

# *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 January of this year. These decisions will appear in the January/February 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 **Lennie Lejasisaks** and **Jack Sullens** as new full-time and part-time Vice-Chairs, respectively.

Prior to joining the Board, **Lennie Lejasisaks** was a partner practicing labour and employment law at a full-service law firm. Previously, he was Chief Human Resources Officer and in-house counsel for a public hospital, and practiced labour and employment law at another full-service firm. Mr. Lejasisaks holds a Juris Doctor and a Master of Industrial Relations and Human Resources from the University of Toronto.

**John (Jack) Sullens** is a Deputy Judge of the Superior Court of Justice. He has held executive positions in legal services focusing on employment and labour law in the broader public sector. In private practice he has represented both employers and unions. He has taught employment, labour and election law courses at the University of Windsor Law School and St. Clair College. He has a strong interest in burgeoning democracies and has served on numerous bilateral and multilateral election observation missions. He has served on numerous community and International non-

profit Boards and is the past President of the Essex Law Association. He is a member of the Adjudication Chamber of the Pan American Boxing Confederation. He is the Chair of the Boxing Canada Governance Committee and is an active Boxing Referee and Judge.

**Breach of Settlement** – Employer alleged former employee breached non-disparagement clause in previous settlement – Employer is a family-owned landscaping company and former employee was the estranged spouse of the son of the Employer's owners - Employer alleged that statements made by employee's lawyer in a case conference brief and financial statements filed during ongoing divorce proceedings were disparaging – Employer sought to void settlement and demanded immediate repayment of loans that were forgiven pursuant to the settlement – Board found that statements made within family law litigation were protected by the doctrine of absolute privilege – It would be inappropriate and contrary to public policy to enforce settlement's non-disparagement clause to restrict litigant or their lawyer from freely communicating material facts in family law court proceeding – Board concluded that commercial reputation can be sufficiently protected without restricting responding party's ability to communicate in family law proceeding – Settlement was not breached – Application dismissed

MR. GRASS LANDSCAPING LTD., PREMIUM GROUNDS MAINTENANCE INC.; OLRB Case No. 3044-24-U; Dated January 13, 2026; Panel: Thomas J. Black (12 pages)

**Certification - Sale of Business – Related Employer** – UBRFIST sought to displace USW's bargaining rights with respect to employees of Q - UBRFIST already represented employees of H - Q and H were

amalgamated with other companies into A - Shortly after amalgamation, USW gave notice to bargain to A - UBRFIST then filed displacement application - Certain employees in USW bargaining unit were transferred to facility where employees were represented by UBRFIST - A filed application under s. 69 of the *Labour Relations Act, 1995* (the “Act”) seeking declaration that A was the successor to Q and H - UBRFIST opposed s. 69 application but brought application under s. 1(4) of the *Act* seeking declaration that A, Q and H were a single employer, and argued that there could not be a successorship where the entities were a single employer for the purposes of s. 1(4) - A argued that relief under s. 69 was required since the Board had the authority under s. 69 to amend or define bargaining units and otherwise address intermingling issues, which did not exist under s. 1(4) - UBRFIST argued that single employer declaration was required to preserve the open period for its displacement application - USW argued that single employer declaration would defeat USW’s statutory right under s. 69(10) of the *Act* to have its notice to bargain treated as having the same effect as a certification - Board declined to issue a single employer declaration - Section 1(4) provided the Board with discretion to make a declaration, while s. 69 established a set of mandatory statutory obligations - UBRFIST’s position could circumvent other statutory rights - Further, the Board has consistently declined to make a single employer declaration where doing so would create a conflict with established bargaining rights, as would be the case here - Amalgamation constituted sale of business as it transferred all assets, liabilities, and property – Sale occurred before USW issued notice to bargain – Statutory protections applied granting USW deemed certification that prioritized labour relations stability and legally closed open period, even though this could have the effect of frustrating UBRFIST’s displacement efforts – Sale of business declared

UNITED BROTHERHOOD OF RETAIL, FOOD, INDUSTRIAL AND SERVICE TRADES INTERNATIONAL UNION, **RE: QUEST WINDOW SYSTEMS INC.**; OLRB Case Nos. 1310-24-R, 1621-24-R, 1621-24-R, 2225-25-R; Dated January 15, 2026; Panel: Jordan Kirkness (22 pages)

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**Construction Industry – Jurisdictional Dispute** – General contractor D bound to Bricklayers agreement but not OPCMIA agreement and contracted work to restoration contractor CBR, which then subcontracted the work to G - G was not bound to Bricklayers’ agreement employed OPCMIA members – Bricklayers challenged assignment, and argued that D’s collective agreement obligations should prevail over all other factors normally considered in a jurisdictional dispute, and render assignment to OPCMIA members by G

improper – Board rejected argument that a general contractor’s collective bargaining obligations prevail over all other considerations - Board found collective agreement and skill factors neutral given that both unions had relevant collective agreements and the necessary skill – There was an established history of assigning speciality restoration work to OPCMIA - Board upheld work assignment to OPCMIA based on employer and area practice, which clearly favoured OPCMIA’s claim

