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### TRADE UNION LAW IN CANADA

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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:**

This release features updates to Chapter 7, Duty of Fair Representation, Chapter 10, Religious Exemption from Union Security Provisions, Chapter 11, Trade Union Liability in Human Rights Cases, and Appendix TC, Table of Concordance.

### **Highlights**

- **Chapter 7—Duty of Fair Representation—II. General Principles—§ 7:6. “Discriminatory, Arbitrary or in Bad Faith” Standard**—The Ontario Board has summarized the definitions of arbitrary, discriminatory and bad faith in the context of duty of fair representation claims in the following manner: “Arbitrary” means conduct which is capricious, implausible, or unreasonable in the circumstances. This is often demonstrated by a failure by the union to properly direct its mind to a situation, or to conduct a proper and meaningful investigation when one appears to be called for. “Discriminatory” is defined as distinguishing or treating employees differently without good reason. “Bad faith” is conduct motivated by hostility, malice, ill-will or dishonesty (see *Swaruban Vijeyaratnam (Ruban) v. CUPE 250*, 2022 CarswellOnt 6061 (Ont. L.R.B.), *Switzer v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)*, 1999 CarswellOnt 4438 (Ont. L.R.B.), and *Swaruban Vijeyaratnam (Ruban) v. CUPE 250*, 2022 CarswellOnt 6061 (Ont. L.R.B.)).
- **Chapter 7—Duty of Fair Representation—II. General Principles—§ 7:7. “Discriminatory, Arbitrary or in Bad Faith” Standard—Discriminatory**—In *Guérin c. Syndicat des employés manuels de la Ville de Québec, section locale 1638 - Syndicat canadien de la fonction publique*, 2025 QCTAT 2521 (T.A.T.D.R.T.), the union was not held to have breached the duty when it accepted an employer offer to provide retroactive pay for only one group of employees who had filed a classification grievance while providing nothing for other employees. Though the two groups were treated differently, the union decided to accept the employer’s offer after concluding that the grievance had a low chance of success and the employer repeatedly refused to consider compensating all employees.
- **Chapter 7—Duty of Fair Representation—III. Process—C. Filing—1. Appropriate Forum—§ 7:17. Human Rights Codes and Parallel Proceedings**—In *Tim Spangler*, 2025 BCLR 87 (B.C. L.R.B.), the British Columbia Board has expressed that it will no longer routinely defer duty of fair representation complaints involving human rights

issues to the Human Rights Tribunal, due to the Tribunal's significant backlog and delays. Instead, the Board will address the human rights aspects within its jurisdiction, leaving broader issues to the Tribunal unless the applicant provides reasons for full deferral. See also *Davidson v. Nova Scotia (Government and General Employees Union)*, 2024 NSSC 352 (N.S. S.C.), where the Nova Scotia Superior Court found that the claim of a breach of contract, occupational health and safety laws, and human rights violations was truly a dispute of a breach of duty of fair representation.

- **Chapter 7—Duty of Fair Representation—V. Administration of the Collective Agreement—B. Scope of the Duty—2. Where the Duty Applies—§ 7:57. Benefit Plans**—“In British Columbia, a failure to inform union members that the union would not be continuing to pay for benefit premiums for members who had crossed the picket line during a labour dispute, when the union had already committed to paying those benefits, has been found to be a breach of the duty.” (see *Edith Jean Jahn*, 2024 BCLRB 115 35 (B.C. L.R.B.)).
- **Chapter 10—Religious Exemption from Union Security Provisions—II. Statutory Provisions—§ 10:3—Other Sources of Protection for Religious Objectors**—Some collective agreements may confer exemptions on paying union dues for religious reasons. For example, see *MZ v. Canadian Union of Public Employees ('CUPE'), Local 8920 et al.*, 2025 NSLB 16 (N.S. L.B.).
- **Chapter 11—Trade Union Liability in Human Rights Cases—V. Discrimination in the Substance of the Collective Agreement—§ 11:23. Mandatory Retirement**—In *Sidhu & Kopeck v. International Longshore and Warehouse Union Local 500*, 2025 CHRT 11 (Can. Human Rights Trib.), application for judicial review pending, the CHRT found that a longshoring union discriminated against two members based on age by adopting a rule that stripped seniority-based work allocation from those working while also receiving a pension. Introduced after the 2011 federal elimination of mandatory retirement, the policy aimed to create opportunities for younger members not yet collecting a pension. However, because members over 71 were required to draw their pension, the rule automatically removed seniority-based work allocation benefits if they continued working. Citing Supreme Court authority that pension benefits are an absolute entitlement rather than income replacement, the Tribunal held that—although the policy was adopted in good faith and was rationally connected to its objective—the union failed to show undue hardship, noting that only three members in total were affected.