



# ONTARIO LABOUR RELATIONS BOARD

*Business Plan*

*2023 - 2026*

**Chair – Brian O’Byrne**

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# ONTARIO LABOUR RELATIONS BOARD

## Business Plan 2023-2026

### Executive Summary

The Ontario Labour Relations Board continues to maintain its reputation for excellence and expertise. The Board is always working to improve service to the public by increasing access to administrative justice in the workplace community and to render its decisions and fulfill its statutory mandate in an even more timely and expeditious manner. To this end, in recent years, the Board introduced electronic filing including e-payments, electronic voting, and modernized its website, all of which allowed it to continue to operate during the pandemic. Video hearings and mediations were introduced at the outset of the pandemic and continued throughout with an increase in hearing days this year to date.

The Board recently announced its plan for a gradual return to in-person hearings and mediations commencing in early 2023, while continuing to hear and mediate certain cases by video. Where there is significant public interest in attending a hearing, the Board will continue to offer a channel recently created to live-stream a video hearing where appropriate. A project to modernize the Board's hearing rooms is currently underway to allow for in-person hearings together with electronic sharing of documents as well as hybrid hearings. An access terminal was put in place during the pandemic to allow those without access to technology to participate in a zoom hearing or mediation. This facility will continue to be maintained at the Board. The Board's project to upgrade to Power BI is ongoing. Power BI provides interactive business intelligence capabilities and may be used to enhance the Board's ability to retrieve data and report on its performance. As a result of the technological improvements outlined above as well as additional measures adopted, the Board will ensure continued access to administrative justice including for a significant number of urgent cases such as unlawful strike or lock-out applications.

Electronic filing of all applications, responses, correspondence and other material was made mandatory during the pandemic. Voting took place electronically and hearings were conducted by video or teleconference where appropriate. Mediations took place by video, telephone or email. Protocols, policies and updates were provided to the community and

to all Board staff and adjudicators. In August 2022, the Board announced that its Front Desk was open and e-filing was no longer mandatory, along with other updates.

The Board was able to function very well throughout the pandemic and was able to avoid a backlog through its efforts. The Board will continue to monitor public health guidance and respond to new challenges and changes in conditions, including those driven by the pandemic, and provide regular updates to its community, staff and adjudicators.

Board policies will continue to provide additional case management including: expedited hearings on a variety of files, such as certification and termination of bargaining rights applications in the construction industry, first contract and unlawful strike/lockout applications, video and teleconferencing, the use of consultations for *Occupational Health and Safety Act (OHSA)* complaints, listing several construction industry grievances under the *Labour Relations Act, 1995*, *Employment Standards Act* appeals or *OHSA* complaints before a single Vice-Chair and expedited case management under the *School Boards Collective Bargaining Act, 2014* and the *Crown Employees Collective Bargaining Act*. Active recruitment and appointments of Vice-Chairs and Members will continue as needed.

Additional statutory responsibilities for the Board were set out in the *Building Opportunities in the Skilled Trades Act* and became effective in 2022. The *Working for Workers Act, 2021* and the *Working for Workers Act, 2022* (not yet in force) will regulate aspects of newer forms of working arrangements, including the “right to disconnect” and electronic monitoring. Changes to the *Employment Standards Act*, which have not been declared in force yet, give the Board jurisdiction to hear applications involving licensing of temporary help agencies and recruiters. The *Digital Platform Workers’ Rights Act*, (not yet in force), establishes a set of rights for digital platform workers and complaint mechanisms comparable to those under the *Employment Standards Act*, and gives the Board jurisdiction to review the orders of compliance officers made under the *DPWRA*. These additional responsibilities cover new subject matter not currently adjudicated by the Board, and will require additional resources, processes and forms in advance of a declaration into force. Additional statutory responsibilities could be added to the Board’s jurisdiction in the event of new legislation or under new regulations. The Board’s caseload may be expected to increase in future years due in part to its additional jurisdiction.

A number of significant labour and employment issues falling under the Board's jurisdiction are expected to come before the Board in the next year:

- Applications under the *School Boards Collective Bargaining Act* and related applications to the Board under the *Labour Relations Act, 1995* arising out of collective bargaining in the education sector in 2023;
- Applications under the *Employment Standards Act*, the *Building Opportunities in the Skilled Trades Act* and the *Digital Platform Workers Rights' Act* as a result of new jurisdiction added;
- The Board may continue to receive COVID-19 related applications such as, health and safety appeals and reprisal applications, duty of fair representation complaints, and *Employment Standards Act* appeals, dependent on the status of the pandemic and government and public health responses;
- The tri-annual construction open period will occur again in 2025 which will bring an increase in certification and termination of bargaining rights applications and related cases, votes, adjudications and mediations commencing in March and April 2025.

Government restraints on hiring staff permanently or from outside the OPS together with new increasing demands on the Board, for example numerous and frequent requests under the *Tribunal Adjudicative Records Act, 2019*, continue to put pressure on the Board's resources. The Board will continue to monitor and review its staffing levels and resource allocation where possible and revise internal processes and policies where required. Requestors under *TARA* have included parties to a case, media, other organizations, lawyers and members of the public. They seek active files currently being heard by a Vice-Chair, files which have been adjourned and older closed files. Many of these files are complex and may contain hundreds of pages, if not boxes of documents, which must be reviewed by the Board's Solicitor or a Vice-Chair. In most cases, the parties in a case are notified and submissions are directed which must also then be reviewed.