OPERATIVE PLASTERERS & CEMENT MASONS’ INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, UNION LOCAL 598, **RE: DALTON ENGINEERING & CONTRS. CO. LTD. AND INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFT WORKERS, LOCAL 10 AND COLONIAL BUILDING RESTORATION**; OLRB Case No. 2725-23-JD; Dated January 5, 2026; Panel: Thomas J. Black (19 pages)

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**Ministerial Reference – Constitutional Law** – Minister of Labour referred question to the Board concerning his authority to appoint an arbitrator under s. 48 of the *Labour Relations Act, 1995* (the “Act”) in respect of the grievance of an employee living and working exclusively in British Columbia – Employer argued Ontario lacked jurisdiction over BC-based employee under s. 92(13) of the *Constitution Act, 1867* – Union framed issue as one of contractual interpretation, noting collective agreement was negotiated in Ontario by Ontario-based parties and explicitly references Ontario’s arbitration procedures – Board rejected Employer’s strict territorial argument – Board applied “real and substantial connection” test established by the Supreme Court of Canada in *Unifund* – Primary parties are located in Ontario and it is an Ontario based trade union – Dispute was fundamentally contractual rather than based on unique BC statutory standard – Board found sufficient connection to Ontario existed – Board advised that Minister has authority to appoint an arbitrator under the Act

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2, **RE: TEAMSTERS LOCAL 879**; OLRB Case No. 0999-25-MR; Dated January 6, 2026; Panel: Jordan Kirkness (16 pages)

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**Ministerial Reference – Construction Industry** – Minister sought Board’s advice in respect of whether or not a conciliation officer could be appointed - Labourers and Employer entities argued that Carpenters had abandoned high-rise residential bargaining rights with Employer between 2006 and 2022 – On first day of

hearing, which took place years after the Minister referred the question to the Board, the Carpenters sought to advance a new theory of the case, namely that the Employer entities had been granted a verbal waiver in 2015 to finish project using non-members of Carpenters – Responding Employers and Labourers objected – Carpenters argued that rules of pleading should be relaxed in the context of a Ministerial Reference - Board rejected this argument - Rules of Procedure emphasized that parties are entitled to know the case they have to meet – Board found multi-year delay unacceptable as alleged 2015 waiver was a fact likely within the Carpenters’ institutional knowledge – Allowing new legal theory would severely prejudice other parties and unduly delay process – Board would not permit Carpenters to advance new theory – Matter continues

**ALLIED CONSTRUCTION EMPLOYEES LOCAL 1030, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, MAYSTAR GENERAL CONTRACTORS INC., BREYWORTH MASTER BUILDER LIMITED, AND POETRY LIVING LIMITED;** OLRB Case Nos. 2027-22-MR, 2879-22-U; Dated January 19, 2026; Panel: John D. Lewis (13 pages)

**Unfair Labour Practice - Duty of Fair Representation** – Applicant bartenders alleged the Union breached its duty of fair representation in respect of the ratification of a new collective agreement – Applicants claimed Union acted arbitrarily by scheduling ratification vote at times inconvenient for evening shift bartenders, providing inadequate notice, and presenting confusing ratification document that obscured key changes to tip distribution – Board found no violation of statutory requirements regarding ratification votes, nor a breach of its fair representation obligations – Union provided sufficient notice via posted notices and email – Union scheduled reasonable voting times meant to capture employees off shift – Evidence did not support that bartender employees were treated differently than other employees – Board acknowledged ratification document lacked clarity, particularly regarding new gratuity language, but concluded that the document contained accurate information and that Union officers were present to answer questions during ratification vote – Union met legal obligation to provide sufficient information for informed vote – Application dismissed

**ROBERT STATHAM ET AL., RE: UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED**

**STEELWORKERS), LOCAL 8327-24;** OLRB Case No. 1617-24-U; Dated January 16, 2026; Panel: Brian Smeenk, KC (19 pages)

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## COURT PROCEEDINGS

**Judicial Review - Construction Industry - Jurisdictional Dispute** - Board dismissed UA’s jurisdictional dispute application, finding that the factors that were not neutral favoured LIUNA, namely area practice - UA had argued that the Board failed to properly consider its argument that the *Building Opportunities in the Skilled Trades Act, 2021* (“*BOSTA*”) restricted which trade could perform the work in dispute - Board rejected this argument, finding that *BOSTA* concerned the skill set required for work performed by regulated trades, not trade jurisdiction between unions - On judicial review, UA argued that the Board was required to comply with *BOSTA* and had failed to engage with it, relying instead on prior decisions rejecting similar arguments under similar legislation - Divisional Court found that the Board was owed significant deference, especially in construction industry matters - The Board had considered the UA’s argument and had provided a reasonable rationale for rejecting it - Board’s conclusion that *BOSTA* was not relevant to the dispute before it was reasonable - Board’s dismissal of the reconsideration request was also reasonable - Application dismissed

