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TRADE UNION LAW IN CANADA M. Mac Neil, M. Lynk and P. Engelmann Release No. 2024-2, June 2024
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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.

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What's New in This Update:

Release 2024-2 features updates to case law and commentary in Chapter 1 (The Legal Status of Trade Unions), Chapter 2 (Union Security), Chapter 3 (Unions, Politics and Law), and Chapter 9 (Discipline and Expulsion from Union Membership).

Highlights

- **CHAPTER 1. THE LEGAL STATUS OF TRADE UNIONS**—Two new cases were added where the employers were seeking interim injunctions to prevent picketers from blocking access to premises during a legal strike. A discussion was added a Quebec statute governing the creation of an association or professional syndicate. The *Professional Syndicates Act*, CQLR, c S-40 sets out a process by which a professional syndicate can be created, and stipulates that when established, such association or professional syndicate constitutes a legal person. An additional case was added on construction unions in the province of New Brunswick, along with discussion of an Ontario statute stating that a person who is a member of any constituent trade union of a council is deemed to be a member of the council, and a case on card-based certification in New Brunswick.
- **CHAPTER 2. UNION SECURITY**—In *Alberta Health Services v. The Alberta Union of Provincial Employees*, 2023 ALRB 2, reconsideration denied 2023 CanLII 117152 (AB LRB), the Alberta Labour Relations Board concluded that a one-month suspension of union dues collection as a penalty for a union that has engaged in an unlawful strike was appropriate so long as the provision was Charter compliant. In its Charter analysis, the Board took into account the more expansive approach to freedom of association and protection for collective bargaining arising from recent Supreme Court decisions. The Board acknowledge that the effect of a suspension order temporarily overrode collective agreement provisions relating to the collection and remittance of union dues. It also acknowledged that those provisions are significant as unions rely on the income generated to fund important union activities. Nevertheless, the Board concluded that because of its temporary and targeted nature, a suspension was not a substantial interference with collective bargaining. Other cases were added on repeated failure of an employer to transmit deducted dues leading to punitive damages, and a case involving an employer that assigned employees to non-certified worksites being required to continue to collect dues until the employee opts out in writing indicating they no longer wish to be a union member and have dues deducted.

- **CHAPTER 3. UNIONS, POLITICS AND LAW**—Commentary and a case summary was added on the legitimacy of a union’s pursuit of political goals, leading a labour board to conclude that it did not have jurisdiction to consider a complaint by a member that the duty of fair representation was violated when a union publicly commented on violence in Palestine and Isarel and joined a coalition supporting a ceasefire (see *Sodexo MS Canada Ltd. v. HEU*, 2004 CanLII 36157 (BC LRB)).
- **CHAPTER 9. DISCIPLINE AND EXPULSION FROM UNION MEMBERSHIP**—Discussion and case references were added on the need for purposive rather than literal interpretations to avoid absurd or unjust outcomes; procedural unfairness to members; non-disciplinary membership issues; zero tolerance for discrimination and harassment; suspension of union executive members involved in legal proceedings against the union; termination of membership due to permissible retirement; jurisdiction of national unions as bargaining agents; whether a ban on attending union events, imposed after a harassment investigation, is considered a penalty; whether certain elected officials in the union could be considered to be employees under *Labour Code*; the concept of fair representation versus natural justice; the standards of natural justice; the right to cross-examine witnesses; how failure to provide sufficient particulars about the charges against a member, or failure to provide them in timely fashion, may violate the principles of natural justice; the right to counsel; accommodation of disabilities (particularly alcoholism); statutory provisions compelling or inducing a person to become, refrain from becoming, continue being, or cease to be a member of a trade union; “intimidation” or “coercion” in the context of unfair labour practices; raiding unions; two-tier fees; retaliatory actions; decertification campaigns; and a union’s internal appeals process.