

# Index

- APPLICATIONS**, *see also* BOARD PROCEDURES  
certification, for. *See* BARGAINING RIGHTS, ACQUISITION OF;  
CERTIFICATION APPLICATIONS, PROCEDURE  
interim orders, 158-159  
reconsideration, for. *See* BOARD DECISIONS, REVIEW AND  
RECONSIDERATION  
revocation, for. *See* BARGAINING RIGHTS, REVOCATION OF  
sale of business, re, 269-271  
single employer declaration, re, 221, 232
- ARBITRATION**  
binding, 278, 384  
first contract, 278  
first contract provisions. *See* FIRST CONTRACT ARBITRATION  
PROVISIONS  
generally. *See* COLLECTIVE AGREEMENTS  
powers during strike, 359
- ARBITRATORS**  
generally. *See* COLLECTIVE AGREEMENTS  
interest arbitrator, jurisdiction of, 338-339
- BACK-TO-WORK LEGISLATION**, 42-44
- BAD FAITH BARGAINING**. *See* COLLECTIVE BARGAINING
- BARGAINING AGENT**  
determination of, 238-241  
employer influence over, 189-191
- BARGAINING FREEZE**. *See* COLLECTIVE BARGAINING
- BARGAINING RIGHTS, ACQUISITION OF**  
bargaining unit, appropriate, 178-181  
Board's authority to determine, 178  
Board's determination, principles re, 179  
Code provisions re, 178

**BARGAINING RIGHTS, ACQUISITION OF** — *continued*

bargaining unit, appropriate — *continued*

raiding unions and, 181

voluntarily recognized bargaining units, 180

bargaining unit criteria, 183-189

collective bargaining history, 188

community of interest, 184-186

employee wishes, 188

employer's operational structure, 187

employer's territorial/geographical distribution, 186

generally, 183-184

industry practice/pattern, 189

viability of bargaining unit, 186

bars to certification applications —

reapplication, six-month bar, 177

strike/lockout, no application during, 177

card check certification system, 164-166

advantages of, 165

federal workplaces and, 166

voting versus, 165

certification —

automatic, 200

Board's duty, 199

Code provisions re, 163-164

employee wishes, determination of, 188, 190-199

ballot requirements, 198

date of filing of application, 191

eligibility to vote, 197

membership cards, 192-194

representation vote —

discretionary, 196

mandatory, 195

procedure, 194

requirement for, 194

results of, 195, 199

employer influence over bargaining agent, 189-191

generally, 163-164, 201

long-shoring bargaining units, 181-183

origin of, 163

statutory freeze, 171

timeliness, 171-177

bargaining unit description, importance of, 172

factors re, 171

no union-employer relationship, where, 172

## INDEX

### **BARGAINING RIGHTS, ACQUISITION OF — *continued***

#### **timeliness — *continued***

- term of collective agreement, no revision of, 176
- union-employer relationship through certification order, 173
- union-employer relationship through collective agreement —
  - operation date of collective agreement, determination of, 174
  - renewal date of collective agreement, determination of, 176-177

### **BARGAINING RIGHTS, REVOCATION OF**

- Board's inquiry process, 248-251
  - confidentiality, 250
  - employee statements/petitions, 249
  - labour relations officer investigation, 250
  - procedural criteria, 250
  - voting procedure, 251
- council of trade unions, revocation of certification, 253
- effect of revocation/declaration, 253-254
- employer support and voluntariness, 252
- fraud, certification by, 253
- generally, 245
- revocation application —
  - inquiry process, 249-251
  - persons entitled to bring, 245-246
  - timing of. *See* timing of application, *infra*
- timing of application, 246-249
  - collective agreement in force, when, 247
  - immunity period, 246
  - no collective agreement in force, when 247-248
  - open period, 246, 247
  - reasonable efforts test, 248-249
  - strike/lockout, during, 247

### **BARGAINING UNIT**

- generally. *See* BARGAINING RIGHTS, ACQUISITION OF
- reviews. *See* BARGAINING UNIT REVIEWS

### **BARGAINING UNIT REVIEWS**

- appropriate bargaining unit, determination of, 236-238
- bargaining agent, determination of, 238-241
  - double-majority principle, application of, 240-241
  - vote requirement, 238-241
- Board's power, 232-233
- collective agreement —
  - amendment of, 242-243
  - choice of, 241

