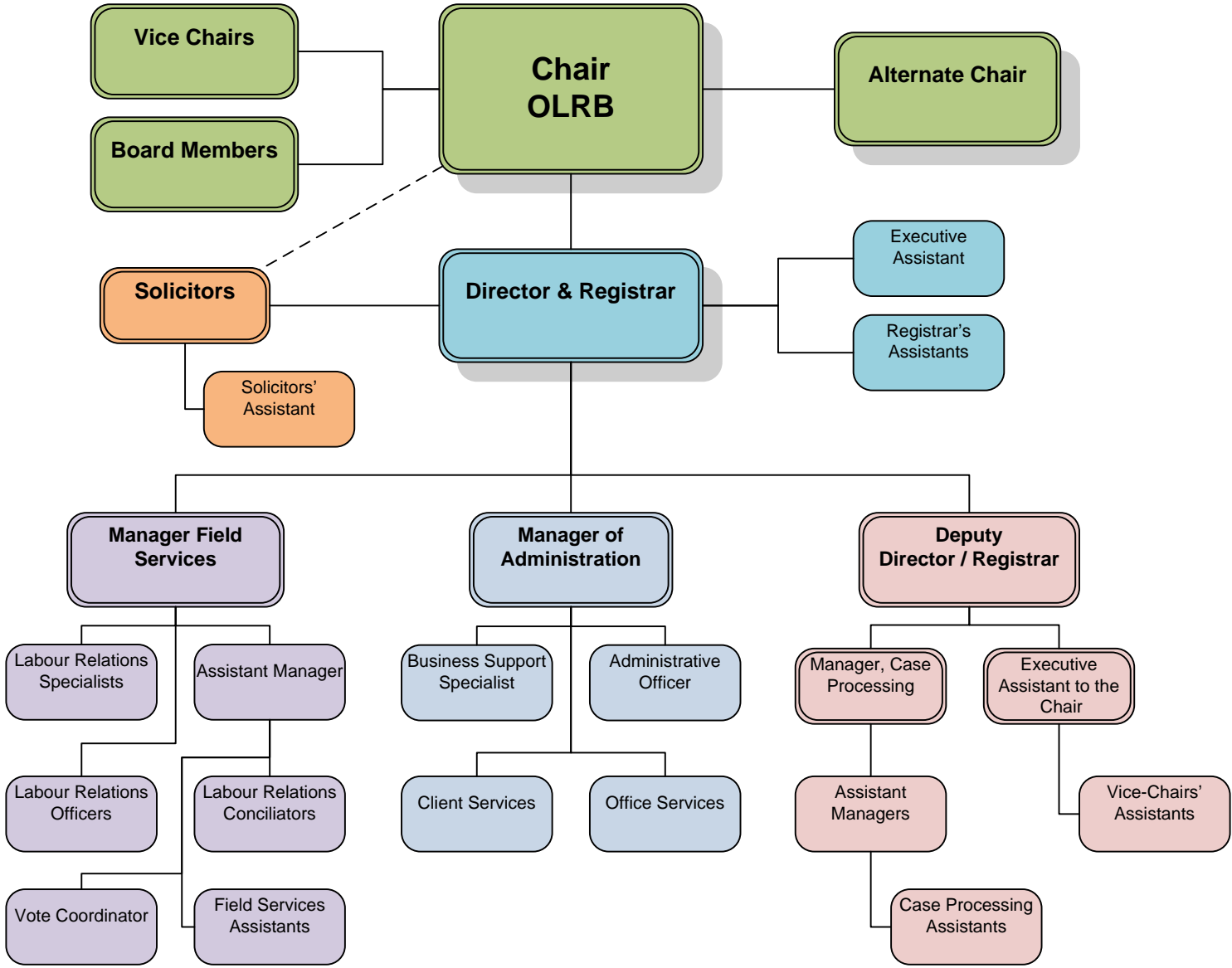
## **Information Technology Support**

Services in IT are provided to the Board by in-house staff of the Labour and Transportation Cluster. Systems Officers are responsible for the technological aspects of the Board's case processing systems, website, electronic communication and individual computer support.

## **Legal Services**

Legal Services to the Board are provided by the Solicitors' Office, which consists of two Board Solicitors. The Solicitors provide legal research, advice, opinions and memoranda to the Chair, Vice-Chairs, Board Members, Labour Relations Officers and administrative staff. They are extensively involved in changes to the Board's rules of procedure and forms and contribute to the continuing education of staff. The Solicitors are the Board's media spokespersons, and handle all inquiries, investigations and complaints under freedom of information or human rights legislation and from Ombudsman Ontario. The Board's Solicitors also represent the Board in court proceedings, including applications for judicial review.

# Organizational Chart – April 2012



# Operational Performance

## Case Numbers and Disposition

Overall, the Board received 3838 new applications this year. This number is slightly lower than last year by 271 cases. 2,020 additional cases remained open from previous years as the 2012/13 year began, for a total number of files before the Board this year of 5858.

Of the 5858 files before the Board, 4109 were disposed of, that is, settled, decided, withdrawn etc. In the result, 1695 cases were carried into 2013/14. The Board continues to work toward its goal to increase the number of cases disposed of in a year, and to that end we look for better ways to case manage, schedule, and deploy our resources.

Of disposed cases, 43% were completed within approximately 90 calendar days of application receipt and about 63% were completed within 6 months. (Figure 13) The tri-annual “open period” in the construction industry took place between February 1, 2013 and April 30, 2013. Between February 1 and March 31<sup>st</sup>, the Board received 95 certification and termination applications related to the open period. 16 of those received a final disposition by March 31, 2013.

