



ANNUAL
REPORT
2016



Labour Relations Board

BRITISH COLUMBIA

LABOUR RELATIONS BOARD

2016

ANNUAL REPORT

**Ministry of Jobs, Tourism and Skills Training and
Minister Responsible for Labour
Honourable Shirley Bond, Minister**

February 28, 2017

The Honourable Shirley Bond
Minister of Jobs, Tourism and Skills Training
and Minister Responsible for Labour
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Honourable Minister:

RE: Labour Relations Board 2016 Annual Report

I am pleased to forward the 2016 Annual Report of the Labour Relations Board for the year ending December 31, 2016. This Report has been prepared for your review pursuant to Section 157(2) of the *Labour Relations Code*.

Yours truly,

LABOUR RELATIONS BOARD

A handwritten signature in black ink, reading "Brent Mullin". The signature is written in a cursive style with a large initial "B" and a long, sweeping underline.

Brent Mullin
Chair

Enclosure

TABLE OF CONTENTS

LETTER OF TRANSMITTAL

CHAIR'S MESSAGE

ORGANIZATIONAL CHART

| | | |
|------|--|----|
| I. | THE BOARD..... | 1 |
| | A. GENERAL OVERVIEW | 1 |
| | B. OFFICE OF THE CHAIR | 2 |
| | C. REGISTRY..... | 2 |
| | D. COLLECTIVE AGREEMENT ARBITRATION BUREAU | 5 |
| | E. ADJUDICATION DIVISION..... | 5 |
| | F. MEDIATION DIVISION | 6 |
| | G. ADMINISTRATION..... | 8 |
| II. | BOARD MEMBERS AND MEDIATORS | 9 |
| | EXECUTIVE | 9 |
| | VICE CHAIRS | 10 |
| | MEDIATORS..... | 12 |
| III. | HIGHLIGHTS OF BOARD DECISIONS..... | 13 |
| IV. | COURT DECISIONS..... | 21 |
| V. | STATISTICAL TABLES | 23 |

CHAIR'S MESSAGE

Section 126(2) of the *Labour Relations Code* provides that the Board may, subject to the Minister's approval, make rules to govern the Board's practice and procedure.

The Labour Relations Board first established its Rules in 1994. The Rules were created through a consultative process with the labour relations community.

At that time, the legal community had become interested in alternative dispute resolution ("ADR"). In particular that impacted what became Rules 17A, B, and C.

Perhaps because ADR was new to the legal community, portions of the Rules were quite conservatively drafted. That was especially the case in respect to Rules 17B.(3) and 17C.(1)(d). Those provisions required the agreement of the parties and, in the case of 17B.(3), the "consent in writing" of the parties.

Even at the time, some felt this was a cautious (and perhaps overly cautious) approach reflecting what can be the inherent conservatism of the legal community and legal practice. The concern was that it would very likely be difficult, if not virtually impossible, to get the needed "consent in writing" required in Rule 17B.(3). The consent in writing would be required, for instance, in the context of a single panel member having unsuccessfully attempted to reach a mediated settlement with the parties, with the panel member then wishing to proceed to adjudicate the matter. In an adversarial, contentious context which has expressly not settled, it is unlikely that the parties and their counsel will "consent in writing". Having to seek that "consent in writing" will in fact provide an opportunity for a party to be able to force the removal of the adjudicator by not agreeing to the "consent in writing". Effective mediation in most cases requires that the adjudicator/mediator be forthright in his or her opinions as to the strengths and weaknesses of a party's case. Having heard that, the party may decide it is advantageous to get rid of that adjudicator.

The requirement for "consent in writing" also inherently provides the opportunity to judge shop if, for example, the party or its counsel was not happy with the assignment of that particular Vice-Chair to the matter in any event, irrespective of what may have occurred in the mediation, settlement discussions. Looked at from this perspective the requirement to get "consent in writing" was in effect a non-starter right from the outset.

Perhaps the proof of that was that the provision was effectively honoured in the breach, by the practice which developed of simply ignoring it.

The cautious approach in the Rules was also in contrast to the established practice in labour relations arbitrations. In that context it had long been accepted that

an arbitrator could frankly discuss the case with the parties, attempt to mediate it, and then continue on with the adjudicative process should the mediation not succeed.

There was also some practice of this nature at the Board itself among the more practically inclined. However, as noted above, when it came to drafting the Board's Rules the more cautious, traditional legal approach was adopted in respect to the requirement of the agreement of the parties in 17B.(3) and 17C.(1)(d).

Subsequent to 1994, given the parties' and society's need for efficiency and timeliness in respect to labour relations matters, leading adjudicators at the Board pushed into the area of the well-established practice at arbitration of an adjudicator proactively working with the parties in terms of interactive case management and mediation and then continuing with the adjudication of the matter should there not be a settlement of it. The practice developed of doing that without the express agreement of the parties, which was contrary to the strict requirements of Rules 17B.(3) and 17C.(1)(d). Those requirements were in effect ignored by all involved, as it was recognized that the approach was needed and effective.

The approach became in fact very much appreciated. For example, in the Board's meetings with the labour relations community and leading counsel, it was consistently put forward that the parties wanted Vice-Chairs at the Board to take more charge of a case and to be more interactive.

As a further example of the acceptance of the practice, I would note that since I became Chair of the Board in 2002 there has not been to my knowledge one instance of a Vice-Chair having to recuse himself or herself or be taken off of a case, or of a decision being overturned, because the Vice-Chair has taken this proactive approach without the express agreement of the parties. In fact, as Chair I have not received any complaints from parties or counsel in that regard, whereas I have received complaints regarding processes not being directed and driven efficiently or mediatively enough.

The result was that the requirement for "consent in writing" was in fact contrary to the practice of the Board, with that practice being understood, accepted, and desired by the parties in the labour relations community and not objected to by their counsel. Simply on that basis, the Rules needed to be amended.

However, the Rules also needed to be amended as this practice at the Board was very much seen as a leading practice and potentially positive option for other tribunals in the administrative tribunal world. That was evidenced in the recent amendments in the *Administrative Tribunals Statutes Amendment Act* (the "*Amendment Act*") and the comments in that regard of the Minister of Justice in *Hansard*. The *Amendment Act* repealed the definition of "dispute resolution process" in the *Administrative Tribunals Act* by substituting for it what is referred to as a "facilitated settlement process". Section 16 of the *Amendment Act* repealed Section

28 of the *Administrative Tribunals Act* and replaced it with a new provision which defines and describes the "facilitated settlement process". That provision states:

- 28 (1) The chair may appoint a member or staff of the tribunal or another person to conduct a facilitated settlement process to resolve one or more issues in dispute.
- (2) The tribunal may require 2 or more parties to participate in the facilitated settlement process, in accordance with the rules of the tribunal.
- (3) The tribunal may make the consent of one, all or none of the parties to the application a condition of a facilitated settlement process, in accordance with the rules of the tribunal.

In *Hansard*, the Minister of Justice, in response to questioning on this "facilitated settlement process", defended the amendment by reference to the Board's practice of having a single adjudicator attempt to mediate, as well as case manage, a matter and then proceed to adjudicate and decide it if there is no settlement.

Irrespective of the fact that Section 28 of the *Administrative Tribunals Act* does not apply to the Board (see the *Labour Relations Code*, section 115.1), it was important for the Board, as a leading practitioner of this approach, to have its own Rules be in compliance with its existing practice.

Accordingly, Rules 17B.(3) and 17C.(1)(d) needed to be amended.

By Ministerial Order dated February 29, 2016 the Board's Rules were amended. Section 17(B).(3) was repealed. Section 17C.(1)(d) was repealed and replaced with a new Rule 17C.(1)(d) and (e) providing that the Board may proceed:

- (d) on the basis of an ADR hearing respecting which the parties may agree to one or more of the following:
 - (i) neither party will be represented by legal counsel at the hearing;
 - (ii) a short decision without precedent will be issued as soon as possible if the matter cannot be settled; and
 - (iii) any reconsideration of the decision will be limited to questions of natural justice; or
- (e) on the basis of an ADR hearing including one or more of the following
 - (i) the matter will be scheduled for an expedited hearing;
 - (ii) a brief written summary of each party's position will be exchanged in advance;
 - (iii) an agreed statement of facts will be prepared and/or limited *viva voce* evidence will be called at the hearing;

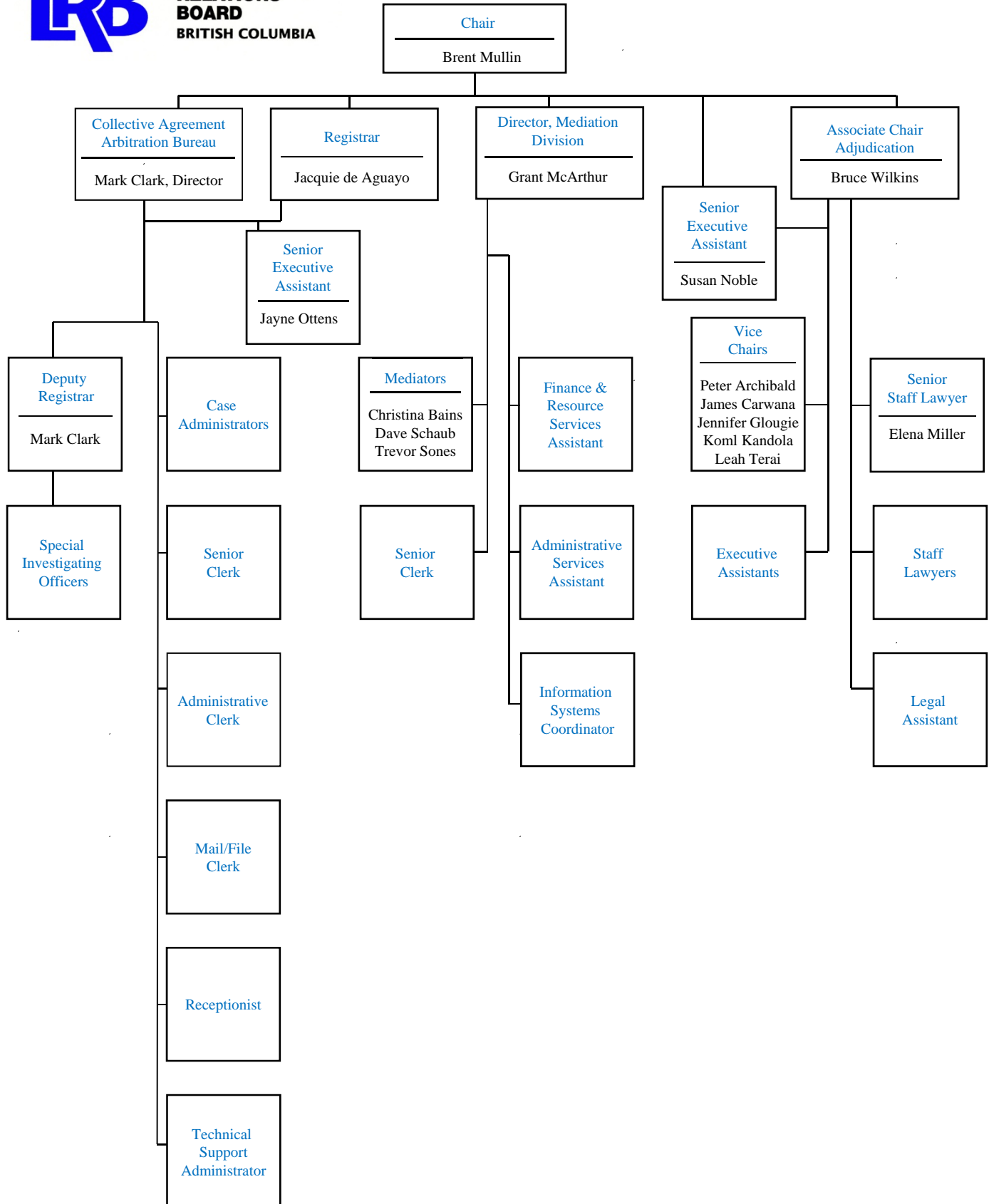
- (iv) a fixed time period will be established for the presentation of any evidence and argument;
- (v) limited reference will be made to legal or other authorities;
- (vi) the panel to which the proceeding has been referred may in its discretion attempt to mediate a settlement of some or all of the matters in dispute; and
- (vii) any other step or procedure designed to facilitate an expedited decision in the proceeding.

As well, consistent with the timelines requirements in the Board's Prescribed Time Periods for Decisions Regulation, Section 21 of the Board's Rules was repealed.

As with the initial adoption of the Board's Rules in 1994, these amendments followed a consultation process with the labour relations community in respect to them. The amendments themselves were designed to address the labour relations needs of the parties, not the legal system. That is consistent with labour relations having been moved out of the court system to the Board.

A handwritten signature in black ink, reading "Brent Mullin". The signature is written in a cursive, flowing style.

Brent Mullin
Chair



I. THE BOARD

A. GENERAL OVERVIEW

The *Labour Relations Code* (the "Code") establishes the Labour Relations Board (the "Board"). The statute grants the Board exclusive jurisdiction to hear and determine applications and complaints under the Code and to make orders under the Code that it deems appropriate.

The Code governs all aspects of collective bargaining amongst the provincially-regulated employers and employees to whom the Code applies. This includes the acquisition of collective bargaining rights, the process of collective bargaining, the settlement and regulation of disputes in both the public and private sectors, and the regulation of the representation of persons by their bargaining agents. In addition to administering and enforcing the Code, the Board is charged with the responsibility for labour relations matters under several other statutes.

In carrying out its mandate, the Board must have regard to the manner in which it performs its duties under the Code. These are set out in Section 2:

2. The board and other persons who exercise powers and perform duties under this Code must exercise the powers and perform the duties in a manner that
 - (a) recognizes the rights and obligations of employees, employers and trade unions under this Code,
 - (b) fosters the employment of workers in economically viable businesses,

- (c) encourages the practice and procedures of collective bargaining between employers and trade unions as the freely chosen representatives of employees,
- (d) encourages cooperative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workforce skills and developing a workforce and a workplace that promotes productivity,
- (e) promotes conditions favourable to the orderly, constructive and expeditious settlement of disputes,
- (f) minimizes the effects of labour disputes on persons who are not involved in those disputes,
- (g) ensures that the public interest is protected during labour disputes, and
- (h) encourages the use of mediation as a dispute resolution mechanism.

In order to accomplish this expansive mandate, the Code establishes the Board's administrative structure. Section 115(1) of the Code provides that the Board shall consist of a Chair, Vice Chairs, and as many other members, equal in number, representative of employers and employees respectively, as shall be considered necessary and appointed by the Lieutenant Governor in Council. The Chair is the head of the Board. The Chair designates one of the Vice Chairs to act as Associate Chair, Adjudication, one to act as Associate Chair, Mediation and one to act as the Registrar. The Chair, along with the Associate Chair, establishes panels to proceed with applications or complaints under the Code. Panels may be composed of the Chair, Vice Chair(s), and members in accordance with Section 117(5) of the Code.

B. OFFICE OF THE CHAIR

As head of the Board, the Chair has the ultimate responsibility to oversee the administration of the Board and the Code. The Associate Chair of Adjudication, Associate Chair of Mediation, and the Registrar report directly to the Chair. The Chair may sit as a panel, either with or without Vice Chairs and/or other members. The Chair presides at proceedings of the Board and on all panels of which the Chair is a member.

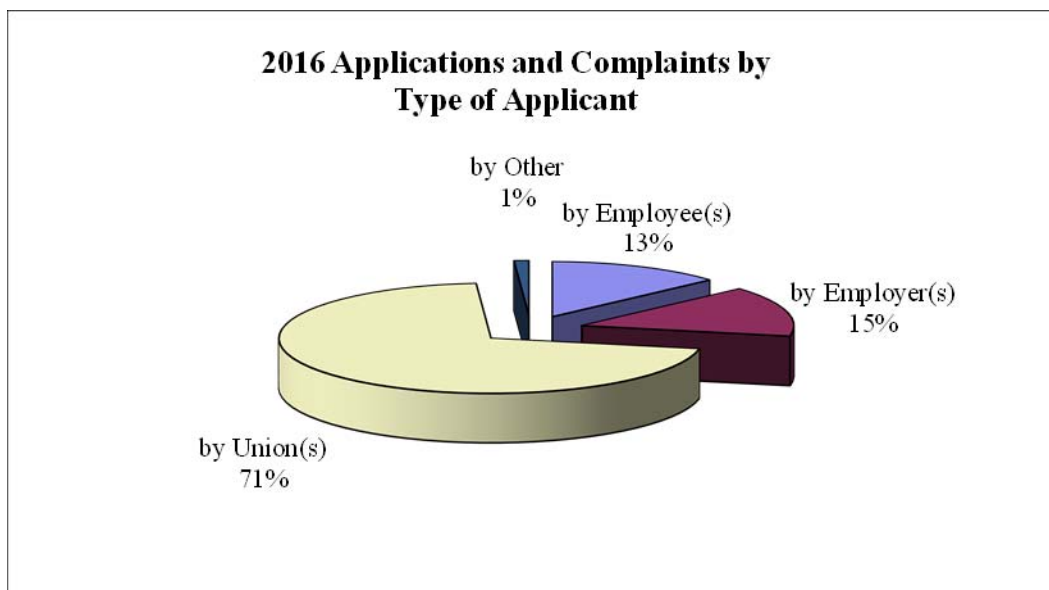
C. REGISTRY

Every application received by the Board is processed through the Registrar's office. Administration and progress of each case is overseen by the Registry until the matter is finally disposed of. Three Case Administrators are responsible for initiation of applications and the conduct of files.

Processing of all applications through the Registry enables the Board to utilize computerized case monitoring/management to achieve effective and speedy processing of cases.

Legislated time frames, combined with established Board policies and procedures, result in approximately 52 percent of applications receiving expedited processing. Part 5 applications can require adjudication within 24 hours. Certain unfair labour practice complaints require commencement of a hearing within three days. Others such as certification and decertification applications are normally processed within approximately one week of receipt.