**BARGAINING UNIT REVIEWS** — *continued*

negotiation by parties, 235-236  
sale of business, on, 270-271  
strike, during, 355  
structural and consequential issues, 238-243  
    bargaining agent. *See* bargaining agent, determination of, *supra*  
    Board's power to resolve, 238  
    collective agreement —  
        amendment of, 242-243  
        choice of, 241  
    notice to bargain, authorizing party to give, 243  
threshold for review, 233-235

**BOARD**

bargaining rights revocation decision. *See* BARGAINING RIGHTS,  
    REVOCATION OF  
bargaining unit determinations. *See* BARGAINING RIGHTS,  
    ACQUISITION OF  
decisions, review of. *See* BOARD DECISIONS, REVIEW AND  
    RECONSIDERATION  
generally. *See* CANADA INDUSTRIAL RELATIONS BOARD  
orders by. *See* ORDERS  
procedures. *See* BOARD PROCEDURES  
unfair labour practices powers. *See* UNFAIR LABOUR PRACTICES

**BOARD DECISIONS, REVIEW AND RECONSIDERATION**

application for reconsideration —  
    available dispositions, 214  
    content, 207  
    service of, 207  
Code provision re, 203  
generally, 203  
grounds for review, 208-214  
    bias, 212  
    duty to act fairly, 210-213  
    error of law/policy, 213  
    generally, 208-209  
    natural justice, 210-213  
    new facts, 209-210  
    reasons for decision, 212  
judicial review, 203, 214-217  
    arbitrator's interpretation of collective agreement, 216  
    conflict of law principles, application of, 217  
    deference, general rule of, 215  
    grounds for overturning decisions, 215

## INDEX

### **BOARD DECISIONS, REVIEW AND RECONSIDERATION — *continued***

judicial review — *continued*

    reasonableness standard of review, 215

procedural rulings, challenging of, 207

procedure on, 207-208

reasons for decision, 211

standing, 204

timeliness, 204-207

    case law, 205-207

    delay in filing, 205

    extension power, 205

written record basis of decision, 214

### **BOARD PROCEDURES**

applications/complaints, requirements, 114-117

Canada Industrial Relations Board Regulations, 2001 —

    2011 review of, 107

    effects of, 107

Canada Industrial Relations Board Regulations, 2012 —

    amendments, overview of, 108-114

commencement of proceedings, 108

confidentiality, 111, 128-130

    non-published confidentiality order, 129-130

decisions, reconsideration of, 113

disclosure, 111

documents —

    confidentiality, 111, 128-130

    filing and serving of, 109, 114-115, 117

    production, 124-126

dormant matters, 112, 131

exemption from, Board's power to grant, 127

expedited process, 110, 117, 122

forms, use of, 109, 114

hearing procedures, 112, 120-122

    adjournments, 123-124

    consolidation, 122

    document production, 124-126

    evidence, 126

    filing requirements, 121

    notice of hearing, 122

    oral hearings, 120-121

    place of, 123

    recording of, 126

    summons, 124-125

**BOARD PROCEDURES** — *continued*

hearing procedures — *continued*

witnesses, 121, 124

interventions, 110, 118-119

factors considered, 119

request requirements, 118

time limits, 118, 119

irregularities, 127

maintenance of activities during strike/lockout, 112

pleadings. *See* documents, *supra*

pre-hearing conference, 120

responses/replies, 115-116

stay of proceedings, 130-131

time limits, 109, 115

extension of, 116

intervention requests, 118, 119

**CANADA INDUSTRIAL RELATIONS BOARD**, *see also* BOARD

chairperson of, 96, 98

Client Consultation Committee, 99-100

decisions —

generally, 102

partial decisions, 105

reasons, duty to provide, 104

reviewability, 102

written decisions, types of, 103

delegation and assignment of powers, 98

described, 93-94

discipline inquiry, 97

employees, 99

executive director of, 99

history of, 94-96

Information Circulars, 100

interim orders. *See* INTERIM ORDERS

judicial independence of, 97-98

mandate of, 93-94

members of, 96-97

offices of, 99

organization of, 96

panels —

composition of, 100-102

decisions. *See* decisions, *supra*

procedures. *See* BOARD PROCEDURES

## INDEX

### **CANADA LABOUR CODE**

employee status under. *See* EMPLOYEE STATUS  
extraterritorial application. *See* EXTRATERRITORIALITY  
historical development of. *See* HISTORICAL CONTEXT  
offences under, chart re, 394