## Main Case Types

The majority of cases filed in 2012/13 fall under 5 main categories:

- 1) Under the LRA, Certification and termination of bargaining rights – 719 applications for certification and 119 applications for termination of bargaining rights
- 2) Also under the LRA, Contraventions of the Labour Relations Act – 687
- 3) Also under the LRA, Referrals of Construction Industry Grievances – 949
- 4) Under the ESA, Appeals of decisions of Employment Standards Officers – 743
- 5) Under the OHSA, Health and Safety (complaints under s50 and Appeals of Inspector’s orders) - 301

The number of certification files and applications for termination of bargaining rights rose to the highest number in the last five years largely due at least in part to the tri-annual “open period” in the construction industry which commenced February 1, 2013 and ended April 30, 2013.

The number of unfair labour practice complaints increased significantly. Applications for termination of bargaining rights also increased from the previous years. Both changes also relate to the “open period” which began in 2013.



Construction grievances remain a relatively steady component of the Board's work; the number filed (949) is slightly lower than the last two years.

The number of Employment Standards appeals declined significantly to 743 likely due in part to the expedited clearance of cases by the Employment Standards Branch.

Complaints under the Occupational Health and Safety Act with respect to reprisals in the workplace rose over 60%. New measures were introduced in the Act which permit health and safety inspectors to refer reprisal complaints to the Board. Of the 207 applications filed, 77 were referred by inspectors. Appeals of health and safety inspectors' orders were up slightly from last year (94).

## Total Applications Received, Disposed of and Pending

Fiscal Year 2012-13	Caseload			Disposed of					
	Total	Pending April 1, 2012	Received Fiscal Year 2012-13	Total	Granted*	Dismissed	Terminated	Settled Withdraw n/ Sine Die	Pending March 31, 2013**
<b>Total</b>	<b>5,858</b>	<b>2,020</b>	<b>3,838</b>	<b>4,109</b>	<b>760</b>	<b>591</b>	<b>107</b>	<b>2,651</b>	<b>1,695</b>
Certification of Bargaining Agents	933	214	719	669	387	110	2	170	264
Declaration of Termination of Bargaining Rights	150	31	119	84	34	32	5	13	66
Declaration of Successor Trade Union	6	3	3	4	4	0	0	0	2
Declaration of Successor Employer or Common Employer Status	255	126	129	143	31	17	0	95	112
Accreditation	6	4	2	2	1	0	0	1	4
Declaration and Direction of Unlawful Strike	11	2	9	9	2	1	0	6	2
Declaration and Direction of Unlawful Lockout	1	0	1	1	0	0	0	1	0
Consent to Prosecute	4	1	3	3	1	1	0	1	1
Contravention of Act	1,115	428	687	735	24	170	9	532	380
Right of Access	2	0	2	1	1	0	0	0	1
Exemption From Union Security Provision in Collective Agreement	10	8	2	10	0	0	0	10	0
Early Termination of Collective Agreement	7	0	7	7	6	0	0	1	0
Trade Union Financial Statement	3	1	2	1	0	1	0	0	2
Jurisdictional Dispute	253	180	73	77	4	14	6	53	176
Referral on Employee Status	23	10	13	15	1	5	0	9	8
Referral From Minister on Appointment of Conciliation Officer or Arbitrator or Under HLDAA	15	9	6	8	0	4	0	4	7
Referral of Construction Industry Grievance	1,143	194	949	976	172	20	0	784	167
Complaint Under Occupational Health and Safety Act	247	40	207	212	2	32	1	177	35
Complaint Under the Environmental Protection Act	4	1	3	4	0	0	0	4	0
Complaint Under the Smoke-Free Ontario Act	2	0	2	2	0	0	0	2	0
First Agreement Arbitration Direction	26	14	12	20	4	1	0	15	6
Determination of Sector of Construction Work	4	2	2	3	0	0	0	3	1
Final Offer Vote	15	6	9	8	0	6	0	2	7
Employment Standards Act (Appeal)	1,400	657	743	987	77	156	80	674	359
Occupational Health and Safety Act (Appeal)	153	59	94	99	2	17	2	78	54
Public Sector Labour Relations Transition Act, 1997	19	7	12	7	2	1	0	4	12
Project Agreement Application	7	5	2	2	0	0	0	2	5
Ambulance Services Collective Bargaining Act, 2001	6	1	5	4	3	0	0	1	2
Other Case Types	38	17	21	16	2	3	2	9	22

\* Includes cases in which a request was granted or a determination made by the Board.

\*\* Note: Pending numbers may vary slightly year-to-year due to inadequate system reporting

