

*H*IGHLIGHTS

Ontario Labour Relations Board

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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.

Construction Industry – Certification – Open Period – Applicant union sought to displace incumbent union in respect of residential bargaining rights with flooring contractor – Applicant identified job site by a street address and unit number in application – Employer identified job site by two street addresses, including that given in the application and noted that the addresses represented different entrances to the same building – Building permit for job site showed only the street address set out in the application - Job site was a two-storey commercial and residential building fronting on two intersecting streets – Incumbent asserted that unit number-street address combination provided by applicant did not exist, and that application should be dismissed as a result – Board found that there was no dispute that only one building existed, but that it had two street addresses – Work on the application date was being performed on the second floor – Incumbent's representative visited site on the day after the application was delivered – No work was being

performed on the ground floor of the building at that time – Representative asked where unit was in the building and was directed to the site supervisor around the corner – Photos filed by incumbent disclosed that on that side of the building, a door opened onto a staircase to the second floor where work was being performed – Representative did not visit second floor or speak to site supervisor – Board found that job site was adequately described in the application – Board further concluded that insufficient facts were pleaded by the incumbent to warrant a hearing into its claim that bargaining unit work was not performed by the employees for the majority of the day – Applicant provided detailed description of work and photos – Incumbent's pleadings on this point were speculative as were its pleadings asserting that employees were in fact working under a different collective agreement – Ballots to be counted – Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, RE: CAPELA SURFACES INC., CAPELA SURFACES LIMITED, AND/OR CAPELA CORPORATION, RE: CARPENTERS AND ALLIED WORKERS LOCAL 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; OLRB Case No. 0143-25-R; Dated June 18, 2025; Panel: Maheen Merchant (15 pages)

Construction Industry – Certification – Open Period – In non-ICI displacement application for certification, incumbent asserted that work

identified in application was ICI, not residential, and that the individuals in dispute were not in the bargaining unit applied for because they were not members of the incumbent and were hired contrary to the collective agreement – Board noted that the work performed was at a mixed-use building in which the majority of the units were residential – No basis for a conclusion that the work was anything but residential – In respect of the other issues, Board noted that although the incumbent asserted that the employees were likely working under the applicant's ICI agreement, not the incumbent's residential agreement, there were no facts asserted in support of this claim – Employer had remitted to incumbent in relevant time period and although it may have not fully complied with the collective agreement binding on the incumbent and employer, this did not mean the employees were working under a different collective agreement – Incumbent's objections to application dismissed – Ballots to be counted – Matter continues

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, RE: **CAPELA SURFACES INC. AND CAPELA SURFACES LIMITED**, RE: BRICK AND ALLIED CRAFT UNION OF CANADA, LOCAL 2; OLRB Case No. 0142-25-R; Dated June 17, 2025; Panel: Maheen Merchant (10 pages)

Construction Industry – Termination – Open Period – Applicant in termination application filed no submissions in accordance with the time frame set out in the Board's decision and Information Bulletin #32 – Employer and incumbent union filed timely submissions – Union then filed timely reply submissions, but employer and applicant both filed reply submissions days late – Union submitted in its reply that application should be dismissed by virtue of the untimely submissions and also because such submissions as existed at that time were insufficient to warrant a hearing – Board noted that result of the late reply filings as well as the

applicant's failure to file any submissions at all was that the first time either the applicant or the employer really advanced a substantive case was after the union's responding submissions – Board reviewed pleading expectations and importance of timely submissions especially during the open period and determined that the late filings would not be considered – The remaining pleading was the employer's initial submissions describing the work performed by the employees, in which it simply indicated that the two employees rewired houses for eight hours – This pleading was insufficient to warrant a hearing – Application dismissed

ZACKARY AYER, RE: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, IBEW CONSTRUCTION COUNCIL OF ONTARIO AND IBEW LOCAL 586, RE: **DIJKEMA ELECTRIC INC.**; OLRB Case Nos. 3025-24-R & 0076-25-R; Dated June 17, 2025; Panel: C. Michael Mitchell (30 pages)

Employment Standards – Director Liability – Issue Estoppel – Applicant initiated review of an order to pay ("OTP") issued against the employer, of which he was a director – After several extensions, that application was dismissed as a result of the employer's failure to pay the amount of the OTP into trust, as required by s. 116 of the *Employment Standards Act, 2000* (the "Act") – Director order to pay then issued against applicant, as a result of the employer's non-payment of the OTP – Applicant sought review of the director order to pay – Sole basis for the review was to challenge the amounts owed under the OTP – Director of Employment Standards ("DES") argued that the application should be dismissed on the basis that liability under an order to pay could not be challenged by pursuing a review of a director order to pay – DES further argued that the application should be dismissed on the basis of issue estoppel – Board concluded that issue estoppel applied – The application raised the same question as did the application to review the OTP – The OTP was a final and binding decision –

Applicant was a proxy for the employer – Although the Board had a residual discretion to not apply issue estoppel where its preconditions exist, there was no reason to do so in this case – Board noted that permitting a director to mount a collateral attack on the OTP defeats the purposes inherent in the *Act* that directors have an incentive to ensure that employers pay wages as required – Remedial purposes of *Act* underline that there was no reason not to apply issue estoppel in this case - Application dismissed