### **CANADIAN CHARTER OF RIGHTS AND FREEDOMS.** *See* RECENT DEVELOPMENTS

### **CERTIFICATION**

applications. *See* CERTIFICATION APPLICATIONS, PROCEDURE  
automatic certification, 375, 384  
extraterritoriality, 76-78, 81  
generally. *See* BARGAINING RIGHTS, ACQUISITION OF

### **CERTIFICATION APPLICATIONS, PROCEDURE**

application —  
    content of, 166  
    processing of, 169  
disclosure and confidentiality, 168  
hearings, 169-170  
investigation officer, role of, 168  
notice to affected parties, 167  
responses, replies and interventions, 167  
withdrawal, request re, 170

### **COLLECTIVE AGREEMENTS,** *see also* BARGAINING RIGHTS, ACQUISITION OF; BARGAINING UNIT REVIEWS

arbitrators, jurisdiction of, 321-328  
    abandonment/settlement of grievances, 327  
    collective agreement basis of, 321  
    employer damages claims, 322  
    “essential character” matters, 322  
    functus officio, doctrine of, 328  
    grievance procedures, 324  
    grievances, over, 322  
    mootness, doctrine of, 327  
    pension rights, 323, 324  
    prematurity, 328  
    res judicata, doctrine of, 326  
    scope of, case law development, 322-324  
    strike, during, 359  
    timeliness, 325  
    tort actions against employers, 323  
arbitrators, powers of, 329-333  
    costs, 332

**COLLECTIVE AGREEMENTS** — *continued*

arbitrators, powers of — *continued*

- damages, 332
- employment-related statutes, application of, 330
- interim relief, 331
- judicial review, 216
- penalty, substitution of, 333
- procedure, 330
- rectification re mistake, 333
- remedial authority, 331-333
- witnesses/testimony, 329

content, 310-321

- ancillary documents, 317
- collective agreement amendments, 320
- company rules, 320
- employment statutes, incorporation of, 314-316
- minimum labour standards (Code Part III), 316-317
- pension and benefit plans, 318-319
- statutory requirements. *See* statutory requirements, *infra*

extraterritoriality of. *See* EXTRATERRITORIALITY

form of, 308-310

- existence of, disputes re, 309-310
- intention to form, 309
- ratification, 309
- written requirement, 308

generally, 307

interpretation of —

- arbitrators. *See* arbitrators, jurisdiction of, *supra*
- Board's deferral to arbitrator, factors, 321

statutory requirements, 310-314

- duration clauses, 313
- early termination, 313
- final and binding dispute resolution, 312
- no strike/lockout, 310-312
- union security clauses, 312-313

**COLLECTIVE BARGAINING**

bad faith bargaining, remedies re, 303-306

- binding arbitration, order re, 305
- Board's remedial authority, 303
- case law, 304-305
- free collective bargaining principle, 305-306
- test re, 303

## INDEX

### **COLLECTIVE BARGAINING** — *continued*

- bargaining freeze, 274, 276, 278, 296-300
  - “business as before” approach, 296, 297
  - effect of, 296
  - employer’s right to alter terms and conditions, 298-300
  - leading case re, 296
  - pension changes, 297
  - purpose of, 296
  - termination of, consequences of, 298-300
- binding arbitration, 278
- conciliation, 276-277
- disclosure. *See* employer’s duty to disclose, *infra*
- duty to bargain in good faith, 282-292
  - bad faith bargaining. *See* bad faith bargaining, remedies re, *supra*
  - bargaining proposals, content of, 287-291
  - contextual assessment, 282
  - disclosure duty. *See* employer’s duty to disclose, *infra*
  - hard bargaining, behaviour suggesting, 286-287
  - hard versus surface bargaining, 283
  - obligations extending after negotiations, 291
  - surface bargaining, behaviour suggesting, 284-286
- employer communications, limits on, 301-303
- employer’s duty to disclose, 292-296
  - “make every reasonable effort”, meaning of, 295
  - plant closure plans, 295
  - privacy issues, 293
  - remuneration issues, 292
  - scope of, 295
  - stage of corporate decision, 294
  - unsolicited information, 294
- final offer vote, 277
- first contract arbitration, 278
- generally, 273
- informed bargaining representatives, use of, 295
- legal strike/lockout, 274
- maintenance of activities agreement/application, 275-276
- mediation, 277
- notice requirements, 273-274
- requirement to commence, 273-274
- technological change, 278-282
  - defined, 279
  - non-application of provision re, 281
  - notice requirement, 279-280
  - reopening collective agreement, 280