**UNITED ASSOCIATION OF CANADA, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 853 and UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 52, RE: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 and LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, TROY LIFE & FIRE SAFETY LTD., E.S. FOX LIMITED and ONTARIO LABOUR RELATIONS BOARD;** Divisional Court File No. 342/25; Dated January 2, 2026; Panel: Backhouse, Lococo and Kaufman, JJ (14 pages)

**Judicial Review - Reprisal** - Applicant’s reprisal application was dismissed by the Board after the Employer satisfied the Board that its decision to terminate the Applicant was not tainted by improper motives contrary to s. 50 of the *Occupational Health*

*and Safety Act* or contrary to s. 72 of the *Labour Relations Act, 1995* - On judicial review, the Applicant argued that the Board exceeded its jurisdiction and/or denied him procedural fairness because it commented that the social media posts that were the basis of his termination were defamatory - Board also commented that the incident that gave rise to the Applicant's harassment complaint "could hardly" be considered bullying or harassment - Applicant argued that he was not aware that the Board would be considering defamation or harassment and that he was therefore denied procedural fairness - Applicant argued that Board's comments on defamation and harassment were outside its jurisdiction - Applicant also argued that certain errors in the decision also rendered it unreasonable - Divisional Court held that the Board's comments about defamation and harassment were not determinations of legal questions - If Applicant considered that he was denied an opportunity to make submissions on these points, he had the ability to seek reconsideration - Similarly, minor errors could easily have been addressed on reconsideration - Principle of finality led to a conclusion that a party that does not raise an issue before an administrative tribunal when they have the capacity to do so should not be given an opportunity to do so on judicial review - Remainder of judicial review application sought to challenge Board's factual findings, which the Court would not do especially since credibility was a significant issue - Board's decision on various evidentiary rulings were reasonable - Application dismissed

**CAI SONG, RE: ONTARIO LABOUR RELATIONS BOARD AND T&T SUPERMARKET INC;** Divisional Court File No. 493/25; Dated January 14, 2026; Panel: Sachs, Backhouse, and O'Brien JJ (7 pages).

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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.

### Pending Court Proceedings

Case Name & Court File No.	Board File No.	Status
<b>Classic Tile</b> Divisional Court No. 1006-25	0069-25-R	Pending
<b>CLV Group Inc.</b> Divisional Court No. 3102-25	2645-24-R	Pending
<b>PBC Development</b> Divisional Court No. 3103/25	2645-24-R 0020-25-U	Pending
<b>Ottawa Valley Kitchens Ltd</b> Divisional Court No. 3111/25	1011-25-R	Pending
<b>Shaochun Huo</b> Divisional Court No. 868/25	2837-24-U	Pending
<b>Mir Hashmat Ali</b> Divisional Court No. 838/25	1067-23-U	Pending
<b>David Tucci</b> Divisional Court No. 660/25	2831-24-UR	March 23, 2026
<b>Holland, L.P.</b> Divisional Court No. 641/25	2059-18-R 2469-18-R 2506-18-R 2577-18-R 0571-19-R 0615-19-R	March 30, 2026
<b>Thurler Milk</b> Divisional Court No. DC-25-00003048-0000	2521-24-ES	Pending
<b>Riocan Management Inc.</b> Divisional Court No. 614/25	0807-22-G	Pending
<b>Paresh C. Ashar</b> Divisional Court No. 546/25	2062-18-UR	Pending
<b>Mary Spina</b> Divisional Court No. 078/25	2542-24-U	Pending
<b>Cai Song</b> Divisional Court No. 493/25	2510-23-U 2766-23-UR	Dismissed
<b>Sobeys Capital Inc.</b> Divisional Court No. 385/25	1383-22-R	October 28, 2025
<b>Tricar Developments Inc.</b> Divisional Court No. 336/25	2132-21-G	Adjourned
<b>Troy Life &amp; Fire Safety</b> Divisional Court No. 342/25	1047-23-JD	Dismissed

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<b>Michael Kay</b> Divisional Court No. 296/25	2356-23-U	June 24, 2026
<b>Liseth McMillan</b> Divisional Court No. 293/25	2463-23-U	Pending
<b>Ellis-Don Construction Ltd</b> Divisional Court No. 126/25	0195-23-G	Adjourned
<b>Ronald Winegardner</b> Divisional Court No. DC-25-00000098-0000	2094-23-U	April 30, 2026
<b>TJ &amp; K Construction Inc.</b> Divisional Court No. DC-24-0002949-00-JR (Ottawa)	1743-24-ES 1744-24-ES	Pending
<b>Justice Ohene-Amoako</b> Divisional Court No. 788/24	2878-22-U	Pending
<b>Peter Miasik</b> Divisional Court No. 735/24	1941-23-U	Dismissed
<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	3434-15-U	Pending
<b>Peter David Sinisa Sesek</b> Divisional Court No. 93/16	0297-15-ES	Pending
<b>Byeongheon Lee</b> Court of Appeal No. M48402	0095-15-UR	Pending

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<b>Byeongheon Lee</b> Court of Appeal No. M48403	0015-15-U	Pending
<b>R. J. Potomski</b> Divisional Court No. 12/16	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	3205-13-ES	Pending