ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0073-22-U**

500 Bloor Street Commercial Partnership c/o Westbank Projects Corp., Applicant v Labourers' International Union of North America, Local 183, Bricklayers, Masons Independent Union of Canada, Local 1, Masonry Council of Unions Toronto and Vicinity, Cesar Rodrigues, and Limen Group Const. (2019) Ltd., Responding Parties v Metropolitan Toronto Apartment Builders Association, Intervenor

OLRB Case No: **0074-22-IO**

500 Bloor Street Commercial Partnership c/o Westbank Projects Corp., Applicant v Labourers' International Union of North America, Local 183, Bricklayers, Masons Independent Union of Canada, Local 1, Masonry Council of Unions Toronto and Vicinity, Cesar Rodrigues, and Limen Group Const. (2019) Ltd., Responding Parties v Metropolitan Toronto Apartment Builders Association, Intervenor

OLRB Case No: **0075-22-IO**

EllisDon Residential Inc., Applicant v Labourers' International Union of North America, Local 183, Cesar Rodrigues, Bricklayers, Masons Independent Union of Canada, Local 1, Masonry Council of Unions Toronto and Vicinity, Masonry Contractors' Association of Toronto, Joe De Caria, Limen Masonry Group Inc., and Tony Lima, Responding Parties v Metropolitan Toronto Apartment Builders Association, Intervenor

BEFORE: Michael McFadden, Vice-Chair

APPEARANCES: Walter Thornton, Christopher Fiore, John Illingworth, Matthew Craig, Anthony Kwong, Alexis Mantello-Clement, Andres Duran and Steven Ferrante appearing for Ellis-Don Residential Inc.; Patrick Groom, Victor Kim and Matthew Spironello appearing for 500 Bloor Street Commercial Partnership c/o Westbank Projects Corp.; L.A.

Richmond, Hong Hua (Emily) Li, Rye Dutton, Cesar Rodrigues, Mário dos Santos, John Meiorin and Maheen Merchant appearing for Labourers' International Union of North America, Local 183 and Cesar Rodrigues, Bricklayers, Masons Independent Union of Canada, Local 1, Masonry Council of Unions Toronto and Vicinity; Dan J. Shields and Hendrik Nieuwland appearing for Limen Masonry Group Inc. and Tony Lima; Jeremy D. Schwartz, Jeffrey D. A. Murray, Haadi Malik and Joe De Caria appearing for Masonry Contractors' Association of Toronto; Carl Peterson and Diane Laranja appearing for Metropolitan Toronto Apartment Builders' Association.

DECISION OF THE BOARD: July 21, 2022

Introduction

1. These three files all arise from similar facts and involve allegations made by Ellis-Don Residential Inc. ("Ellis-Don") and 500 Bloor Street Commercial Partnership c/o Westbank Projects Corp. ("Westbank") that they have been subject to an illegal strike by or on behalf of Labourers' International Union of North America, Local 183 ("Local 183"), Bricklayers, Masons Independent Union of Canada, Local 1 ("Local 1") and Masonry Council of Unions Toronto and Vicinity ("MCUTV") (when referring to all three trade unions together, this decision will refer to them collectively as "the Unions").

2. These files were all filed on or about April 8, 2022. In a decision dated April 11, 2022, among other things, the Board grouped these files to be heard together (along with other files more particularly described further below), directed that all responses and materials that any party must file to comply with the Board's *Rules of Procedure* be filed by April 13, 2022, and said that the matters would commence hearing on April 14, 2022.

3. At the hearing on April 14, 2022, the Board on its own motion converted that date into a case management hearing ("CMH"), and after hearing submissions from counsel to all the parties, issued directions that, among other things, stated that the Board would deal with just the three files captioned above at this time, set hearing dates on a relatively expedited basis and identified the sources of the factual record the Board would rely upon for the determinations it would make at this time.

These matters are memorialized in a decision of the Board dated April 14, 2022 ("CMH Decision").

4. The matters generally proceeded as anticipated in the CMH Decision. The Board heard further evidence (more particularly described below) and the comprehensive legal submissions of all the parties and concluded the hearings on June 3, 2022.

5. For the reasons set out further below, the Board considers it appropriate to issue some declaratory relief at this time, stay seized on issues of remedy and direct a hearing into the other files referenced at paragraph 2, above.

Preliminary Objections

6. In a letter accompanying its interim order application (Board File No. 0075-22-IO), Ellis-Don stated that the Board should ensure that any Vice-Chair assigned to hear the case is not also a private roster arbitrator in respect of any collective agreement to which Local 183 is bound. This was a regrettable statement as it impugned the impartiality, on a purely abstract basis, of any Vice-Chair assigned to hear the case who might also be a private roster arbitrator.

7. These matters were assigned to me by the Registrar because I am a construction industry Vice-Chair at the Board and because I was available on a reasonably expeditious basis, the latter always an important consideration where a party alleges that there is an on-going illegal strike or lockout.

8. The request of Ellis-Don was patently inappropriate. Unfortunately, counsel for the Unions did not treat the request as the inappropriate artifact that it was, but instead raised a series of objections to the matters proceeding at all and requested in its response materials that the Board, instead of dealing with the illegal strike application, embark on an inquiry into the conduct of Ellis-Don and its counsel for making the request and sanction them accordingly.

9. Section 111 of the Act requires the Board to exercise the powers and perform the duties conferred or imposed upon it by the Act. Section 100 of the Act authorizes the Board to inquire into an allegation that an illegal strike is occurring (section 101 of the Act is the lockout equivalent of section 100 of the Act). The Board cannot and will not decline its statutory duty to inquire into the allegation that there is an illegal strike

(or lockout) or perform that duty in a fundamentally different manner than it normally does, only because a party to the proceeding raises purely abstract objections to form, or another party responds to such abstractions with abstractions of their own.

10. At the CMH, the Board addressed and dismissed Ellis-Don's request, stating briefly that the request of Ellis-Don should not have been made, the basis upon which the files were assigned to me, above, and that the Board intended to proceed to hear and determine these three files in a reasonably expeditious and orderly manner. Counsel for the Unions maintained his objections to the files proceeding at all given the original request of Ellis-Don, though he was careful to state he had no objections specifically to me hearing the matters, but rather that the Board as an institution ought to decline to proceed further with the three files until it had engaged in the sort of inquiry and sanctions he identified in his client's written materials and as summarized above. The Board stated clearly again that the three files would proceed as previously stated.

11. In a further, and also unfortunate and entirely unnecessary turn of events, counsel for the Unions later responded (in part) to a letter from counsel for Ellis-Don setting out the proposed further hearing dates by saying this in writing copied to all the other parties: "Now that Ellis Don has discovered that it can order the Board to grant it a vice-chair of its choosing, it has decided that it can dictate hearing dates."