## **Mandate and Statutory Authority**

**Mandate: To provide excellence in administrative justice through the effective resolution of labour and employment disputes.**

The Ontario Labour Relations Board (the "Board") was established by section 2 of the *Labour Relations Act, 1948* and is continued by subsection 110(1) of the *Labour Relations Act, 1995* S.O. 1995, c. 1, ("*LRA*") as amended. The Board is an

adjudicative agency of the Government of Ontario and its staff are appointed under the *Public Service Act of Ontario, 2006, S.O. 2006*. The Board has original jurisdiction under the *LRA* but also appellate jurisdiction under the *Employment Standards Act, 2000, S.O. 2000, c. 41* (under which additional responsibilities for review by the Board are still pending) and the *Occupational Health and Safety Act R.S.O. 1990, c.O.1* as well as jurisdiction over complaints under a myriad of different statutes (numbering over 25). The Board also has jurisdiction to deal with various issues arising under numerous other statutes including the *School Boards Collective Bargaining Act, 2014 S.O. 2014, c. 5* with respect to both local and central bargaining regarding teachers and other education-related workers, the *Colleges Collective Bargaining Act 2008, S.O. 1990 c. 5*, *Crown Employees Collective Bargaining Act, 1993, S.O. 1993, c. 38*, *Ambulance Services Collective Bargaining Act, 2001, S.O. 2001, c.10*, *Hospital Labour Disputes Arbitration Act, R.S.O. 1990, c. H. 14*, the *Public Sector Labour Relations Transition Act, 1997, S.O. 1997, c. 21, Schedule B*, the *Building Opportunities in the Skilled Trades Act*, and *Digital Platform Workers' Rights Act 2022* (which is not yet in force).

The Board is an independent adjudicative tribunal issuing decisions based upon the evidence presented and submissions made to it by the parties, as well as its interpretation of the relevant legislation and jurisprudence. It plays a fundamental role in the labour relations regime in Ontario. By dealing with matters before it as expeditiously and fairly as possible, the Board provides effective delivery of neutral dispute resolution and adjudicative services, thereby encouraging harmonious relations among employers, employees and trade unions and the just treatment of individual employees. This, in turn, maintains the stability of labour relations in the Province by ensuring that economic activity is not disrupted by labour disputes and providing for the expeditious resolution and/or adjudication of such disputes whether they be strikes or lockouts, construction industry grievances or the acquisition or termination of bargaining rights. Often, the Crown itself is a litigant before the Board.

The acceptance of (and therefore compliance with) the Board's decisions plays a crucial role in all of the above. Stakeholders, including the Crown, expect qualified senior experienced adjudicators to hear the most important/urgent cases, as does the public, when the resolution of issues can have a significant impact on great numbers of Ontario's citizens and businesses such as transit, education or other public sector strikes, and health and safety appeals in all sectors including police forces, schools, hospitals and correctional institutions. This became even more evident during the pandemic.



By law, the Board is required to schedule certain cases very quickly such as construction industry grievances and first contract arbitrations. Other urgent cases such as unlawful strikes/lockouts are normally scheduled within a day or two and interim order applications may be scheduled within four to six days. Certification and termination votes are normally conducted within five days of application as the statute requires, unless the Board orders otherwise. To fulfil its mandate under the *School Boards Collective Bargaining Act* and to facilitate teacher bargaining in the Province, the Board hears and resolves cases such as whether an issue is to be bargained provincially or locally within weeks. And under the *Crown Employees Collective Bargaining Act*, the Board is required to mediate and hear essential service agreement disputes. As well, COVID-19 related cases such as health and safety appeals of inspectors' orders may be required to be scheduled urgently.

## Overview of Programs and Key Activities

The OLRB can be described as engaging in two key activities: Mediation and Adjudication, primarily, although not exclusively, in the areas of labour relations, employment standards and occupational health and safety. These two core functions are the foundation for the Board's vision of maintaining a reputation for adjudicative and dispute resolution excellence. The Board engages in these activities as it fulfills its mandate under three key statutes, as well as over twenty-five others within its mandate. The Board hears and resolves applications for the certification and termination of trade unions, school board collective bargaining disputes, unfair labour practice complaints, unlawful strikes and lockouts, construction grievance referrals, essential services agreements under the *Crown Employee Collective Bargaining Act*, sale of business/related employer applications, certain broader public sector restructuring which leads to bargaining unit and union representation issues, and employer reprisal complaints. As well, the Board settles and adjudicates appeals from decisions of Employment Standards Officers and Occupational Health and Safety Inspectors. Additional jurisdiction has been given to the Board under the *Building Opportunities in the Skilled Trades Act* and the *Working For Workers Act, 2021* and *Working for Workers Act, 2022* (not yet in force). Amendments to the *Employment Standards Act* add new jurisdiction for the Board with

respect to the licensing of temporary help agencies and recruiters and the *Digital Platform Workers' Rights Act, 2022* (not yet in force) will also add to the Board's responsibilities.

**Adjudication** – Vice-Chairs are lawyers appointed to the Board who draw upon specialized expertise in labour and employment law issues in hearing and determining the cases before them. The Board is quasi-judicial in nature and must conduct hearings consistent with the principles of natural justice and procedural fairness. The Board strives to keep its procedures informal, expeditious and fair, and to avoid being overly technical or legalistic. Board Members may be appointed to sit on certain cases as part of the tripartite system. From their past experience and involvement in collective bargaining in various sectors, Board Members bring with them a unique knowledge of labour relations matters and issues as they affect their particular employer or union constituencies.