Figure 1

## Applications Received and Disposed of – 5 Year Comparison

Fiscal Years 2008-09 to 2012-13	Number Received, Fiscal Year						Number Disposed of, Fiscal Year					
	Total	2008-09	2009-10	2010-11	2011-12	2012-13	Total	2008-09	2009-10	2010-11	2011-12	2012-13
Type of Case	20,053	3,782	4,001	4,323	4,109	3,838	18,393	4,097	3,675	3,087	3,425	4,109
Certification of Bargaining Agents	3,328	742	623	652	592	719	3,196	748	559	671	549	669
Declaration of Termination of Bargaining Rights	592	115	140	151	67	119	540	125	112	126	93	84
Declaration of Successor Trade Union	13	1	5	1	3	3	13	4	2	2	1	4
Declaration of Successor Employer or Common Employer Status	673	154	165	114	111	129	627	179	142	92	71	143
Accreditation	13	2	4	1	4	2	11	1	5	3	0	2
Declaration and Direction of Unlawful Strike	44	12	17	6	0	9	42	14	15	2	2	9
Declaration and Direction of Unlawful Lockout	4	2	0	0	1	1	5	4	0	0	0	1
Consent to Prosecute	13	2	3	0	5	3	15	2	1	2	7	3
Contravention of Act	3,342	705	658	693	599	687	3,179	792	624	515	513	735
Right of Access	2	0	0	0	0	2	1	0	0	0	0	1
Exemption From Union Security Provision in Collective Agreement	16	5	9	0	0	2	16	4	2	0	0	10
Early Termination of Collective Agreement	114	78	10	8	11	7	116	79	11	8	11	7
Trade Union Financial Statement	13	3	2	4	2	2	8	1	3	2	1	1
Jurisdictional Dispute	413	93	54	78	115	73	243	47	54	36	29	77
Referral on Employee Status	43	8	5	10	7	13	50	9	11	5	10	15
Referral From Minister on Appointment of Conciliation Officer or Arbitrator or Under HLDA	104	9	51	16	22	6	52	4	12	8	20	8
Referral of Construction Industry Grievance	4,853	936	1,048	952	968	949	3,860	972	989	448	475	976
Complaint Under Occupational Health and Safety Act	612	90	82	110	123	207	617	110	83	75	137	212
Complaint Under the Environmental Protection Act	9	0	5	1	0	3	11	1	0	6	0	4
Complaint Under the Smoke-Free Ontario Act	7	1	2	0	2	2	7	1	2	0	2	2
First Agreement Arbitration Direction	64	9	18	12	13	12	64	6	12	17	9	20
Determination of Sector of Construction Work	10	3	1	1	3	2	10	3	2	0	2	3
Final Offer Vote	67	15	13	13	17	9	56	15	7	15	11	8
Employment Standards Act (Appeal)	4,934	640	896	1,351	1,304	743	4,958	808	826	967	1,370	987
Occupational Health and Safety Act (Appeal)	553	117	150	102	90	94	509	123	157	67	63	99
Public Sector Labour Relations Transition Act, 1997	60	12	12	11	13	12	44	12	7	4	14	7
Project Agreement Application	12	1	2	4	3	2	6	1	2	0	1	2
Ambulance Services Collective Bargaining Act, 2001	19	3	3	3	5	5	16	4	2	2	4	4
Other Case Types	126	24	23	29	29	21	121	28	33	14	30	16

Figure 2

# Mediation Results

Mediators are assigned to virtually every application filed with the Board and the majority of all files disposed of are settled by the parties with the assistance of a mediator. About 80 - 85% of all cases before the Board are settled or withdrawn; only 15% are decided by way of a Hearing or Consultation.

Fiscal Year 2012-13				Cases in Which Activity Completed					
Type of Case	Total Cases Assigned*	Pending April 1, 2012	Received Fiscal Year 2012-13	Total	Cases Settled	% of Cases Settled	To Hearing / Consultation	Withdrawn / Sine Die	Pending**
<b>Total</b>	<b>5,858</b>	<b>2,020</b>	<b>3,838</b>	<b>4,109</b>	<b>3,314</b>	<b>80.7%</b>	<b>795</b>	<b>2,651</b>	<b>1,695</b>
Certification of Bargaining Agents	933	214	719	669	520	77.7%	149	170	264
Declaration of Termination of Bargaining Rights	150	31	119	84	66	78.6%	18	13	66
Successor Employer or Common Employer Status	255	126	129	143	100	69.9%	43	95	112
Referral on Employee Status	23	10	13	15	9	60.0%	6	9	8
Contravention of Act	1,115	428	687	735	597	81.2%	138	532	380
Referral of Construction Industry Grievance	1,143	194	949	976	850	87.1%	126	784	167
Complaint Under Occupational Health and Safety Act	247	40	207	212	192	90.6%	20	177	35
Employment Standards Act (Appeal)	1,400	657	743	987	753	76.3%	234	674	359
Occupational Health and Safety Act (Appeal)	153	59	94	99	97	98.0%	2	78	54
All Other Case Types	439	261	178	189	130	68.8%	59	119	250
*Includes all cases assigned to labour relations officers, which may or may not have been disposed of by the end of the year.									
**Includes all cases in which the officer activity may or may not be complete but which was not disposed of by the end of the year (March 31, 2013).									

Figure 3

## Certification and Termination of Bargaining Rights Cases

All non-construction certification applications before the Board are decided by way of a vote, as are all termination applications, whether in the construction sector or not. The vast majority of construction certification applications are decided by a “card-check” process and not by vote. As such, the statistics shown about certification votes apply almost exclusively to non-construction sectors and to termination applications.

The Board received a total of 719 applications for certification and 119 applications for termination of bargaining rights. (Figure 1)

The Board held a total of 422 votes in 2012/13, with 16,891 people voting. The vast majority of these votes relate to certification files; the remainder are representational votes in termination applications, under the successor employer/related employer provisions of the Act or are votes related to Hospital, School Board and Municipal re-organization. Unions won the majority of certification votes 69.5% and lost the majority of termination applications 68.3% (Figure 4)

Fiscal Year 2012-13	Representation Cases Disposed			Representation Votes Conducted*		Representation Ballots Cast		
	Total Cases	Appl. Granted	Appl. Not Granted	Votes Conducted	Employees on Employers List	Total	In Favour of	Against
<b>Total Certifications &amp; Terminations</b>	<b>339</b>	<b>235</b>	<b>104</b>	<b>422</b>	<b>21,803</b>	<b>16,891</b>	<b>50.2%</b>	<b>49.8%</b>
<b>Certification of Bargaining Rights</b>	<b>298</b>	<b>207</b>	<b>91</b>	<b>366</b>	<b>19,200</b>	<b>15,006</b>	<b>52.0%</b>	<b>48.0%</b>
<b>Construction cases</b>								
One Union	26	9	17	29	450	389	22.9%	77.1%
Two Unions	9	2	7	47	565	630	20.0%	80.0%
Three Unions				2	18	24	0.0%	100.0%
<b>Regular cases</b>								
One Union	248	187	61	270	16,028	12,366	49.7%	50.3%
Two Unions	15	9	6	18	2,139	1,597	90.6%	9.4%
<b>Termination of Bargaining Rights</b>								
One Union	41	28	13	56	2,603	1,885	35.5%	64.5%