12. I have spent some space on these matters because I do not believe, for even a moment or to any degree at all, that either counsel for Ellis-Don or counsel for the Unions seriously or genuinely believe that the Board Vice-Chairs conduct their adjudicative duties based on split loyalties or that the Board is the captive of Ellis-Don, or any party that appears before it for that matter. It is inescapable to me that this particular controversy arose strictly as performative theatre on the part of counsel for the benefit of their respective clients, an at least disappointing exercise of advocacy, especially considering the very substantial experience and meritorious skill of the counsel involved. It should go without saying that counsel should not impugn the impartiality and integrity of the Board for merely abstract reasons or for reasons collateral to the Board's functions. The Board considers this issue to be closed and will say nothing further about it.

Factual Record

13. These cases came to the Board chiefly because of civil proceedings that both Ellis-Don and Westbank have commenced against some of the same responding parties. Ellis-Don, during its civil action, applied for injunctive relief against Limen Inc., the Unions, Cesar Rodrigues and certain other individually named persons. Westbank intervened in the injunctive relief proceeding and supported the remedies sought by Ellis-Don. The Court hearing the injunction application dismissed it on the basis that the Board should first have an opportunity to deal with the issues pursuant to the Act, a position advanced by the responding parties at the injunction proceedings.

14. As recounted in the CMH Decision, for the purposes of establishing a factual record for these three cases before the Board all parties agreed that the affidavits and cross-examinations of the affiants filed in the injunction proceedings may be relied on and referred to by the parties in accordance with the list below, in addition to the other items listed:

> (i) the affidavits sworn by Steven Ferrante of Ellis-Don dated January 12, 2022, February 11 and 22, 2022 and his cross-examination on those affidavits as set out in the transcript of same dated March 2, 2022;
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> (ii) the affidavits sworn by Cesar Rodrigues of Local 183, Local 1 and MCTUV dated February 14 and 15, 2022 and his cross-examination on those affidavits as set out in the transcript of same dated March 2, 2022;
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> (iv) the affidavit of Matthew Spironello of Westbank dated January 17, 2022;
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> (v) the declaration of Antonio Lima ("Lima Declaration") attached and marked as Schedule "G" to the response of Limen Masonry Group Inc. ("Limen Inc.") to Board File No. 0075-22-IO;
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> (vi) the evidence that might arise from counsel's questions to each of Matthew Spironello and Antonio Lima at the hearing;

(vii) the documents contained in the "Common Document Book" (approximately 3200 pages) referenced in the CMH Decision; and

(viii) those several further documents the parties filed during the hearings, more particularly described below where necessary.

15. In the CMH Decision the Board noted that it might rely upon the affidavit sworn by Kieran Hawe of Ellis-Don dated January 12, 2022 ("Hawe Affidavit"). At the hearing held on May 9, 2022, Ellis-Don said it was withdrawing its reliance on the Hawe Affidavit for the purposes of the present proceeding. Limen Inc., in particular, objected to the withdrawal as its counsel said there were statements made in the Hawe Affidavit upon which Limen Inc. had intended to rely, and in reliance upon them had not made the same or similar statements in the Lima Declaration. Counsel for Limen Inc. identified the subject statements in the Hawe Affidavit for me and I said that I would permit counsel to lead that evidence from Mr. Lima before he was cross-examined by any other party (which he later did). I then permitted Ellis-Don to withdraw the Hawe Affidavit for the pirposes of these three cases.

Ellis-Don and Westbank Projects

16. Ellis-Don is the general contractor for a large high-rise residential condominium project being built in Toronto's West Don Lands ("Don Lands Project"). Limen Inc. entered into a masonry sub-contract with Ellis-Don in respect of the Don Lands Project in or about June of 2020 and commenced performing masonry work at the Don Lands Project in approximately the Fall of 2020.

17. Westbank is a property developer currently building (in partnership with others) a large residential and commercial project at the block of land near Bathurst and Bloor Streets in Toronto, colloquially known as Mirvish Village ("Mirvish Project"). Westbank is acting as its own builder on the Mirvish Project but has engaged Ellis-Don as its construction manager. Westbank has entered into contracts directly with various trades and sub-trades and Ellis-Don manages the overall construction project and the timing and completion of the trade contracts.

18. During the injunction proceedings and at the outset of the Board proceedings, Westbank (at least) proceeded on the premise that it had a signed commercial contract for Limen Inc. to perform masonry work at the Mirvish Project. As the Board proceedings progressed it became clear that Westbank does not have a signed contract with Limen Inc. That being said, there is also no dispute that Limen Inc. arrived at the Mirvish Project in approximately the Fall of 2020 and began performing masonry work there as anticipated and expected by Westbank and Ellis-Don.

19. Limen Inc. is bound to an accredited collective agreement between the Unions and the Masonry Contractors' Association of Toronto ("MCAT"). Ellis-Don is bound to the accredited collective agreement between Local 183 and the Metropolitan Toronto Apartment Builders' Association ("MTABA"). The MTABA collective agreement applies to high-rise apartment construction in Board Areas 8 (which includes the City of Toronto and is where the Don Lands Project and Mirvish project are located), 9, 10, 11, that portion west of the Trent-Severn waterway in Board Area 12 and Board Area 18.

20. The MTABA collective agreement includes what is known as "cross-over" clauses that require employers bound to the MTABA collective agreement to apply the terms of other collective agreements to which the Unions are bound where the employer performs work covered by the other agreements on any of its projects to which the MTABA collective agreement applies. One such cross-over collective agreement is the MCAT collective agreement to which Local 183 is bound. This does not mean that Ellis-Don is bound to the MCAT collective agreement (it is not), but only that it must perform work that falls within the scope of the MCAT collective agreement in accordance with its provisions when performing work within the scope of the MTABA collective agreement. Westbank is not bound to any collective agreement.

21. On or about November 15, 2021, at a time when Limen Inc. was well into its masonry work at both the Don Lands Project and the Mirvish Project, Mr. Robert Molyneaux ("Mr. Molyneaux"), Vice President of Estimating, Masonry, for Limen Inc. forwarded a document to Mr. Steven Ferrante ("Mr. Ferrante"), Vice President of Operations for Ellis-Don. The document constituted draft proposed minutes of settlement between Ellis-Don and the Unions ("Ellis-Don MOS") that would, among other things, require Ellis-Don to sub-contract all masonry work at its

projects located anywhere in Ontario to a contractor bound to the MCAT collective agreement and would impose some restrictions on the capacity of Ellis-Don to self-perform masonry work (as opposed to sub-contract such work).

