

# *H* Ontario Labour Relations Board **HIGHLIGHTS**

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## SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in June of this year. These decisions will appear in the May/June issue of the OLRB Reports. The full text of recent OLRB decisions is available on-line through the Canadian Legal Information Institute [www.canlii.org](http://www.canlii.org).

## NOTICE TO COMMUNITY – NEW VICE-CHAIRS

The Board welcomes **Alan Freedman** as a new full-time Vice-Chair, and **Archana Mathew** and **Heather Ann McConnell** as new part-time Vice-Chairs.

**Alan Freedman** is an alumnus of McMaster University, received his law degree from the University of Toronto and was called to the Ontario Bar in 1999. Mr. Freedman practiced labour and employment law for 25 years with a focus on labour board proceedings, collective bargaining and labour arbitrations. Prior to his appointment to the Board, he was a partner at a prominent labour and employment law firm and frequently appeared at the Board, often in construction industry proceedings. He was also counsel in cases in the Ontario courts and the Federal courts.

**Archana Mathew** was educated at McGill University and Osgoode Hall Law School. She was

called to the Ontario Bar in 2005. She comes to the Board after working in-house for eighteen years at a leading union, with a focus on labour and human rights law. She is a frequent public speaker and taught the course "Rethinking Procedural Justice: Human Rights and Fairness in Adjudication" at Osgoode Hall.

**Heather Ann McConnell** was called to the bar in 2007, after receiving her Bachelor of Laws from Osgoode Hall Law School. She also holds two degrees from the University of Toronto – a Bachelor of Arts (Hons.) and a Master of Arts from the Ontario Institute for Studies in Education (OISE). Prior to her appointment to the Board, Heather Ann was a partner in a leading labour law firm in Toronto, where she regularly appeared before boards and tribunals in the areas of labour, human rights, occupational health and safety, education, professional regulation, and administrative law.

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**Certification - Practice and Procedure -** Application for certification delivered to address provided by Responding Party on its provincial and federal corporate profile reports as its registered office address and its principal place of business, which was a law firm - Law firm sent application to in-house counsel for the Responding Party, but that individual's auto-reply indicated that she was no longer employed by the Responding Party - No further steps taken until Board contacted another law firm that had previously acted for the

Responding Party in an effort to obtain information necessary for the vote - Response eventually filed by Responding Party four business days after the date the response was due - Responding Party asserted that application was not properly delivered, since Responding Party had offices in Winnipeg and Toronto which were easily obtainable via an internet search - Responding Party further asserted that if application was properly delivered, the Board should relieve against the time limits for delivery of the response, and that the notice under section 8.1 of the *Labour Relations Act, 1995* (the “Act”) was not late because the Responding Party did not “receive” the application until several days after the application was delivered to the address set out in the corporate profile report and in the final alternative, that the Board should relieve against the time limits set out in section 8.1 - Board reiterated its jurisprudence that an applicant is entitled to rely on the address set out in a corporate profile report and that in this case, there was nothing to suggest the address was wrong such that the applicant could not rely on it - Board concluded the application was properly delivered - Board further concluded that its jurisprudence and Rules confirmed that the date an application was “received” within the meaning of the Act was the date it was delivered in accordance with the Board’s Rules - Finally, assuming the Board did have the discretion to relieve against the time limit set out in s. 8.1 of the *Act*, this was not a compelling case for relief - Matter continues

CANADIAN UNION OF POSTAL WORKERS,  
RE: **SKIPTHE DISHES RESTAURANT SERVICES INC.**; OLRB Case No. 0019-24-R;  
Dated June 7, 2024; Panel: D. Morrison (24 pages)

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**Construction Industry - Certification** - Applicant union asserted that Responding Party B was the employer of the individuals in issue; B asserted that L was their employer - L was already bound to a collective agreement with the Union - Union argued that in this case L acted as a labour supplier and not a subcontractor to B - B was general

contractor - B had difficulties with forming subcontractor on a particular project and contacted L, which was working for B on a different project, to take over the formwork subcontract - Board concluded that subcontract between B and L was legitimate - Dispute between the parties over whether L had hired individuals in issue or whether B had hired them - Evidence did not support a conclusion that L had simply sent individuals to B so that they could be hired by B, but that L had hired them itself - B did not interview individuals or have them fill out timesheets - B’s supervisor provided general direction to individuals but most of their supervision was provided by the working foreperson sent by L - Supervisor also agreed with foreperson’s suggestion that some “friends” could work - Supervisor had no involvement in hiring the friends who came to work - Board found there was no intention that any individual would be hired by B, despite some exchanges about how individuals would be paid - Post-application date evidence, such as sending of referral slips to B for the individuals and individuals’ resistance to providing L information it needed to pay them for their work, suggested an attempt to support argument that B was their employer, but was unpersuasive - Board found that application was an attempt to use existing contractual relationship with L for the purpose of certifying B, which the Board’s case law did not permit - L was individuals’ employer and therefore there were no employees in applied-for bargaining unit - Application dismissed