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

Figure 4

Of the non-construction certification applications, a minority relate to the manufacturing sector, and the majority related to the broader public sector and non-manufacturing businesses. (Figure 5)

Fiscal Year 2012-13	All Groups	
	Total	Employees
<b>All Industries</b>	<b>404</b>	<b>13,472</b>
<b>Manufacturing</b>	<b>5</b>	<b>194</b>
Food, Beverages	1	28
Machinery	1	60
Other Manufacturing	3	106
<b>Non-Manufacturing</b>	<b>399</b>	<b>13,278</b>
Accommodation, Food Services	5	106
Construction	198	1,864
Education, Related	4	112
Health, Welfare Services	24	3,050
Hospital	2	129
Local Government	1	12
Municipal	1	13
Personal Services	2	13
Real Estate, Insurance Agencies	1	6
Retail Trade	2	236
Transportation	1	10
Other Services	150	7,054
Other Non-Manufacturing	8	673

Figure 5

Fiscal Year 2012-13	Total		Construction **		Non-Construction	
	Cases	Employees	Cases	Employees	Cases	Employees
<b>Total</b>	<b>372</b>	<b>13,471</b>	<b>178</b>	<b>1,313</b>	<b>194</b>	<b>12,158</b>
<b>2-9 employees</b>	<b>184</b>	<b>812</b>	142	586	42	226
<b>10-19 employees</b>	<b>70</b>	<b>990</b>	24	364	46	626
<b>20-39 employees</b>	<b>52</b>	<b>1,501</b>	9	227	43	1,274
<b>40-99 employees</b>	<b>42</b>	<b>2,688</b>	3	136	39	2,552
<b>100-199 employees</b>	<b>11</b>	<b>1,454</b>			11	1,454
<b>200-499 employees</b>	<b>8</b>	<b>2,299</b>			8	2,299
<b>500+ employees</b>	<b>5</b>	<b>3,727</b>			5	3,727

\* Refers to the total number of employees in one or more bargaining units certified in an application. A total of 391 bargaining units were certified in the 372 applications in which certification was granted.

\*\* Refers to cases processed under the construction industry provisions of the Act. This figure should not be confused with the figure in Figure 10, which includes all applications involving construction employers whether processed under the construction industry provisions of the Act or not.

Figure 6

Of the 372 certification applications in which unions were successful, 184 bargaining units were composed of 2 - 9 employees, and at the other extreme 8 were bargaining units of 200 - 499 employees, and 5 were of units with over 500 employees. (Figure 6)

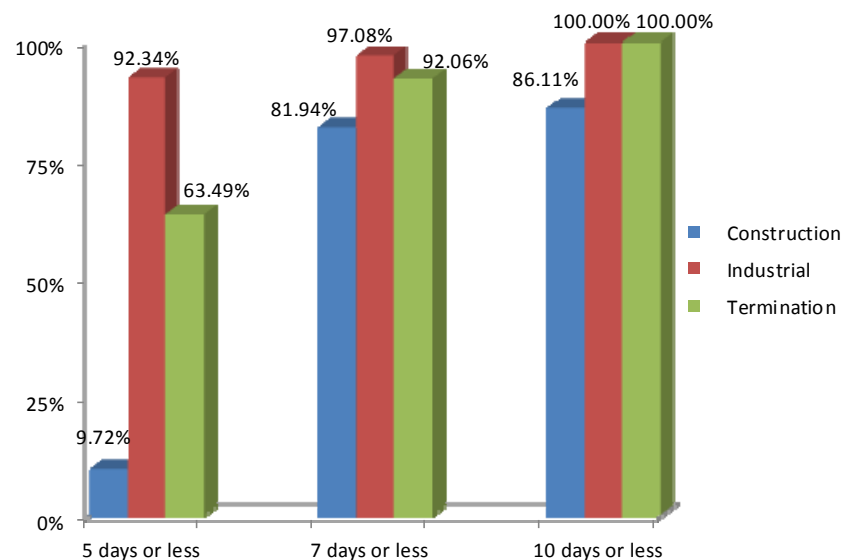


Figure 7

Over 92% of all non-construction certification votes were held within five working days of application, about 97% within seven days and 100% within ten days of application. Termination applications took slightly longer, largely because of bargaining unit and notice issues: over 63% were held within five days of application, 92% within seven days and 100% within ten days of application. (Figures 7 & 8)

Fiscal Year 2012-13	Total		Industrial		Construction		Termination Cases to Vote	
	Cases	% of	Cases	% of	Cases	% of	Cases	% of
	<b>346</b>		<b>274</b>		<b>72</b>		<b>63</b>	
<b>Under 5</b>	<b>0</b>	<b>0.00%</b>	0	0.00%	0	0.00%	<b>0</b>	<b>0.00%</b>
<b>5</b>	<b>260</b>	<b>75.14%</b>	253	92.34%	7	9.72%	<b>40</b>	<b>63.49%</b>
<b>6</b>	<b>36</b>	<b>10.40%</b>	5	1.82%	31	43.06%	<b>10</b>	<b>15.87%</b>
<b>7</b>	<b>29</b>	<b>8.38%</b>	8	2.92%	21	29.17%	<b>8</b>	<b>12.70%</b>
<b>8</b>	<b>9</b>	<b>2.60%</b>	7	2.55%	2	2.78%	<b>3</b>	<b>4.76%</b>
<b>9</b>	<b>1</b>	<b>0.29%</b>	0	0.00%	1	1.39%	<b>2</b>	<b>3.17%</b>
<b>10</b>	<b>1</b>	<b>0.29%</b>	1	0.36%	0	0.00%	<b>0</b>	<b>0.00%</b>
<b>11-15</b>	<b>2</b>	<b>0.58%</b>	0	0.00%	2	2.78%	<b>0</b>	<b>0.00%</b>
<b>16-20</b>	<b>3</b>	<b>0.87%</b>	0	0.00%	3	4.17%	<b>0</b>	<b>0.00%</b>
<b>over 20</b>	<b>5</b>	<b>1.45%</b>	0	0.00%	5	6.94%	<b>0</b>	<b>0.00%</b>
*Number of Business Days between application date and date vote held								