The Board has exclusive jurisdiction to exercise the power conferred upon it and to determine all questions of fact or law that arise. Its decisions are not subject to appeal, and privative or finality clauses in the *Labour Relations Act* and other legislation are intended to limit the scope of judicial review. The Board is also entitled to determine its own practices and procedures, to make rules and to deal with issues on many case types in a consultative manner rather than a traditional hearing.

**Mediation** – The Board is considered expert in the area of alternative dispute resolution. Mediators at the Board are responsible for mediating most cases coming to the Board. In addition to settling cases, Mediators assist parties in identifying issues and streamlining cases in order to avoid unnecessary litigation and expedite those issues that must be litigated.

**Provision of administrative services** - The OLRB provides services to the Pay Equity Hearings Tribunal and the Education Relations Commission. Services provided by the Board include administration and support staff, budgeting and scheduling expertise, human resources, legal services, library and information technology services and client services. The benefits of these arrangements include an efficient use of resources, consistency of process and outcome and the ability to maintain and monitor quality control practices. These objectives are accomplished while also safeguarding the particular and unique expertise of each agency or tribunal.

**Education Relations Commission**: The role of the ERC is to determine when, in its opinion, students' course of study is in jeopardy due to a strike or lock-out occurring at a school or schools and to advise the government accordingly. The OLRB



provides administrative support to the ERC. Presently, the Chair and three Vice-Chairs of the Board are appointed to the ERC. In 2015, for the first time in over a decade, the ERC was asked by the Minister of Education to advise the government of its opinion as to whether students' course of study was in jeopardy due to the continuation of strikes at several school boards. Following consultation with stakeholders, the ERC issued an advisement to the Minister.

**Pay Equity Hearings Tribunal:** The *Pay Equity Act* established the PEHT to hear and decide pay equity disputes. The Tribunal has exclusive jurisdiction to determine all questions of fact or law that arise before it and decisions of the Tribunal are final and conclusive for all purposes. Currently, the Presiding Officer of the PEHT is cross-appointed as a Vice-Chair to the OLRB, and the Alternate Presiding Officer, a Deputy Presiding Officer and a Member are cross-appointed from the OLRB.

### **Service Delivery**

The Board continues to work to improve service delivery to the public. In recent years, the Board introduced electronic filing for Board forms, submissions, attachments, and fee payments for construction-industry grievances making the Board more accessible to the public and its stakeholders. The Board's website has also been modernized to provide greater access to its services and information to the public. Over 90 Board forms, as well as Notices, Information Bulletins, Guides and Rules in English and French are available for public use. Legislative and other changes will often result in requirements to revise and create new electronic forms which are hosted by OSS and the Board is charged for all changes and all new forms.

The Board remained open throughout the pandemic and hearings, mediations and votes continued throughout. While staff worked remotely, the Board was able to continue its operations and remained open by relying exclusively on its electronic filing system, electronic votes, video hearings and mediations and other technological improvements such as an electronic summons to witness and electronic hearing fee payments for construction grievances. The Board also responded to the needs of members of the community who did not have access to equipment needed to participate in a video hearing. An "access terminal" was provided at the Board's premises to allow individuals to attend at the Board to participate in a video hearing and is expected to remain available in the future. The Board responded to new challenges and changes in conditions by developing new processes and forms and providing regular updates to its community, staff and adjudicators including additional meetings with its Advisory Committee (legal stakeholders). In August 2022, the Board announced that electronic filing was no longer mandatory although strongly encouraged. Other methods of filing were allowed again with the exception of fax. Following consultations with its stakeholders, the Board recently announced a gradual return to in-person hearings and