## FEDERAL LABOUR LAW AND PRACTICE

### **COLLECTIVE BARGAINING** — *continued*

unfair labour practices, 301-303

### **COMMUNICATIONS, EMPLOYER**, 301-303, 379-381

### **CONCILIATION**

Code provisions, 336

collective bargaining and, 276-277

conciliation commissioners/boards —

    antecedents to, 338

    constitution and appointment of, 337-338

    recommendations by, 338

conciliation officer —

    appointment of, 336

    functions of, 337

    report of, 338

exhaustion of, 349

Federal Mediation and Conciliation Service, 336

generally, 335

interest arbitrator, jurisdiction of, 338-339

legal strike/lockout, timing strategy, 339-340

notice of dispute —

    Minister's options, 336

    Minister's receipt of, 336

practical application of Code provisions, 339-340

referral of matter by union and employer, 338-339

### **CONFIDENTIALITY**, 111, 128-130, 168, 250

### **CONSTITUTION ACT, 1867**. *See* LABOUR JURISDICTION

### **DECERTIFICATION**. *See* BARGAINING RIGHTS, REVOCATION OF

### **DISCLOSURE**, 111, 168, 292-296

### **DISCRIMINATION**. *See* UNFAIR LABOUR PRACTICES

### **DIVISION OF POWERS**. *See* LABOUR JURISDICTION

### **EMPLOYEE STATUS**

confidential capacity exclusion, 146-147

    narrow interpretation of, 147

    test re, 146

dependent contractor, Code definition, 139-142

“employee”, defined —

    Code Part I, under, 133-135

    Code Part II, under, 134

## INDEX

### **EMPLOYEE STATUS** — *continued*

exclusions from under Code —

artists, 136

confidential capacity. *See* confidential capacity exclusion, *supra*

Crown Corporations, 135

mail contractors, 136

management. *See* management exclusion, *infra*

nuclear facilities, employment in, 135

offshore marine installations, 136

public service, 135

generally, 133

independent contractor, test re, 137-139

laid-off workers, 148

management exclusion, 142-145

decision-making test, 143-145

non-management duties, 143

supervisors versus team leaders, 145

supervisory versus management functions, 142

seasonal workers, 149

sufficiency of connection to employment relationship, 147-149

voting eligibility re representation vote, 147-149

### **EMPLOYERS**

communications by, 301-303, 379-381

disclosure duty. *See* COLLECTIVE BARGAINING

federal sector. *See* FEDERAL SECTORS

single employer declaration. *See* SINGLE EMPLOYER DECLARATION

unfair labour practices by. *See* UNFAIR LABOUR PRACTICES

### **EXTRATERRITORIALITY**

American approach to, 84-86

businesses operating beyond Canada's territorial limits, 77

Canada Industrial Relations Board, jurisdiction taken by, 73

Canada Labour Code —

application of, 73-74

conflict of laws and, 89-91

expanded application of, 77-84

limited application of, traditional, 75-76

case law re, 75

collective agreements, extraterritorial application, 86-89

case law re, 86-89

contracting out context, 88

foreign entities in foreign jurisdictions, 87-89

work moved to foreign subsidiary, where, 87-88

conflict of laws and Canada Labour Code, 89-91

## FEDERAL LABOUR LAW AND PRACTICE

### **EXTRATERRITORIALITY** — *continued*

criteria for asserting jurisdiction, 78, 82  
domestic laws, extraterritorial application of, 74-75  
foreign affiliates, 79-80  
generally, 73, 91  
international law ousting Canada Labour Code jurisdiction, 79-80  
non-Canadians working in non-Canadian jurisdictions, 81-84  
residency and employment requirements, 81  
sectors involved, 73  
trans-border transportation business, 79  
union certification cases, 76-78, 81

### **FEDERAL LABOUR LAW**

federal sectors. *See* FEDERAL SECTORS  
historical context. *See* HISTORICAL CONTEXT  
recent developments. *See* RECENT DEVELOPMENTS