On certification and decertification applications, Case Administrators are responsible for completing all necessary procedures before files are forwarded to adjudication for a hearing. This includes written notification to parties, initiation of investigations by Industrial Relations Officers ("IROs") and requests for written submissions. Accordingly, administrative staff must be familiar with legal principles and Board case law and policies.



Informal dispute resolution is an important part of the Board's operations and is used extensively during the processing of applications and complaints. Under the direction of the Deputy Registrar, cases requiring immediate informal dispute resolution are assigned to Special Investigating Officers (SIOs). The vast majority of their caseload involves expedited matters such as unfair labour practice complaints, certifications, and Part 5 applications dealing with strikes, lockouts and picketing.

Assistance by SIOs through the informal process can be obtained by the parties or the adjudicator at any stage of proceedings, including case management meetings and after formal hearings have commenced.

These informal settlement discussions are on a "without prejudice" basis. That is to say, a party cannot subsequently raise what was said in such discussions in any formal proceeding. However, settlement agreements reached on issues during the informal proceedings are binding on the parties and will be enforced by the Board.

The informal process achieves a very high success rate. As shown in Table 9 of the statistical tables, approximately 87 percent of unfair labour practice complaints and Part 5 complaints referred to SIOs are settled.

This informal dispute resolution process helps the Board and the parties make more effective use of resources and personnel, and substantially reduces the time needed to conclude cases, thus reducing expenditures. In addition, by fostering negotiated settlements between the parties, the process furthers the purposes of the Code by minimizing, where possible, decisions imposed by a third party.

Similar valuable services are provided throughout the Province by Industrial Relations Officers (IROs) of the Employment Standards Branch of the Ministry of Jobs, Tourism and Skills Training and Minister Responsible for Labour. For example, every application for certification or decertification requires a report by an IRO.

Both SIOs and IROs also provide considerable assistance through written reports which may involve fact finding, narrowing the issues to be adjudicated, and interviewing individual employees and employers on a wide variety of issues.

In addition to administering the Registry, the Registrar, as a Vice Chair of the Board, may chair or sit as a member of an adjudication panel, and as a sole panel member, may dispose of certain applications where summary disposition is appropriate. This leads to the speedy disposition of many types of applications.

The Deputy Registrar has responsibility for administering the informal process and also deals with Section 12, duty of fair representation applications, most of which require additional information before the Registry can process them.

Section 122(3) of the Code requires the Board to provide an Information Officer. The Information Officer's responsibilities to date have encompassed two main areas: handling incoming inquiry calls and preparing written material for the public and the labour relations community.

The Information Officer deals with approximately 4000 phone calls and email enquiries per year from employers, unions, individual employees and media representatives.

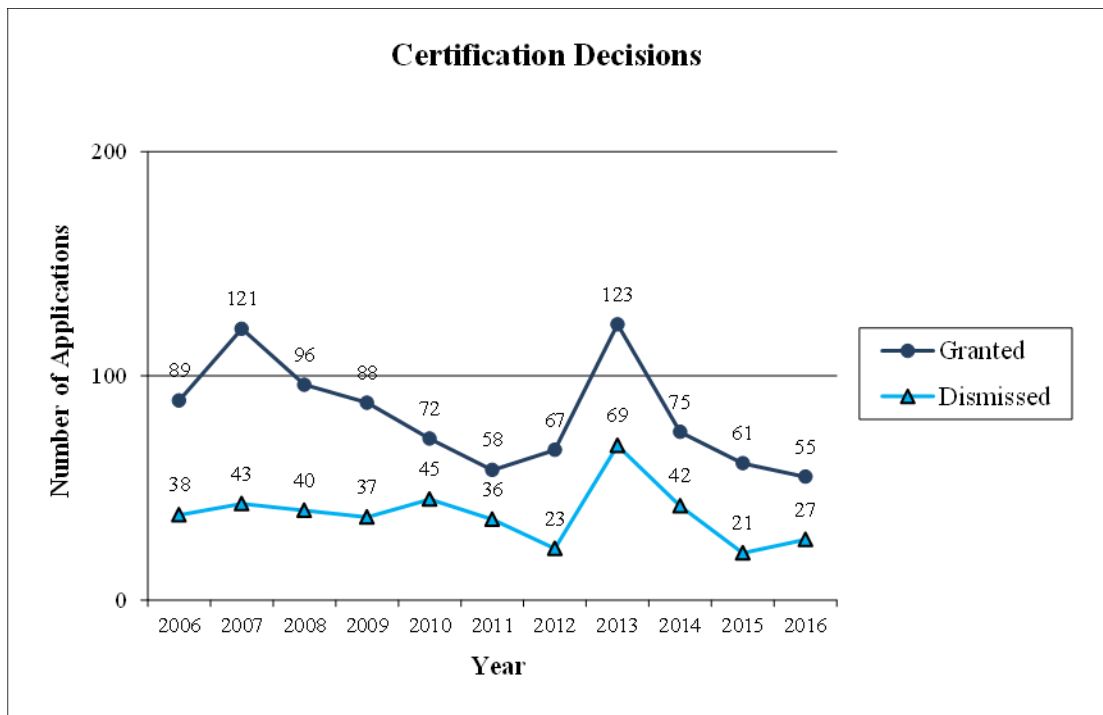
The Board's publications include the *Employer's Guide to the Union Certification Process*. This plain language guide is sent to employers along with the Notice of Certification Application, to clarify their rights and responsibilities under the Code. The same day the Information Officer sends a letter to employers who have not previously been certified, offering to answer any questions about the Code or certification procedures before the hearing date or on the morning of the certification hearing.

A companion publication, *Questions and Answers for Employees Regarding the Union Certification Process*, has been developed following an extensive consultation process with the labour relations community. It provides information to employees in plain language concerning the certification process.

Another publication prepared by the Information Officer, the Board's Practice Manual, has been in use since April, 1995.

The Board's website was officially launched in late 1999. The site includes information concerning the Board's processes, hearing schedules and recent Board decisions. The site is a work-in-progress and the Board welcomes input from the public to help improve the information provided. The website address is www.lrb.bc.ca.

The Board has also prepared a *Section 12 Guide* explaining the Board's approach to Section 12 complaints. It is available on our website under "Information Bulletins" or upon request in written form.



D. COLLECTIVE AGREEMENT ARBITRATION BUREAU

Effective July 5, 2002, and pursuant to the *Labour Relations Code Amendment Act, 2002*, the Collective Agreement Arbitration Bureau (the "Bureau") was brought under the administration of the Labour Relations Board. Pursuant to Section 83(1) of the Code, the Chair designated the Board's Deputy Registrar, Mark Clark, as Director of the Bureau.

The primary function of the Bureau is to appoint arbitrators where one of the parties seeks an expedited form of arbitration, where the parties seek consensual mediation/arbitration, or where there is a failure to appoint or constitute an arbitration board by one of the parties. In addition, the Bureau also appoints settlement officers to assist the parties in resolving grievances filed under collective agreements. The Labour Relations Board offers the services of its Special Investigating Officers ("SIOs") and Mediators as settlement officers to assist the parties in resolving the grievances prior to an arbitrator's appointment by the Bureau.

Since July 5, 2002, applications filed with the Bureau for the appointment of arbitrators and/or settlement officers are processed through the Registry of the Labour Relations Board. The Registry's Case Administrators are generally responsible for the day-to-day administrative processing of the applications, with the Director responsible for the selection/appointment of the arbitrator in each case.

The Bureau, through its Director, must also maintain a register of arbitrators. A Joint Advisory Committee, as appointed by

the Minister, must advise the Director on the training and education of arbitrators and settlement officers, research and publication of information about arbitrations, and establishment and maintenance of a register of arbitrators.

The Joint Advisory Committee comprises two representatives of unions, two representatives of employers and two representatives of arbitrators, along with the Director who is the chair of the committee.

E. ADJUDICATION DIVISION

The Adjudication Division is responsible for hearing and deciding applications brought under the Code. The Division also attempts wherever possible to settle disputes without formal adjudication through case management and alternative dispute resolution.

Issues requiring adjudication include applications for the acquisition and termination of bargaining rights; unfair labour practice complaints; duty of fair representation complaints by individual employees; common and successor employer applications; reviews of arbitration awards; complaints respecting strikes, lockouts, picketing and other conduct regulated by Part 5 of the Code, including the replacement worker and essential services provisions; and applications for reconsideration of Board decisions.

On average, close to 700 cases are adjudicated each year. A comparison of cases assigned for adjudication and adjudicated for the past several years is set out in the accompanying table. In 2016, the Adjudication Division published 167 decisions. Summaries of some of the

noteworthy decisions can be found in Section III of this Report.

A major portion of the Division's workload continues to be adjudication of expedited applications (including certifications, unfair labour practice and Part 5 applications). During 2016, expedited applications comprised about 63

percent of cases received in the Board's major adjudication areas.

As of December 31, 2016, the Board had 5 Vice Chairs and 3 Staff Lawyers.

| | 2007* | 2008* | 2009* | 2010* | 2011* | 2012* | 2013* | 2014 | 2015 | 2016 |
|---------------------------------|-------|-------|-------|-------|-------|-------|-------|------|------|------|
| Cases Assigned for Adjudication | 815 | 638 | 679 | 634 | 734 | 1291 | 715 | 1021 | 533 | 476 |
| Cases Adjudicated | 782 | 664 | 672 | 642 | 697 | 1344 | 718 | 1119 | 543 | 468 |
| Cases Outstanding at Year End | 220 | 194 | 201 | 193 | 230 | 177 | 174 | 76 | 66 | 74 |

* Figures adjusted after publication of *LRB Annual Report* for noted year(s).

F. MEDIATION DIVISION

The Mediation Division offers assistance in collective bargaining, facilitation of joint sessions which enable employers and trade unions to improve their working relationship, and collective bargaining information. The head of the Mediation Division is the Director of Mediation.

Information about the services available from the Mediation Division can be obtained via the Board's website (www.lrb.bc.ca). This information includes various practice guidelines on the sections of the Code administered by the Mediation Division.

Collective Bargaining Mediation (Sections 55 and 74)

Collective bargaining mediation involves assistance to employers and

unions to conclude the terms of first or renewal collective agreements. Mediators utilize a variety of techniques in an effort to assist the parties to reach mutual agreement. In certain cases, the mediator may issue recommendations for settlement.

Most mediation appointments are made under Section 74 of the Code and involve the renewal of existing collective agreements. A lesser number of first collective agreement mediator appointments are made under Section 55.

Section 55 is specific to first collective agreements and confers on the Mediator greater responsibility for mediation outcomes within tightly prescribed time frames. Access to this provision can only be gained if the trade union has taken a strike vote and a majority of the employees have voted in favour of a strike.

In 2016 Board mediators were appointed to 75 cases under Section 74 and

15 cases under Section 55. Mediators were also involved in 17 cases carried over from previous years.

Essential Services (Section 72)

The mediation of essential services in certain disputes involving the health, safety or welfare of the residents of British Columbia is also part of the mandate of the Mediation Division.

Conflict Management

The Mediation Division provides conflict management initiatives, not only in keeping with its mandate under the Code, but also with a view to designing individualized and relevant programs. The focus of the programs places greater emphasis on the analysis of conflict and its ongoing management in the workplace.

At the joint request of employers and trade unions, the Mediation Division consults with the parties in an effort to understand the nature and role of conflict in the parties' organization. Current methods of dispute resolution are also examined in the context of the organizational culture within which they operate. The Mediation Division works with the stakeholders to design and implement conflict management processes that focus on systemic change.

Guidelines used in the design process include: stakeholder participation, the adoption of preventative methods of alternative dispute resolution including training in interest based problem solving; the use of interest based and rights based processes; and promotion of dispute resolution throughout all levels of the organization. Openness and broad-based participation are encouraged and emphasis

is also placed on the importance of feedback and continuous self-evaluation.

Relationship Enhancement

One of the forums for exploring conflict and designing conflict management systems has been the Relationship Enhancement Program "REP". The program originally designed as a two-day exploratory retreat, has been refocused to place greater emphasis on skills in effective communication and interest based problem solving.

In a preliminary assessment, the Mediation Division determines if the parties are committed to make the changes needed in their relationship to foster a more positive climate in the workplace. The assessment is conducted through various forms of information gathering, including confidential interviews, meetings, surveys, and/or focus group discussions. Following the initial assessment, a representative sampling of the stakeholders attends a two or three-day session conducted away from the workplace. Two mediators normally facilitate the session. Participants receive skills training, identify conflicts affecting their relationship, and collectively develop strategies to address and manage the identified conflicts. These strategies take the form of written action plans with specific goals, time frames for achieving the goals and assignment of specific individuals who are responsible for ensuring that action plans are carried out.

The program has been modified to place greater emphasis on monitoring and follow up.

Labour Management Consultation Committees

Section 53 of the Code requires employers and unions to establish joint consultation committees to promote the cooperative resolution of workplace issues. Using some of the same conflict management techniques described above, the Mediation Division offers assistance to employers and unions in meeting this obligation. Assistance is offered for the establishment of new committees and/or improvement in the effectiveness of existing committees. These sessions are usually scheduled for half a day to a maximum of one day, depending on the needs of the parties.

G. ADMINISTRATION***Information Systems***

The principal computer applications contained on the in-house computers run in the following areas: case management,

word processing, office automation and end user computing, statistical collection and distribution, and computer aided research.

Finance and Administration

The Finance and Administration Department is responsible for human resource matters including recruitment, payroll and benefits administration, financial management including budget, accounts payable/accounts receivable and is also responsible for all security and facilities matters.

Office and Technical Support

All Board departments are ably assisted in the performance of their duties by various office and technical support staff. These include technical support persons, executive assistants and administrative clerk support personnel.

II. BOARD MEMBERS AND MEDIATORS

As of December 31, 2016, the Board consisted of the following members:

EXECUTIVE

BRENT MULLIN, *Chair*

Brent Mullin's education includes a B.A. from the University of Victoria, an M.A. from Queen's University at Kingston, Ontario, and an LL.B. from the University of British Columbia. From 1983 to 1992 he practised labour relations, employment and human rights law in Vancouver, British Columbia at Russell & DuMoulin (now Fasken Martineau). From 1992 to 1998 he served as a Vice Chair at the British Columbia Labour Relations Board, then returned to the practice of labour law at Fasken Martineau DuMoulin. In January 2002, he was appointed Chair of the British Columbia Labour Relations Board and in August 2002, he was also appointed Chair of the Employment Standards Tribunal.

BRUCE WILKINS, *Associate Chair, Adjudication*

Bruce Wilkins was introduced to labour relations while studying at the University of Toronto for his B.A. in philosophy. While attending the University of Toronto and working at the library, he became a steward and then the Chief Steward of CUPE Local 1230. After obtaining his B.A. he went to law school and graduated from Queens University Law School in 1997. He articulated at Victory Square Law Office, a firm which exclusively represents unions, and was called to the Bar in 1998. He worked for two years as Crown Counsel in traffic and criminal prosecutions. He returned to the labour relations community as in-house counsel for the Health Sciences Association of British Columbia, representing the union in arbitrations, Labour Relations Board proceedings and professional discipline hearings. He was appointed as a Vice Chair in May 2007. In January of 2014, he was appointed as Associate Chair, Adjudication.

JACQUIE de AGUAYO, *Vice Chair and Registrar*

Jacque de Aguayo has a B.A. and LL.B. from the University of Toronto. She was called to the Bar in Ontario in 1998 and practiced labour relations, employment and constitutional law on behalf of unions and employees. In 2002, Jacque became in-house counsel for the Public Service Alliance of Canada, a national trade union. In 2010, Jacque moved to Vancouver, was called to the Bar in British Columbia, and began working at the Hospital Employees' Union as Legal Director. She was later appointed as its Assistant Secretary Business Manager and Legal Director. Jacque has appeared before arbitrators, labour relations boards and courts. She was appointed as a Vice-Chair of the Board on March 14, 2014 and she was appointed as Registrar on September 1, 2015.

VICE CHAIRS

PETER ARCHIBALD, Q.C., *Vice Chair*

Peter Archibald practised industrial relations and employment law as litigation counsel and as a spokesperson in collective bargaining. Peter developed an extensive collective bargaining practice and acted as chief spokesman for employers as well as acting as senior advisor to employers in labour negotiations. He also had an extensive practice as a policy advisor to both public and private sector employers with regard to their human resources policies. He was a policy advisor to successive provincial governments on labour law reform and has acted for various interest groups in regard to labour law policy. Peter was appointed Queen's Counsel in 1984.

JAMES CARWANA, *Vice Chair*

James Carwana has a B.A. and LL.B. from the University of Toronto. He was called to the Bar of British Columbia in 1985 and practiced labour relations, employment, and education law in Vancouver for over 25 years. During his time in private practice, Jim represented both employers and employees while working at Campney & Murphy, Harris & Company and Coutts Pulver. Jim has acted as counsel before the Labour Relations Board, and other tribunals, and all levels of court. He was appointed as a Vice-Chair effective May 31, 2012.

JENNIFER GLOUGIE, *Vice Chair*

Jennifer Glougie obtained her LL.B. from the University of Victoria and was called to the Bar of British Columbia in 2004. She practiced with Banister & Company for 12 years representing unions in all areas of work-related law. Prior to joining the Board, Jennifer regularly developed and delivered labour education programs through the Canadian Labour Congress. She holds a B.A., M.A., and Ph.D. (Linguistics) from the University of British Columbia and is a former executive member of CUPE Local 2278. She was appointed as a Vice-Chair of the Board in June 2016.

KOML KANDOLA, *Vice Chair*

Koml Kandola has a Bachelors degree in Business Administration, and obtained her LL.B. from the University of British Columbia. She served as a judicial law clerk for six judges of the BC Supreme Court. She was called to the Bar of British Columbia in 2000. Koml practiced labour, employment and human rights law in Vancouver for 12 years, during which she regularly appeared before arbitrators, labour boards, administrative tribunals and the courts. She then joined the Health Employers Association of British Columbia in an in-house role for three years, where she was involved in labour relations management and collective bargaining. She was appointed as Vice-Chair of the Board effective September 9, 2015.