CARPENTERS' DISTRICT COUNCIL OF ONTARIO, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, RE: **C.S. BACHLY BUILDERS LIMITED C.O.B. AS BACHLY CONSTRUCTION**; OLRB Case No. 0960-21-R; Dated June 28, 2024; Panel: S. Slaughter (24 pages)

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**Construction Industry - Grievance** - OE filed grievance alleging violation of Formwork Agreement by Employer - Employer asserted that it was not bound to a collective agreement with the

OE but only with the Labourers - Employer signed memorandum of agreement (“MOA”) with the Labourers - As part of that agreement, Employer agreed that it was bound to the Formwork Agreement - Employer executed voluntary recognition agreement (“VRA”) recognizing the Formwork Council of Ontario (“FCO”), which council is composed of the Labourers and the OE, as the exclusive bargaining agent for all employees engaged in concrete forming construction in the residential sector in Board Area 3 - OE not party to MOA - Employer argued that parties to MOA did not intend to confer bargaining rights on OE - Employer argued that memorandum conflicted with VRA and that MOA should prevail - Board concluded that there was no conflict between VRA and MOA - The VRA’s scope was limited to the residential sector and to Board Area 3, but there was no other limitation to what the Employer agreed to be bound by – Trade union party to the VRA was the FCO, which included OE - Board concluded that OE could file a grievance under and enforce the collective agreement - Matter continues

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, RE: **ELLISDON FORMING LTD**; OLRB Case No. 1623-22-G; Dated June 18, 2024; Panel: M. Giroux (15 pages)

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**First Contract Direction** - Union applied for a first contract direction after first collective agreement remained unachieved after more than one year of bargaining - Many meetings held, sometimes briefly, many meetings cancelled, without yet addressing significant issues such as a wage structure and wages - Employer emailed employees indicating that Union’s positions would potentially adversely affect employees - After seeking no-board report, instead of attempting to return to bargaining, Responding Party communicated directly with employees referring to application to terminate Union’s bargaining rights at another location and indicating that it believed that the employees would have the ability to vote on whether or not to continue to be represented by the

Union - Responding Party’s actions did not recognize the bargaining authority of the Union and sought to bypass it - Responding Party also did not make expeditious efforts to reach a collective agreement - First contract direction issued

UNITED FOOD AND COMMERCIAL WORKERS CANADA LOCAL 1006A, RE: **SESSIONS CANNABIS RETAIL INC.**; OLRB Case No. 2823-22-FA; Dated June 19, 2024; Panel: M. Doyle (36 pages)

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**Related Employer - Sale of a Business - Practice and Procedure** - Responding Party to application (“CCS”) asserted that counsel for one of the other responding parties (“FF”) was in a conflict of interest and could not act in the matter - CCS’s principal, C, was a former employee of FF - Counsel had taken over the defence of FF and C in a civil action brought by C’s previous employer, at a time when C was still employed by FF, and negotiated tentative settlement of civil action - C continued to provide services to FF but ended his relationship with FF prior to final settlement of civil action - C was thereafter represented in the civil action by different counsel - FF then commenced civil action against, among others, CCS and C - CCS asserted that counsel’s involvement in prior civil action on behalf of C led to a conflict of interest because the two civil actions were similar to the proceeding before the Board - Parties did not dispute that counsel had no confidential information pertaining to C or CCS - Board reviewed principles applicable to conflict of interest claims - No legal overlap between application before the Board and the civil actions - No substantial risk of a breach of counsel’s ongoing duty of loyalty to C - The fact that the Board application had been proceeding for more than a year after the facts related to the alleged conflict of interest led to a determination that CCS effectively waived its right to raise a conflict of interest objection - Motion dismissed - Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, RE: **FOCUS FLOORING AND CONSTRUCTION INC. AND 2615194 ONTARIO INC.**, CHASTON CONTRACTING SERVICES INC. (CCS), AND 12784572 CANADA INC. O/A ABE CONSTRUCTION GROUP; OLRB Case No. 2609-22-R; Dated June 27, 2024; Panel: M. McFadden (9 pages)

1006A, RE: **INDIGO BOOKS & MUSIC INC.**; OLRB Case No. 0363-23-R; Dated June 27, 2024; Panel: R. McGilvery (11 pages)

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7<sup>th</sup> Floor, 505 University Avenue, Toronto.

