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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 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—III. Modern Law of Union Status—B. Specific Issues—§ 1:8. Liability of a National or Parent Union—On an appeal from an application judge's decision, the Alberta Court of King's Bench determined that it was possible for an international union to be considered a supervisor of employees of a local union for the purpose of Alberta's Occupational Health and Safety Act, SA 2017, c 0-2.1. The Court, however, determined that in order for an international union to attract such liability it must have the authority to directly address health and safety issues on a day-to-day basis by having sufficient control over the workplace and the workers. The international union's constitutional trusteeship power, which had not been exercised, were insufficient to vest it with the powers required for it to be deemed a supervisor. See *Piechotta v. United Food* and Commercial Workers Canada Union, Local 401, 2025 ABKB 241 at para. 38.
- Chapter 2—Union Security—§ 2:5. Enforcing Union Se**curity—**An arbitrator appointed, pursuant to the British Columbia Code, to conclude the terms of a first collective agreement held that restrictions on contracting out and union security clauses were fundamental to establishing the goals of collective bargaining especially at workplaces where an employer had an extensive history of using contractors (see Newcrest Red Chris Mining Limited v. United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-1937, 2023 CanLII 88238 (BC LA), at para. 14). Unions may also rely upon union security clauses to protect against efforts by nonmembers to terminate bargaining rights. The Nova Scotia Board has held that a termination application will be dismissed where the Applicant was hired contrary to a union security clause (see Gautreau v. United Brotherhood of Carpenters and Joiners of America, Local 1386, 2024 CanLII 137741 (NB LEB), at para. 3).
- Chapter 2—Union Security—§ 2:9. Enforcing Union Security—Closed Shops—In 2024, the federal government amended the *Canada Labour Code* to prohibit employers from using replacement workers during a lawful strike except for

in certain prescribed circumstances. These prescribed circumstances are the replacement worker's services are necessary to deal with a situation that presents or could reasonably be expected to present an imminent or serious "threat to life, health or safety of any person", the "threat of destruction of, or serious damage to, the employer's property or premises" or "threat of serious environmental damage affecting the employer's property or premises". It is expected that these amendments will serve to significantly strengthen union security at federally regulated workplaces; however, the provision has not yet been the subject of judicial consideration. The amendments to the Code also include significant sanctions, including fines up to \$100,000 for violations of this prohibition.

- Chapter 3—Unions, Politics and Law—III. Union Political Activities—B. Restrictions on Election-Related Spending—§ 3:15. Third-Party Advertising During Elections—In March 2025, a majority of the Supreme Court of Canada in Ontario (Attorney General) v. Working Families Coalition (Canada) Inc., 2025 SCC 5 dismissed the appeal, affirming that the third-party spending limit contained in the Election Financing Act infringes the right to vote protected by section 3 of the Charter. The majority adopted a broad approach to protecting the right to vote, holding that in order to cast informed votes, citizens must be able to hear differing viewpoints from third-parties, candidates, and political parties. Section 3 will be infringed where spending limits allow any political actor or third party a disproportionate voice in the political discourse, which was the case given how the impugned provisions limited third parties in the pre-writ year while no similar limits existed for political parties. The spending limit itself was also found to infringe section 3 of the Charter. The majority held that the correct question is whether the limit creates disproportionality in the political discourse. The Court held that the impugned provisions permitted political parties to overwhelm the voices of third parties during the first six months of the pre-election year. The Supreme Court's decision in Working Families has affirmed that legislation which seeks to silence third parties (including advertising done by unions and labour-adjacent groups) engaged in electoral advertising may not withstand Charter scrutiny. It affirmed the important and meaningful role trade unions may play in electoral politics.
- Chapter 9—Discipline and Expulsion from Union Membership—III. Statutory Bases for Intervention—B. Statutory Models—§ 9:12. Natural Justice—Section 6-58 of the Saskatchewan Employment Act provides the Board with jurisdiction to review certain internal union matters for compliance with the principles of natural justice. Assessing

whether a union has complied with its duty of procedural fairness is a contextual exercise, and the content of the duty varies from case to case. Section 6-58 does not provide employees with carte blanche to have the Board review every decision of the Union. To the contrary, the Board will not routinely review every internal decision made by a union (see Unifor Local 649 v. Jensen, 2023 CanLII 13065 (SK LRB), at para. 30; see also Stewart v. Saskatchewan Brewers' Bottle & Keg Workers, Local Union No. 340, [1995] 2nd Quarter Sask Labour Rep 204). Furthermore, the Board expects employees to exhaust all internal remedies available to them before applying to the Board, and this applies to applications under section 6-58 as well (see Saskatchewan Government and General Employees' Union v. Candace Smith and Regina Transition House, 2024 CanLII 77316 (SK LRB), at para. 56; see also Elizabeth Emeka-Okere v. Canadian Union of Public Employees, 2021 CanLII 89513 (SK LRB), at para. 85). In Saskatchewan Polytechnic Faculty Association v. Chau Ha, 2022 CanLII 75556 (SK LRB), the Board confirmed the holding from McNairn that the purpose of section 6-58 is to protect an employee from abuse in the union's exercise of its power (para. 43). An employee's right to procedural fairness in certain processes will vary based on the circumstances. In an application under section 6-58, the applicant is required to provide sufficient particulars to sustain a breach (para. 31). Whether the Board has jurisdiction to hear an application under section 6-58 depends upon assessing the essential character of the dispute to endure that it relates to the application of the principles of natural justice and not to a breach of a provision of the Union's constitution (para. 48). The Board has jurisdiction over the former, but not the latter.