Figure 8

# Contravention of Act

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

In 2012-2013, the Board received 687 complaints under this section. In complaints against employers, the principal charges were alleged illegal discharge of or discrimination against employees for union activity in violation of section 70 and 72 of the Act, illegal changes in wages and working conditions contrary to section 86, and failure to bargain in good faith under section 17. These charges were made mostly in connection with applications for certification. The principal charge against trade unions was alleged failure to represent employees fairly in grievances against their employer.

Overall, in addition to the complaints received, 428 cases were carried over from 2011-2012. Of the 1,115 cases processed, 532 were settled, and 380 cases were pending on March 31, 2013. (Figure 1)

## Duty of Fair Representation / Referral

Complaints against trade unions for a breach of the duty to provide fair representation or referral (ss 74 and 75 OLRA) accounted for 321

of the complaints processed. One was granted, 126 were dismissed, 13 were terminated and 85 were settled. 104 were pending as of March 31, 2013. (Figure 9)

## Applications for Interim Order

Where a proceeding is pending, the Board, on application under the Act, may make interim orders requiring an employer to reinstate an employee in employment on such terms as it considers appropriate. The Board may also issue interim orders respecting the terms and conditions of employment of an employee whose employment has not been terminated but whose terms and conditions of employment have been altered or who has been subject to reprisal, penalty or discipline by the employer. The Board may only issue interim orders if specific conditions set out in the Act are met.

In 2012/13, the Board received 45 applications for interim orders. Two were granted, 6 were dismissed and 28 were settled. Ten were pending on March 31, 2013.

Fiscal Year 2012-13	Caseload			Disposed of					
	Total	Pending April 1, 2012	Received Fiscal Year 2012-13	Total	Granted*	Dismissed	Terminated	Settled Withdraw n/ Sine Die	Pending March 31, 2013
Duty of Fair Representation / Referral	321	131	190	225	1	126	13	85	104
Interim Order	45	6	39	36	2	6	0	28	10

\* Includes cases in which a request was granted or a determination made by the Board.  
Cases counted here also are reflected in Figure 1.

Figure 9



## Construction Industry Grievances

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

In 2012-2013, the Board received 949 cases under this section. The principal issues in these grievances were alleged failure by employers to make required contributions to health and welfare, pension and vacation funds, failure to deduct union dues, and alleged violation of the subcontracting and hiring arrangements in the collective agreement.

In addition to the cases received, 194 were carried over from 2011-2012. Of the total 1,143 processed, 976 were disposed of including 784 cases which were settled. Awards were made by the Board in 172 cases, 20 cases were dismissed, and 167 cases were pending on March 31, 2013. (Figure 1)

# Appeals Under the Employment Standards Act

The *Employment Standards Act* deals with workplace rights such as minimum wage, hours of work, overtime, vacation or public holiday pay, violations of pregnancy or reprisal provisions, termination issues, and severance pay.

The Board dealt with 1400 appeals during 2012-2013. Of the 987 cases that were disposed of, 77 were granted, 156 were dismissed, 674 cases were settled and 80 were terminated. 359 cases were pending on March 31, 2013. (Figure 1)

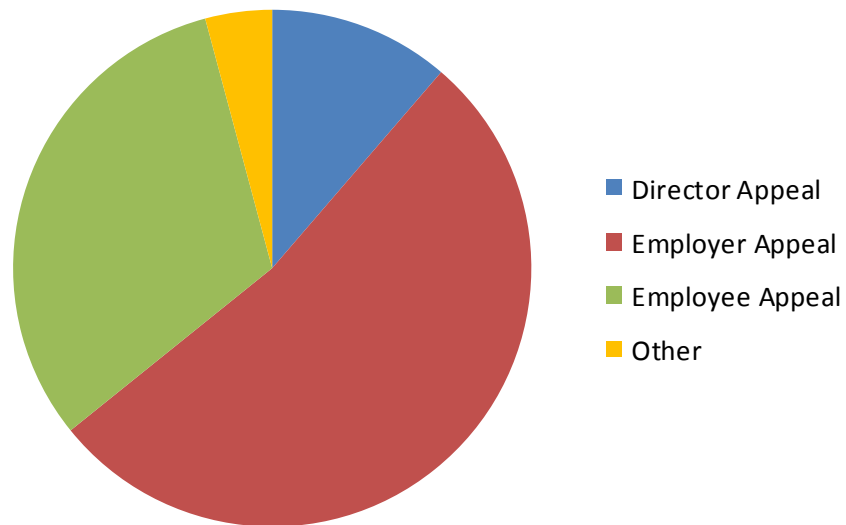


Figure 10

Fiscal Year 2012-13	
Employment Standards Act (Appeals)	Cases Received
<b>Total</b>	<b>743</b>
Director Appeal	<b>84</b>
Employer Appeal	<b>393</b>
Employee Appeal	<b>235</b>
Other	<b>31</b>

Figure 11

# Occupational Health and Safety Act

In 2012-2013, the Board received 207 complaints under Section 50 of the *Occupational Health and Safety Act* alleging wrongful discipline or discharge for acting in compliance with the Act. Forty cases were carried over from 2011-12. Seventy-seven of those applications were referred by health and safety inspectors.