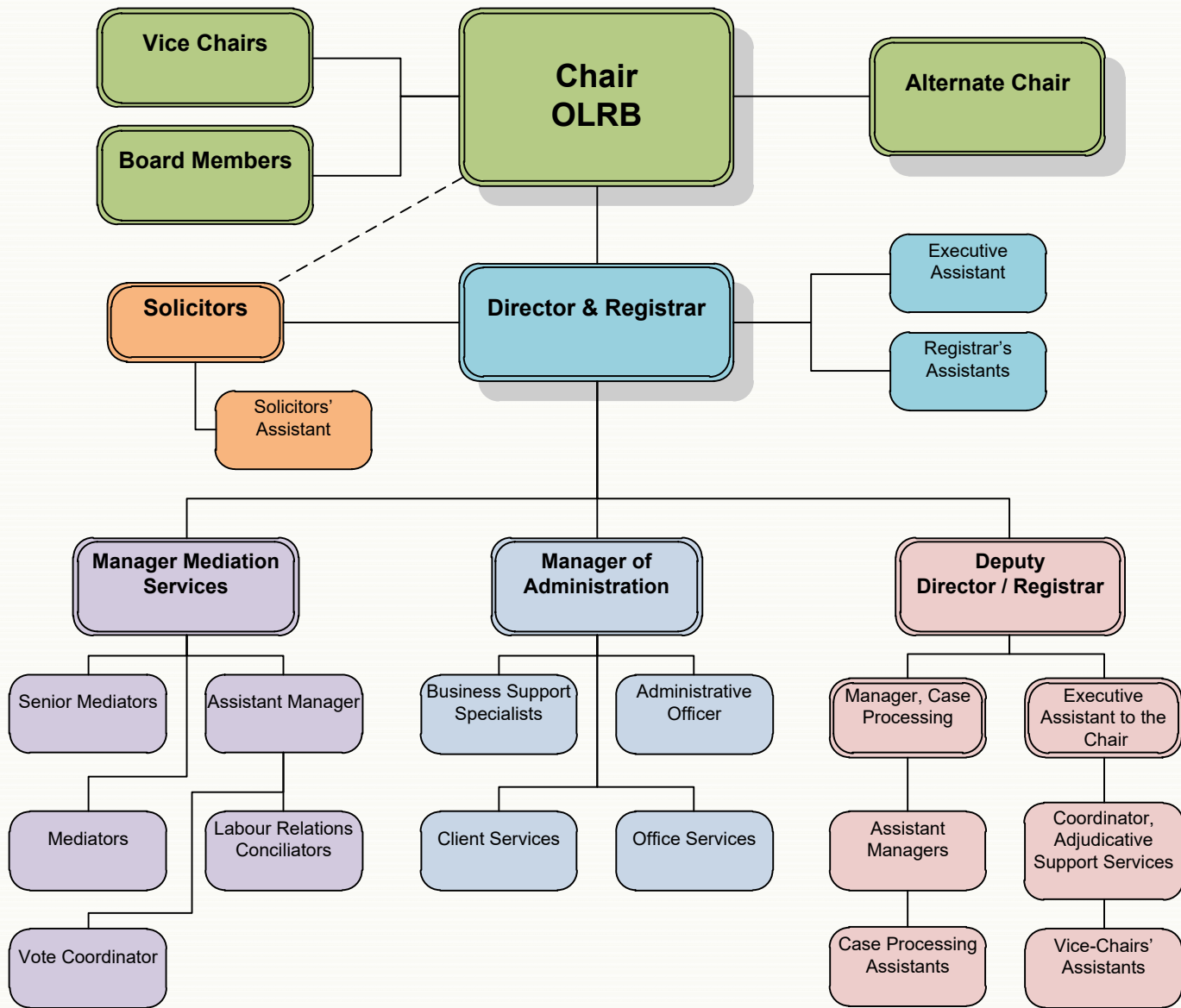
mediations commencing in February 2023. Parties may ask to change the mode of hearing and some hearing and file types will continue to be scheduled for video hearings by default, such as case management hearings. Further updates may be required in the future. At this time, staff have returned to work in the office under the OPS Safe Return to the Workplace Directive through a hybrid model of three days in office and two days working remotely. It is anticipated that further announcements regarding the mode of work for the OPS will be made in the coming months. The Board is undertaking a hearing room modernization project to allow for the return to in-person hearings as well as hybrid hearings and at the same time, continue to employ the digital enhancements adopted during the pandemic such as electronic sharing of documents. New daily hearing room schedules have been developed and will be displayed on upgraded monitors in public lobbies. These projects are expected to be completed in 2023. Where there is significant public interest in attending a hearing, the Board will continue to offer a channel recently created to live-stream a video hearing where warranted thus avoiding disruptions to video hearings while still allowing for public hearings. The Board is also exploring options for an upgraded microphone system to better meet accommodation requests.

The Board has worked to ensure that its premises are appropriately equipped for in-person hearings and mediations. Protocols and updates were provided to the community and to all Board staff and adjudicators and these will be updated prior to the return to in-person hearings and mediations in 2023.

The Board holds votes of employees in certification and termination of bargaining rights cases, final offer cases as well as *Public Sector Labour Relations Transition Act* applications and strike votes under the *Colleges Collective Bargaining Act*. In recent years, the Board had begun holding electronic votes in certain cases, allowing employees to vote via phone or online as a means to provide greater accessibility, flexibility and potentially save travel costs for Board staff who travel province-wide to conduct votes on short notice. All other votes were held in-person. During the pandemic, the Board has relied solely on electronic voting in order to maintain these operations. The Board's mediation staff are trained to run the Help Desk provided for e-voters in most cases, where staffing allows. The Board expects that electronic voting will be used more frequently than pre-pandemic, given stakeholder acceptance and based on its success during the pandemic, Although, in-person voting will still be used on occasion, where appropriate.

An electronic case management system supports the Board in its aim to deliver timely, cost-effective mediation and adjudication to parties. The Board will continue to rely on its case management system and electronic files. A modernization project is now underway to allow for electronic documents to be shared by the parties at in-person hearings. The documents will remain available in the Board's electronic files for adjudicators working remotely. The Board continues to look for ways to improve upon the system where required both for efficiency in delivery of services as well as to enhance the Board's ability to measure performance. The Board's project to upgrade to Power BI is ongoing. Power BI provides interactive business intelligence capabilities and may be used to enhance the Board's ability to retrieve data and report on its performance.

**Ontario Labour Relations Board - Organizational Chart**



## OLRB Environmental Scan

### External Scan:

Client and stakeholder expectations for quicker, less expensive and less onerous forms of dispute resolution and adjudication are a constant pressure on the OLRB. The Board's case management system includes an experienced and flexible roster of adjudicators who, where appropriate, can use a range of options to address cases including consultations rather than formal hearings, case management methods, adjudicator-led mediation or by making determinations and directions to eliminate issues with the expectation that hearings will move along more expeditiously as a result.