LEAH TERAJ, *Vice Chair*

Leah Terai obtained a B.A. and L.L.B. from the University of British Columbia. She articulated and was called to the Bar in 1990 while working at Rankin & Company. In 1993 she began the practice of labour law with Laughton & Company, representing unions before various tribunals and at court. She was appointed as a Vice-Chair of the Board in June 2012.

MEDIATORS**GRANT MCARTHUR**, *Director, Mediation Division*

Grant McArthur graduated from the University of British Columbia in 1973. He worked for the Hospital Employees' Union for approximately five years. He then joined the Labour Relations Board as a Special Investigating Officer in 1980 and left to work for Canada Post in late 1984. Grant joined B.C. Rail in 1986, where he worked in labour relations and as Manager of Personnel Services for three years prior to returning to the Board in 1992.

CHRISTINA BAINS, *Mediator*

Christina Bains is a Mediator with the British Columbia Labour Relations Board. Christina has a B.A. in Sociology from Simon Fraser University and a Human Resources Post-Diploma from the British Columbia Institute of Technology. Christina spent several years working in Employee Relations for B.C. Ferries providing direct support to approximately 1,000 employees, facilitating workshops as well as developing outreach initiatives to build relationships with various public and private sector groups on Vancouver Island and the mainland to support province wide recruitment. Christina has also spent some time with the British Columbia Post Secondary Employers' Association, the Health Employers Association of British Columbia and the British Columbia Government Employees' Union where she was involved in several public sector and private sector negotiations.

DAVID SCHAUB, *Mediator*

David Schaub is a Mediator with the B.C. Labour Relations Board. Dave worked as a National Representative for the Canadian Paperworkers Union and Communications and Energy and Paperworkers Union for twenty-two years providing services in various labour relations areas such as education, pensions and benefits plans and led negotiations in both the private and public sector. He also served on the Board of Directors for Concert Properties, Concert Infrastructure investments, ACM Investment Committee and Chair of the Pulp and Paper Industry Pension Plan. Dave joined the Labour Relations Board in the Mediation division in January of 2014.

TREVOR SONES, *Mediator*

Trevor Sones is a Mediator with the B.C. Labour Relations Board. Trevor has an Honours B.A. in Criminology with a concentration in Law from Carleton University, in addition to an M.A. in Dispute Resolution from the University of Victoria. While specializing in the field of Alternative Dispute Resolution, Trevor has published a book and a peer-reviewed journal article on the role of conflict and conflict resolution processes.

III. HIGHLIGHTS OF BOARD DECISIONS

In 2016, the Adjudication Division published 167 numbered decisions. The following are summaries of some noteworthy decisions issued during the year. These summaries are provided for interest only, and they do not constitute legal or authoritative interpretations of the decisions in question. The full text of these and other Board decisions are available on its website (www.lrb.bc.ca).

Certain Employees of B & R Drugs Ltd., BCLRB No. B7/2016, 281 C.L.R.B.R. (2d) 238 - Certain employees applied under s. 33(2) of the Code for decertification. The union objected to the ballots of individuals whom the union alleged were not hired in accordance with the union security clause in the parties' collective agreement and because the union did not receive union membership documentation from the employer regarding the individuals. Accordingly, the union alleged the individuals were not union members and therefore not "employees in the unit" and their votes should not be counted for the purpose of determining whether the application met the 45% threshold. The panel found that while the employer did not get union membership cards signed by the individuals, they were "employees in the unit". The individuals believed they were union members and the employer deducted and remitted union dues for the individuals in accordance with the parties' practice. The panel found the failure of the employer to have the individuals sign membership cards was not an unfair labour practice and did not constitute improper interference. The lack of signed membership cards did not result in a situation where the vote was unlikely to disclose the true wishes of the employees. The union's objections were dismissed and the votes were ordered to be counted.

Certain Employees of Floralia Plant Growers Limited, BCLRB No. B34/2016 (Leave for Reconsideration of BCLRB No. B248/2015), 282 C.L.R.B.R. (2d) 32 - The union applied under s. 141 for leave and reconsideration of the original decision, which dismissed the union's objections to certain employees'

decertification application. The circumstances involved new SAWP employees who had just arrived from Mexico. The 12 employees arrived from Mexico, were taken shopping to acquire the supplies they needed, had a meal, and did not arrive at their lodging until 10:30 pm. They were required to participate in the decertification vote at 9:30 am the next morning. The panel noted the SAWP employees are in a particularly tenuous and vulnerable position and deal with the added difficulties of being in a foreign country. The reconsideration panel found the effect of the circumstances was to deny the new employees the time and opportunity to properly ascertain the circumstances at issue and make inquiries and assess the views which were being presented to them. Accordingly, the reconsideration panel found a breach of ss. 6(1) and 33(6) of the Code and dismissed the decertification application.

Health Employers Association of British Columbia, BCLRB No. B49/2016, 277 C.L.R.B.R. (2d) 1 (Leave for Reconsideration denied BCLRB No. B60/2016) (petition for judicial review filed) - BCNU filed seven applications under s. 19 of the Code to represent seven separate units composed of employees in the classification of "Psychologist" or "Psychologist or Testing Technician - Psychometrist" employed within the paramedical professionals subsection, a single, province-wide, multi-employer, multi-union bargaining unit under the *Health Authorities Act*. The incumbent unions affected by the applications were HSA and PEA. Because both HSA and PEA hold broad consolidated certifications in the paramedical

professional subsector bargaining unit which cover multiple groups of employees of several different employers, and the applications were for a subset of the incumbents' respective existing units, the panel found the applications constituted partial raids. BCNU's applications would result in the addition of another bargaining agent representing employees in the paramedical subsector at the employers' worksites. The panel found Board's policy set out in *Certain Biomedical Engineering Technologists*, BCLRB No. B126/2005 and the cases following it were persuasive and applicable to the present case and there was no reason to depart from it. The panel found that in the circumstances, BCNU's argument that employee choice should trump industrial stability concerns in a partial raid context did not establish compelling circumstances to justify making an exception to the Board's policy regarding partial raids in the health sector. The panel also found the units applied for were classification-specific which runs afoul of the Board's appropriateness principles and would lead to the inappropriate proliferation of units within the subsector and give rise to industrial instability. Accordingly the applications were dismissed.

Saipem Canada Inc., BCLRB No. B50/2016, 277 C.L.R.B.R. (2d) 203 - Section 22(1) of the Code provides that when a union applies for certification as the bargaining agent for a union, the Board must determine if the unit is appropriate for collective bargaining. This obligation includes ensuring that the proposed bargaining unit description accurately reflects the reality of the current employment environment and the essential character of the unit. CLAC applied to be certified to represent a province-wide bargaining unit of all Saipem employees "except persons above the rank of working foreman and office, clerical and engineering staff". After considering the submissions of the parties and an Investigation Report by a Board Special Investigating Officer, the original panel found there was no basis to grant a province-wide certification, and to do so would be inconsistent with Code principles.

Health Employers Association of British Columbia, BCLRB No. B54/2016, 273 C.L.R.B.R. (2d) 82 - The union filed an application alleging the employer had not provided notice in accordance with s. 54 of the Code which requires notice to be given by the employer to the union, but does not mandate the form of this notice. In this case, the employer advised the union of its intention to implement a change, but did not provide certain details and particulars as they were unknown at the time. The union said it required specific and detailed information before it was able to participate in adjustment planning. The original panel found that the employer's correspondence provided a sufficient description of the subjects to be discussed and was clear and specific enough to trigger the parties' understanding of their legal obligations under s. 54(1)(b). Accordingly, the application was dismissed.

Alma Mater Society of UBC (AMS Security), BCLRB No. B55/2016, 274 C.L.R.B.R. (2d) 79 - The union applied under s. 6 of the Code alleging the employer committed an unfair labour practice by its conduct surrounding a certification vote. The employer admitted an unfair labour practice but said it was limited to a solicitation to vote against the union. The union argued the evidence showed the scope of the unfair labour practice was broader than asserted by the employer. The panel found the testimony and the documentary evidence demonstrated the employer offered two employees shifts to do work on the day of the vote which was never performed and paid them money in excess of the hours scheduled. The panel drew an inference that the employer paid one of the employees for a shift not worked on the day of the vote to provide the employee with an incentive and reward to vote, hoping she would vote against the union. The panel found the employer's payment of the other employee for work not done was also improper and in violation of ss. 6(1) and 6(3)(d) of the Code. The documentary evidence showed that not all employees who voted were paid, and employees who voted were not paid pursuant to the terms of the

Employment Standards Act. The panel found the unequal treatment of employees on the voter's list by the employer with respect to pay on the day of the vote constituted improper interference contrary to ss. 6(1) and 6(3)(d) of the Code. It found a declaration and cease and desist order on their own would be insufficient given the egregious conduct of the employer. Accordingly, the panel awarded the union damages for the cost of its efforts to litigate and dispute the eligibility of one of the employees to vote, as well as damages in the amount equivalent to the cost of pursuing the unfair labour practice complaint.

Norbord Inc., BCLRB No. B58/2016 (Leave for Reconsideration of BCLRB No. B42/2016), 284 C.L.R.B.R. (2d) 127 - The unions applied under s. 141 of the Code for leave and reconsideration of an original decision dismissing a request for written reasons for a decision to order a mail ballot representation vote. At the hearing before the original panel, the unions and the employer objected to a recommendation by a returning officer of the Employment Standards Branch that the vote be conducted by mail. The original panel ordered the vote to proceed by mail ballot. The unions requested written reasons for this decision. However, by error, an incorrect ballot was mailed out to employees. The parties were notified of the error and an in-person vote was ordered to take the place of the mail ballot. The unions nonetheless maintained their request for reasons for the original decision to order a mail ballot vote. The original panel found the matter was moot and declined to issue written reasons for the bottom line decision. The reconsideration panel found that s. 128(3) of the Code does not require the Board to produce, on request, full written reasons for a bottom line decision made in the course of adjudicating an application. It found the original panel properly concluded that s. 128 of the Code did not require the panel to provide full written reasons for the earlier bottom line decision, which had subsequently been rendered inoperative. It also noted there have been more frequent recommendations for

mail ballots from returning officers of the Employment Standards Branch, which has resulted in an increase in litigation on this issue. The reconsideration panel confirmed the Code, and the Board's policy consistent with the legislation, is that the primary mechanism to determine employee wishes is an in-person vote within 10 days of the date of an application. Mail ballots are an exception.

Sunlover Holding Co. Ltd., BCLRB No. B65/2016 (Leave for Reconsideration of BCLRB No. B53/2016) (petition for judicial review heard: January 18-19, 2017, judgment reserved) - The employer applied for leave and reconsideration alleging, among other things, that the original panel did not consider its argument that the proposal by the union to prohibit the employer's appeals or access to the courts in respect to any aspect of the *Container Trucking Act* or *Container Trucking Regulation* was improper *per se*. The reconsideration panel held that it is not illegal for a party to propose as part of collective bargaining and an overall agreement that the opposing party agree not to pursue certain positions in court or elsewhere it would otherwise be entitled to. It found the proposal put forward and ultimately agreed to by the parties was part of the legitimate give and take between the parties in their collective bargaining.

Working Enterprises Consulting & Benefits Services Ltd., BCLRB No. B67/2016, 274 C.L.R.B.R. (2d) 96 - This decision found electronic signatures on membership cards met the requirements of s. 3 of the Regulation, with the exception of one card that was signed with the "type" function, rather than the "draw" function. The panel noted that parties who wish to use electronic signatures for membership evidence will be required to demonstrate their reliability and authenticity with regard to the date and signing of the cards before the application for certification process is completed. The panel also noted the Board will expect applicants to identify the audit trail for obtaining electronic signatures when their

applications are filed and have the organizer with the device which originally received the electronic cards attend at the Board.

David Ormerod, et al., BCLRB No. B76/2016 (Leave for Reconsideration denied BCLRB No. B93/2016) (petition for judicial review filed) - The complainants alleged the union breached s. 12 of the Code in the negotiation of a seniority provision in collective bargaining. The new seniority provision involved a blending of two seniority lists. The original panel noted the Board takes a “hands off” approach to collective bargaining. This reflects the reality that parties engaged in collective bargaining know the problems in their workplace and also know the solutions to those problems better than parties outside of the collective bargaining relationship. However, the panel also noted that seniority rights are a critically important employee interest and unions are expected to treat a member’s seniority rights with more care and concern. The original panel found the union provided clear and accessible information concerning the effect of the new seniority rules, and held ratification meetings where materials were widely distributed, questions were asked, and answers were given before the polls were closed in the ratification vote. The original panel found the union was not required to hold a second ratification vote or referendum with respect to the issue of seniority alone, as it is only one aspect of the totality of terms and conditions of employment in a collective agreement. It found the union did not act arbitrarily or in bad faith – it was aware of the relevant information and made a reasoned decision and had specific regard for the seniority ramifications of the deal they had made with the employer. Finally, the original panel found the fact that a decision made in the context of collective bargaining results in a disadvantage to a group within the union does not, in and of itself, constitute discrimination. Accordingly, the complainants’ application was dismissed.

Alma Mater Society of UBC (AMS Security), BCLRB No. B78/2016 (Leave for Reconsideration of BCLRB No. B28/2016) - The union applied for leave and reconsideration of the original decision on the basis that new evidence had become available after the issuance of the original decision showing that the employer deliberately misled the Board with respect to the employment status of an individual in order to compromise the integrity of the vote conducted pursuant to the Code. The reconsideration panel found that the new evidence provided a strong basis for reconsideration and the reconsideration panel was not in a position to determine with confidence that the false testimony proffered by the employer did not impact the findings of fact leading to the original decision. The reconsideration panel found that was a matter best determined by the original panel. Accordingly, the original decision was overturned and the union’s original applications were returned to the original panel for a fresh determination.

Port Transport Inc., BCLRB No. B85/2016 (Leave for Reconsideration of BCLRB No. B167/2015 and BCLRB No. B41/2016) - Team applied under s. 141 of the Code for leave and reconsideration of two original decisions which held that Team and Port were common employers under s. 38 of the Code, and thus Team would be bound to the Unifor certification. Among other things, Team argued the common employer determination was beyond the jurisdiction of the original panel and was rendered in violation of the principles of procedural fairness and natural justice since the relief sought in the original application had been against three employer entities, not two. The reconsideration panel noted the broad, discretionary nature of s. 38 of the Code stands in contrast to the specific, express requirements in the certification language in the Code. The certification language in the Code turns on the express requirement that certification is of the specific bargaining unit described in the application. Section 38 is broadly discretionary. Accordingly, the reconsideration panel found

there was jurisdiction in the Code to make the Port-Team common employer determination as in the original decision. The application for leave and reconsideration was dismissed.

Well Being Services (Standford) Ltd., BCLRB No. B106/2016 - BCNU applied under s. 19 of the Code to be certified for a bargaining unit represented by HEU. After filing the application, BCNU became aware the Board had received a number of card revocations. As a result, it applied to withdraw the application on the following business day – prior to the Board investigating the application and before an Industrial Relations Officer report was prepared to determine whether the raid application had threshold support. HEU opposed the application to withdraw, arguing it would suffer prejudice if the application was withdrawn because it would be denied the statutory time bar if the application was unsuccessful. The panel noted the Board has established a high bar with respect to what will constitute a compelling labour relations reason justifying the withdrawal of a raid application. In this case, BCNU relied on the timing of its application to establish a labour relations reason for the withdrawal. It said it applied to withdraw before the Board's process was engaged and before threshold was determined. If the application was denied, BCNU said the Board would have to process the application on its merits, which would be inconsistent with s. 2(e) of the Code because BCNU did not wish to proceed with the application. The panel found that the goal of avoiding the potential for adjudication was not a compelling labour relations reason to justify the withdrawal and, in the absence of evidence demonstrating due diligence on BCNU's part to determine its level of support within the unit sought, the goal of avoiding the potential for litigation was not sufficient to outweigh the prejudice HEU would suffer if the raid application were unsuccessful on the merits. Accordingly, the panel declined to exercise its discretion to allow BCNU to withdraw the raid application.

M.A., BCLRB No. B107/2016 (Leave for Reconsideration of BCLRB No. B91/2016) - HEABC applied under s. 141 for leave and reconsideration of an original decision granting M.A.'s application under s. 99 of the Code in respect of a Claims Review Committee decision. In the CRC decision, the CRC noted that it had requested certain employer assessment or workplace testing documents from the Healthcare Benefit Trust, but the Trust had not provided those documents and asked the CRC to proceed with rendering a decision without that information. The original panel found that M.A. had been denied a fair hearing when the CRC proceeded without the requested documents. While HEABC argued the documents would not have been of assistance to the CRC, the reconsideration panel found that it would not be appropriate for the Board to evaluate the medical or vocational relevance of the documents and thus supersede the opinions of medical experts such as the CRC panel. In light of the fair hearing requirement in the Code, it is consistent with the purpose of the CRC process that where a CRC panel, in response to specific information before it, identifies existing, potentially relevant medical/vocational documents it determines may be of assistance, the documents should be provided to it. Accordingly, leave and reconsideration were denied.

Vancouver English Centre Inc., BCLRB No. B108/2016 (Leave to Reconsider Letters to the Parties dated July 19, 2016 and July 22, 2016) - It is not a denial of procedural fairness or natural justice to not seek submissions from the parties as to when submissions should be received or to set the timeframe for the submissions without seeking input from the parties.