Of the total 212 cases processed, 177 cases were settled by the parties in discussions with labour relations officers (Figure 3). Thirty-two cases were dismissed, 2 cases were granted, 1 case was terminated, and the remaining 35 were pending on March 31, 2013.

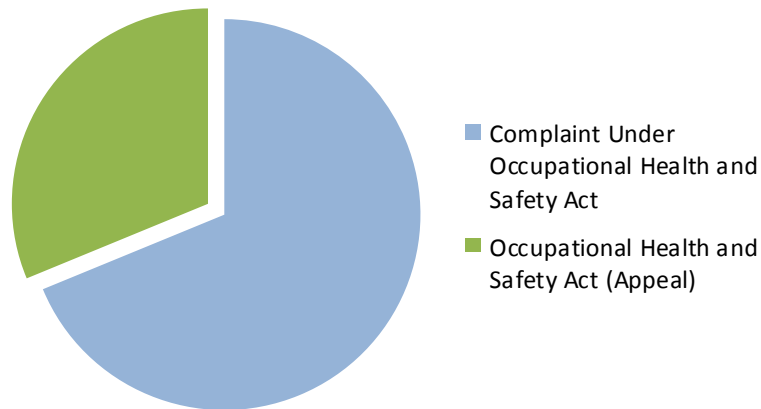


Figure 12 – Applications Received

## Appeals under the Occupational Health and Safety Act

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

153 appeals were dealt with by the Board in 2012-2013. Of the 99 cases that were disposed of, 2 appeals were granted, 17 were dismissed, 78 cases were settled, 2 cases were terminated, and 54 cases were pending on March 31, 2013. (Figure 1)

Fiscal Year 2012-13	
Occupational Health and Safety Act	Cases Received
<b>Total</b>	<b>301</b>
Complaint Under Occupational Health and Safety Act	<b>207</b>
Referred by Inspectors	77
Occupational Health and Safety Act (Appeal)	<b>94</b>

# Miscellaneous Applications

## Final Offer Votes

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

Of the requests dealt with by the Board during the fiscal year, in six cases employees voted to reject the collective agreement, two were settled or withdrawn, and seven cases were pending on March 31, 2013. (Figure 1)

## Declaration of Successor Trade Union

Three applications for declaration of successor trade union were pending April 1, 2012 with three new applications received and four applications were granted in the current fiscal year. There are two cases pending as of March 31<sup>st</sup>, 2013. (Figure 1)

## Declaration of Successor or Common Employer Status

In 2012-2013, the Board dealt with 255 applications for declarations under section 69 of the Act concerning the bargaining rights of trade unions of a successor employer resulting from a sale of business, or for declarations under section 1(4) to treat two companies as one employer. The two types of requests are often made in a single application.

Affirmative declarations were issued by the Board in 31 cases, 17 applications were dismissed, 95 cases were settled and 112 cases were pending on March 31, 2013. (Figure 1)

## Declaration/Direction of Unlawful Strike/Lock-out

In 2012-2013, the Board dealt with 11 applications seeking a declaration under section 100 regarding an alleged unlawful strike by employees. Six cases settled, two cases were granted and one was dismissed. Two cases were pending on March 31, 2013.

The Board received one application for a declaration under section 101 regarding an alleged unlawful lock-out by an employer. It was settled. (Figure 1)

## **Consent to Prosecute**

In 2012-2013, the Board dealt with 4 applications under section 109 of the Act requesting consent to institute prosecution in court against unions and employers for alleged commission of offences under the Act. One case settled, one was dismissed and one was granted. One case was pending on March 31, 2013. (Figure 1)

## **Religious Exemption from Union Security Provision in Collective Agreement**

Ten applications were processed under section 52 of the Act, seeking exemption for employees from the union security provisions of collective agreements because of their religious beliefs. They were all settled.(Figure 1)

## **Early Termination of Collective Agreements**

Seven applications were processed under section 58(3) of the Act, seeking early termination of collective agreements. These are joint applications by employers and trade unions. Consent was granted in all six and one settled. (Figure 1)

## **Jurisdictional Disputes**

253 complaints were dealt with under section 99 of the Act involving union work jurisdiction. An assignment of work in dispute was made

by the Board in 4 cases, 53 cases were settled, 14 cases were dismissed, 6 were terminated, and 176 cases were pending on March 31, 2013. (Figure 1)

## **Referral on Employee Status**

The Board dealt with 23 applications under section 114(2) of the Act, seeking decisions on the status of individuals as employees under the Act. Nine cases were settled by the parties in discussions with labour relations officers. One case was granted, and the remaining eight cases were pending on March 31, 2013. (Figure 1)

## **Referrals by Minister of Labour**

In 2012-2013, the Board dealt with 15 cases referred by the Minister under section 115 of the LRA for opinions or questions related to the Minister's authority to appoint a conciliation officer under section 18 of the Act, under sections 48 or 49 of the LRA for authority to appoint an arbitrator, or under s3(2) of the *Hospital Labour Disputes Arbitration Act*. Four applications were settled, advice was given to the Minister in four cases, and seven cases were pending on March 31, 2013. (Figure 1)

## **First Agreement Arbitration**

In 2012-2013, the Board processed 26 applications for directions to settle first agreements by arbitration. Fifteen cases were settled, four cases were granted, one case was dismissed and six cases were pending on March 31, 2013. (Figure 1)