22. On November 26, 2021, Mr. Ferrante had a relatively brief telephone conversation with Cesar Rodrigues ("Mr. Rodrigues"), a senior officer with the Unions. Mr. Ferrante asked why the Ellis-Don MOS had been presented to Ellis-Don, and Mr. Rodrigues replied (to paraphrase) that the Ellis-Don MOS would level the playing field and place Ellis-Don in the same situation as a number of other residential builders, including among others "Alterra", "Concord" and Fitzrovia". Ellis-Don declined to sign the Ellis-Don MOS.

23. Limen Inc. ceased its masonry work at both the Don Lands Project and the Mirvish Project after November 26, 2021 (which was a Friday – in other words, Limen Inc. did not return to these projects commencing on Monday, November 29, 2021), though that masonry work remained incomplete. There is one brief exception to this fact arising on January 11, 2022, described further below at paragraph 26.

24. On November 30, 2021, Mr. Ferrante had a telephone conversation with Mr. Antonio Lima ("Mr. Lima"), principal and owner of Limen Inc. (Mr. Lima is the same person identified as "Tony Lima" in the title of Board File No. 0075-22-IO). During this conversation Mr. Ferrante learned that Limen Inc. had ceased working at both the Don Lands Project and the Mirvish Project as of November 29, 2021. Mr. Lima apologized to Mr. Ferrante for the current circumstances and said further that Limen Inc. had "no choice" but to pull its workers from the Don Lands Project and the Mirvish Project while the Ellis-Don MOS remained unsigned by Ellis-Don, because otherwise the Unions were threatening to "fine" Limen Inc. $15,000.00 per day and suspend any members of the Union who report to work at those sites.

25. On December 13, 2021, Westbank issued a formal Notice of Default in respect of Limen Inc.'s work at the Mirvish Project and gave it 5 days to return to the site and continue its masonry work. Limen Inc. did not return to the Mirvish Project as directed and Westbank terminated its contract with Limen Inc. at that time.

26. After a further set of conversations between Mr. Lima and Mr. Ferrante, Limen Inc. returned its forces to the Don Lands Project on January 11, 2022. Three Limen Inc. employees attended at the Don

Lands Project in the morning that day and began performing masonry work. At some point approximately in the middle of the afternoon of that same day, two representatives of Local 183 (one of whom was Mr. Rodrigues) attended at the Don Lands Project and were observed conversing with the Limen Inc. employees present there. Shortly after, the Limen Inc. employees and the Local 183 representatives left the Don Lands Project site. Limen Inc. employees have not returned to the Don Lands Project since January 11, 2022.

27. Various payroll documentation for Limen Inc. was tendered at the Board hearings for the relevant projects and time periods (these documents were separate from the Common Document Book identified at paragraph 14(vii) and are documents that come within the description set out at paragraph 14(vii), above). Generally speaking, the payroll documents disclose that more or less the same persons worked at the Don Lands Project and at the Mirvish Project from the time Limen Inc. commenced its work at those projects up to and including November 26, 2021. Mr. Lima in his evidence (dealt with in more detail further below) confirmed that, as a practical matter, Limen Inc. preferred that the same workers that start a particular project remain at that same project until its completion, with exceptions as necessary. The same payroll records disclose that two of the three Limen Inc. workers who reported for work at the Don Lands Project on January 11, 2022, were the same workers who had been working there regularly previously up to and including November 26, 2021.

28. Those same payroll documents also disclose that, again speaking generally, the Limen Inc. workers who discontinued attending at the Don Lands Project and the Mirvish Project after November 26, 2021, did not then cease working, but rather they were dispatched to other Limen Inc. projects then in operation in the City of Toronto. In other words, all the workers identified in the payroll documents as having worked a more or less regular and full workday at the Don Lands Project and the Mirvish Project on Friday, November 26, 2021, then commenced and continued working more or less a regular and full workday commencing on Monday, November 29, 2021, at another Limen Inc. project.

29. There are exceptions to this general pattern. Four of the six Limen Inc. workers present at the Mirvish Project on November 26, 2021, continued working elsewhere commencing on Monday, November 29, 2021, but two of the Mirvish Project workers do not. These latter two appear not to have worked at all on Monday, November 29, 2021,

but then join the other four commencing on Tuesday, November 30, 2021. Also based on Limen Inc.'s payroll records, it appears that the three workers who attended at the Don Lands Project on January 11, 2022, did not work elsewhere that same week, and then two of these three workers begin working regularly at another Limen Inc. project site in Toronto commencing the work week following January 11. Much was made of these exceptions to the general pattern described at paragraph 28, above, during argument by counsel for Ellis-Don and counsel for Westbank and so the Board will return to these facts further below.

Evidence of Matthew Spironella

30. As partially noted above, the documents filed with the Board disclose that Ellis-Don and Westbank made repeated efforts in writing to have Limen Inc. return to the two project sites after November 26, 2021, all to no avail to date, with the one-day exception at the Don Lands Project on January 11, 2022. During his cross-examination before the Board, Mr. Matthew Spironello, a Vice President of Westbank with responsibility for the construction of the Mirvish Project, said that Westbank has not been able to find a qualified masonry contractor willing and able to attend at the Mirvish Project since the departure of Limen Inc. from that project. Mr. Spironello said he doubted that there would be any non-unionized masonry contractor of sufficient commercial size and sophistication to carry out the masonry work required at the Mirvish Project, and all the unionized masonry contractors he has contacted have told him they are not interested in working at the Mirvish Project because of issues with the Unions.

31. Mr. Spironello confirmed in his evidence that there have been no picket lines up at any time at the Mirvish Project, he did not personally observe any worker "walking off the job", so to speak, and he has no personal knowledge as to why any individual or group of Limen Inc. workers have not returned to the Mirvish Project since November 26, 2021. Mr. Spironello also said that his understanding from Limen Inc. at the time (at the time Westbank terminated its commercial relationship with Limen Inc. in December of 2021), was that Limen Inc. would not return to the Mirvish Project because neither Ellis-Don or Westbank are "in good standing with the Unions" and that this was related to the obligations and liabilities of Limen Inc. under the collective agreement it had with the Unions.

32. As noted, Ellis-Don also made efforts to have Limen Inc. to return to both projects, with no success except for the one day of masonry work on January 11, 2022 at the Don Lands Project. Mr. Ferrante in his affidavit says that Ellis-Don has also had no success in securing an alternative masonry contractor for the Don Lands Project. Placed into evidence before the Board is a letter from Mr. Rodrigues of the Unions dated December 21, 2021 to Mr. Joe De Caria, General Manager of MCAT, that states (to paraphrase) that MCAT should inform its member contractors that none of them are to perform work for Ellis-Don or Westbank without the prior written permission of the Unions, and that any contractor that does so will face a grievance from the Unions seeking "full damages".