Samuel, Son & Co., Limited/Samuel & Fils & Cie Ltee, BCLRB No. B114/2016, 279 C.L.R.B.R. 1 - The union applied under s. 18 of the Code for certification of a unit of employees employed by the employer and filed a number of unfair labour practice complaints. A key issue was whether three lead hands should be included in the proposed bargaining unit. The panel found the lead hands were employees under s. 1(1) of the Code: there was no evidence of the lead hands actually making any discipline or discharge decisions or determining the level of discipline to be imposed in any particular case; the lead hands did not have labour relations input; and, there was no evidence the lead hands played a role in hiring or promotion decisions. In considering whether the lead hands should otherwise be excluded from the primary unit applied for, the panel found that each of the community of interest facts favoured inclusion of the lead hands in the same bargaining unit as the other employees. With respect to the unfair labour practice complaints: the first complaint related to the termination of the primary union organizer; the second complaint related to comments made by the lead hand suggesting there would be negative economic circumstances for employees if the union was certified; the third complaint related to a letter posted by the employer in the worksite on the day of the representation vote; the fourth related to discipline issued to two employees. With respect to the first complaint, the panel found that the organizer's participation in and initiation of the organizing drive was a factor in the employer's decision to terminate his employment and accordingly the employer breached ss. 6(3)(a)(ii), 6(3)(b) and 9. With respect to the complaint relating to comments made by the lead hand, the original panel found that there was no basis to find that the lead hand was acting on behalf of the employer and the evidence indicated the comments were the voicing of a concern among fellow employees and did not constitute a threat. With respect to the letter posted by the employer on a bulletin board in the workplace, the panel found the letter did not contain a direct or implied threat regarding job security should the union be certified. While the letter

concluded with the employer's expression of its preference that employees vote against unionization, the letter did not contain or constitute "a direction to act". While the timing of the posting of the letter was potentially concerning, given that it was posted the morning of the day of the representation vote, the panel noted that letters containing some similar statements were circulated by the employer a few days prior and employees had an opportunity to make inquiries and assess the views expressed in those statements. As well, the letter was posted in a location where employees were able to choose not to read it – they were not expressed in the context of a captive audience meeting. With respect to the fourth complaint relating to the discipline of two employees, the panel found there was no basis to find that the discipline interfered with the selection or administration of a union or that it constituted intimidation, a threat, or a penalty made to compel or to induce an employee from becoming a member of a union. The fact that the employer may have perceived the employee to be a union supporter, and the fact that the union supporter was disciplined, was an insufficient basis to conclude that the employer's discipline was based on union involvement. The union sought remedial certification; however, the panel was not persuaded remedial certification was appropriate. The panel found that membership cards were signed after the termination of the union organizer's employment occurred and therefore there was debate and discussion among employees about unionization after the incident. While the breaches were serious, the evidence did not support the existence of an ongoing campaign of unlawful conduct by the employer. The panel found that the employer's unfair labour practices could be effectively remedied by remedies short of remedial certification.

Lafarge Canada Inc. (Lafarge Texada Quarrying Ltd.), BCLRB No. B145/2016 - The union alleged the employer violated ss. 6 and 68 of the Code by hiring replacement workers after bargaining had begun to perform the work of an employee in the bargaining unit

who had been locked out. The panel held that s. 68 of the Code requires the Board to look very specifically at what the work in question is and who performs it. The panel found the arrangement whereby a third party trained the employer's excluded employees to perform preventative maintenance could not be characterized as merely "self help" because it benefited the employer in its ability to perform the preventive maintenance work usually performed by the locked-out members of the bargaining unit. The panel found the third party representatives were persons acting on behalf of the employer and had been engaged by the employer to perform the work of an employee in the bargaining unit that is on strike or locked out contrary to s. 68 of the Code.

Port Transport Inc., BCLRB No. B146/2016 (Leave for Reconsideration of BCLRB Nos. B70/2016 and B117/2016) (petition for judicial review filed) - Team and PTG applied for reconsideration of two original decisions on the several grounds, including that the original decision improperly protected the union's work jurisdiction notwithstanding that it had no collective agreement rights and that the original decision was in conflict with the *Bankruptcy and Insolvency Act*. The reconsideration panel noted that it is long established that s. 38 of the Code protects collective bargaining rights, as well as collective agreement rights. The termination of a collective agreement with the commencement of a strike or lockout does not necessarily terminate the protection of the union's bargaining rights under s. 38 of the Code. As well, the Code itself affords protection for those bargaining rights in a strike or lockout context in ss. 68 and 6(3)(e). With respect to the alleged conflict with the *Bankruptcy and Insolvency Act*, the reconsideration panel noted that a Board decision under s. 38 of the Code need not speak merely from the date of the decision; rather, it can be effective from a date reflecting the particular circumstances of the case. The reconsideration panel noted the common employer application was made effective on

the date of the union's application, which was appropriate in light of the circumstances of the case, the remedial purpose of s. 38 of the Code, and the relevant jurisprudence. As the bankruptcy occurred after the date of the union's application, the Board's common employer remedy against Port was effective from the date of the union's common employer application until at least the date of Port's bankruptcy. Accordingly, the reconsideration panel found this preservation of the union's bargaining rights under s. 38 of the Code was not in operational conflict with the bankruptcy order in respect of Port. Leave for reconsideration was denied.

Rio Tinto Alcan Inc., BCLRB No. B154/2016 - Unifor applied pursuant to s. 139 of the Code seeking a determination that Rio Tinto Alcan (RTA) was the true employer of the individuals. RTA took the position that the application should be deferred to arbitration. As the underlying concern was that bargaining unit work was being performed by persons who are not employees represented by Unifor, and the certification *per se*, and because the remedy sought was a collective agreement remedy, the panel found the dispute to be primarily a collective agreement dispute. The matters relating to the Code were incidental, and accordingly, arbitration was the appropriate forum to deal with the matter. The panel also noted several other factors weighing in favour of deferring to arbitration in this case, including that: the Board's policy generally is to defer disputes to arbitration involving questions of employee status and "contracting in"; the fact that a certification exists for a group of workers does not prevent an arbitrator from making a finding that a different entity is the true employer of those individuals; deferring the matter to arbitration in this case was less likely to require two proceedings; the determination of questions raised in the application would involve collective agreement interpretation; and the arbitration proceeding involved a broader and more comprehensive proceeding than the application. Accordingly, the application was deferred to the arbitration process.

Pro Vita Care Management Inc., BCLRB No. B164/2016 (Leave for Reconsideration of BCLRB No. B142/2016) - The employer applied for leave and reconsideration of the original decision that found the employer breached ss. 11 and 47 of the Code by refusing to continue collective bargaining as a result of the union having observers at the collective bargaining meetings. The observers were from other locations of the employer certified to the union. The reconsideration panel found the unique circumstances included the unique certification and collective bargaining structures which are permitted in respect to health care contract service providers such as the employer. Considering these circumstances, the reconsideration panel found the original decision did not err in finding the employer breached its obligations under the Code by refusing to continue collective bargaining.

Kootenay Savings Credit Union, BCLRB No. B167/2016 - In considering whether an individual ordinarily worked at a location, the panel found that visiting the worksite weekly had the requisite degree of frequency to support a finding that the individual ordinarily worked at the location. Even if there was a question about the sufficiency of attendance, the panel also found the nature of his work was integral to the operation at the worksite, that he had a real and significant role in the operation of the worksite, and that he had actual authority for the worksite.

IV. COURT DECISIONS

1. *Gardezi v. Canadian Union of Public Employees, Local 3495*, 2016 BCSC 421 (Notice of Appeal filed and stayed until security for costs is posted) - The petitioner applied for judicial review of the Board's decision dismissing her s. 12 complaint. The chambers judge found the Board was not patently unreasonable in concluding the union did not breach the duty of fair representation when it decided to settle the petitioner's termination grievance rather than pursue it to arbitration. The chambers judge also dismissed the petitioner's arguments alleging the Board breached the duty of procedural fairness by, among other things, making its decision absent evidence from the respondents and not granting the petitioner an extension to resubmit her materials with the benefit of counsel. Finally, the chambers judge denied the petitioner's application for an order that the parties' names be anonymized by using initials, as in the Board's decision. The chambers judge held the facts were not so unique or sensitive that the court should depart from its long standing policy of ensuring openness of and access to all the court's processes. The chambers judge affirmed the principle that it is only in rare circumstances where the court will authorize the using of initials. The petition was dismissed.
2. *United Association of Journeymen, Local 170 v. Allied Hydro Council*, 2016 BCSC 435 - The petitioners sought judicial review of the Board's decision that found the petitioners were precluded from revoking their consent to have AHC act as their bargaining agent. The petitioners argued the appropriate standard of review was correctness because, among other things, the Board considered the union's constitution in coming to its decision. The

chambers judge found that because the ultimate question was whether AHC was a trade union entitled to bargain on behalf of its members, and since that question is reserved to the exclusive jurisdiction of the Board, the standard of review was patent unreasonableness. The chambers judge found the Board made its decision through its lens as an expert tribunal within the landscape of labour relations. The chambers judge found that the decision-making process was neither flawed nor irrational and that the Board had properly exercised its authority as authorized by the Code. Accordingly, the petition was dismissed.

3. *Unifor Local 2301 v. Rio Tinto Alcan (Kitimat Works)*, 2016 BCSC 455 - The union sought judicial review of a reconsideration decision which dealt with the question of whether the employer had to maintain the earnings of up to three union grievance committee members while they were present during a grievance arbitration conducted pursuant to s. 104 of the Code. The chambers judge found the Board was not patently unreasonable to find that nothing in the parties' collective agreement detracted from the requirement in s. 90(1) of the Code that the parties to an expedited arbitration under s. 104 must bear their own fees, expenses and costs.
4. *Construction, Maintenance and Allied Workers Bargaining Council v. Construction Labour Relations Association of British Columbia*, 2016 BCSC 704 - The petitioner sought to quash the Board's decision on the basis that the conditions imposed by the Board with respect to sharing the craft of carpentry were beyond the Board's jurisdiction. The petitioner argued the Board did not have jurisdiction under the Code to impose conditions which abrogate the provisions of collective agreements. The main issue before the court was the standard of review to be applied to the Board's decision. The petitioner took the position the standard of review should be correctness because the

Board exceeded its jurisdiction. The chambers judge found the appropriate standard of review was that of patent unreasonableness. The chambers judge found that the exercise engaged in by the Board in concluding it had the jurisdiction to impose conditions was in the context of interpreting its home statute and particularly in interpreting the broadly conferred powers granted by the Legislature to the Board in ss. 2, 49 and 134 of the Code. The chambers judge found that conditions imposed by the Board were rationally connected to the purpose to be achieved - the resolution of the ongoing fractious jurisdictional disputes between CMAW and BCRCC, which were disruptive to industrial peace and stability. The chambers judge found the Board's decision was not patently unreasonable and the petition was dismissed.

5. ***British Columbia Teachers' Federation v. British Columbia Public School Employers' Association (No. 2)***, 2016 BCCA 273 - The union appealed from a chambers judge's order dismissing its petition for judicial review. The matter before the Board related to the remedial portion of an arbitrator's award dealing with the entitlement for teachers for "experience credits" for time spent on pregnancy or parental leave. The arbitrator held that the employer was only required to pay retroactive wages from 30 days prior to the filing of the grievance but that, in determining the amount of wages going forward, the employer was required to take into account all such leaves taken after the date s. 56 of the *Employment Standards Act* came into effect. The reconsideration panel varied the arbitrator's ruling by holding that the employer was not required to give credits for leaves taken more than 30 days prior to the filing of the grievance. The appeal was allowed and the matter was remitted to the Board. The Court found the reconsideration panel's decision was patently unreasonable on the basis that it

failed to consider the continuing nature of the employer's breach.

6. ***Shella Gardezi v. Canadian Union of Public Employees, Local 3495, The Positive Living Society of British Columbia, and British Columbia (Labour Relations Board)***, unreported application for review dismissed: 2016 BCCA 462; application for leave to the SCC filed - The union and employer applied for an order that the appellant post security for costs and that the appeal be stayed until that security is posted. The chambers judge found that considering the appellant's financial means, the fact that the appeal does not have obvious merit, and that it will probably be difficult for the respondents to recover costs, it was appropriate to order security for costs before the appeal can proceed.

V. 2016 STATISTICAL TABLES

DESCRIPTION

EXPLANATORY NOTES TO TABLES 24

TABLE 1 Applications and Complaints Filed and Disposed of in 2015-2016 27
(Chart 1: Applications and Complaints Filed in 2016)..... 33

TABLE 1A Certification Applications and Certification Cancellations Under s.33(2)
 Granted in 2016 – Analyzed by Industry 34
*(Charts 1A & 1B: Certification Applications Granted – Number of Applications
 and Number of Employees by Type of Industry)*..... 35
*(Charts 1C & 1D: Certification Cancellations Under s.33(2)
 Granted – Number of Applications and Number of Employees by Type of Industry) ...* 36

TABLE 1B Certification Applications and Certification Cancellations Under s.33(2) Filed /
 Granted in 2016 – Analyzed by Union 37

TABLE 2 Certification Applications and Certification Cancellations Under s.33(2)
 Filed / Decided in 2016 39
(Certification Decisions Line Chart)..... 4

TABLE 2A Certification Applications and Certification Cancellations Under s.33(2)
 Granted in 2016 – Analyzed by the Size of the Bargaining Unit 40
(Chart 2A: Certification Applications)..... 41
(Chart 2B: Certification Cancellations Under s.33(2)) 41

TABLE 2B Certification Applications Granted Between 1992 and 2016 by
 Size of the Bargaining Unit 42

TABLE 3 Applications to Cancel Certifications Disposed of in 2015 and 2016..... 43

TABLE 4 Reconsiderations Disposed of in 2016 44
(Chart 4: Types of Applications Being Reconsidered) 45

TABLE 5 "Success" Rate of Reconsiderations Disposed of Between 2006 and 2016 46
(Chart 5)..... 47

TABLE 6 "Success" Rate of Reviews of Arbitration Awards Disposed of Between
 2006 and 2016 46
(Chart 6)..... 47

TABLE 7 Applications and Complaints Filed in 2016 – Analyzed by Applicant Type 48
(Applicant Pie Chart) 2

TABLE 8 Time Required to Process Certain Applications Disposed of in 2016 50

TABLE 9 Officer Assignments Completed in 2016 51

TABLE 10 Requests For Automatic Certification Pursuant to Section 14(4)(f) of the *Labour
 Relations Code* (Previously Section 8(4)(e) of the *Labour Code* and the *Industrial
 Relations Act*) as a Result of an Alleged Unfair Labour Practice Violation
 (Years 1977 to 2016) 52
(Chart 10: Requests for Automatic Certification Filed and Granted) 53

TABLE 11 Complaints Regarding Duty of Fair Representation Disposed of Between 2006
 and 2016 54
(Chart 11: Duty of Fair Representation Decisions)..... 54

EXPLANATORY NOTES TO TABLES

The following tables provide an analysis of the applications filed and disposed of in 2016. In some cases, statistics from 2015 and other years are provided for comparative purposes.

As of 2005 Table 1 of the *LRB Annual Report* includes applications and complaints “Filed Previous” and “Remainder Active”. These figures help provide an overview of the active or current caseload at the Labour Relations Board.

Statistical Tables Definitions:

- **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 at January 1 of the report period;
- **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).

A number of other changes have been made during past years in the statistical base used in some of the categories in Table 1. The changes have been summarized as follows for reference (in date order with most recent appearing first).

Requests for Appointment of a Facilitator

Applications to appoint a Facilitator under Section 53 are counted as applications for the first time in the 2008 Annual Report (see Table 1: "Applications and Complaints Filed and Disposed of"). These applications have been processed by the

Board/Council prior to 2008 but have not appeared in the Annual Report Tables until now.

Changes in Report Tables

Tables available in previous years regarding vote information for representation applications, details of Part 5 applications, and details of Mediation Officer appointments were taken out of the Annual Report in 2004. Certification cancellation information (s.33(2)) was added to tables 1A, 1B, 2 and 2A as of 2004. Other information previously included in Table 1 footnotes has been moved to related tables for ease of reference and readability.

Applications for Collective Agreement Arbitration

The Labour Relations Board assumed the processing of these applications from the Collective Agreement Arbitration Bureau in mid-2002; however, due to technical and procedural considerations, applications under Sections 86, 87, 104 and 105 ("CAAB" applications) were counted in the Board's statistics only if received on or after January 1, 2003 (i.e., any 'outstanding' CAAB applications at the end of 2002 are not included in the Board's statistics).

Requests for Appointment of a Mediator

Applications to appoint a mediator under Section 74 were counted as applications for the first time in the 2002 Annual Report (see Table 1: "Applications and Complaints Filed and Disposed of"). These applications were processed by the Board/Council prior to 2002 but appeared only in the "Analysis of Mediator Appointments" Table for those years.

Complaints of Unfair Labour Practices

Prior to 1989, complaints under Sections 2 or 3 (now Sections 5 or 6) of the legislation were not broken down by sub-section. From 1989 to 1996, complaints under each particular sub-section were counted as one complaint.