## **Applications under The Public Sector Labour Relations Transition Act**

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

In 2012-2013, the Board processed 19 applications under *the Public Sector Labour Relations Transition Act, 1997*. Of the seven cases that were disposed of, two cases were granted, 1 was dismissed, four cases were settled and twelve cases were pending on March 31, 2013. (Figure 1)

## Time Required to Dispose of Applications, By Major Case Type

Fiscal Year 2012-13	All Cases*		Certification Cases		Contravention of the Act Cases		Construction Industry Grievances Cases		All Other Cases		Total Certification Cases Granted		Non-Construction Granted		Construction Granted	
	Cumulative %		Cumulative %		Cumulative %		Cumulative %		Cumulative %		Cumulative %		Cumulative %		Cumulative %	
Time Taken (Business Days)	Dispositions		Dispositions		Dispositions		Dispositions		Dispositions		Dispositions		Dispositions		Dispositions	
<b>Total</b>	<b>3,270</b>	<b>100.0</b>	<b>624</b>	<b>100.0</b>	<b>618</b>	<b>100.0</b>	<b>457</b>	<b>100.0</b>	<b>1,571</b>	<b>100.0</b>	<b>370</b>	<b>100.0</b>	<b>197</b>	<b>100.0</b>	<b>173</b>	<b>100.0</b>
<b>Under 8 days</b>	<b>197</b>	<b>6.0</b>	84	13.5	30	4.9	30	6.6	53	3.4	<b>44</b>	<b>11.9</b>	1	0.5	43	24.9
<b>8-14 days</b>	<b>277</b>	<b>14.5</b>	85	27.1	18	7.8	153	40.0	21	4.7	<b>70</b>	<b>30.8</b>	10	5.6	60	59.5
<b>15-21 days</b>	<b>282</b>	<b>23.1</b>	137	49.0	30	12.6	54	51.9	61	8.6	<b>105</b>	<b>59.2</b>	98	55.3	7	63.6
<b>22-28 days</b>	<b>160</b>	<b>28.0</b>	67	59.8	21	16.0	32	58.9	40	11.1	<b>47</b>	<b>71.9</b>	39	75.1	8	68.2
<b>29-35 days</b>	<b>117</b>	<b>31.6</b>	29	64.4	18	18.9	30	65.4	40	13.7	<b>18</b>	<b>76.8</b>	14	82.2	4	70.5
<b>36-42 days</b>	<b>99</b>	<b>34.6</b>	20	67.6	22	22.5	17	69.1	40	16.2	<b>11</b>	<b>79.7</b>	5	84.8	6	74.0
<b>43-49 days</b>	<b>93</b>	<b>37.5</b>	10	69.2	14	24.8	13	72.0	56	19.8	<b>6</b>	<b>81.4</b>	1	85.3	5	76.9
<b>50-56 days</b>	<b>86</b>	<b>40.1</b>	18	72.1	20	28.0	9	74.0	39	22.3	<b>14</b>	<b>85.1</b>	4	87.3	10	82.7
<b>57-63 days</b>	<b>93</b>	<b>42.9</b>	15	74.5	16	30.6	7	75.5	55	25.8	<b>7</b>	<b>87.0</b>	3	88.8	4	85.0
<b>64-70 days</b>	<b>77</b>	<b>45.3</b>	5	75.3	18	33.5	8	77.2	46	28.7	<b>2</b>	<b>87.6</b>	1	89.3	1	85.5
<b>71-77 days</b>	<b>86</b>	<b>47.9</b>	10	76.9	15	35.9	4	78.1	57	32.3	<b>6</b>	<b>89.2</b>	1	89.8	5	88.4
<b>78-84 days</b>	<b>71</b>	<b>50.1</b>	6	77.9	17	38.7	6	79.4	42	35.0	<b>4</b>	<b>90.3</b>	2	90.9	2	89.6
<b>85-91 days</b>	<b>63</b>	<b>52.0</b>	3	78.4	16	41.3	7	81.0	37	37.4	<b>0</b>	<b>90.3</b>	0	90.9	0	89.6
<b>92-98 days</b>	<b>68</b>	<b>54.1</b>	7	79.5	17	44.0	3	81.6	41	40.0	<b>2</b>	<b>90.8</b>	1	91.4	1	90.2
<b>99-105 days</b>	<b>73</b>	<b>56.3</b>	10	81.1	21	47.4	3	82.3	39	42.5	<b>5</b>	<b>92.2</b>	4	93.4	1	90.8
<b>106-126 days</b>	<b>133</b>	<b>60.4</b>	10	82.7	29	52.1	6	83.6	88	48.1	<b>5</b>	<b>93.5</b>	1	93.9	4	93.1
<b>127-147 days</b>	<b>106</b>	<b>63.6</b>	7	83.8	33	57.4	5	84.7	61	51.9	<b>4</b>	<b>94.6</b>	2	94.9	2	94.2
<b>148-168 days</b>	<b>92</b>	<b>66.5</b>	10	85.4	16	60.0	6	86.0	60	55.8	<b>4</b>	<b>95.7</b>	0	94.9	4	96.5
<b>Over 168 days</b>	<b>1097</b>	<b>100.0</b>	91	100.0	247	100.0	64	100.0	695	100.0	<b>16</b>	<b>100.0</b>	10	100.0	6	100.0

\* Excludes cases in which proceedings were adjourned sine die

Figure 13

# Court Activity

On April 1, 2012, there were 28 Board matters pending before the Courts; 23 of them at Divisional Court. Two applications sought leave to appeal to the Court of Appeal and three matters were before the Court of Appeal on their merits.

During the 2012-2013 fiscal year, there were 16 new applications to the Divisional Court for judicial review of Board decisions and one stay application filed with the Divisional Court. Leave to appeal was sought in two cases to the Court of Appeal and one case was before that court on its merits. Leave to appeal to the Supreme Court of Canada was sought in two cases.