Evidence of Antonio Lima

33. Mr. Lima's evidence included that Limen Inc. commenced operations in the late 1970's as a very small masonry contractor, literally, one man, one pick-up truck and one wheelbarrow, but has since grown into a substantial construction industry enterprise with three main divisions: masonry; concrete restoration; and concrete formwork. At any given time, Limen Inc.'s masonry division regularly employees between 100 and 150 masonry employees (mainly masons, labourers, forklift operators and site crew foremen). Indeed, Mr. Lima said his company could often undoubtedly employ more masonry employees, but there is generally a shortage of such workers in Ontario at any given time.

34. Mr. Lima said that Limen Inc. has had a substantial commercial relationship with Ellis-Don extending back many years and in any given year the business that Limen Inc. does with Ellis-Don can amount to millions of dollars.

35. Mr. Lima spoke about a telephone conversation he had on December 16, 2021 with Mr. Kieran Hawe, Chief Operating Officer of Ellis-Don, in which he expressed his concern about the effect the circumstances then-prevailing at the Don Lands Project and the Mirvish Project might have on the future commercial relationship between Limen Inc. and Ellis-Don, and expressed his frustration that, in his view, Limen Inc. had "no choice" in the circumstances given the position of the Unions.

36. At Mr. Lima's direction, Mr. Molyneaux sent a letter dated December 16, 2022, to Ellis-Don ("Molyneaux December 16 Letter") that says, among other things, that Mr. Rodrigues of the Unions had advised Limen Inc., and all other MCAT contractors for that matter, that if any member of the Unions reports for work at any Ellis-Don project, that member will be fined $500 for each such day of work and be expelled from the Unions and lose their pension packages. Mr. Molyneaux also wrote that Mr. Rodrigues had informed Limen Inc., and all other MCAT contractors for that matter, that any such contractor that worked on an Ellis-Don project would be fined $15,000.00 per each day of such work. For these reasons, Mr. Molyneaux wrote, Limen Inc. had "no choice" but to discontinue working at the Don Lands Project and the Mirvish Project.

37. Mr. Molyneaux also wrote that the experience Limen Inc. was currently having with Ellis-Don at the Don Lands Project and Mirvish Project was not its first such experience. Specifically, Mr. Molyneaux wrote:

> "This has been an ongoing issue by the Union during this past year, the Union first started this pursuit with low-rise residential projects and is now pursuing high-rise residential projects".

38. At the hearing, notwithstanding that he said he had carefully reviewed and considered the content of the Molyneaux December 16 Letter with the assistance of legal counsel before it was sent, Mr. Lima began distancing himself from some of the content of it. Specifically, Mr. Lima said that the information that the Unions might fine and expel individual members did not come to him from Mr. Rodrigues (though that is what the Molyneaux December 16 Letter explicitly says), but rather that this information was "industry rumour" that masonry contractors such as Limen Inc. had been hearing.

39. As pertains to the statement set out at paragraph 37, above, Mr. Lima said in his evidence that on previous projects in 2021, and he identified two such projects involving builders he named as "Alterra" and "Concord-Adex" (these appear to be the same builders that Mr. Rodrigues referenced in his conversation with Mr. Ferrante described in paragraph 22, above), Limen Inc. was told by the Unions that continued work on those projects would result in daily fines. Mr. Lima said the issues on those projects were resolved relatively quickly and may have involved those builders signing settlements with the Unions that permitted Limen Inc. to return to the projects without facing claims from

the Unions. (I note here parenthetically that in Mr. Rodrigues' cross-examination referenced at paragraph 14 (ii), above, he states that approximately 100 builders have signed minutes of settlement similar in content to the Ellis-Don MOS since approximately early 2021).

40. Mr. Lima said in his evidence that the "fines" he referred to as threatened against Limen Inc. were claims that the Unions would make in a grievance or grievances against Limen Inc. filed under the terms of the MCAT collective agreement.

41. Mr. Lima said that he directed that masonry workers be returned to the Don Lands Project on January 11, 2022, because he valued his past commercial relations with Ellis-Don so highly and he hoped that he could work matters out. Mr. Lima said that he was told by Mr. Rodrigues later on January 11, 2022, after the workers had already left the site, that if Limen Inc. continued to perform masonry work at the Don lands Project the Unions would file a grievance and seek full damages. Mr. Lima said he then proposed to Ellis-Don that Limen Inc. and Ellis-Don split those amounts (these are the $15,000.00 per day amounts), but Ellis-Don declined. In the circumstances, Mr. Lima said, he felt Limen Inc. had no choice but to further withdraw its workers after January 11, 2022.

Evidence of Cesar Rodrigues

42. To paraphrase Mr. Rodrigues' evidence (including what he set out in his affidavits and the evidence he gave during his cross-examination), he maintains that the Unions are not insisting that builders that engage MCAT contractors must have signed minutes of settlement similar to the Ellis-Don MOS. Rather, he says that when the Unions learn that an MCAT contractor is performing work for a builder that is not bound to the MCAT collective agreement in its full scope, or in other words the builder is a "non-union" builder in the view of Mr. Rodrigues, the Unions may require the MCAT contractor to re-deploy its forces to projects where the builder is bound to the MCAT collective agreement in its full scope, as it is entitled to direct under Letter of Understanding Number 8 ("LOU No. 8") in the MCAT collective agreement.

43. The basic mechanics of LOU No. 8 are that the Unions are entitled to direct that an MCAT contractor re-deploy its work force away from the project(s) of a "non-union builder" to the projects of a unionized builder. Mr. Rodrigues says that a failure to re-deploy forces

from a non-union builder to a union builder when directed to do so under the terms of LOU No. 8 is what may lead to the daily damages claims pursuant to a grievance or grievances filed against the MCAT contractor. Under the current terms of LOU No. 8, the damages claimed by the Unions can be $15,000.00 for each day the contractor is in breach, plus $1,000.00 per day for each worker the contractor has assigned to the job in violation of LOU No. 8. Although LOU No. 8 has been part of the MCAT collective agreement for some time, these specific and costly penalty provisions appear to be of relatively recent origin. The Board has no information before it (at this time) explaining the reason for the substantial increase in the penalty amounts.

44. Mr. Rodrigues is adamant that one of the purposes of LOU No. 8 is to address the shortage of skilled masonry workers in Ontario. Mr. Rodrigues estimates the masonry industry in Ontario is short between 2000 and 3000 experienced and skilled masonry workers at any given time, depending on the season and residential building volume. No one during the proceedings took exception to Mr. Rodrigues' estimate. Mr. Rodrigues said that the Unions wish to favour those parties already bound to the Unions by ensuring a supply of masonry employees to them.