**Termination of Bargaining Rights - Practice and Procedure**

- Union asserted that termination application was initiated or supported by Employer  
- After two days of hearing, applicant withdrew application - Withdrawal accepted by Board - Employer indicated that it would seek reconsideration of Board's decision accepting withdrawal - Applicant then sought to rescind the withdrawal - Employer sought reconsideration on the basis that the Board should not have accepted the withdrawal without inquiring further, and that Applicant's request to rescind was new evidence that should be considered by the Board and that the Board had made an obvious error - Union submitted that Board routinely accepts the withdrawal of applications without further inquiry - Applicant asserted that she thought that withdrawal would permit another employee to pursue the application in her place - Board concluded that Applicant was entitled to withdraw her application without the Board giving notice to or consulting with the other parties - While it was open to a group of employees to apply for termination, here the Applicant was the only applicant - Withdrawal of an application is a serious matter and the Board is entitled to assume that an applicant has considered the implications of withdrawing and has made an informed decision - If Board permitted withdrawals to be reversed based on a party's change of heart, it would set a chaotic precedent with no finality - No basis for reconsideration - Request for reconsideration denied

LISA SCALI, RE: UNITED FOOD AND COMMERCIAL WORKERS CANADA LOCAL

### Pending Court Proceedings

Case Name & Court File No.	Board File No.	Status
<b>Clean Water Works</b> Divisional Court No. 401/24	1093-21-R	Pending
<b>SkipTheDishes</b> Divisional Court No. 378/24	0019-24-R	Pending
<b>Bird Construction Company</b> Divisional Court No. 363/24	1706-23-G	Pending
<b>2469695 ONTARIO INC. o/a ULTRAMAR</b> Divisional Court No. 278/24	1911-19-ES 1912-19-ES 1913-19-ES	December 19, 2024
<b>Yan Gu</b> Divisional Court No. 306/24	0994-23-U	December 12, 2024
<b>Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario</b> Divisional Court No. 131/24	2442-22-U	October 31, 2024
<b>A. &amp; F. Di Carlo Construction Inc.</b> Divisional Court No. 657/23	0614-23-ES 0638-23-ES	Dismissed
<b>Errol McHayle</b> Divisional Court No. 013/24	1396-22-U	September 11, 2024
<b>Four Seasons Site Development</b> Divisional Court No. 661/23	0168-17-R	September 25, 2024
<b>Robert Currie</b> Divisional Court No. 365/23	0719-22-UR 1424-22-UR	July 23, 2024
<b>Mina Malekzadeh</b> Divisional Court No. 553/22	0902-21-U 0903-21-UR 0904-21-U 0905-21-UR	Adjourned
<b>Simmering Kettle Inc.</b> Divisional Court No. DC-22-00001329-00-JR - (Oshawa)	0012-22-ES	Pending
<b>Candy E-Fong Fong</b> Divisional Court No.	0038-21-ES	Pending
<b>Symphony Senior Living Inc.</b> Divisional Court No. 394/21	1151-20-UR 1655-20-UR	Pending
<b>Joe Mancuso</b> Divisional Court No. 28291/19	2499-16-U – 2505-16-U	Pending
<b>The Captain's Boil</b> Divisional Court No. 431/19	2837-18-ES	Pending

<b>EFS Toronto Inc.</b> Divisional Court No. 205/19	2409-18-ES	Pending
<b>RRCR Contracting</b> Divisional Court No. 105/19	2530-18-U	Pending
<b>China Visit Tour Inc.</b> Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending
<b>Front Construction Industries</b> Divisional Court No. 528/17	1745-16-G	Pending
<b>Myriam Michail</b> Divisional Court No. 624/17 <b>(London)</b>	3434-15-U	Pending
<b>Peter David Sinisa Sesek</b> Divisional Court No. 93/16 <b>(Brampton)</b>	0297-15-ES	Pending
<b>Byeongheon Lee</b> Court of Appeal No. M48402	0095-15-UR	Pending
<b>Byeongheon Lee</b> Court of Appeal No. M48403	0015-15-U	Pending
<b>R. J. Potomski</b> Divisional Court No. 12/16 <b>(London)</b>	1615-15-UR 2437-15-UR 2466-15-UR	Pending
<b>Qingrong Qiu</b> Court of Appeal No. M48451	2714-13-ES	Pending
<b>Valoggia Linguistique</b> Divisional Court No. 15-2096 <b>(Ottawa)</b>	3205-13-ES	Pending