In 1996, the Board decided to revert to the pre-1989 method of counting these complaints. The change affects the statistics published as Sections 2,3 and 4 of the *Industrial Relations Act* and Sections 5,6,7 and 9 of the *Labour Relations Code*. The following table displays the statistics as they were published and as they would have been under the pre-1989 method of counting (rev).

| Type of Application | NUMBER OF APPLICATIONS OR COMPLAINTS | | | | | | | | | |
|--|--------------------------------------|-------|-------------|--------------------|-----------|---------|---------|-----------|-------|--------------|
| | Year | Filed | Disposed of | Not Proceeded With | Withdrawn | Settled | Granted | Dismissed | Other | Hearing Held |
| Other Unfair Labour Practice Complaints (ss.5,6,7 and 9 of the Labour Relations Code or ss.2,3, and 4 of the Industrial Relations Act) | 1995 | 825 | 909 | 26 | 0 | 573 | 192 | 118 | 0 | 449 |
| | 1995 (rev) | 488 | 529 | 25 | 0 | 338 | 97 | 69 | 0 | 221 |
| | 1994 | 899 | 831 | 9 | 0 | 586 | 136 | 100 | 0 | 362 |
| | 1994 (rev) | 513 | 467 | 9 | 0 | 326 | 74 | 58 | 0 | 176 |
| | 1993 | 748 | 676 | 3 | 0 | 440 | 134 | 99 | 0 | 331 |
| | 1993 (rev) | 422 | 390 | 2 | 0 | 249 | 73 | 66 | 0 | 177 |
| | 1992 | 416 | 345 | 0 | 0 | 205 | 108 | 32 | 0 | 176 |
| | 1992 (rev) | 228 | 185 | 0 | 0 | 112 | 54 | 19 | 0 | 83 |
| | 1991 | 346 | 370 | 0 | 0 | 241 | 92 | 37 | 0 | NP |
| | 1991 (rev) | 187 | 199 | 0 | 0 | 135 | 44 | 20 | 0 | |
| | 1990 | 386 | 388 | 5 | 0 | 220 | 100 | 63 | 0 | NP |
| | 1990 (rev) | 229 | 225 | 3 | 0 | 124 | 62 | 36 | 0 | |
| | 1989 | 209 | 177 | 0 | 0 | 96 | 47 | 34 | 0 | NP |
| | 1989 (rev) | 123 | 118 | 0 | 0 | 61 | 36 | 21 | 0 | |

NP --Not Published

Stay Applications

Applications for a Stay of proceedings were counted as applications for the first time in 1993 (see Table 1: "Applications and Complaints Filed and Disposed of"). A footnote has been added to the Miscellaneous category to facilitate comparisons over time. In previous years, these applications were not counted.

For an Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship

Prior to 1989, an application regarding the inclusion or exclusion of employees from a bargaining unit was counted as one application for each employee in question if a ruling was made; if the application was withdrawn, it was counted as one application regardless of the number of employees

involved. From 1989 on, an application regarding the inclusion or exclusion of employees is counted as one application regardless of the number of employees in question and regardless of whether or not a ruling is made.

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.

To File an Order in the Supreme Court

Applications to file orders in the Supreme Court were counted as applications for the first time in 1989 (see Table 1: "Applications and Complaints Filed and Disposed of"). These applications had been processed by the Board/Council since 1974 but were not registered or counted prior to 1989.

For an Order or Opinion Pertaining to Applications Pursuant to Part 5 (Strikes, Lockouts, Picketing, etc.)

Prior to 1988, each application under Part 5 was counted as one application, regardless of the sections cited. One application could cover, for example, a strike or a picket or a combination of both. From 1988 on, each section and sub-section of Part 5 is counted as a separate application.

GENERAL NOTES

For the convenience of users, the following is a brief description of some of the disposition codes used in Table 1.

- 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.
- 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

| Type of Application / Complaint | Year | Filed in Previous Year(s) | Filed in Current Year | Disposed of - Current | | | | | | | Open at Year End | Hearing Held |
|--|------|---------------------------|-----------------------|-----------------------|--------------------|-----------|---------|---------|-----------------|-------|------------------|--------------|
| | | | | Total Disposed of | Not Proceeded With | Withdrawn | Settled | Granted | Dismissed | Other | | |
| Complaints of Unfair Labour Practices <i>Complaints Regarding Internal Union Affairs (s.10)</i> | 2016 | 0 | 9 | 9 | 0 | 0 | 2 | 4 | 3 | 0 | 0 | 0 |
| | 2015 | 2 | 7 | 9 | 1 | 0 | 0 | 1 | 7 | 0 | 0 | 0 |
| <i>Complaints Regarding Duty to Bargain in Good Faith (s.11)</i> | 2016 | 2 | 25 | 20 | 0 | 0 | 13 | 3 | 4 | 0 | 7 | 2 |
| | 2015 | 4 | 19 | 21 | 0 | 0 | 10 | 2 | 9 | 0 | 2 | 3 |
| <i>Complaints Regarding Duty of Fair Representation (s.12)</i> | 2016 | 10 | 88 | 77 | 32 | 0 | 6 | 0 | 39 ¹ | 0 | 21 | 3 |
| | 2015 | 15 | 72 | 77 | 26 | 0 | 4 | 1 | 46 ² | 0 | 10 | 1 |
| <i>Other Unfair Labour Practice Complaints (ss.5 - 9)³</i> | 2016 | 20 | 123 | 125 | 1 | 0 | 88 | 12 | 24 | 0 | 18 | 34 |
| | 2015 | 33 | 184 | 197 | 0 | 0 | 129 | 29 | 39 | 0 | 20 | 61 |
| Religious Exemption (s.17) | 2016 | 0 | 1 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| | 2015 | 0 | 3 | 3 | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 0 |
| Certification Applications (ss.18, 19 and 28) | 2016 | 20 | 100 | 107 | 3 | 22 | 0 | 55 | 27 | 0 | 13 | 99 |
| | 2015 | 31 | 109 | 120 | 1 | 37 | 0 | 61 | 21 | 0 | 20 | 106 |
| Certification Variances (ss.28 and 142) | 2016 | 41 | 179 ⁴ | 191 ⁵ | 6 | 11 | 0 | 164 | 10 | 0 | 29 | 49 |
| | 2015 | 22 | 151 ⁶ | 132 ⁷ | 4 | 6 | 0 | 117 | 5 | 0 | 41 | 23 |

¹ 16 of the 39 dismissed complaints filed under the *Labour Relations Code* were dismissed because no *prima facie* case was found.

² 21 of the 46 dismissed complaints filed under the *Labour Relations Code* were dismissed because no *prima facie* case was found.

³ In 1996, the Board changed the method of counting complaints under Sections 5 and 6 of the *Labour Relations Code*. Figures in this category reported prior to 1996 cannot be compared to figures in this category reported from 1996 to present.

⁴ Includes one partial decertification application.

⁵ Includes two partial decertification applications. See TABLE 3.

⁶ Includes 11 partial decertification applications.

⁷ Includes 11 partial decertification applications. See TABLE 3.

| TABLE 1: Applications and Complaints Filed and Disposed of in 2016 (including comparative figures for 2015) | | | | | | | | | | | | |
|--|------|---------------------------|-----------------------|-----------------------|--------------------|-----------|---------|-----------------|-----------|-------|------------------|--------------|
| Type of Application / Complaint | Year | Filed in Previous Year(s) | Filed in Current Year | Disposed of - Current | | | | | | | Open at Year End | Hearing Held |
| | | | | Total Disposed of | Not Proceeded With | Withdrawn | Settled | Granted | Dismissed | Other | | |
| Certification Cancellations (ss.33 and 142) ¹ | 2016 | 7 | 36 | 38 | 0 | 5 | 0 | 24 | 9 | 0 | 5 | 37 |
| | 2015 | 3 | 37 | 33 | 7 | 2 | 0 | 16 | 8 | 0 | 7 | 16 |
| Cancellation of a Voluntary Recognition (s.34) | 2016 | 0 | 4 | 4 | 0 | 1 | 0 | 2 | 1 | 0 | 0 | 3 |
| | 2015 | 3 | 2 | 5 | 0 | 1 | 0 | 2 | 2 | 0 | 0 | 5 |
| Permission to Alter Conditions of Employment (ss.32 and 45) | 2016 | 0 | 2 | 2 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| | 2015 | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| Alleged Unlawful Alteration of Employment Terms and Conditions (ss.32 and 45) | 2016 | 4 | 4 | 8 | 0 | 0 | 6 | 0 | 2 | 0 | 0 | 1 |
| | 2015 | 7 | 24 | 27 | 0 | 0 | 23 | 3 | 1 | 0 | 4 | 8 |
| Declaration of Successor Status <i>Successor Employer (s.35)</i> | | | | | | | | | | | | |
| | 2016 | 26 | 56 | 69 | 3 | 3 | 0 | 60 | 3 | 0 | 13 | 1 |
| | 2015 | 11 | 55 | 40 | 1 | 2 | 0 | 33 | 4 | 0 | 26 | 4 |
| <i>Successor Union (s.37)²</i> | 2016 | 11 | 24 | 29 | 0 | 0 | 0 | 29 ³ | 0 | 0 | 6 | 0 |
| | 2015 | 1 | 35 | 25 | 0 | 0 | 0 | 25 | 0 | 0 | 11 | 0 |
| Common Employer (s.38) | 2016 | 5 | 16 | 15 | 0 | 8 | 0 | 2 | 5 | 0 | 6 | 7 |
| | 2015 | 3 | 13 | 11 | 0 | 3 | 0 | 5 | 3 | 0 | 5 | 4 |
| Accreditation Applications (s.43) | 2016 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2015 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

¹ See TABLE 3.

² 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 (any notable discrepancies are listed below).

³ 29 applications granted affecting 50 collective bargaining relationships.

| Type of Application / Complaint | Year | Filed in Previous Year(s) | Filed in Current Year | Disposed of - Current | | | | | | | Open at Year End | Hearing Held |
|---|------|---------------------------|-----------------------|-----------------------|--------------------|-----------|---------|---------|-----------|-----------------|------------------|--------------|
| | | | | Total Disposed of | Not Proceeded With | Withdrawn | Settled | Granted | Dismissed | Other | | |
| Accreditation Variances (ss.43 and 142) | 2016 | 0 | 3 | 3 | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 0 |
| | 2015 | 1 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| Accreditation Cancellations (s.142) | 2016 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2015 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Alleged Failure to Execute or Comply with a Collective Agreement (s.49) | 2016 | 1 | 2 | 3 | 0 | 0 | 1 | 1 | 1 | 0 | 0 | 1 |
| | 2015 | 2 | 7 | 8 | 0 | 0 | 4 | 1 | 3 | 0 | 1 | 1 |
| Facilitator (s.53(5)) | 2016 | 6 | 18 | 19 | 0 | 0 | 0 | n/a | n/a | 19 ¹ | 5 | 0 |
| | 2015 | 5 | 11 | 10 | 0 | 0 | 0 | n/a | n/a | 10 ¹ | 6 | 0 |
| First Collective Agreement (s.55) | 2016 | 0 | 15 | 14 | 0 | 0 | 10 | n/a | n/a | 4 ² | 1 | 0 |
| | 2015 | 2 | 11 | 13 | 0 | 0 | 9 | n/a | n/a | 4 ³ | 0 | 0 |
| Appointment of a Mediation Officer (s.74) | 2016 | 17 | 75 | 78 | 0 | 6 | 68 | n/a | n/a | 4 ⁴ | 14 | 0 |
| | 2015 | 24 | 88 | 95 | 0 | 8 | 78 | n/a | n/a | 9 ⁵ | 17 | 0 |

¹ Facilitator appointed.

² For one case, the matter was referred to arbitration under s. 55(7) and for three cases, the parties were allowed to exercise their right to strike or lockout.

³ For two cases, the matter was referred to arbitration under s. 55(7) and for two cases, the parties were allowed to exercise their right to strike or lockout.

⁴ For four cases, no agreement reached.

⁵ For eight cases, no agreement reached; and for one case, the business closed.

| Type of Application / Complaint | Year | Filed in Previous Year(s) | Filed in Current Year | Disposed of - Current | | | | | | | Open at Year End | Hearing Held |
|--|------|---------------------------|-----------------------|-----------------------|--------------------|-----------|-----------------|---------|-----------|------------------|------------------|--------------|
| | | | | Total Disposed of | Not Proceeded With | Withdrawn | Settled | Granted | Dismissed | Other | | |
| Collective Agreement Arbitration Bureau (CAAB) ¹ <i>Section 86 (Appointment of Arbitrator)</i> | 2016 | 9 | 42 | 39 | 1 | 22 | 2 | n/a | n/a | 14 ² | 12 | n/a |
| | 2015 | 7 | 65 | 63 | 0 | 34 | 4 | n/a | n/a | 25 ² | 9 | n/a |
| | 2016 | 1 | 18 | 18 | 0 | 2 | 13 | n/a | n/a | 3 ³ | 1 | n/a |
| <i>Section 87 (Appointment of Settlement Officer)</i> | 2015 | 1 | 13 | 13 | 0 | 3 | 7 | n/a | n/a | 3 ³ | 1 | n/a |
| | 2016 | 8 | 162 | 162 | 0 | 54 | 16 | n/a | n/a | 92 ⁴ | 8 | n/a |
| <i>Section 104 (Appointment of Arbitrator)</i> | 2015 | 7 | 218 | 217 | 0 | 67 | 18 | n/a | n/a | 132 ⁴ | 8 | n/a |
| | 2016 | 1 | 0 | 1 | 0 | 0 | 0 | n/a | n/a | 1 ⁵ | 0 | n/a |
| <i>Section 105 (Appointment of Mediator-Arbitrator)</i> | 2015 | 1 | 2 | 2 | 0 | 1 | 0 | n/a | n/a | 1 ⁵ | 1 | n/a |
| | 2016 | 19 | 222 | 220 | 1 | 78 | 31 ⁶ | n/a | n/a | 110 | 21 | n/a |
| Combined CAAB Sections | 2015 | 16 | 298 | 295 | 0 | 105 | 29 ⁷ | n/a | n/a | 161 | 19 | n/a |
| | 2016 | 3 | 28 | 27 | 0 | 0 | 18 | 6 | 3 | 0 | 4 | 13 |
| Part 5 Applications (Strikes, Lockouts, Picketing, etc.) (ss.57-67 and ss.69-70) | 2015 | 9 | 46 | 52 | 0 | 0 | 26 | 19 | 7 | 0 | 3 | 17 |

¹ These applications were included in the *LRB Annual Report* for the first time in 2003. Beginning in 2004, figures for individual sections as well as the combined totals for CAAB (ss. 86, 87, 104, 105) are included in this report. In general, for this category, Withdrawn indicates withdrawal / settlement prior to any appointments and Settled indicates withdrawal / settlement subsequent to the appointment of a Settlement Officer but prior to appointment of an Arbitrator. See individual section notes regarding Other dispositions.

² Arbitrator appointed.

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

⁴ Arbitrator appointed. For 6 cases in 2016 and 11 cases in 2015, a Settlement Officer was appointed in addition to an Arbitrator.

⁵ Mediator-Arbitrator appointed.

⁶ A Settlement Officer was appointed for 41 CAAB applications disposed of in 2016: 31 disposed of as Settled and 10 disposed of as Other. Of these 41 applications, 32 (78%) resulted in full and final settlement.

⁷ A Settlement Officer was appointed for 47 CAAB applications disposed of in 2015: 29 disposed of as Settled and 18 disposed of as Other. Of these 47 applications, 33 (70%) resulted in full and final settlement.

| Type of Application / Complaint | Year | Filed in Previous Year(s) | Filed in Current Year | Disposed of - Current | | | | | | | Open at Year End | Hearing Held |
|---|------|---------------------------|-----------------------|-----------------------|--------------------|-----------|---------|-----------------|-----------------|-----------------|------------------|--------------|
| | | | | Total Disposed of | Not Proceeded With | Withdrawn | Settled | Granted | Dismissed | Other | | |
| Replacement Workers (s.68) | 2016 | 1 | 7 | 6 | 0 | 0 | 1 | 5 | 0 | 0 | 2 | 5 |
| | 2015 | 0 | 25 | 24 | 0 | 0 | 14 | 7 | 3 | 0 | 1 | 11 |
| Essential Service Designations (s.72) | 2016 | 1 | 14 | 14 | 0 | 0 | 7 | 7 | 0 | 0 | 1 | 1 |
| | 2015 | 2 | 19 | 20 | 0 | 0 | 10 | 10 | 0 | 0 | 1 | 3 |
| Last Offer Vote (s.78) | 2016 | 0 | 11 | 11 | 0 | 0 | 0 | 11 ¹ | 0 | 0 | 0 | 0 |
| | 2015 | 0 | 10 | 10 | 0 | 0 | 0 | 10 ² | 0 | 0 | 0 | 0 |
| Review of Arbitration Award (s.99) | 2016 | 2 | 23 | 17 | 0 | 0 | 0 | 5 | 12 | 0 | 8 | 1 |
| | 2015 | 9 | 21 | 28 | 1 | 1 | 0 | 5 | 21 | 0 | 2 | 2 |
| Interim Order (s.133(5)) | 2016 | 1 | 4 | 4 | 0 | 2 | 0 | 0 | 2 | 0 | 1 | 1 |
| | 2015 | 4 | 19 | 22 | 0 | 10 | 0 | 1 | 11 | 0 | 1 | 8 |
| File an Order in Supreme Court (s.135) | 2016 | 1 | 12 | 11 | 0 | 3 | 0 | 8 | 0 | 0 | 2 | 0 |
| | 2015 | 8 | 24 | 31 | 0 | 20 | 0 | 11 | 0 | 0 | 1 | 0 |
| Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s.139) | 2016 | 7 | 30 | 29 | 2 | 13 | 0 | 0 | 0 | 14 ³ | 8 | 7 |
| | 2015 | 10 | 21 | 24 | 0 | 7 | 0 | 0 | 0 | 17 ³ | 7 | 4 |
| Reconsideration of a Decision (s.141) | 2016 | 8 | 40 | 43 | 0 | 3 | 0 | 6 | 34 ⁴ | 0 | 5 | 1 |
| | 2015 | 3 | 60 | 55 | 0 | 0 | 0 | 9 | 46 ⁵ | 0 | 8 | 0 |

¹ In nine cases the final offer was rejected; and in one case the parties settled prior to the vote being conducted; and in one case the application was withdrawn prior to the ballots being counted.

² In three cases the final offer was accepted; and in seven cases the final offer was rejected.

³ Ruling made.

⁴ For 32 of the 34 applications dismissed in 2016, leave to apply was denied.