### **FEDERAL SECTORS**

employers —  
    aeronautics, 23  
    banking, 26  
    broadcasting, 24  
    international and interprovincial shipping and transportation, 24  
    long-shoring, 25  
    nuclear power, 26  
    railroads, 26  
    telecommunications, 23  
generally, 21-22  
statistical overview, 22-23  
unions —  
    aeronautics, 27  
    banking, 29  
    broadcasting, 27  
    generally, 26  
    international and interprovincial shipping and transportation, 28  
    long-shoring, 29  
    nuclear power, 29  
    railroads, 28  
    telecommunications, 27

### **FIRST CONTRACT ARBITRATION PROVISIONS**

Code's provisions re, 341  
employer's bad faith bargaining remedy, as, 342  
generally, 340  
imposition of agreement, 341-343

## INDEX

### **FIRST CONTRACT ARBITRATION PROVISIONS** — *continued*

inquiry by Board, 341  
representations and evidence, presentation of, 341

**GOOD FAITH BARGAINING.** *See* COLLECTIVE BARGAINING

**GRIEVANCES,** 322, 324, 327

**HEARINGS.** *See* BOARD PROCEDURES; CERTIFICATION  
APPLICATIONS, PROCEDURE

### **HISTORICAL CONTEXT**

Canada Labour Code, 16-19  
    current form, described, 17-19  
    early amendments to, 17  
    origins of, 16  
    Sims Report, 17-19  
Canada Labour Relations Board, 16, 18  
Conciliation Act, 2-4  
current issues, 19  
federal versus provincial constitutional jurisdiction, 6-10  
generally, 1  
Great Depression, effect of, 10  
Industrial Disputes Investigation Act, 3, 4-14  
    constitutional challenges to, 5-10  
    procedures under, 4-5  
    suspension of, 14  
    World War II, extension of scope during, 11  
Industrial Relations and Disputes Investigations Act, 14-16  
nineteenth century laws, 2  
Ontario Collective Bargaining Act, 12  
post-World War II developments, 13-17  
Railway Labour Disputes Act, 3, 4  
United States National Labor Relations Act, 10  
United States New Deal legislation, effect of, 10  
Wagner Model, adoption of, 10-12  
War Measures Act, effect of, 10-13  
Woods Task Force, 16  
World War II, effect of, 10-14  
    National Wartime Labour Relations Board, 12  
    P.C. 1003, provisions and operation of, 12-14

**ILLEGAL STRIKES/LOCKOUTS.** *See* STRIKES AND LOCKOUTS

**INDEPENDENT CONTRACTOR.** *See* EMPLOYEE STATUS

**INTERFERENCE.** *See* UNFAIR LABOUR PRACTICES

## FEDERAL LABOUR LAW AND PRACTICE

### **INTERIM ORDERS**

- application requirements/procedure, 158-159
- Board's jurisdiction, limits on, 159-161
- Code provisions re, 151-152
- criteria for issuance of, 152-158
  - injunctive relief test, application of, 153-154
  - labour relations objectives, 155-157
  - pragmatic approach, 154
  - test, case law re, 153-155
  - timeliness of application, 157-158
- limits to issuance of, 159-161
- stay application and, 160

**INTERVENTIONS.** *See* BOARD PROCEDURES

**JUDICIAL REVIEW**, 203, 214-217, 374

**JURISDICTION.** *See* LABOUR JURISDICTION

### **LABOUR JURISDICTION**

- aeronautics, 68-69
- basic principles, 50-53
  - exclusive provincial authority versus federal exceptions, 51, 52
  - federal competence, 51
  - functional test, 52
  - Indian reserve, business on, 51-52
- components of enterprise, identifying, 56-57
- Constitution Act, 1867 —
  - federal work, undertaking or business power, 50
  - provincial property and civil rights power, 50
- division of powers, 50
- federal undertaking, identifying, 54-55
- functional test, 53
- generally, 72
- Indians and lands reserved for Indians, 64-66
- interprovincial communications, 62-63
- interprovincial transportation, 57-62
  - communications, 62-63
  - freight forwarding, 59
  - generally, 58
  - pipelines, 61
  - railways, 61
  - trucking, 60
- issues re, sources of, 70-71
- postal service, 66-68
- practical points for practitioner, 70-72