45. The MCAT collective agreement is an accredited province-wide collective agreement, and so Mr. Rodrigues said that the Unions favour those parties who apply the MCAT collective agreement on that basis (that is, province-wide). Mr. Rodrigues says he does not consider a party to be a "union builder" for the purposes of LOU No. 8 if it applies the MCAT collective agreement only, to take one example, in Board Area 8, but not at those projects that party is undertaking outside of Board Area 8. Mr. Rodrigues was equally clear that even if a builder were bound to the MCAT collective agreement only in Board Area 8, if that builder only built projects within Board Area 8 it would not likely face any concerns from the Unions or find that the MCAT contractor performing masonry work on its projects in Board Area 8 is being directed by the Unions to deploy its workforce elsewhere. This would be true whether such a builder signed minutes of settlement like the Ellis-Don MOS or not.

46. Mr. Rodrigues in his evidence explained that he considered Ellis-Don to be a non-union builder for the purposes of LOU No. 8 because Ellis-Don had residential building projects at London and Ottawa at which it was not applying the MCAT collective agreement (it is not in dispute that given the current scope of the Unions' bargaining rights as

against Ellis-Don, it is under no legal obligation to apply the MCAT collective agreement to its projects at London and Ottawa).

47. Mr. Rodrigues maintained during his cross-examination that he did not care either way whether a builder signed minutes of settlement or not, his focus was solely on the activities of the MCAT contractor in relation to LOU No. 8. Mr. Rodrigues did allow during his cross-examination, however, that a builder might want to sign minutes of settlement for its own "peace of mind".

48. Before turning to an analysis of the facts and the law, the Board notes here that there can be little doubt that Mr. Rodrigues, in taking any of the actions he did in this matter, did so in his capacity as an officer of the Unions. The evidence discloses that Ellis-Don, for one, brought the circumstances that accrued at the Don lands Project and the Mirvish Project after November 26, 2021, to the attention of both more senior leadership (than Mr. Rodrigues) at the Unions and to the senior vice president of Labourers' International Union of North America (which geographic jurisdiction includes Ontario), and Ellis-Don was told without qualification that it should for all these purposes deal directly with Mr. Rodrigues.

Analysis

49. Before turning to the analysis some comments about the hearings, the evidence and this decision are in order. As can be appreciated by the description of the material placed before the Board in paragraph 14, there is a very substantial evidentiary record before that Board. The documents alone amount to approximately 3,400 pages (including the various affidavits, cross-examinations and the exhibits appended to them). In addition to that record, the Board held several full days of hearing to hear oral evidence. All counsel were commendably cooperative and efficient in their customary fashion in ensuring the Board heard all the oral evidence that it directed over the several hearing days, but the record of the oral evidence (including the documents referred to during same) is also substantial. In addition to that, all counsel made thorough and scholarly submissions that included reference to and their own analysis of a substantial body of law.

50. All the above is said to form the context of these next remarks. This decision is in no way attempting to identify all the facts placed before the Board or the full extent of the parties' various submissions in these proceedings. The Board is mindful of the especial need for

expedition in cases where an illegal strike or lockout is alleged and where it is alleged that construction work at a project or projects is not proceeding because of a violation of the Act. While the Board took the time to review all the documentary evidence placed before it and all the oral evidence placed before it in the form of the affidavits and cross-examinations on those affidavits as described at paragraph 14, and the evidence placed before it during the oral evidence portion of the hearings, and reviewed again the detailed submissions of counsel as well as the cases they referred to, this decision in the interests of expedition is not as full as it might be, but is instead focussed narrowly on those facts and arguments most germane to the results.

51. In these matters, stated at it most basic, Ellis-Don and Westbank are asserting that the Unions have illegally withheld the work of its members from the Don Lands Project and the Mirvish Project because of their refusal to sign the Ellis-Don MOS. They allege in other words that the Unions are engaged in an illegal recognition strike. The Unions, on the other hand, say that they have done nothing illegal at all and are only exercising their rights under the MCAT collective agreement through LOU No. 8, a consequence of which is that Limen Inc. has decided for sensible labour relations reasons to re-deploy its forces elsewhere and so avoid the potential damages that might flow to it if a grievance were filed against it and proved successful.

52. The general tenor of what was described in paragraph 51, above, was the subject of two recent, previous Board decisions, *Baycliffe Homes* (2021) CanLII 2843 (ON LRB) (hereafter, "*Baycliffe*") and *Ras-Con Group Inc.* 2021 CanLII 18122 (ON LRB) (hereafter, "*Ras-Con")*. As would be expected, the parties in their submissions spent substantial time analyzing the two previous decisions and urging the Board to come to certain conclusions based on the analyses and results set out in those decisions. It is appropriate, then to begin the analysis with these decisions.

53. In *Baycliffe*, the Board had before it an illegal strike application brought by Baycliffe Homes ("BC Homes"). BC Homes had a small residential project underway at Ajax in the Fall of 2020 ("Ajax Project"). BC Homes had other residential projects underway at other places in Ontario at approximately the same time, including one at Wasaga Beach. BC Homes sub-contracted with a masonry and bricklaying contractor known as "CJM" to perform masonry and bricklaying work at the Ajax Project. CJM is bound to the MCAT collective agreement and the version of LOU No. 8 then prevailing.

54. CJM transported equipment and supplies to the Ajax Project in anticipation of commencing its work there on or about November 19, 2020, but never actually commenced its work there. The Board heard evidence from the owner of CJM, who said he was told by a representative of Local 183 that if CJM commenced work at the Ajax Project for BC Homes it would be subject to "fines". The Board found that CJM, after consulting with Mr. De Caria of MCAT and legal counsel, decided to not deploy its workers to the Ajax Project in order to avoid conflict with Local 183 arising out of the enforcement of LOU No. 8.

55. After finding out that CJM would not deploy its forces to the Ajax Project, the principal of BC Homes had several conversations with Mr. Rodrigues of Local 183. During these conversations, Mr. Rodrigues told BC Homes that Local 183 would not permit supply of its members to the Ajax Project because BC Homes had assigned work covered by the MCAT collective agreement to a contractor not bound to the Unions at its Wasaga Beach project (the Unions had no bargaining rights as against BC Homes in the Board Area in which Wasaga Beach is located).

56. In addition to the facts described at paragraph 53 – 55, above, the Board also found in *Baycliffe* that there was at no time a picket line or other typical manifestation of a strike at any time at the Ajax Project. The Board also found that the employees who likely would have been dispatched to the Ajax Project by CJM continued to work at other projects being operated by CJM or declined offers of such work by CJM.

