Publisher’s Note

An Update has Arrived in Your Library for:

TRADE UNION LAW IN CANADA
M. Mac Neil, M. Lynk and P. Engelmann
Release No. 2023-5, December 2023

A resource designed around the concerns of labour unions, Trade Union Law in Canada comprehensively explains the various strands of the law that affect the internal affairs of trade unions. While examining the relationships between unions and their members, Trade Union Law in Canada provides analysis of the legal character of unions, including their legal status, security, and politics, as well as a review of union structures, constitutions, and the election of union leaders. Matters of internal discipline of union members and the duty imposed by law on unions to provide fair representation are examined and clearly explained.

Customer Support
1-416-609-3800 (Toronto & International)
1-800-387-5164 (Toll Free Canada & U.S.)
E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher’s note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.
What's New in This Update:

Release 2023-5 features extensive updates to case law and commentary in Chapter 7 (Duty of Fair Representation), and Chapter 10 (Religious Exemption from Union Security Provisions).

Highlights

- **DUTY OF FAIR REPRESENTATION—PROCESS—PARTIES—TO WHOM THE DUTY IS OWED**—In *L.T. and MAHCP, Re*, 2023 CarswellMan 138 (Man. L.B.), the Board found that a union must still make appropriate inquiries into a probationer’s allegations in order to determine if the employer has improperly exercised its contractual right to terminate. This must occur even when the collective agreement contains a provision regarding the inability to grieve a release from probation.

- **DUTY OF FAIR REPRESENTATION—PROCESS—FILING—TIME-LIMITS—INTRODUCTION**—In *Cuff and CUPE, Local 1289 (Vincent), Re*, 2022 CarswellNfld 275, it was found that specific circumstances giving rise to the complaint may influence the point from which the delay is measured. In one instance, the Labour Board of Newfoundland and Labrador found the clock started when the Union’s email communication with the griever significantly deteriorated. The Union’s poor communication amounted to a breach of the duty as it indicated it would reply to emails requesting for updates but failed to.

- **DUTY OF FAIR REPRESENTATION—PROCESS—SUMMARY DISMISSAL OF COMPLAINTS—GENERAL**—In *Roy and Workers United Canada Council, Re*, 2015 CarswellSask 25 (Sask. L.R.B.), the test for summary dismissal of complaints was summarized. When determining whether a claim should be struck as disclosing no arguable case, the test is whether there is no reasonable chance of success, assuming the applicant is able to prove everything alleged in their claim. The Board should exercise its jurisdiction to strike on this ground only in plain and obvious cases and where the Board is satisfied that the case is beyond doubt. In *SGEU v. Wilchuck*, 2023 CarswellSask 293 (Sask. L.R.B.), the Board held that the strict application of the test would limit the Board to consider only the applicant’s submission but because it was “very sparse,” the Board concluded that it was appropriate to consider the employee's reply to the applicant’s summary dismissal.

- **DUTY OF FAIR REPRESENTATION—ADMINISTRATION OF THE COLLECTIVE AGREEMENT—THE EM-
PLOYEE'S OBLIGATIONS—POST-SETTLEMENT CLAIMS WILL BE MORE STRICTLY SCRUTINIZED—In Fusaro v. LIUNA, Local 3000, 2023 CarswellOnt 4693 (Ont. L.R.B.), the Ontario Board dismissed a duty of fair representation application filed as the union failed to pursue an increase in the payment set out in the applicant’s settlement agreement. The Board stated that the applicant failed to provide any compelling reasons for the “Board to inquire further into the application”, and also that the application could be precluded based on a settlement term. Given that the duty of fair representation is either a statutory duty or a well-established common law duty, the implications of this decision should be approached with caution.