TIMOTHY BROWN, A DIRECTOR OF SENIOR CARE BARRIE INC. O/A COMFORT KEEPERS, RE: DEIRDRA ABBOTT AND OTHERS, AND DIRECTOR OF EMPLOYMENT STANDARDS; OLRB Case No. 01060-24-ES; Dated June 30, 2025; Panel: Patrick Kelly (15 pages)

Unfair Labour Practice – Certification – Union asserted that discipline of inside union organizer, shortly after union won the vote, violated the *Labour Relations Act, 1995* (the “*Act*”) – Union asserted that timing of discipline was designed to harm the Union’s position in respect of collective bargaining – Union argued that the Employer had created a list of known union supporters and that the purpose of this list was to target the employees on it – Finally, Union argued that the inside organizer had been singled out for discipline in circumstance that did not warrant it – Employer argued that it had nothing to gain by targeting an employee at that particular time, since the vote had already been held and the results were known – Employer noted that another employee, vocally opposed to the Union, had been disciplined around the same time, which undermines the Union’s case that the organizer was targeted – Board concluded that the organizer had a history of discipline and an incident did occur – Discipline was proximate in time to the incident and the disclosure of the vote results, so there was no basis for concluding that it was motivated by the vote results – Union adduced no evidence that it was having difficulty engaging

in collective bargaining as a result of the discipline - Further, organizer testified that he had felt singled out for special treatment long before the organizing drive commenced – Existence of list of union supporters was not surprising given Employer’s interest in understanding the likelihood of the Union succeeding in its drive, but there was no basis for concluding that the organizer being on the list was connected to the discipline – Application dismissed

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 175, RE: GAY LEA FOODS CO-OPERATIVE LTD.; OLRB Case No. 0741-24-U; Dated June 16, 2025; Panel: Paul Young (27 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, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case Name & Court File No.	Board File No.	Status
Mary Spina Divisional Court No. 078/25	2542-24-U	Pending
Cai Song Divisional Court No. 493/25	2510-23-U 2766-23-UR	January 5, 2026
Sobeys Capital Inc. Divisional Court No. 385/25	1383-22-R	October 28, 2025
Tricar Developments Inc. Divisional Court No. 336/25	2132-21-G	November 10, 2025
Troy Life & Fire Safety Divisional Court No. 342/25	1047-23-JD	Pending
Michael Kay Divisional Court No. 296/25	2356-23-U	Pending
David Johnston Divisional Court No. DC-25-00000450-00JR	0780-23-U	Pending
Liseth McMillan Divisional Court No. 293/25	2463-23-U	Pending
Jacob (Yakov) Yavelberg Divisional Court No. DC-25-00001646-00JR	1799-24-UR	Abandoned
Thomas Cavanagh Construction Divisional Court No. 231/25	3322-19-R 0718-22-U	October 21, 2025
Ellis-Don Construction Ltd Divisional Court No. 126/25	0195-23-G	August 21, 2025
Ronald Winegardner Divisional Court No. DC-25-00000098-0000	2094-23-U	Pending
TJ & K Construction Inc. Divisional Court No. DC-24-0002949-00-JR (Ottawa)	1743-24-ES 1744-24-ES	Pending
Justice Ohene-Amoako Divisional Court No. 788/24	2878-22-U	Pending
Peter Miasik Divisional Court No. 735/24	1941-23-U	May 27, 2025
Ahmad Mohammad Divisional Court No. 476/24	1576-20-U	Dismissed
2469695 Ontario Inc. o/a Ultramar Divisional Court No. 278/24	1911-19-ES 1912-19-ES 1913-19-ES	September 11, 2025

(July 2025)

Mina Malekzadeh Divisional Court No. 553/22	0902-21-U 0903-21-UR 0904-21-U 0905-21-UR	June 5, 2025
Candy E-Fong Fong Divisional Court No.	0038-21-ES	Pending
Symphony Senior Living Inc. Divisional Court No. 394/21	1151-20-UR 1655-20-UR	Pending
Joe Mancuso Divisional Court No. 28291/19 (Sudbury)	2499-16-U – 2505-16-U	Pending
The Captain's Boil Divisional Court No. 431/19	2837-18-ES	Pending
EFS Toronto Inc. Divisional Court No. 205/19	2409-18-ES	Pending
RRCR Contracting Divisional Court No. 105/19	2530-18-U	Pending
China Visit Tour Inc. Divisional Court No. 716/17	1128-16-ES 1376-16-ES	Pending
Front Construction Industries Divisional Court No. 528/17	1745-16-G	Pending
Myriam Michail Divisional Court No. 624/17 (London)	3434-15-U	Pending
Peter David Sinisa Sesek Divisional Court No. 93/16 (Brampton)	0297-15-ES	Pending
Byeongheon Lee Court of Appeal No. M48402	0095-15-UR	Pending
Byeongheon Lee Court of Appeal No. M48403	0015-15-U	Pending
R. J. Potomski Divisional Court No. 12/16 (London)	1615-15-UR 2437-15-UR 2466-15-UR	Pending
Qingrong Qiu Court of Appeal No. M48451	2714-13-ES	Pending
Valoggia Linguistique Divisional Court No. 15-2096 (Ottawa)	3205-13-ES	Pending