⁵ For 44 of the 46 applications dismissed in 2015, leave to apply was denied.

| TABLE 1: Applications and Complaints Filed and Disposed of in 2016 (including comparative figures for 2015) | | | | | | | | | | | | |
|--|-------------|---------------------------|-----------------------|-----------------------|--------------------|------------|------------|------------|------------|------------|------------------|------------------------|
| Type of Application / Complaint | Year | Filed in Previous Year(s) | Filed in Current Year | Disposed of - Current | | | | | | | Open at Year End | Hearing Held |
| | | | | Total Disposed of | Not Proceeded With | Withdrawn | Settled | Granted | Dismissed | Other | | |
| Declaratory Opinion (excluding Declaratory Opinions Pertaining to Part V of the Legislation) (s.143) | 2016 | 1 | 1 | 2 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 |
| | 2015 | 0 | 3 | 2 | 0 | 1 | 0 | 1 | 0 | 0 | 1 | 0 |
| Miscellaneous | 2016 | 5 | 64 ¹ | 60 ² | 0 | 7 | 17 | 22 | 14 | 0 | 9 | 1 |
| | 2015 | 11 | 81 ³ | 87 ⁴ | 1 | 6 | 27 | 32 | 21 | 0 | 5 | 12 |
| Total | 2016 | 219 | 1236 | 1256 | 48 | 162 | 269 | 432 | 194 | 151 | 199 | 267⁵ |
| | 2015 | 241 | 1456 | 1478 | 42 | 210 | 363 | 405 | 257 | 201 | 219 | 290⁶ |

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

¹ Includes five stay applications.

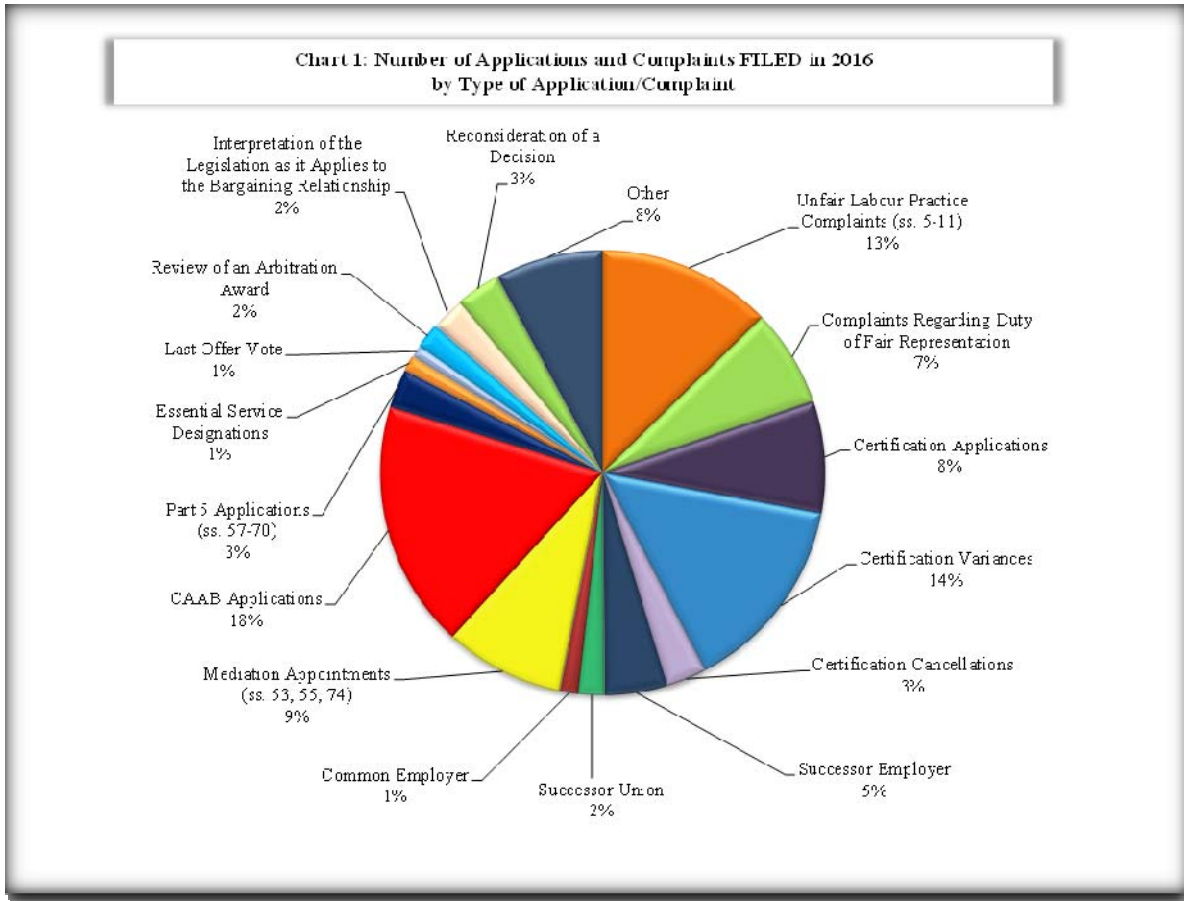
² Includes five stay applications (one was granted; four were dismissed).

³ Includes five stay applications.

⁴ Includes five stay applications (one was granted; four were dismissed).

⁵ 267 applications disposed of in 2016 were heard sometime during the process. In 2016, the Board held 188 hearings (including 150 expedited hearings to deal with certification, expanded bargaining unit, and decertification applications), some of which dealt with multiple applications and for some of which, the applications had not been disposed of by the end of 2016.

⁶ 290 applications disposed of in 2015 were heard sometime during the process. In 2015, the Board held 201 hearings (including 136 expedited hearings to deal with certification, expanded bargaining unit, and decertification applications), some of which dealt with multiple applications and for some of which, the applications had not been disposed of by the end of 2015.



| Type of Industry | Certification Applications | | Certification Cancellations ¹ | |
|---|--------------------------------|----------------------------------|--|----------------------------------|
| | Number of Applications Granted | Number of Employees ² | Number of Applications Granted | Number of Employees ³ |
| Accommodation and Food Services | 1 | 21 | 4 | 119 |
| Administrative and Support, Waste Management and Remediation Services | 2 | 42 | 0 | 0 |
| Agriculture, Forestry, Fishing and Hunting | 1 | 19 | 2 | 41 |
| Arts, Entertainment and Recreation | 6 | 407 | 2 | 102 |
| Construction | 8 | 221 | 2 | 18 |
| Finance and Insurance | 2 | 23 | 0 | 0 |
| Health Care and Social Assistance | 16 | 829 | 2 | 169 |
| Manufacturing | 4 | 122 | 1 | 59 |
| Mining, Quarrying and Oil and Gas Extraction | 2 | 108 | 0 | 0 |
| Public Administration | 3 | 37 | 0 | 0 |
| Retail Trade | 0 | 0 | 2 | 74 |
| Transportation and Warehousing | 6 | 125 | 6 | 184 |
| Wholesale Trade | 0 | 0 | 1 | 8 |
| Other Services (except Public Administration) | 4 | 1058 | 2 | 9 |
| | | | | |
| Total | 55 | 3012 | 24 | 783 |

¹ In order to accurately reflect the number of employees per granted application, only those certification cancellation applications brought by employees under s. 33(2) of the *Labour Relations Code* are included in this table. Thus, the total number of applications granted may not equal the corresponding figure from the Certification Cancellations category in TABLE 1. See TABLE 3 for a breakdown of Certification Cancellations by applicant type.

² The number of employees on an application for certification is based on the information supplied by the union on the application form.

³ 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.

Chart 1A: Certification Applications Granted - Analyzed by Type of Industry (Number of Applications)

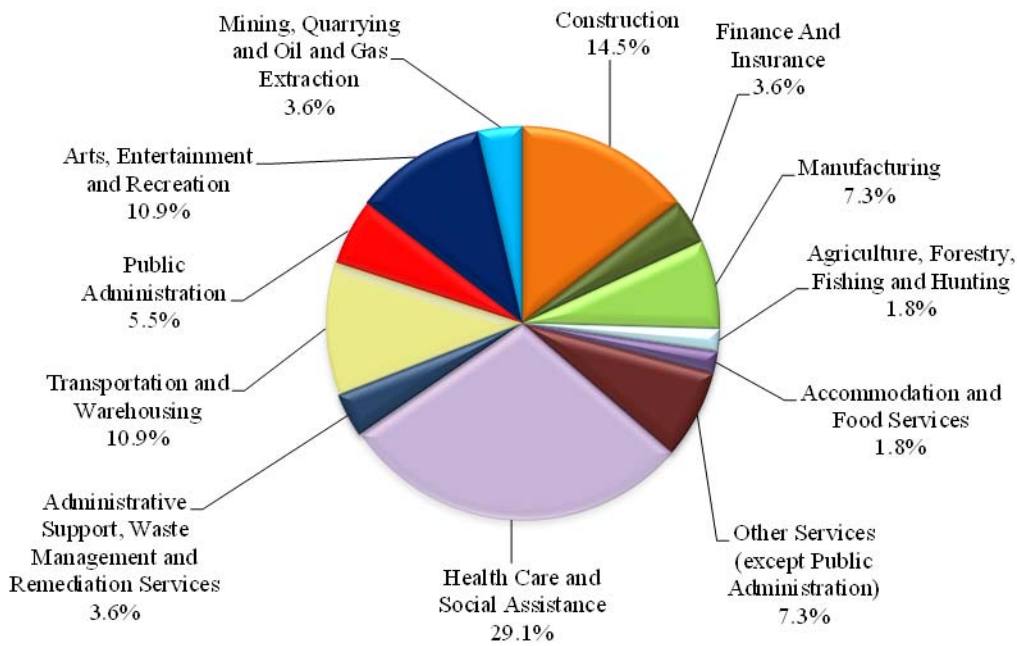


Chart 1B: Certification Applications Granted - Analyzed by Type of Industry (Number of Employees)

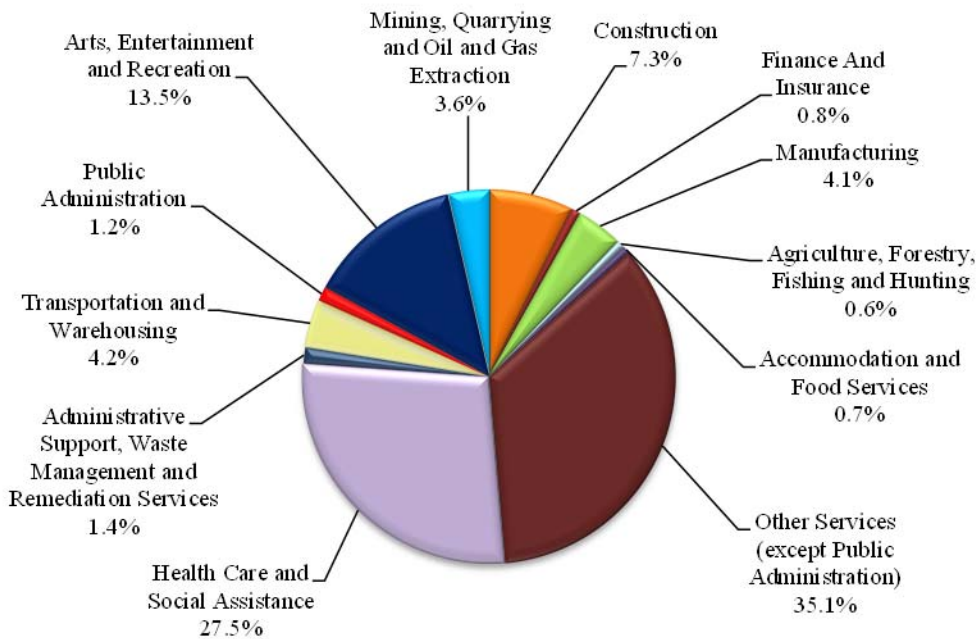


Chart 1C: Certification Cancellations (s.33(2)) Granted - Analyzed by Type of Industry (Number of Applications)

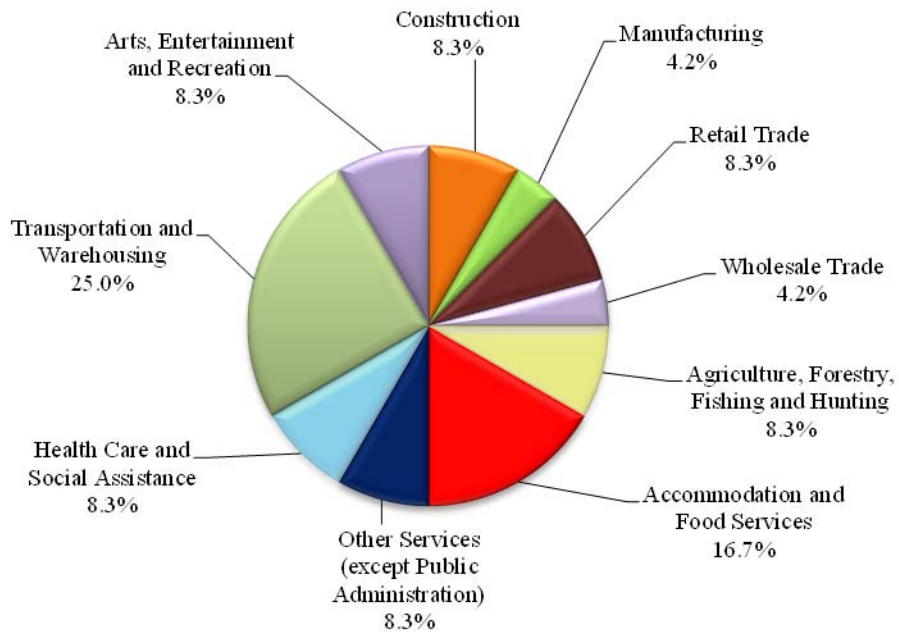


Chart 1D: Certification Cancellations (s.33(2)) Granted - Analyzed by Type of Industry (Number of Employees)

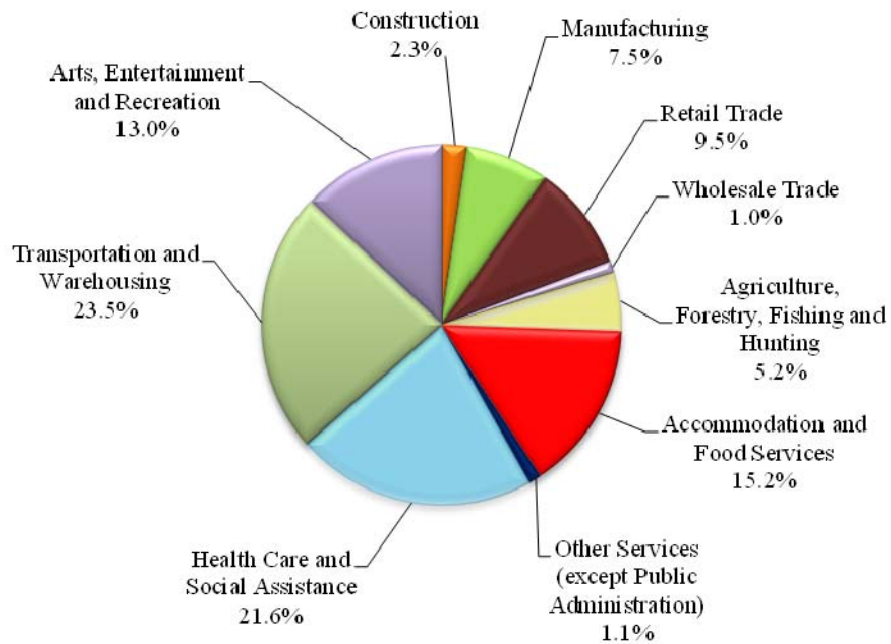


TABLE 1B: Certification Applications and Certification Cancellations Under s. 33(2) Filed / Granted in 2016 - Analyzed by Union

| UNION NAME (Names have been abbreviated: where possible, the commonly used, shortened form appears) | Certification Applications | | Certification Cancellations ¹ | |
|---|---|--------------------------------|---|--------------------------------|
| | Number of Applications Filed ² | Number of Applications Granted | Number of Applications Filed ² | Number of Applications Granted |
| BCGEU (not including Brewery Workers) | 20 | 11 | 0 | 0 |
| Boilermakers | 0 | 0 | 1 | 1 |
| Carpenters (not including CMAW or CAST councils) | 2 | 0 | 0 | 0 |
| CAW | 0 | 0 | 4 | 0 |
| CEP | 0 | 0 | 1 | 0 |
| CLAC | 2 | 3 | 0 | 0 |
| CUPE | 9 | 4 | 3 | 2 |
| Electrical Workers (IBEW) | 4 | 3 | 0 | 0 |
| Food and Commercial Workers (UFCW) | 4 | 3 | 0 | 2 |
| Glazier & Glass Workers | 0 | 0 | 2 | 1 |
| Hospital Employees Union (HEU) | 3 | 4 | 1 | 1 |
| Health Sciences Association (HSA) | 1 | 1 | 0 | 0 |
| Hotel Employees (UNITE HERE) | 0 | 0 | 7 | 4 |
| IATSE | 1 | 0 | 0 | 0 |
| Labourers | 2 | 1 | 0 | 0 |
| Machinists and Aerospace Workers | 2 | 1 | 1 | 2 |
| Marine Workers | 1 | 1 | 0 | 0 |
| Nurses (BCNU) | 5 | 3 | 0 | 0 |
| Office and Professional Employees (COPE) | 3 | 2 | 1 | 1 |
| Operating Engineers (IUOE) | 5 | 3 | 3 | 2 |
| PPWC | 1 | 1 | 1 | 1 |
| Sheet Metal Workers | 3 | 3 | 0 | 0 |
| Steelworkers | 18 | 4 | 4 | 3 |

TABLE 1B: Certification Applications and Certification Cancellations Under s. 33(2) Filed / Granted in 2016 - Analyzed by Union

| UNION NAME (Names have been abbreviated: where possible, the commonly used, shortened form appears) | Certification Applications | | Certification Cancellations ¹ | |
|---|---|--------------------------------|---|--------------------------------|
| | Number of Applications Filed ² | Number of Applications Granted | Number of Applications Filed ² | Number of Applications Granted |
| Teamsters | 9 | 5 | 3 | 1 |
| Unifor | 3 | 1 | 0 | 2 |
| Single Employer Employee Association | 1 | 2 | 1 | 1 |
| | | | | |
| Total | 97³ | 55 | 33 | 24 |

¹ Only those certification cancellation applications brought by employees under s. 33(2) of the *Labour Relations Code* are included in this table. Thus, the number of applications filed and/or granted may not equal the corresponding figure from the Certification Cancellations category in TABLE 1. See TABLE 3 for a breakdown of certification cancellations by applicant type.