## INDEX

### **LABOUR JURISDICTION** — *continued*

shipping, 63-64

works declared for the general advantage of Canadians, 70

**LABOUR LAW.** *See* FEDERAL LABOUR LAW

**LOCKOUTS.** *See* STRIKES AND LOCKOUTS

**MANAGEMENT.** *See* EMPLOYEE STATUS

**MEDIATION,** 277, 336, 349, 372

### **NOTICE**

collective bargaining requirements, 273-274

of dispute, 336

of hearing, 122

to bargain, 243

to employer, 349, 350-351

### **OFFENCES**

Board order —

contravention of, 393

filing in Federal Court, 396-397

filing in superior court, 397

Code contraventions, 393

generally, 393

labour relations remedies versus prosecutions, 395, 397, 399

penalties re Code offences, chart, 394

prosecutions —

authorization by Board, 395-396

consent to prosecute, 397-399

### **ORDERS**

binding arbitration, order re, 305, 384

certification order, 173

costs order, 374

illegal strikes and lockouts, 356-358

interim. *See* INTERIM ORDERS

offences, re. *See* OFFENCES

**PENALTIES.** *See* OFFENCES

**PICKET LINES.** *See* STRIKES AND LOCKOUTS

**PROSECUTIONS.** *See* OFFENCES

**RECENT DEVELOPMENTS**

- Charter decisions —
  - collective bargaining/strikes —
    - “duty to consider”, 46
    - exclusion of, 44
    - protection of, 45
  - freedom of association issues, 44-48
  - “Labour Trilogy” cases, 44
- deregulation, 35-36
- generally, 31-32, 48
- labour relations, changes in, 36-40
  - union activism, 39-40
  - union density, decline in, 37-39
  - union mergers, 38-39
  - union recruitment, 38
- legal framework, evolution of, 40-48
  - back-to-work legislation, use of, 42-44
  - Canada Labour Code, 1999 amendments, 41
  - Canada Labour Relations Board, expanded role of, 42
  - Canadian Charter of Rights and Freedoms. *See* Charter decisions, *supra*
  - Sims Task Force Report, 41-42
- North American Agreement on Labour Cooperation, 33-34, 40
- privatization, 35-36
- technological innovation, 34-35
  - computer-based information technology, 35
  - deregulation and, 35
  - telecommunications sector, 35
- trade liberalization, 32-34
  - free trade agreements, 34
  - historical free trade initiatives, 33
  - North American Agreement on Labour Cooperation, 33-34
  - North American Free Trade Agreement, 33

**REMEDIES. *See* OFFENCES**

**SALE OF BUSINESS**

- application for declaration, 269
- bargaining unit review application, 270-271
- Board’s authority to determine questions re, 269
- Code provisions re, 255-259, 264, 266, 269-271
- consequences of, 266-269
- federal to provincial sale of business, 265
- inquiry re, four-step test, 256-264
  - block versus partial transfer, 258
  - “business”, definition of, 257-258

## INDEX

### **SALE OF BUSINESS — *continued***

inquiry re, four-step test — *continued*  
    continuity of business by successor, 262-263  
    continuity of work, 263  
    “sale”, definition of, 259-261  
    “sale of business”, occurrence of, 261-264  
    transfer of assets, mere, 262  
provincial to federal sale of business, 264-265  
public to private sale of business, 266  
“sale of business”, interpretation of, 255-256  
transfer of employees, 267-269

### **SINGLE EMPLOYER DECLARATION**

bargaining unit reviews. *See* BARGAINING UNIT REVIEWS  
Board declaratory power, 219-220  
Code provisions, 219-220  
discretionary declaration, 230-232  
    balancing objective, 231  
    compelling labour relations purpose, 230  
    timing of application, 232  
    union fitness to represent issue, 231  
    union versus employer applications, 230  
single employer application, 221  
single employer test, elements of, 221-232  
    associated/related employers, 224-225  
    common control and direction, 227-229  
    federal jurisdiction requirement, 223  
    plurality of employers criterion, 225-227  
    two/more enterprises, 222

### **STRIKES AND LOCKOUTS**

bargaining unit revisions, during, 355  
Board’s regulatory power during, 358  
Code provisions re, 346-348  
collective agreement arbitrators, powers during, 359  
commencement of, test re, 346  
conduct during and after, prohibitions, 364-365  
    replacement workers, 364  
    unfair labour practices, 364  
courts, regulatory powers during, 360  
criminal sanctions, 363  
crossing picket lines, 347  
definitions of, 346-347  
generally, 345, 365  
illegal conduct during, 358