The Board consults with the community about innovative ways of dealing with files to ensure more efficient processing of cases and therefore fewer hearing dates lost to the consideration of preliminary, procedural or production issues. The Board will continue using an expedited process for certification applications in the construction industry which includes increased obligations on the parties to identify issues and deliver detailed submissions and a Vice-Chair review of the file prior to a case management hearing. It is to be noted that these processes result in more time spent by Vice-Chairs in the early stages of a case. However, the case ultimately is concluded in a much shorter period of time. The Board will also continue to engage Mediators in the early stages of construction jurisdictional disputes in an effort to reduce hearing times. Expedited mediations and hearings of specified cases will continue for discharges, interim orders, unlawful strikes or lockouts and urgent matters arising from the pandemic. Case management methods for employment standards appeals and construction industry grievances which constitute a significant amount of the Board's caseload are employed where appropriate.

The Board is preparing for a gradual return to in-person hearings and mediations in most cases, commencing in February 2023. The gradual return to in-person proceedings was announced following consultation with the Board's stakeholders which included a town hall meeting. The Board considers that a return to in-person hearings is important for a number of reasons including access to justice, the context and mandate of the labour relations board, including the relationships it fosters, and its institutional needs. At the same time, the Board will continue to modernize its services and maintain digital improvements adopted over the last two and a half years, where appropriate.



Electronic votes have been conducted since the start of the pandemic. Following the pandemic, the Board expects that electronic voting will be used more frequently than pre-pandemic, given stakeholder acceptance and based on its success during the pandemic. Although, In-person voting will still be used on occasion, where appropriate.

The increasing need to address and meet the diverse needs of client groups and to deliver accessible services across all channels will continue to be a pressure and a priority for the Board. Processes have been put in place to streamline interpretation for video hearings (American Sign Language, French language) The Board recently modernized its website to improve accessibility, among other things, and the Board conducted a review of its front desk services and made changes in response to ensure customer service referrals and information are up-to-date and inclusive. The Board's forms have been modernized and electronic filing implemented for its stakeholders. The costs involved in engaging in IT transformation, including changes to its electronic forms, have shown to be substantial in the past and will continue to be a pressure for the Board as such costs are funded from within the Board's budget. The Board will continue to use a recently created channel by which it can live-stream hearings where warranted, for example, by the media and public interest in the case. The Board continues to explore new technologies to meet the changing needs of its clients. To this end, the Board is currently modernizing hearing rooms to allow, for example, the ability to conduct remote, hybrid and in-person hearings without reliance on paper documents. Outdated daily hearing room schedules in the Board's lobbies are currently being replaced to provide easier access to room schedules for the public. The Board is also exploring options for an upgraded microphone system to better meet accommodation requests. An "access terminal" launched to allow access to video hearings at the Board's premises for those who do not have the necessary equipment available to them will remain in place. In response to stakeholder input, the Board expects to increase the space size available for documents attached to its electronic forms such as applications and responses in the near future.

Legislative changes to any one of the more than 25 statutes under the Board's jurisdiction or the addition of new jurisdiction for the Board must be responded to within required timelines. This may result in a pressure on the Board, both in terms of response time and effort in creating new processes, forms and Rules of Procedure as well as an additional pressure on the Board's available resources including additional costs for changes to electronic forms which require engaging Ontario Shared Services.

A significant caseload of judicial review applications and related motions and appeals, a number of which include self-represented litigants, can be expected to continue. The caseload causes a noticeable pressure on the Board's resources due to the time-consuming and legal nature of the work which falls necessarily to the Board's solicitors.

Finally, with the passage of the *Tribunal Adjudicative Records Act, 2019* ("TARA"), and the related litigation which preceded it, the Board expects to continue to receive numerous requests. Approximately 30 requests have been received to date in fiscal 2022/23 for access to and copies of Board files and documents contained within those files. The Board will continue to make revisions to its Access to Documents and Exhibits Policies in light of developing Board jurisprudence under TARA and the number of requests. Requestors have included parties to a case, media, lawyers, other organizations and members of the public. They seek active files currently being heard by a Vice-Chair, files which have been adjourned and older closed files. Many of these files are complex and may contain hundreds of pages, if not boxes of documents, which must be reviewed by a Board Solicitor or a Vice-Chair. In most cases, the parties in a case are notified and submissions are directed in a decision and must then be reviewed.

### **Internal Scan:**

The Board is responsible for mediation and adjudication under a number of statutes including the *Labour Relations Act, 1995*, *Employment Standards Act*, *Occupational Health and Safety Act*, *Crown Employees Collective Bargaining Act*, *School Boards Collective Bargaining Act*, *Hospital Labour Disputes Arbitration Act*, *Public Sector Labour Relations Transition Act*, *Building Opportunities in the Skilled Trades Act* and more than 20 others. The Board also provides administrative services to the Pay Equity Hearings Tribunal and the Education Relations Commission to which a number of its adjudicators are cross-appointed resulting in more complex administrative arrangements. Future legislative changes adding to the Board's jurisdiction, which are clearly beyond the Board's control, may increase the Board's caseload without much warning. The increasing demands associated with the OLRB's own caseload, including judicial reviews, the ongoing difficulty in filling adjudicator positions with frequent turnover due to low compensation and delays in appointments, the restrictions on hiring staff externally or permanently, the requirements under TARA for public access to Board files and expenditure restrictions are all pressures on the Board's resources. It is to be noted that the requirement under TARA creates a pressure on the

Board's resources due to the additional and time-consuming workload. Additional resources may be required in the event of an increased volume of requests for public access to Board files and documents.