57. The Board dismissed the illegal strike application in *Baycliffe* because it found that there was no "strike" as that term is defined under the Act. After noting that a "strike" for the purposes of the Act is defined as including "…a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output" (Section 1(1) of the Act), the Board stated that the evidence was that no CJM employees covered by the Act were involved in any respect in the case before it. The Board noted that all the communications set out in the evidence before it occurred between management officers of CJM and BC Homes and the Local 183 officers and representatives. The Board found that no employee of CJM at any time ceased work, refused to work or refused to continue to work, and so whatever the circumstances were, they did not constitute a strike under the Act.

58. In *Ras-Con*, the Board had before it (among other complaints) an illegal strike application brought by Ras-Con Group Inc. ("RC Group"). RC Group is a construction contractor that specializes in the installation of exterior insulation finish systems ("EIFS") and stucco for residential housing in Ontario. Part of the complexity of the facts in *Ras-Con* are attributable to the circumstances involving EIFS/stucco work under the MCAT collective agreement, circumstances not at play in the instant case. The Board in this case will therefore not fully recite all the facts of *Ras-Con*. Instead, the Board will recite the facts in *Ras-Con* as the Board in that case found them that are most germane to explaining the analysis the Board deployed in that case and the results (in terms or remedy) that it arrived at and which the Board is adopting in this case.

59. RC Group is a contractor not bound to any union. RC Group secured some of its work from builders who are bound to the MCAT collective agreement. Beginning in the Fall of 2020 and continuing into 2021, these same builders informed RC Group (and similar non-union EIFS/stucco contractors) that they would no longer be permitted to perform EIFS/stucco work at their various projects. The builders involved explained that they had no choice in the matter, because they had been informed that the Unions would not permit their members employed by masonry contractors bound to the MCAT collective agreement to work at sites where the non-union EIFS/stucco contractors were working. At several of the builders' project sites identified in *Ras-Con*, masonry sub-contractor employees did not report for work as anticipated and scheduled for the reasons previously referenced. It was the discontinuance of work by the masonry subcontractors' employees at the various builders' project sites that formed the basis of the claim that there was an illegal strike (there was no dispute that the collective agreement relevant to the circumstances was in a currently binding and operative period).

60. In *Ras-Con*, the Board had detailed and extensive evidence before it of a variety of communications between various senior managers and site superintendents of the builders with various officers and representatives of Local 183, including Mr. Rodrigues. The Board found that in at least several of these conversations there could be no doubt that Local 183 representatives told the builders' managers and site superintendents that the builders would "lose their bricklayers", or words to that effect, if the builders did not discontinue using the non-union EIFS/stucco contractors within very short deadlines.

61. In analyzing the circumstances and coming to its conclusions, the Board in *Ras-Con* reviewed, endorsed and adopted the analysis set out in *Baycliffe* as to what constitutes a strike under the Act and whether on the evidence an illegal strike had been made out. The Board in *Ras-Con* found that no strike was ongoing or had occurred, because there was no evidence that the employees had ceased to work as a matter of their own initiative. In *Ras-Con*, the Board was satisfied on the evidence before it that the masonry sub-contractors' bricklaying crews not attending at the builders' projects was the result of directions given to them to not attend at the various sites by the managers of the masonry sub-contractors, and therefore the circumstances could not amount to a strike under the Act.

62. In *Ras-Con*, unlike in *Baycliffe*, that was not the end of the matter. In *Ras-Con*, the Board went on to find that although no illegal strike had occurred the representatives of Local 183 had threatened an unlawful strike or committed acts the reasonable and probable consequence of which is others will engage in an unlawful strike contrary to sections 81 and 83 of the Act. The Board relied on the evidence before it described at paragraph 60, above, in coming to this conclusion.

63. There are important qualifications set out in *Ras-Con* that are worth highlighting. In *Ras-Con* (and to a lesser extent in *Baycliffe* before it), there was extensive discussion of the application of LOU No. 8 to the circumstances. In *Ras-Con*, in concluding that there had been a breach of the Act because Local 183 had threatened to engage in an illegal strike, the Board was careful to say that if the only evidence before it was that Local 183 had threatened to or in fact filed a grievance under the MCAT collective agreement and enforce its rights under and seek remedies under LOU No. 8 through that process, such activity could not constitute the threatening of an illegal strike. Indeed, the Board in *Ras-Con* found that Local 183 had threatened an illegal strike because instead of availing itself of its remedies under LOU No. 8, it pursued the self-help of threatening to pull bricklayers from active construction projects.

64. The key analytical units that the Board takes from *Baycliffe* and *Ras-Con*, and that it adopts and applies in the instant case, are that a strike under the Act involves acts and omissions of employees, and only employees. Further, an employer electing not to deploy its work forces to a project, or removing them from a project, at its own initiative because that employer chooses to avoid conflict with a union or unions with which it is bound pursuant to a collective agreement in respect of

claims or potential claims arising out of that collective agreement is not a strike under the Act. Finally, there need not be an illegal strike in progress, nor must one result, in order for the Board to find that there has been a threat to cause an illegal strike under section 81 of the Act.

Dismissal of the Applications Against Certain Parties

65. Before turning to the substantive portion of this decision, that is, what the Board makes of the facts before it given the essential units of analysis summarized at paragraph 64, above, the Board first turns to some collateral matters.

66. First, the applications so far as they seek declaratory or any other relief as against Limen Inc., MCAT, Joe De Caria, Mr. Lima and Mr. Rodrigues are hereby dismissed. There are no facts before the Board (nor any reasonable inferences to be drawn from the facts which are before the Board) that would cause the Board to find liability against any of these parties.

67. Ellis-Don and Westbank in effect submit that Limen Inc. acted as a conduit for the illegal acts of the Unions, that it was not an innocent party but a willing participant in the overall scheme about which they complain. Ellis-Don points to such things as Limen Inc. forwarding the proposed Ellis-Don MOS to it as evidence of its active involvement in the scheme, and further, Ellis-Don says that Limen Inc. re-deploying its forces to the Don Lands Project on January 11, 2022, was a ruse intended to obscure its active role in the scheme.

68. The Board does not agree that this is a likely or probable conclusion on the facts before it. Limen Inc. plainly values its past commercial relationship with Ellis-Don, at least, hardly surprising given the relatively high-dollar annual value of that past relationship to Limen Inc., and the Board is not prepared to conclude on the evidence before it that Limen Inc. would undermine that to act as a handmaiden to the Unions. There is similarly no evidence from which the Board would conclude that Mr. Lima engaged in activities separate and apart from his role as principal and owner of Limen Inc. in these cases.