² Does not include applications that were not proceeded with (NPW) due to incorrect or insufficient information supplied on the application.

³ Adding the individual numbers in the column produces a larger number because two applications were filed jointly by more than one union and one such application was granted.

| TABLE 2: Certification Applications and Certification Cancellations Under s. 33(2) Filed / Decided in 2016 | | | | | |
|---|----------------------------------|--------------------|---------|-----------|---------------|
| Type of Application | | Filed ¹ | Granted | Dismissed | Total Decided |
| Total Certification Applications | Number of Applications | 97 | 55 | 27 | 82 |
| | Number of Employees ² | 4561 | 3012 | 916 | 3928 |
| <i>Certification Applications for Previously Unorganized Employees</i> | Number of Applications | 80 | 46 | 14 | 60 |
| | Number of Employees | 2991 | 2384 | 275 | 2659 |
| <i>Certification Applications for Organized Employees</i> | Number of Applications | 17 | 9 | 13 | 22 |
| | Number of Employees | 1570 | 628 | 641 | 1269 |
| Total Applications to Cancel a Certification Brought by Employees under s. 33(2) ³ | Number of Applications | 33 | 24 | 8 | 32 |
| | Number of Employees ⁴ | 927 | 783 | 488 | 1271 |

¹ Does not include applications that were not proceeded with (NPW) due to incorrect or insufficient information supplied on the application.

² The number of employees on an application for certification is based on the information supplied by the union on the application form. Variances do 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.

³ Since only those certification cancellation applications brought by employees under s. 33(2) of the *Labour Relations Code* are included in this table, the number of applications filed and/or decided may not equal the corresponding figure from the Certification Cancellations category in TABLE 1. See TABLE 3 for a breakdown of certification cancellations by applicant type.

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. 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 Industrial Relations Officer.

TABLE 2A: Certification Applications and Certification Cancellations Under s. 33(2) Granted in 2016 - Analyzed by the Size of the Bargaining Unit

| Size of Bargaining Unit (Number of Employees) | Certification Applications | | Certification Cancellations ¹ | |
|---|--------------------------------|------------------------------------|--|------------------------------------|
| | Number of Applications Granted | Percentage of Applications Granted | Number of Applications Granted | Percentage of Applications Granted |
| 1 to 10 | 16 | 29.1% | 7 | 29.2% |
| 11 to 20 | 12 | 21.8% | 6 | 25.0% |
| 21 to 30 | 4 | 7.3% | 1 | 4.2% |
| 31 to 40 | 7 | 12.7% | 2 | 8.3% |
| 41 to 50 | 0 | 0.0% | 1 | 4.2% |
| 51 to 60 | 1 | 1.8% | 4 | 16.7% |
| 61 to 70 | 1 | 1.8% | 0 | 0.0% |
| 71 to 80 | 6 | 10.9% | 1 | 4.2% |
| 81 to 90 | 2 | 3.6% | 0 | 0.0% |
| 91 to 100 | 1 | 1.8% | 1 | 4.2% |
| 101 to 200 | 3 | 5.5% | 1 | 4.2% |
| Over 200 | 2 | 3.6% | 0 | 0.0% |
| | | | | |
| Total | 55 | 100% | 24 | 100% |

¹ In order to accurately reflect the number of employees per granted application, only those certification cancellation applications brought by employees under s. 33(2) of the *Labour Relations Code* are included in this table. Thus, the total number of applications granted may not equal the corresponding figure from the Certification Cancellations category in TABLE 1. See TABLE 3 for a breakdown of Certification Cancellations by applicant type.

Chart 2A: Certification Applications Granted - Analyzed by Size of Bargaining Unit (Percentage of Applications)

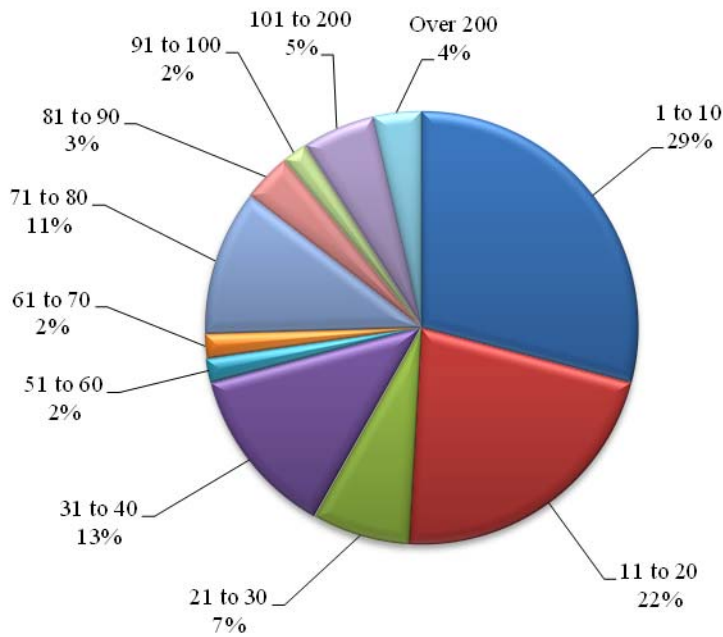
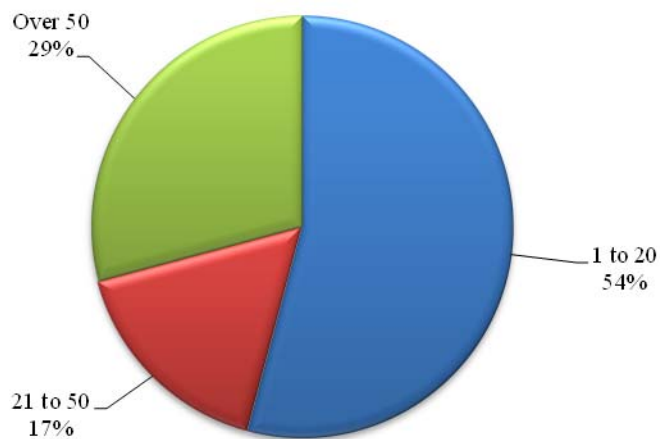


Chart 2B: Certification Cancellations (s.33(2)) Granted - Analyzed by Size of Bargaining Unit (Percentage of Applications)



| Year | Number and Percentage of Certification Applications | | | | | | Total |
|------|---|-------|--------------------|-------|-------------------|-------|------------------|
| | 1 to 20 Employees | | 21 to 50 Employees | | Over 50 Employees | | |
| 1992 | 130 | 66.0% | 47 | 23.9% | 20 | 10.1% | 197 |
| 1993 | 353 | 69.4% | 102 | 20.0% | 54 | 10.6% | 509 |
| 1994 | 292 | 66.9% | 86 | 19.7% | 59 | 13.4% | 437 |
| 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 ¹ |
| 1999 | 239 | 65.8% | 65 | 17.9% | 59 | 16.3% | 363 ² |
| 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 ³ |
| 2004 | 58 | 65.9% | 17 | 19.3% | 13 | 14.8% | 88 |
| 2005 | 170 | 63.9% | 62 | 23.3% | 34 | 12.7% | 266 ⁴ |
| 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 ⁵ |
| 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 |

¹ One single certification application resulted in the issuance of two individual certifications; thus the total of certifications granted in 1998 amounts to 349.

² One single certification application resulted in the issuance of two individual certifications; thus the total of certifications granted in 1999 amounts to 364.

³ Five separate certification applications for the same employee bargaining unit were granted and simultaneously consolidated resulting in the issuance of a single certification; thus the total number of new certifications granted for a bargaining unit size between 1 and 20 employees is 50 and the total number of certifications granted in 2003 is 71.

⁴ A number of applications to certify separate units were amended at some time in the process prior to disposition to certify a consolidated unit(s). A further application was granted and two certifications issued as a result. In total, in 2005, 266 certification applications were granted resulting in 249 certifications being issued.

⁵ Three certification applications to certify separate units were amended at some time in the process prior to disposition to certify a consolidated unit (a single certification was issued as a result). In total, in 2011, 58 certification applications were granted resulting in 56 certifications being issued.

TABLE 3: Applications to Cancel Certifications Disposed of in 2016 and 2015

| Type of Applicant (and Application) | Year | Granted | Dismissed | Not Proceeded With | Withdrawn | Total |
|---|-------------|-----------|-----------|--------------------|-----------|-----------|
| Filed by Employee(s) (s. 33) | 2016 | 24 | 8 | 0 | 5 | 37 |
| | 2015 | 11 | 6 | 7 | 2 | 26 |
| Filed by Employee(s) (s. 142 - Partial Decertification) ¹ | 2016 | 0 | 1 | 1 | 0 | 2 |
| | 2015 | 8 | 2 | 0 | 1 | 11 |
| Filed by Employer(s) | 2016 | 0 | 1 | 0 | 0 | 1 |
| | 2015 | 2 | 2 | 0 | 0 | 4 |
| Filed by Union(s) | 2016 | 0 | 0 | 0 | 0 | 0 |
| | 2015 | 2 | 0 | 0 | 0 | 2 |
| Filed by Employer(s) / Union(s) | 2016 | 0 | 0 | 0 | 0 | 0 |
| | 2015 | 1 | 0 | 0 | 0 | 1 |
| | | | | | | |
| Total | 2016 | 24 | 10 | 1 | 5 | 40 |
| | 2015 | 24 | 10 | 7 | 3 | 44 |

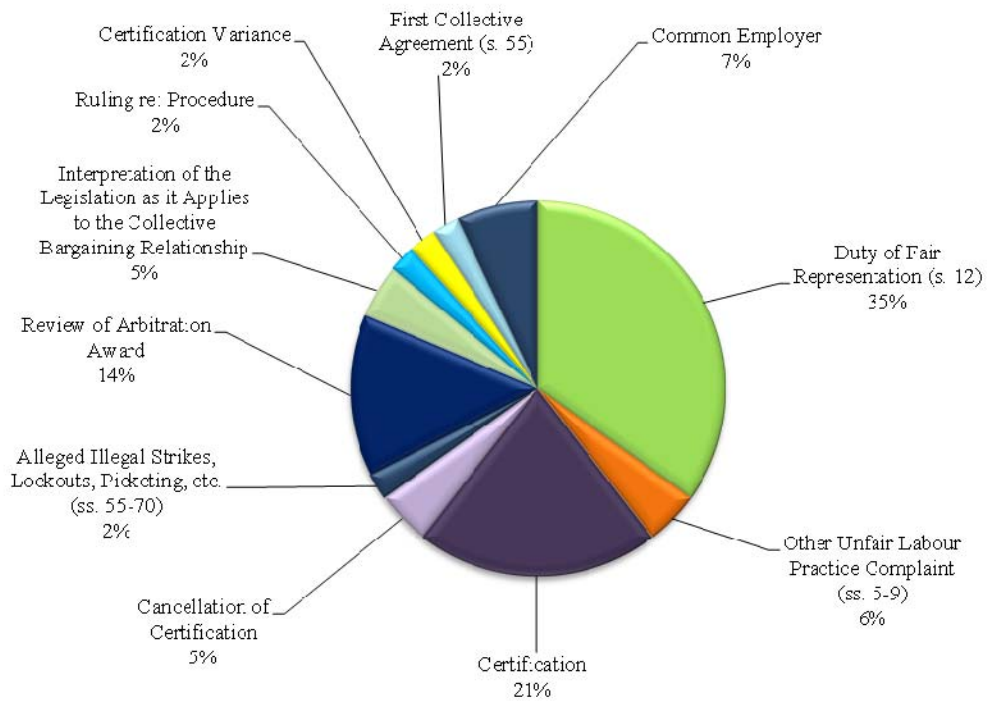
¹ Applications filed under s. 142 for Partial Decertification are included in TABLE 1 under the category Certification Variances; therefore, subtracting the number of applications filed by employees under s. 142 from the Total number of applications disposed of in TABLE 3 will equal the number of applications disposed of in TABLE 1 for the Certification Cancellations category.

TABLE 4: Reconsiderations Disposed of in 2016

| Type Of Application Being Reconsidered | Leave Denied | Dismissed | Granted | Withdrawn | Not Proceeded With | Total |
|---|------------------|-----------------|-----------------|-----------------|--------------------|------------------|
| Duty of Fair Representation (s. 12) | 14 | 0 | 1 | 0 | 0 | 15 |
| Other Unfair Labour Practice Complaint (ss. 5-9) | 2 | 0 | 0 | 0 | 0 | 2 |
| Certification | 7 | 1 | 1 | 0 | 0 | 9 |
| Certification Variance | 0 | 0 | 1 | 0 | 0 | 1 |
| Certification Cancellation | 0 | 0 | 2 | 0 | 0 | 2 |
| Common Employer | 2 | 0 | 0 | 1 | 0 | 3 |
| First Collective Agreement (s.55) | 1 | 0 | 0 | 0 | 0 | 1 |
| Alleged Illegal Strikes, Lockouts, Picketing, ect. (ss. 55-70) | 1 | 0 | 0 | 0 | 0 | 1 |
| Review of Arbitration Award | 4 | 0 | 1 | 1 | 0 | 6 |
| Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s.139) | 1 | 0 | 0 | 1 | 0 | 2 |
| Ruling re: Procedure | 0 | 1 | 0 | 0 | 0 | 1 |
| | | | | | | |
| | | | | | | |
| TOTAL | <u>32</u> | <u>2</u> | <u>6</u> | <u>3</u> | <u>0</u> | <u>43</u> |

| Appellant | Leave Denied | Dismissed | Granted | Withdrawn | Not Proceeded With | Total |
|--------------|------------------|-----------------|-----------------|-----------------|--------------------|------------------|
| Employer(s) | 6 | 0 | 1 | 1 | 0 | 8 |
| Union(s) | 11 | 2 | 4 | 1 | 0 | 18 |
| Employee(s) | 15 | 0 | 1 | 1 | 0 | 17 |
| | | | | | | |
| TOTAL | <u>32</u> | <u>2</u> | <u>6</u> | <u>3</u> | <u>0</u> | <u>43</u> |

**Chart 4: Types of Applications Being Reconsidered
(Disposed of in 2016)**



**TABLE 5: "Success" Rate of Reconsiderations
Disposed of Between 2006 and 2016**

| Year | Total Applications Disposed of | Withdrawn / Not Proceeded With | Processed to a Final Decision | Resulted in a Revision of the Original Decision | "Success" Rate of Reconsiderations |
|------|--------------------------------|--------------------------------|-------------------------------|---|------------------------------------|
| 2006 | 72 | 9 | 63 | 8 | 13% |
| 2007 | 65 | 11 | 54 | 5 | 9% |
| 2008 | 47 | 6 | 41 | 6 | 15% |
| 2009 | 48 | 4 | 44 | 8 | 18% |
| 2010 | 51 | 2 | 49 | 10 | 20% |
| 2011 | 45 | 2 | 43 | 6 | 14% |
| 2012 | 59 | 2 | 57 | 15 | 26% |
| 2013 | 47 | 3 | 44 | 14 | 32% |
| 2014 | 57 | 2 | 55 | 14 | 25% |
| 2015 | 55 | 0 | 55 | 9 | 16% |
| 2016 | 43 | 0 | 43 | 6 | 14% |

**TABLE 6: "Success" Rate of Reviews of Arbitration Awards
Disposed of Between 2006 and 2016**

| Year | Total Applications Disposed of | Withdrawn / Not Proceeded With | Processed to a Final Decision | Resulted in a Revision of the Original Decision | "Success" Rate of Reconsiderations |
|------|--------------------------------|--------------------------------|-------------------------------|---|------------------------------------|
| 2006 | 50 | 7 | 43 | 11 | 26% |
| 2007 | 26 | 3 | 23 | 5 | 22% |
| 2008 | 37 | 7 | 30 | 7 | 23% |
| 2009 | 39 | 6 | 33 | 4 | 12% |
| 2010 | 31 | 5 | 26 | 8 | 31% |
| 2011 | 35 | 8 | 27 | 2 | 7% |
| 2012 | 59 | 4 | 55 | 7 | 13% |
| 2013 | 15 | 1 | 14 | 1 | 7% |
| 2014 | 33 | 4 | 29 | 1 | 3% |
| 2015 | 28 | 2 | 26 | 5 | 19% |
| 2016 | 17 | 0 | 17 | 5 | 29% |