All Board staff and OICs were issued laptops and/or VPNs upon being sent home to work remotely at the commencement of the pandemic. Hearings and mediations took place only by video. E-filing was made mandatory and electronic votes were held. As a result, the Board continued to deliver services through an electronic format and eliminated travel. Electronic payment for grievance hearings as well as an electronic summons to witness were developed to replace services provided in-person and will be continued. The Board's premises are being equipped for in-person hearings and mediations and the arrangements at the Board's premises are revisited when public health guidelines are updated. Protocols, policies and updates are provided to the community and to Board staff and adjudicators. The Board's staff and managers are currently in the office on a hybrid basis pursuant to OPS/TBS direction.

Vice-Chair salaries remain increasingly less attractive to those in the private sector. Vice-Chairs are lawyers who the Board and, in particular, stakeholders, expect to have practiced for a number of years in order to gain the necessary experience and expertise. Vice-Chair starting rates remain far below that which similarly experienced lawyers or even junior lawyers can earn at law firms which appear before the Board as well as the Board's solicitors who are paid as Crown Counsel 3. The problem has been exacerbated with the termination of the historical alignment between Vice-Chair salaries and those of senior management a number of years ago. The salary adjustment previously passed on to Vice-Chairs when senior management received an increase no longer occurs. As a result, Vice-Chairs' salaries have remained unchanged for a number of years and the gap in salaries has increased resulting in significant disparity, all in a time of increasing inflation. These salaries are also dramatically less than what Vice-Chairs could earn as private arbitrators and mediators which has resulted in an ongoing history of Vice-Chairs leaving the Board as experienced adjudicators and mediators to successfully pursue private careers at enhanced income levels.

Not only do the low salary levels create retention and recruitment problems (particularly in areas of heavily sought expertise such as construction) but these problems are compounded by the Agency and Appointments Directive and the 10-year rule which results in the loss of the expertise of senior Vice-Chairs and occurs in the context of the frequent turnover of Vice-Chairs who leave to practice private arbitration. The Government Directive continues to provide that appointees will not normally be appointed in excess of 10 years except in exceptional circumstances. This rule applies to all appointees who

reach the 10-year threshold. In addition, recent changes require the Chair to demonstrate the failure of other recruiting methods before seeking an exemption to the 10-year rule. This requirement adds to the delay for re-appointments. The lower salaries, delays in the processing of recommended appointments and job insecurity associated with the limits imposed on appointment terms, results in the loss of extremely valuable, senior OLRB adjudicators and makes it difficult for the OLRB to attract well-qualified replacements as part of its succession plan. The Board will continue to make applications for the re-appointment of its senior Vice-Chairs based on exceptional circumstances. In the Board's view, the well-established pattern of turnover in Vice-Chairs, the specialized legal expertise and institutional knowledge required for appointment to an adjudicative agency recently recognized again by the courts as an expert tribunal, and the limited number of qualified candidates obviates the need for the application of the 10-year Rule to the Board. The Board cannot be expected to fulfill its statutory mandates, meet stakeholder expectations and provide adjudicative excellence without senior Vice-Chairs.

The Board had previously commenced a training program to train all Vice-Chairs in construction labour law including hearings. Unfortunately, the first Vice-Chair in training was not re-appointed and the initiative was then put on hold due to the demands the pandemic placed on the Board's operations. As part of the Board's initiative to modernize its processes and the use of resources and to enable more efficient and effective processing and scheduling of cases, it hopes to re-launch the training program when circumstances permit.

There is a continued need for succession and recruitment activities to support a modern service organization that reflects Ontario's diversity and ensures that the Board is well positioned for the future. Training, development and engagement activities are priorities.

Innovation and the modernization of services will continue as a priority. The e-filing system allows for electronic submission of English and French forms, attachments and related fees and efficiencies in case processing. Since all electronic forms are now hosted by OSS on its electronic system and OSS charges the Board for all changes, any new forms or changes to existing forms required, for example, when the Board is given new jurisdiction, will result in pressure on the Board's resources. The Board's website was modernized by its staff to provide greater accessibility. Board staff are now able to live-stream hearings on a recently-created channel where warranted by public and media interest. It also continues to review its internal processes with a view to modernization and efficiencies. The Board is currently modernizing hearing rooms to allow, for example, for the ability to conduct remote, hybrid and in-person hearings without reliance on paper documents. Outdated

public-facing daily hearing room schedules in the Board's lobbies are currently being replaced to provide easier access to daily room schedules for the public. The Board is also exploring options for an upgraded microphone system to meet accommodation requests. An "access terminal" launched to allow access to video hearings at the Board's premises for those who do not have the necessary equipment available to them will remain in place. The Board expects to increase the space size available for documents attached to its electronic forms, such as applications and responses, in the near future in response to stakeholder input. At the outset of the pandemic, the Board was able to immediately pivot to use video hearings and mediations and electronic votes exclusively. The Board will gradually return to in-person hearings commencing in February 2023 in some cases while continuing to rely on advancements in technology and video hearings for others.

As a result of the current pandemic, the Board suspended its use of travel for votes, mediation and hearings. This has resulted in a significant fiscal savings to the Board. However, should in-person events requiring travel take place on occasion, Board resources will be required. This is not anticipated to be a significant pressure on Board's resources. Fax has been discontinued as a filing method. E-filing, courier, mail and hand-delivery remain available. Mediation staff have been trained to provide services to voters through a Help Desk in most electronic votes thereby reducing costs. During the construction open period in 2025, the Board may need the services of the voting company to operate the help desk where necessary in the event of significant labour disputes and increased caseloads.