## FEDERAL LABOUR LAW AND PRACTICE

### **STRIKES AND LOCKOUTS** — *continued*

illegal strikes and lockouts, 354-358

Board's powers/orders, 356-358

Code provisions re, 355

economic consequences, 366

employer application re, 355

finances, 358

"lockout", meaning of, 357

prohibitions, 354-355

refusal to cross picket lines, 357

remedial orders against, 355-356

"strike", meaning of, 356

union application re, 355

injunctions, 360, 362-363

limitations on right to strike, 347

lockout, subjective and objective elements, 347-348

picketing —

general principles re, 361

illegal, 362-363

injunctions and, 360

prerequisites for lawful strikes/lockouts, 349-354

conciliation/mediation, exhaustion of, 349

essential services, determination of, 350, 351-354

notice to employer, 349, 350-351

strike vote, holding of, 349, 350

prohibitions on declaration of strike, 347, 354-355

unlawful picketing, civil remedies for, 362-363

**TECHNOLOGICAL CHANGE.** *See* COLLECTIVE BARGAINING

**TECHNOLOGICAL INNOVATION, EFFECT OF.** *See* RECENT DEVELOPMENTS

**TRADE LIBERALIZATION.** *See* RECENT DEVELOPMENTS

### **TRADE UNIONS**

bargaining rights. *See* BARGAINING RIGHTS, ACQUISITION OF;  
BARGAINING RIGHTS, REVOCATION OF

certification. *See* CERTIFICATION

collective agreements. *See* COLLECTIVE AGREEMENTS

collective bargaining. *See* COLLECTIVE BARGAINING

federal sector. *See* FEDERAL SECTORS

strikes and lockouts. *See* STRIKES AND LOCKOUTS

unfair labour practices and. *See* UNFAIR LABOUR PRACTICES

## INDEX

### UNFAIR LABOUR PRACTICES

- anti-union animus, existence of, 370
- bargaining with non-bargaining agent union, 390-391
- Board's powers —
  - deferral to arbitration, 371
  - mediate disputes, 372
  - remedial. *See* Board's remedial powers, *infra*
- Board's remedial powers, 373-376
  - automatic certification, 375, 384
  - binding arbitration order, 384
  - Code provisions re, 373, 375
  - costs order, 374
  - court deference to, 374
  - discrimination, 388
  - interference with right to be union member, 389
  - interference with trade union, 383-384
  - judicial review of, errors, 374
  - limitations on, 373
- Code provisions re, 367
- collective bargaining and, 301-303
- complaint procedure —
  - anti-union animus, where existence of, 370-371
  - Board's powers. *See* Board's powers, *supra*
  - burden of proof, 370
  - onus and reverse onus, 369
  - procedural requirements, 368-369
  - response to, 369
  - standing to file, 371
  - time limit for filing, 367-368
    - commencement of, 368
    - continuing wrong, 368
    - extension of, 367
- discrimination against union supporters complaint, 385-387
  - discriminatory actions, 385-386
  - examples, 386-387
  - general principles, 385-386
  - remedies, 388
- employee's refusal to perform prohibited act, discipline for, 390
- generally, 367
- interference in employee's right to be union member, 388-389
  - examples, 388-389
  - general principles, 388
  - remedies, 389

## FEDERAL LABOUR LAW AND PRACTICE

### **UNFAIR LABOUR PRACTICES** — *continued*

- interference with trade union complaint, 376-384
  - administration of trade union, 377
  - employer's business reasons, 381-382
  - employer's right to communicate directly with employees, 379-381
    - acceptable conduct versus interference, 380-381
    - speech during organizing campaign, 381
    - test, 379-380
  - exceptions to unfair labour practices, 383
  - formation of trade union, 376
  - generally, 376
  - remedies, 383-384
  - representational activities of trade union, 377, 378-379
- maintenance of benefits complaint, 390
- replacement workers complaint, use of, 384
- strikes and lockouts, during and after, 364
- union membership complaint, 370-371

**UNIONS.** *See* TRADE UNIONS

### **VOTING**

- bargaining agent determination, 238-241
- card check certification system versus, 165
- employee eligibility, 197
- final offer vote, 277
- representation vote, 147-149, 194-196, 199
- revocation inquiry, 251
- strike vote, 349, 350