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REMEDIES IN LABOUR EMPLOYMENT AND HUMAN RIGHTS LAW

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Remedies in Labour, Employment and Human Rights Law is a unique resource which provides a comprehensive analysis of the remedial jurisdiction of adjudicators, tribunals and courts to enforce human rights and employment rights. The authors examine remedies arising from labour arbitration, from wrongful dismissal litigation, and from unjust dismissal cases under the *Canada Labour Code*, following labour relations board hearings and in the human rights context. In each instance the authors discuss the purpose and scope of the available remedial orders as well as the source of the remedial authority, then each type of remedial order is detailed and explored.

This release updates Chapter 3 (Labour Relations Board Remedies).

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Highlights:

- **Labour Relations Board Remedies — Types of Remedial Orders — Interim Relief —** In *LIUNA, Local 183 v. Alto Restoration Inc.*, 2025 CarswellOnt 12660 (Ont. L.R.B.), the Ontario Labour Relations Board dismissed an application for interim relief seeking to adjourn interest arbitration proceedings that had been initiated by appointment of the Minister to settle the terms of a renewal agreement. The Board found that it was not apparent that the Board's jurisdiction to make interim orders and decisions under subsection 98(1) extends to issuing orders or decision that direct how a separate and distinct arbitration proceeding that is not proceeding before the Board ought to proceed. The Board held it did not have the jurisdiction to grant the requested interim relief.
- **Labour Relations Board Remedies — Unfair Labour Practices — During Union-Organizing Campaigns — Posting of Notices/ Access to Premises —** In one case, a consent order attaching a settlement agreement between the employer and the union regarding how and when the employer provided the union's organizers access was amended to remove the requirement that the union organizers be subject to a full-time escort, and prohibited excluded employer representatives from being present in a room near to where the union is meeting with employees (see *Aramark Canada Ltd.*, 2025 CarswellBC 567 (B.C. L.R.B.)). In another case involving an application to stay an order that included a requirement that the employer post a bottom-line decision pending the issuance of reasons for decision and a potential application for reconsideration, the British Columbia Labour Relations Board observed that a requirement to post a copy of the "bottom-line" decision prominently within the employer's operation is not as significant a remedy as requiring an employer to publish a newspaper article admitting to misleading employees and the public or to forward union-prepared material to employees. Nevertheless, the Board stayed the posting order finding that "[a]s a bottom-line decision, it articulates that the Employer committed breaches of the Code without articulating any reason, explanation, or context for that finding. Therefore, publishing a copy of the Decision would, effectively, leave employees to their own imaginations as to why the Board found as it did." The Board found that if a reconsideration application is ultimately successful, the employer would not be able to undo the prejudice caused by having to publish the bottom-line decision in the circumstances (see *Gordon Food Service Ltd.*, 2024 BCLRB 103, 2024 CarswellBC 2385) (B.C. L.R.B.)).
- **Labour Relations Board Remedies — Unfair Labour Practices — During Collective Bargaining — Imposition of a First Collective Agreement —** In directing that the first collective agreement be settled by arbitration in another case, the Board dismissed an employer's argument that collective bargaining could not be said to have been unsuccessful because the union did not take the employer's final offer to the membership for a vote as requested (see *USW v. Starbucks Coffee Canada Inc.*, 2024 CarswellOnt 11419 (Ont. L.R.B.)). The Board in that case held that putting an employer's final offer to the membership for a vote is not a precondition to the Board's discretion to direct first contract arbitration under s. 43. Furthermore, the employer could have requested the Minister direct a vote on its last offer under s. 42 but chose not to exercise that right.

- **Labour Relations Board Remedies — Strikes, Picketing and Lockouts — The Courts —** An injunction was granted where secondary picketers had held up the applicant company's vehicles for up to 19.5 hours on the condition the picketers are granted access on the company's parking lot to allow them to engage in "lawful informational picketing with anyone who wanted to speak with them without obstructing access in or out of the property" (see *Purolator Inc. v. John Doe et al.*, 2024 ONSC 6812, 2024 CarswellOnt 19141 (Ont. S.C.J.)). The Manitoba Court of King's Bench denied an injunction where secondary picketers had stopped an undetermined number of vehicles for four minutes over a two-and-one-half hour period on one business day (see *Purolator Inc. v. John Doe et al.*, 2024 MBKB 189, 2024 CarswellMan 456).
- **Labour Relations Board Remedies — Strikes, Picketing and Lockouts — Labour Boards —** The Canada Industrial Relations Board acknowledged that the 72-hour strike notice requirement was added to the *Canada Labour Code* in 1999 based on a recommendation that employers required a notice to ensure orderly shutdown of operations. This is particularly critical in the federally regulated sectors that involve key infrastructure, such as ports, airports and airlines, railways and nuclear reactors (*British Columbia Maritime Employers Assn. and ILWU Canada, Re*, 2023 CarswellNat 3085, 2023 CIRB 1088). The Board also considered section 87.2(3) of the Code, which provides that where strike activity does not occur on the date indicated in the notice, a new notice is required. The purpose of this new notice is to provide clarity and allow the employer to put appropriate measures in place for the shutdown of operations. For these reasons, the Board declared a strike unlawful when it resumed abruptly without a new notice after a failed ratification vote. The strike activities had previously ceased and full operations had resumed for a few days pending the outcome of the ratification process. The Board distinguished one of its earlier decisions (*Teamsters Canada Rail Conference v. Canadian National Railway*, 2007 CarswellNat 4664, 2007 CIRB 398 (C.I.R.B.)), in which a strike was found to be lawful despite the absence of a new strike notice prior to the resumption of strike activities because in that case the union made its intention clear that it would resume its strike activities if the ratification vote failed (*British Columbia Maritime Employers Assn. and ILWU Canada, Re*, 2023 CarswellNat 3085, 2023 CIRB 1088, at paras. 69 and 76). In the case under review, the Board found that the union had been silent in response to the employer's public statements about the full resumption of operations during the ratification process and the Minister's statement about the end of the strike. The Federal Court of Appeal dismissed the union's application for judicial review (see *International Longshore and Warehouse Union - Canada v. British Columbia Maritime Employer's Association*, 2024 FCA 142 (Fed. C.A.)).