The Board supports the development and implementation of initiatives to increase management and employee awareness, understanding, respect and engagement with respect to enhancing and embracing diversity. The OLRB has an anti-racism working group comprised of staff and a manager which meets and develops the OLRB's anti-racism action plan, with the input and guidance of the Ministry's Anti-Racism Team and explores opportunities for learning and dialogue, engaging resources both in and outside the Ministry.

Fiscal strategies are reviewed quarterly and contingency offsets identified to safeguard statutory and program priorities and create savings. Corporate directives and policies are followed.



## Performance Measures and Targets

The OLRB's goal is to provide efficient, fair, accessible and modernized services in all areas, including case processing, mediation, votes and adjudication, in a fiscally responsible manner. In addition to closely monitoring files and processes internally, it uses performance measures and targets to track and focus on outcomes. Performance measures and targets are revised or created in the event of legislative changes or changes to the Board's operations. Results are published in the Board's annual reports. Internal measures are also used internally to track case processing, caseloads, mediations and decisions to ensure improved performance. The Board is in the midst of a project to engage Power BI to assist in the extraction of additional data and enhanced reporting.

The Board successfully continued its operations during the pandemic. The Board may continue to face challenges necessitating changes to its policies and processes due to public health requirements. It is clear that working remotely and conducting all hearings, votes and mediations by Zoom is not "business as usual". Numerous additional steps and processes are required while working remotely and holding video hearings, mediations and electronic votes. In certain cases, electronic voting causes delays in vote times due to additional requirements.

The following are the performance measures and targets for the 2023-2026 Business Plan:

### 1. Efficient Case Processing

- Files opened within two days after an application is filed in accordance with the Rules of Procedure. Target: 80%
- Board confirms filing of application to parties within four days of an application filed in accordance with the Rules of Procedure (except for ESA appeals). Target: 80%

### 2. Meets Legislated Timelines

- 90% industrial certification votes held within 5-7 days
- 95% held within 10 days
- 5% or less held within more than 10 days



### 3. Efficient Mediation

#### Mediation Assignment:

Mediator assignments made within three days after an application is filed in accordance with the Board's Rules of Procedure. Target: 80%

#### Mediation: Percentage of Cases Resolved without a Final Hearing

- 80-85% of disputes settled without final litigation
- *LRA* cases 85%
- *ESA* cases (appeals) 75%
- *OHSA* (appeals) 80%
- *OHSA* (reprisal complaints) 80%

### 4. Fair and Reasonable Adjudication

Target: 80-90% of the Board's decisions are upheld on judicial review\*

### 5. Fiscally Responsible

Target: less than 2% variance between year-end allocation and expenditure.

\* In November 2022, the Ontario Court of Appeal restored decisions of the Board which had been overturned by Ontario's Divisional Court: *Turkiewicz (Tomasz Turkiewicz Custom Masonry Homes) v. Bricklayers, Masons Independent Union of Canada, Local 1*, 2022 ONCA 780 (CanLII); and *Enercare Home & Commercial Services Limited Partnership v. UNIFOR Local 975*, 2022 ONCA 779 (CanLII). In both decisions, the Court of Appeal concluded that the Divisional Court had erred in its application of the reasonableness standard of review and had not shown sufficient deference to the Board's expertise and experience. The revised target for success on judicial review reflects ongoing developments with respect to the judicial application of the reasonableness standard of review in light of the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 and the Court of Appeal's decisions in *Turkiewicz* and *Enercare*.

## Key Activities with Stakeholder Groups

**Advisory Committee:** The Ontario Labour Relations Board has established an Advisory Committee whose mandate is to function as a consultative group for the Board. The Committee is composed of members of the labour and management side bar, the Director of Legal (MLITSD), representatives from the Ontario Bar Association Labour & Employment Law Section and the OLRB Chair, Alternate Chair, Director/Registrar and Solicitor and acts as a resource to the Board for consultation/feedback. The Committee meets three times per year, and more often if necessary. Committee membership and minutes of meetings are posted on the Board's website.

**Internship Programs:** Collaborative external partnership programs with client labour and management law firms and post-secondary institutions continue. The program provides opportunities for students currently articling and recent graduates (and/or current students of MIR and Labour Studies programs) to put their academic training to practical use with a hands-on professional learning experience at the OLRB.

**Outreach:** Community outreach by the Chair, Alternate Chair, Director and Deputy Director/Registrar at consultations held with client and stakeholder groups and Town Hall and community meetings where advisable. These individuals are invited to and routinely speak at professional and stakeholder conferences, conventions, seminars, continuing education programs and meetings. In the past, events have included those listed below but are now subject to expenditure restrictions:

Representation at Labour Board conferences  
Conference of Labour Board Chairs and Senior Administrators  
Association of Labor Relations Agencies (ALRA)  
Council of Canadian Administrative Tribunals (CCAT)  
Canadian Institute of Administrative Justice (CIAJ)  
Society of Ontario Adjudicators and Regulators  
Ontario Bar Association  
Canadian Institute of Administrative Justice  
Law Society of Ontario  
Various private continuing legal education providers  
Various stakeholder conferences and meetings

The OLRB provides services in both official languages, including the publication of forms, information bulletins and website notices, and strives to ensure the accessibility of our websites and the conduct of hearings. The ability of our clients and stakeholders to readily communicate with the Board in an accessible manner in either French or English - from reception through to adjudication – continues to be a priority.