69. Ellis-Don maintains that MCAT and its General Manager Joe De Caria ("Mr. De Caria") are also willing participants in the scheme of the Unions. There was no evidence of any sort at all placed before the Board by Ellis-Don from which it might reasonably conclude this is true. The proposition of Ellis-Don in this regard is premised exclusively on its

theory that MCAT, as the employer bargaining agency responsible for the negotiation of the MCAT collective agreement, knew or ought to have known that the Unions would abuse their position under LOU No. 8 to cause the circumstances Ellis-Don and Westbank now find themselves in. The Board finds no merit in this position.

70. The claims of Ellis-Don against Mr. De Caria are slightly different from the above, or at least they proved to be by the end of the hearings. Ellis-Don says that Rule 19 of the Board's Rules of Procedure require a responding party to an interim order application to file one or more declarations signed by persons with first-hand knowledge of the facts they set out in the declaration and upon which the responding party relies. Ellis-Don drew the Board's attention to the absence of any declaration in the interim order response of MCAT and Mr. De Caria and said (among other things) that this was a deliberate breach of the requirement of the Board's Rules that was intended to shield Mr. De Caria from any questions that Ellis-Don might have for him during the hearings. Counsel for MCAT rejected these submissions and said that the applications alleged no facts of any sort against MCAT or Mr. De Caria and contained only conclusory theories of the type described at paragraph 69, above.

71. While to some limited degree it is correct to say that MCAT and Mr. De Caria are at least in technical breach of Rule 19 of the Board's Rules of Procedure, insofar as they filed no declarations at all, the Board agrees with counsel for MCAT and Mr. De Caria that nothing particular flows from that in these cases precisely because there are no material allegations of fact made against either MCAT or Mr. De Caria in the interim order application filed by Ellis-Don. While any party that declines to file a declaration as required by Rule 19 does so at its own great peril, the failure to do that cannot thereby create material facts adverse to that party where none were alleged or where no such facts can be inferred from the matrix of facts and documents the Board has before it. The Board is satisfied this applies in these cases and so dismisses the applications as against both MCAT and Mr. De Caria.

72. The Board is also satisfied that it should dismiss the applications as against Mr. Rodrigues. As noted above at paragraph 48, the Board has before it direct evidence that at all times Mr. Rodrigues was acting only in his capacity as a representative and officer of the Unions and not at any time engaged in acts at his own initiative separate from his formal role, and no party ever alleged otherwise. If the Board had any basis to believe that the declaratory relief it has issued below would be

meaningless if there was no relief as against Mr. Rodrigues in his personal capacity, the result might be different, but there is nothing in the record before the Board at this time that raises such a concern. The Board is mindful, also, that the Board in *Ras-Con* issued declaratory relief as against the unions involved in that case but not personally against Mr. Rodrigues. For all these reasons, the Board dismisses these applications as against Mr. Rodrigues.

No Illegal Strike

73. Apart from what occurred on January 11, 2022, the Board is satisfied that there has been no illegal strike in the circumstances before it. The employees said to be on strike are all employees of Limen Inc. At all material times, the Board is satisfied that those employees were deployed to projects (or not so deployed) and worked or discontinued working at the direction of Limen Inc. and at no time ceased working or refused to continue working at their own initiative. Indeed, with minor exceptions as described above at paragraph 29, the workers did not cease working at any time but rather continued working at Limen Inc. projects other than the Don Lands Project and the Mirvish Project.

74. As stated in paragraph 29, much was made of the exceptions by Ellis-Don in its final submissions, but the Board is not satisfied that this should be taken as evidence that the employees were on strike. To do that would be to ignore the very clear evidence from Mr. Lima that Limen Inc. always re-deployed its forces in each instance where the Unions alleged that Limen Inc. was in jeopardy under the MCAT collective agreement and LOU No. 8, if it continued to perform work at a site where the Unions alleged a non-union builder (as the Unions mean that term) is working. Mr. Lima's evidence about the Alterra and Concord-Adex circumstances are illustrative and corroborative of this point.

75. A different conclusion is appropriate, however, in respect of what occurred at the Don Lands Project on January 11, 2022. That is dealt with further below.

Threat of Illegal Strike and Illegal Strike

76. The Board is satisfied that an allegation that the Unions threatened an illegal strike is made out in this case because of what happened on January 11, 2022, at the Don Lands Project. Based on the evidence before the Board, there can be no doubt that Limen Inc. knew

that the Unions might respond to it re-deploying its forces to the Don Lands Project by again raising the threat of claims made against it pursuant to LOU No. 8. Indeed, that is precisely what happened (eventually), as recounted at paragraph 41, above.

77. If that is all that happened on January 11, 2022, that is, the Unions raised the prospect of a potentially very costly grievance being filed against Limen Inc., this decision might well have concluded that there was no illegal strike or threat of illegal strike and dismissed these three applications without further comment or action. But that is not all that happened. The Board cannot ignore the undisputed facts that representatives of the Union arrived at the Don Lands Project the afternoon of January 11, 2022, were seen speaking to the Limen Inc. workers there, and shortly after all of them left the site. The Board concludes that the Unions engaged in impermissible self-help and directed the Limen Inc. workers to leave the site and not return. That the workers present left with the Unions' representatives leaves the Board with no doubt that those workers, on that day, engaged in an illegal strike.

78. In *Ras-Con* at paragraph 89, the Board noted its specialized role as Ontario's labour relations tribunal and said the Board should not, ostrich-like, bury its head in the sand and pretend it sees nothing when there are circumstantial facts before it that in its specialized expertise it knows or believes demonstrate something specific about those labour relations. The Board takes the same approach in the instant cases.

79. There is no evidence before the Board that the discontinuance of work by Limen Inc. workers at the Don Lands Project and the Mirvish Project beginning after November 26, 2021, was for any reasons apart from the threats the Unions made to Limen Inc. that it faced jeopardy under LOU No. 8 by continuing its work at those sites, and there is no reliable evidence that it was because of any impermissible self-help of the type described in *Ras-Con* or that occurred on January 11, 2022 at the Don Lands Project on the part of the Unions. Different circumstances accrue, in the Board's view, because of the facts surrounding the events of January 11, 2022, at the Don Lands Project and the facts that the Board infers from them.