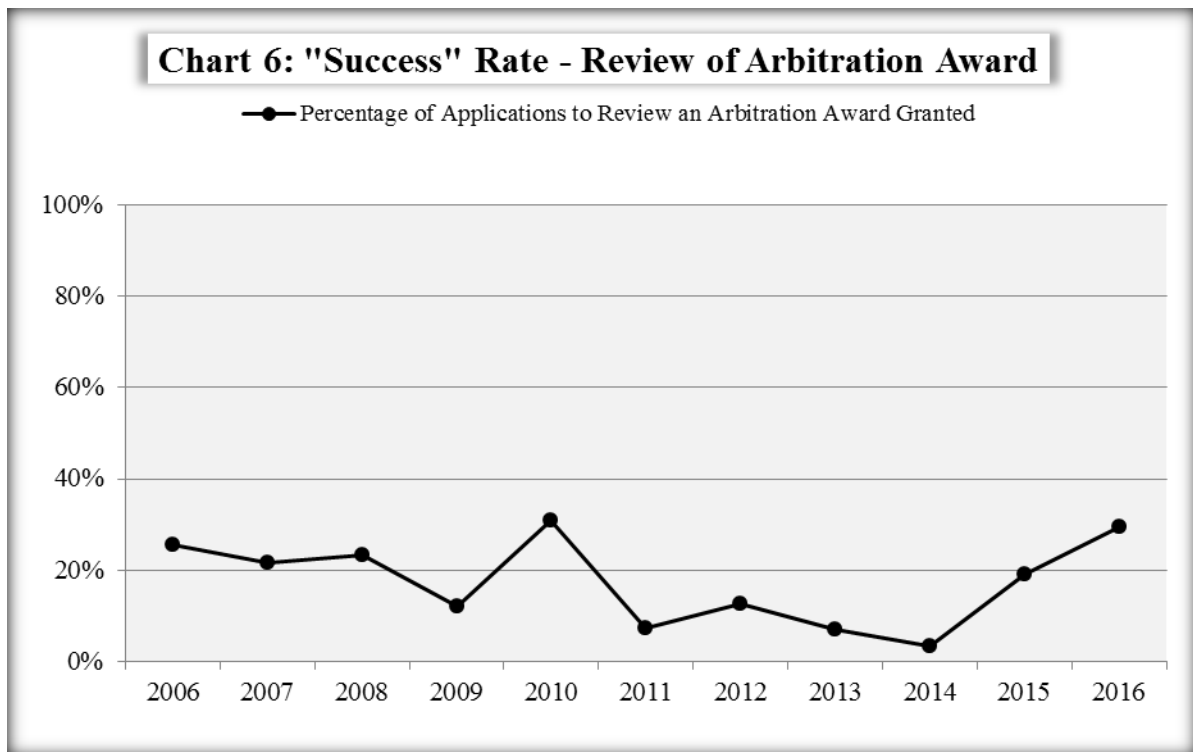
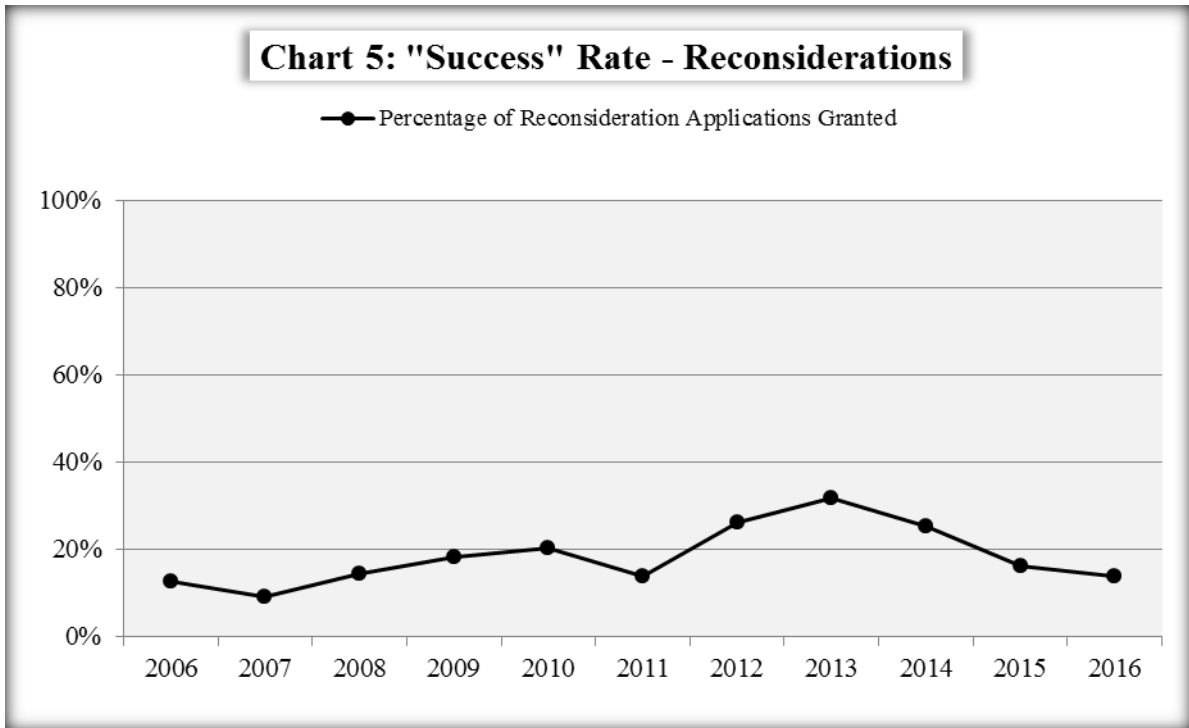


TABLE 7: Applications and Complaints Filed in 2016 - Analyzed by Applicant Type

| Type of Application | Filed by Employer(s) | Filed by Union(s) | Filed by Employee(s) | Other | Total ¹ |
|--|----------------------|-------------------|----------------------|----------|--------------------|
| Complaints of Unfair Labour Practices | | | | | |
| <i>Complaints Regarding Internal Union Affairs (s. 10)</i> | 0 | 0 | 9 | 0 | 9 |
| <i>Complaints Regarding Duty to Bargain in Good Faith (s. 11)</i> | 4 | 21 | 0 | 0 | 25 |
| <i>Complaints Regarding Duty of Fair Representation (s. 12)</i> | 0 | 2 | 86 | 0 | 88 |
| <i>Other Unfair Labour Practice Complaints (ss. 5-9)</i> | 7 | 112 | 4 | 0 | 123 |
| Religious Exemption (s. 17) | 0 | 0 | 1 | 0 | 1 |
| Certification Applications (ss. 18, 19 and 28) | 0 | 100 | 0 | 0 | 100 |
| Certification Variances (ss. 28 and 142) | 19 | 160 | 1 | 0 | 179 |
| Certification Cancellations (ss. 33 and 142) | 3 | 0 | 33 | 0 | 36 |
| Cancellation of a Voluntary Recognition (s. 34) | 0 | 0 | 4 | 0 | 4 |
| Permission to Alter Conditions of Employment | 1 | 1 | 0 | 0 | 2 |
| Alleged Unlawful Alteration of Employment Terms and Conditions (ss. 32 and 45) | 0 | 4 | 0 | 0 | 4 |
| Declaration of Successor Status | | | | | |
| <i>Successor Employer (s. 35)</i> | 12 | 44 | 0 | 0 | 56 |
| <i>Successor Union (s. 37)</i> | 0 | 24 | 0 | 0 | 24 |
| Common Employer (s.38) | 0 | 16 | 0 | 0 | 16 |
| Accreditation Variances | 2 | 1 | 0 | 0 | 3 |
| Alleged Failure to Execute or Comply with a Collective Agreement (s. 49) | 0 | 2 | 0 | 0 | 2 |
| Facilitator (s. 53(3)) | 6 | 17 | 0 | 0 | 18 |
| First Collective Agreement (s. 55) | 4 | 11 | 0 | 0 | 15 |
| Appointment of a Mediation Officer (s. 74) | 40 | 37 | 0 | 0 | 75 |
| Collective Agreement Arbitration Bureau (CAAB) | | | | | |
| <i>Section 86 (Appointment of Arbitrator)</i> | 1 | 41 | 0 | 0 | 42 |
| <i>Section 87 (Appointment of Settlement Officer)</i> | 3 | 15 | 0 | 0 | 18 |
| <i>Section 104 (Appointment of Arbitrator)</i> | 3 | 159 | 0 | 0 | 162 |
| <i>Combined CAAB Sections</i> | 7 | 215 | 0 | 0 | 222 |
| Part 5 Applications (Strikes, Lockouts, Picketing, etc.) (ss. 57-67 and ss. 69-70) | 22 | 5 | 1 | 0 | 28 |

| TABLE 7: Applications and Complaints Filed in 2016 - Analyzed by Applicant Type | | | | | |
|--|----------------------|-------------------|----------------------|------------------|--------------------|
| Type of Application | Filed by Employer(s) | Filed by Union(s) | Filed by Employee(s) | Other | Total ¹ |
| Replacement Workers (s. 68) | 0 | 7 | 0 | 0 | 7 |
| Essential Service Designations (s. 72) | 0 | 0 | 0 | 14 | 14 |
| Last Offer Vote (s. 78) | 10 | 1 | 0 | 0 | 11 |
| Review of Arbitration Award (s. 99) | 6 | 10 | 7 | 0 | 23 |
| Interim Order (s. 133(5)) | 0 | 4 | 0 | 0 | 4 |
| File an Order in Supreme Court (s. 135) | 6 | 5 | 1 | 0 | 12 |
| Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s. 139) | 6 | 23 | 2 | 0 | 30 |
| Reconsideration of a Decision (s. 141) | 8 | 17 | 15 | 0 | 40 |
| Declaratory Opinion (Excluding Declaratory Opinions Pertaining to Part 5 of the Legislation) | 0 | 1 | 0 | 0 | 1 |
| Miscellaneous | 21 | 42 | 2 | 0 | 64 |
| | | | | | |
| TOTAL | <u>184</u> | <u>882</u> | <u>166</u> | <u>14</u> | <u>1236</u> |

¹ Totals by applicant do not equate with total applications because certain applications were filed jointly, by more than one type of party.

| TABLE 8: Time Required to Process Certain Applications Disposed of in 2016 | | | |
|--|---|------------------------|-----------------------|
| Type of Application | Number of Applications Disposed of ¹ | Average Number of Days | Median Number of Days |
| Unfair Labour Practice Complaints Under S.6 of the <i>Labour Relations Code</i> Where a Dismissed Employee is Involved | 24 | 57 | 39 |
| Complaints Regarding Duty of Fair Representation (S.12) | 45 | 99 | 92 |
| Certification Applications (Ss.18, 19, 28) | 104 | 53 | 21 |
| Certification Cancellations (S.33(2)) | 37 | 54 | 27 |
| Declaration of Successor Employer (S.35) | 66 | 60 | 46 |
| Common Employer (S.38) | 15 | 133 | 109 |
| Review of Arbitration Award (S.99) | 17 | 106 | 105 |
| Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (S.139) | 27 | 224 | 109 |
| Reconsideration of a Decision (S.141) | 43 | 37 | 23 |

¹ Does not include applications that were not proceeded with (NPW) due to incorrect or insufficient information supplied on the application.

| TABLE 9: Officer Assignments Completed in 2016 | | | | | | | |
|--|--------------------|---------------------------------------|---------------------------------------|-------------------------------|-------------------------|--------------------|-------------------|
| Assignment Outcome | | | | | | | |
| Type of Application / Complaint | Settled/ Withdrawn | Resolved Issues / Assisted at Hearing | Narrowed Issues / Assisted at Hearing | To Adjudication (No Informal) | Report of Investigation | Other ¹ | Total |
| Part V (ss.57 to 70) ² | 4 | 1 | 0 | 1 | 0 | 1 | 7 |
| Unfair Labour Practice (ss.5 to 11) ³ | 28 | 0 | 0 | 4 | 0 | 0 | 32 |
| Certification & Variance to Expand the Bargaining Unit ⁴ | 25 | 35 | 25 | 0 | 0 | 1 | 86 |
| Decertification & "Partial Decertification" ⁵ | 4 | 12 | 2 | 0 | 0 | 0 | 18 |
| Collective Agreement Arbitration (CAAB) (ss.86, 87, 104, 105) ⁶ | 27 | 1 | 1 | 0 | 0 | 9 ⁷ | 38 |
| Other | <u>11</u> | <u>2</u> | <u>1</u> | <u>2</u> | <u>2</u> | <u>0</u> | <u>18</u> |
| TOTAL | <u>99</u> | <u>51</u> | <u>29</u> | <u>7</u> | <u>2</u> | <u>11</u> | <u>199</u> |

¹ Includes Consent Order issued.

² Includes complaints regarding strikes, lockouts, picketing, etc.

³ Excludes duty of fair representation (s.12).

⁴ In reports prior to 2001, the number of certification & expanded bargaining unit applications Settled / Withdrawn were included in the Resolved Issues / Assisted at Hearing assignment outcome category.

⁵ Prior to 2003 applications for 'partial decertification' were included under Other types of applications.

⁶ Reporting of assignments under the Collective Agreement Arbitration provisions of the *Labour Relations Code* first appears in the 2003 annual report.

⁷ Includes seven assignments closed with matter proceeding to arbitration.

TABLE 10: Requests for Automatic Certification Pursuant to s. 14(4)(f) of the *Labour Relations Code* as a Result of an Alleged Unfair Labour Practice Violation
 (Previously s. 8(4)(e) of the *Labour Relations Code* and the *Industrial Relations Act*)

| Year | Requested | Granted |
|------|-----------|---------|
| 1977 | 25 | 1 |
| 1978 | 17 | 1 |
| 1979 | 25 | 1 |
| 1980 | 22 | 0 |
| 1981 | 34 | 2 |
| 1982 | 15 | 2 |
| 1983 | 18 | 0 |
| 1984 | 21 | 3 |
| 1985 | 16 | 2 |
| 1986 | 18 | 2 |
| 1987 | 17 | 0 |
| 1988 | 10 | 0 |
| 1989 | 10 | 0 |
| 1990 | 18 | 3 |
| 1991 | 20 | 1 |
| 1992 | 32 | 6 |
| 1993 | 31 | 2 |
| 1994 | 31 | 2 |
| 1995 | 35 | 0 |
| 1996 | 41 | 1 |
| 1997 | 52 | 3 |
| 1998 | 40 | 0 |
| 1999 | 51 | 0 |
| 2000 | 21 | 1 |
| 2001 | 9 | 0 |
| 2002 | 12 | 3 |
| 2003 | 13 | 0 |
| 2004 | 8 | 1 |
| 2005 | 7 | 1 |
| 2006 | 8 | 0 |
| 2007 | 10 | 1 |
| 2008 | 17 | 2 |
| 2009 | 16 | 0 |

TABLE 10: Requests for Automatic Certification Pursuant to s. 14(4)(f) of the *Labour Relations Code* as a Result of an Alleged Unfair Labour Practice Violation
 (Previously s. 8(4)(e) of the *Labour Relations Code* and the *Industrial Relations Act*)

| Year | Requested | Granted |
|--------------|-------------------|------------------|
| 2010 | 18 | 1 |
| 2011 | 9 | 0 |
| 2012 | 9 | 3 ¹ |
| 2013 | 11 | 0 |
| 2014 | 18 | 1 |
| 2015 | 5 | 1 |
| 2016 | <u>5</u> | <u>0</u> |
| TOTAL | <u>795</u> | <u>47</u> |

These requests relate to *Other Unfair Labour Practice Complaints* and are not included under Applications for Certification.

Note: Figures for 1993 to 1995 were not included in the Annual Reports for these years.

¹ One certification issued as a result of reconsideration.

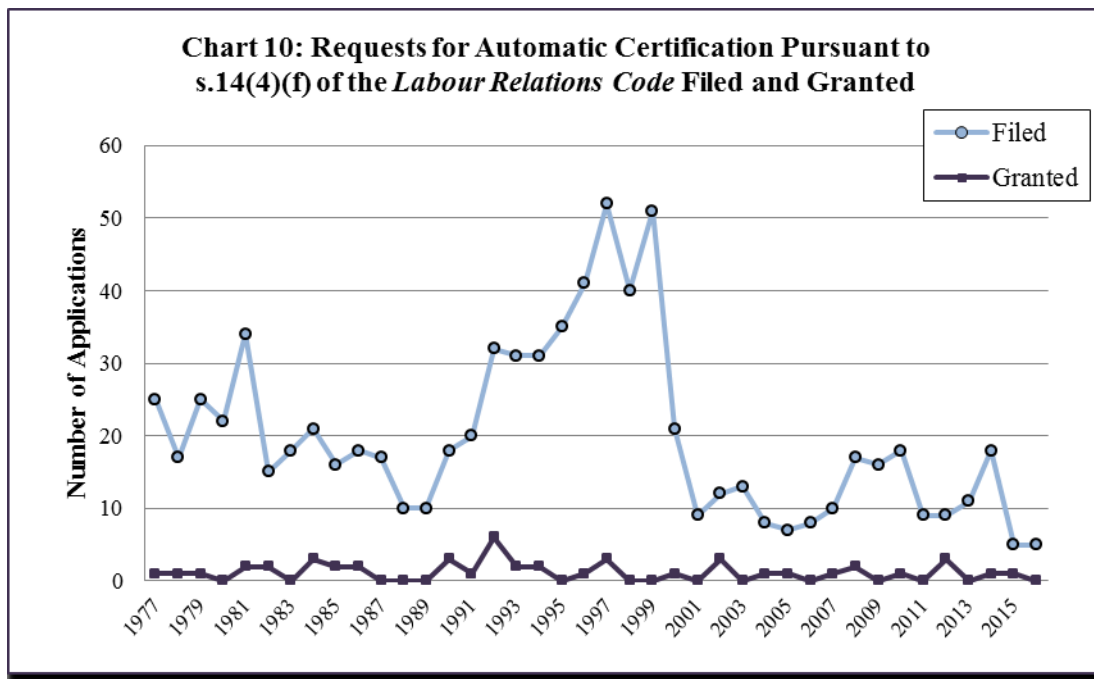


Table 11: Complaints Regarding Duty of Fair Representation Disposed of Between 2005 and 2016

| Year | Total Applications Disposed of | Not Proceeded With | Settled | Processed to a Final Decision | Granted | Dismissed |
|------|--------------------------------|--------------------|---------|-------------------------------|---------|-----------|
| 2006 | 99 | 34 | 9 | 56 | 1 | 55 |
| 2007 | 90 | 39 | 9 | 42 | 0 | 42 |
| 2008 | 70 | 29 | 7 | 34 | 2 | 32 |
| 2009 | 96 | 36 | 1 | 59 | 5 | 54 |
| 2010 | 82 | 26 | 5 | 51 | 5 | 46 |
| 2011 | 74 | 17 | 1 | 56 | 4 | 52 |
| 2012 | 75 | 24 | 2 | 49 | 2 | 47 |
| 2013 | 55 | 10 | 0 | 45 | 1 | 44 |
| 2014 | 67 | 25 | 1 | 41 | 1 | 40 |
| 2015 | 77 | 26 | 4 | 47 | 1 | 46 |
| 2016 | 77 | 32 | 6 | 39 | 0 | 39 |