## **Communications Plan**

The OLRB will continue to communicate with its community through the Advisory Committee and through its regular publications including *HIGHLIGHTS*, Bi-monthly Reports, Annual Report and Notices to the Community. The Board's modernized website allows for greater accessibility and communications. The Chair regularly meets with a large cross-section of the parties and counsel that regularly appear before the Board.

## APPENDIX A – OLRB Multi-Year Preliminary Planning Base\*

FY 2023-24 (\$000)											
Program	FTE	Salaries & Wages	Benefits	Transp. & Comm.	Services	Supplies & Equipt.	Total ODOE	Transfer Payment	Sub-Total	Recoveries	TOTAL
Ontario Labour Relations Board	104.0	8,516.5	1,038.7	419.5	1,312.5	82.2	1,814.2		11,369.4		11,369.4
Program Sub-total	104.0	8,516.5	1,038.7	419.5	1,312.5	82.2	1,814.2	-	11,369.4	-	11,369.4
Lease					1,019.5		1,019.5		1,019.5		1,019.5
<b>Grand Total</b>	<b>104.0</b>	<b>8,516.5</b>	<b>1,038.7</b>	<b>419.5</b>	<b>2,332.0</b>	<b>82.2</b>	<b>2,833.7</b>	<b>-</b>	<b>12,388.9</b>	<b>-</b>	<b>12,388.9</b>

FY 2024-25 (\$000)											
Program	FTE	Salaries & Wages	Benefits	Transp. & Comm.	Services	Supplies & Equipt.	Total ODOE	Transfer Payment	Sub-Total	Recoveries	TOTAL
Ontario Labour Relations Board	104.0	8,882.3	1,075.3	419.5	1,367.3	82.2	1,869.0		11,826.6		11,826.6
Program Sub-total	104.0	8,882.3	1,075.3	419.5	1,367.3	82.2	1,869.0	-	11,826.6	-	11,826.6
Lease					1,019.5		1,019.5		1,019.5		1,019.5
<b>Grand Total</b>	<b>104.0</b>	<b>8,882.3</b>	<b>1,075.3</b>	<b>419.5</b>	<b>2,386.8</b>	<b>82.2</b>	<b>2,888.5</b>	<b>-</b>	<b>12,846.1</b>	<b>-</b>	<b>12,846.1</b>

FY 2025-26 (\$000)											
Program	FTE	Salaries & Wages	Benefits	Transp. & Comm.	Services	Supplies & Equipt.	Total ODOE	Transfer Payment	Sub-Total	Recoveries	TOTAL
Ontario Labour Relations Board	104.0	8,882.3	1,075.3	419.5	1,367.3	82.2	1,869.0		11,826.6		11,826.6
Program Sub-total	104.0	8,882.3	1,075.3	419.5	1,367.3	82.2	1,869.0	-	11,826.6	-	11,826.6
Lease					1,019.5		1,019.5		1,019.5		1,019.5
<b>Grand Total</b>	<b>104.0</b>	<b>8,882.3</b>	<b>1,075.3</b>	<b>419.5</b>	<b>2,386.8</b>	<b>82.2</b>	<b>2,888.5</b>	<b>-</b>	<b>12,846.1</b>	<b>-</b>	<b>12,846.1</b>

\* Multi-year numbers are based on 2023-24 Preliminary Planning Base budget allotments, which reflect the 2022-23 MYP approvals. As such, these numbers do not include realignments or funding requests made through 2023-24 SPP submissions.

## APPENDIX B – FTE PLAN: OLRB 2023-26

Compensation Group	2023-24						2024-25						2025-26					
	Regular		Fixed Term		Total		Regular		Fixed Term		Total		Regular		Fixed Term		Total	
	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies	FTEs	Funded Vacancies
SMG / ITX					1.0	0.0					1.0	0.0					1.0	0.0
MCP					29.0	0.0					29.0	0.0					29.0	0.0
Excluded					0.0	0.0					0.0	0.0					0.0	0.0
OPSEU					40.0	0.0					40.0	0.0					40.0	0.0
AMAPCEO					7.0	0.0					7.0	0.0					7.0	0.0
PEGO					0.0	0.0					0.0	0.0					0.0	0.0
ALOC					0.0	0.0					0.0	0.0					0.0	0.0
OCAA (Excluded)					2.0	0.0					2.0	0.0					2.0	0.0
PSAT					0.0	0.0					0.0	0.0					0.0	0.0
AOPDPS					0.0	0.0					0.0	0.0					0.0	0.0
OPPA					0.0	0.0					0.0	0.0					0.0	0.0
Minister's Staff					0.0	0.0					0.0	0.0					0.0	0.0
OIC					25.0	0.0					25.0	0.0					25.0	0.0
To be Determined					0.0	0.0					0.0	0.0					0.0	0.0
Students					0.0	0.0					0.0	0.0					0.0	0.0
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>104.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>104.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>104.0</b>	<b>0.0</b>

<b>TOTAL with Funded Vacancies</b>	<b>104.00</b>	<b>TOTAL with Funded Vacancies</b>	<b>104.00</b>	<b>TOTAL with Funded Vacancies</b>	<b>104.00</b>
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