80. The Board issued a decision in *Baywood Homes* 1999 CanLII 18501 (ON LRB) ("*Baywood")* that is useful in explicating what concerns the Board in these cases. In *Baywood*, the Board had before it an illegal strike application involving a small residential construction project at

Wasaga Beach. The builder involved, Baywood Homes, had been the subject of a certification application by Local 183, but for a different Board Area than where Wasaga Beach is located. Baywood Homes had subcontracted work to sub-contractors already bound to Local 183, both in the Board Area in which the Local 183 certification application arose and in the Board Area containing Wasaga Beach. At one point, business representatives from Local 183 attended at the Wasaga Beach project, were seen speaking to some Local 183 members employed there by the unionized sub-contractors, who in turn shortly after stopped working and left the project. The Board had no evidence before it of what words were spoken between the Local 183 representatives and the workers at Wasaga Beach project and there were at no times any picket lines present at that project. The Board nonetheless did not hesitate to find that an illegal strike had been counseled by Local 183 and had occurred at the Wasaga Beach project. The Board in *Baywood* briefly but effectively examined the Board's jurisprudence on construction site strikes where picket lines are present and did not rely on that caselaw for its finding in the case, recognizing that construction sites and picket lines present a form of special case.

81. What the Board takes from *Baywood* for the instant case is the principle that the Board may find an illegal strike has been counselled and occurred even in the absence of a picket line where the circumstances warrant. Such are the circumstances in the instant case. There can be no doubt that Ellis-Don and Westbank have been targeted by the Unions in these cases and so can be said to be the subject of a labour relations dispute with the Unions. The letter from Mr. Rodrigues to Mr. De Caria dated December 21, 2021, described at paragraph 32, above, which effectively blacklists them for masonry contractor work, and the essentially uncontradicted evidence of Mr. Spironello of Westbank that the universal and consistent response from the unionized masonry contractors he has spoken to about completing the masonry work at the Mirvish Project is that none of them will attend there while the dispute between Westbank and the Unions remains active, makes that apparent.

82. It is worth stating that in these cases, what is set out above, if there were no other considerations, might still not have been enough to warrant the remedial intervention of the Board. But what occurred in *Ras-Con* is an important consideration in encouraging remedial intervention. As previously noted, the Board in *Ras-Con* would have dismissed the applications before it and treated the cases as being fundamentally indistinguishable from *Baycliffe*, but for the

impermissible self-help activity of the Unions (the threat of work stoppages). What greatly concerns the Board in these cases is that the Unions appear not to have modified their behaviour as a result of the declarations made against them in *Ras-Con*. In short, there appears to be an arc between *Baycliffe* and the current cases which appears to establish that the Unions are using their rights under LOU No. 8 to engage in a recognition strike.

83. It is important to note here that Ellis-Don and Westbank asked for sweeping and very consequential remedies at the end of the hearing, including requests for orders that the Unions not be permitted to rely on LOU No. 8 or seek damages under it in respect of any work that Limen Inc. may further perform on behalf of Ellis-Don or Westbank. There is (as of yet) an insufficient evidentiary basis for issuing such orders. At and throughout the hearings the Board stated repeatedly that it was, at that time, dealing only with the illegal strike application and the interim order applications, and not (by way of contrast), the unfair labour practice complaint filed by Ellis-Don captioned under Board File No. 0071-22-U ("Ellis-Don ULP Application"). It is in the Ellis-Don ULP Application that the legality of LOU No. 8 and its use and enforcement by the Unions is placed directly in issue. At the hearings, because the Board was not inquiring into the Ellis-Don ULP Application the Board repeatedly rebuffed the attempts by Ellis-Don and Westbank to inquire further into the legality of LOU No. 8 at that time.

84. In both *Baycliffe* and *Ras-Con* the Board declined to inquire into the legality, or perhaps to put it another way, the illegal use of LOU No. 8 for the reasons stated in those cases. Given the continuation of the "self-help" activity described in first *Ras-Con* and then again in this case, the Board is of the view that a further examination of LOU No. 8 is appropriate and so is directing the Registrar to contact the parties to schedule a hearing into the Ellis-Don ULP (along with the other files not the subject of the hearings described above but that are referred to in the CMH Decision).

85. In the meantime, the Board has turned its mind to the appropriate remedial relief in the cases at the current time and set them out further below.

Remedial Declarations

86. Accordingly, the Board declares and orders as follows:

(a) that the Unions have threatened an unlawful strike or committed acts the reasonable and probable consequence of which is others will engage in an unlawful strike contrary to sections 81 and 83 of the Act and, in particular, those employees covered by the MCAT collective agreement;

(b) that the Unions cease and desist from threatening or committing acts the reasonable and probable consequence of which are that others, in particular those employees covered by the MCAT collective agreement, will engage in an unlawful strike;

(c) that the Limen Inc. employees that were at work at the Don Lands Project on January 11, 2022, did engage in a strike contrary to section 81 of the Act;

(d) that any employee covered by the MCAT collective agreement must refrain from further breaching the requirement not to strike during the currency of the MCAT collective agreement;

(e) that the effective implementation of these remedial declarations and orders is remitted to the parties to provide them an opportunity to resolve the disputes between them, but the Board will remain seized on whether the remedial relief should be varied depending on the efforts of the parties;

(f) that the Unions post a copy of these declarations and orders on all relevant notice boards (or equivalent locations) at its offices where this might come to the attention of the employees covered by the MCAT collective agreement and on their website;

(g) that the Unions provide copies of these declarations and orders on its letterhead to all members of MCAT; and

(h) Ellis-Don is directed to post copies of this decision immediately in a location or locations at or near its workplace(s) where they are most likely to come to the attention of affected individuals. These copies must remain posted for a period of 45 days.

87. As will be obvious, at least in so far as the Board is dealing with these three applications, the Board does not view this case differently than how the Board viewed the case in *Ras-Con*, and therefore has fashioned a declaratory remedy somewhat similar in character to that case. But the Board is of the view that the declaratory relief set out in *Ras-Con* did not have the salubrious effect that might have been expected, and so a stiffer response is now appropriate.

88. That being said, some further comments are also in order. First, the Board has not at this point declared the use of LOU No. 8 illegal, and may not ever do so. Nothing in this decision should therefore be taken as a prohibition or infringement of the rights of the Unions to file or threaten to file grievances against any one or more contractor in reliance on LOU No. 8. Second, and unlike the circumstances in *Ras-Con*, these cases came to the Board as a result of earlier proceedings before the Superior Court of Ontario. Nothing in this decision is intended to be a comment on those proceedings or otherwise affect the interests of or positions of the parties in the Court proceedings.

Further Case Management Hearing to be Scheduled

89. The Registrar is directed to consult with the parties for the purposes of scheduling a case management hearing ("CMH") to deal with any further remedial issues arising from these three cases and to consider the submissions the parties may wish to make about how to most efficiently litigate the Ellis-Don ULP, the unfair labour practice complaint filed by the Unions and captioned under Board File No. 2012-21-U and the grievance referred to the Board under section 133 of the Act and captioned under Board File No.0070-22-G.

"Michael McFadden"
for the Board