The Divisional Court disposed of a total 20 applications for judicial review. Sixteen were dismissed and four were abandoned. Twenty-two applications for judicial review remained outstanding on March 31, 2013. The Court dismissed one stay application.

Leave to appeal to the Court of Appeal was granted in one case and dismissed in two others. The Court also granted one appeal on its merits and dismissed three others.

The Supreme Court of Canada dismissed two applications for leave to appeal.

Fiscal Year 2012-13 Type of Case	Caseload			Disposed of				Pending March 31, 2013
	Total	Pending April 1, 2012	Received	Total	Granted	Dismissed	Abandoned	
<b>Total</b>	<b>50</b>	<b>28</b>	<b>22</b>	<b>30</b>	<b>2</b>	<b>24</b>	<b>4</b>	<b>23</b>
Divisional Courts (Merits)	39	23	16	20	0	16*	4 <sup>#</sup>	22 <sup>+</sup>
Divisional Court (Stay)	1	0	1	1	0	1	0	0
Ontario Court of Appeal (Seeking Leave)	4	2	2	3	1	2	0	1
Ontario Court of Appeal (Merits)	4	3	1	4	1	3	0	0
Supreme Court of Canada (Seeking Leave)	2	0	2	2	0	2	0	0
Supreme Court of Canada (Merits)	0	0	0	0	0	0	0	0

\* Three applications for judicial review (Khaiter No. 1, 2 and 3) dismissed on a motion by trade union to a single judge of Divisional Court. Khaiter is seeking leave to have dismissal overturned by a three-judge panel.

<sup>#</sup> Two applications for judicial review abandoned by applicant. Two other applications dropped for statistical purposes by Board (no activity in over 4 years).

<sup>+</sup> Includes 3 Khaiter matters; see first footnote.

Figure 14 - Court Activity



## Financial Position

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

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

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

### Fiscal Year – 2012/2013

All figures in \$000.0 thousand

Account	Final Allocation*	Actual Expenditures**	Variance	% Variance
Salaries & Wages	8,622.4	8,296.6	325.8	3.8%
Benefits	1,053.2	1,047.5	5.7	0.5%
<b>ODOE:</b>				
Transportation & Communication	542.9	363.0	179.9	33.1%
Services (incl. Lease & IT charges)	4,277.8	4,499.1	(221.3)	-5.2%
Supplies & Equip	116.4	72.7	43.7	37.5%
<b>Total ODOE</b>	<b>4,937.1</b>	<b>4,934.8</b>	<b>2.3</b>	<b>0.0%</b>
<b>GRAND TOTAL</b>	<b>14,612.7</b>	<b>14,278.9</b>	<b>333.8</b>	<b>2.3%</b>

\* Final Allocation = Printed Estimates +/- TBO, re-alignment of funds by standard account.

\*\* Year-end Actual Expenditures including office lease cost and IT charges

Figure 15

Non-Tax Revenue	2012-2013 Revenue
Construction Grievance	533.5
Publications	35.0
Subscriptions	16.8
<b>Total</b>	<b>585.3</b>

Figure 16

## Performance Measures

Each year the OLRB provides a broad accountability of progress achieved on our core performance measures. We take each of our goals and track progress on a series of performance measures designed to assess whether the Board is measuring up to corporate standards and program targets/commitments.

Measure	Standard / Target	2012-2013 Commitments	2012-2013 Achievements
<b><u>Fiscal Measures:</u></b> % variance between year end allocation and expenditure	Less than 2% variance between year end allocation and expenditure	Less than 2% variance between year end allocation and expenditure	<b>Actual:</b> - <b>2.4 % variance</b> Approved budget = 11,240.4 Actual expenditure = 10,970.2
<b><u>Program Effectiveness Measures:</u></b>  Meeting legislated time lines	90% Industrial cert. votes held within 5-7 days.  95% held within 7-10 days  5% or less held within more than 10 days	90% Industrial cert. votes held within 5-7 days.  95% held within 7-10 days  5% or less held within more than 10 days	<b>Actual:</b> <b>97.1 %</b> of votes held within 5-7 days or less  <b>100 %</b> of votes held within 7-10 days or less  <b>0 %</b> of votes held in more than 10 days
% of LRA cases settled by mediation  % of ES and HS appeal cases settled by mediation	85% of LRA cases settled through mediation  ESA (Appeals) cases = 75% OHSA (Appeals) cases = 75% OHSA (Complaints) cases = 75%	85% of LRA cases settled through mediation  ESA (Appeals) cases = 75% OHSA (Appeals) cases = 75% OHSA (Complaints) cases = 75%	<b>Actual:</b> <b>81.2% *Based on completed case activity in certification/termination/unfair labour practices/grievances.</b>  <b>Actual:</b> <b>76.3%</b> - ESA Appeals <b>98.0%</b> - OHSA appeals <b>90.6%</b> - OHSA Complaints
% of judicial reviews upheld	90-100% of judicial reviews upheld Board decision	90-100% of judicial reviews upheld Board decision	<b>Actual:</b> <b>90-95%</b> based on 30 disposed of cases. Please see Court Activity section for details

Figure 17

# Accountability Statement

The OLRB's Annual Report for the fiscal year ending March 31, 2012 was prepared under my direction for submission to the Minister of Labour in accordance with the ***Agency Establishment and Accountability Directive – 2010***, as issued by Management Board of Cabinet.

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

The Results Based Plan of the Ministry of the Labour, which is to be released in the fall of each year, contains the Ministry's mission and accountability statements, the consolidated financial/allocation statements of the Ministry and an annual comparison of actual performance results to desired results set out in the Ministry business plan.

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

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

**This report covers the fiscal year April 1, 2012 to March 31, 2013.**

## For More Information

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