Index

ABANDONMENT

As defence to certification application, 9:8 As grounds for decertification, 9:8 Automatic renewal clauses, 9:8 British Columbia, 9:8 Clean Hands required, 9:8 Construction industry, 9:8 Entitlement to vote, 9:2 Estoppel, arising from, 9:8 Factors considered, 9:8 Failure to assert rights, 9:8 Futility of bargaining, 9:8 ICI sector, 9:8 Manitoba. 9:8 Newfoundland and Labrador, 9:8 Nova Scotia, 9:8 Onus of proof, 9:8 Part of bargaining unit, 9:8, 9:18 Rule and its defence, 9:8 Saskatchewan, 9:8 Statutory basis, 9:8 Threat of, as unfair labour practice, 9:8, 10:20, 10:39 Unequivocal evidence, need for, 9:8 Union status lost, 9:13

ABORIGINAL PEOPLES See INDIGENOUS PEOPLES AND RESERVES

ACCREDITATION See also CERTIFICATION Restrictions on bargaining authority, **15:5**, **15:7**, **15:8**

ADMINISTRATIVE LAW

Advent, **5:1** Regulatory boards labour boards, natural direction, **5:1** overview, **5:1** Rule of discretion vs. rule of law, **5:2**

AERONAUTICS

Federal jurisdiction, residual power, **3:10** Integral activities, **3:10**

© 2024 Thomson Reuters, Rel. 5, 12/2024

AGENTS

See BARGAINING AGENTS

AGRICULTURAL WORKERS

Agricultural Employees Protection Act, 2002 (Ont.), **2:9**, **3:25**, **3:26**, **6:12** Agriculture, Food and Rural Affairs Appeal Tribunal, **2:9**, **3:25**, **6:12** Freedom of association, **3:25**, **3:26**, **6:12** Quebec, **6:12**

ALBERTA

Alberta Labour Act evolution of, 2:3 initial provisions, 2:3 Arbitral review, 4:2, 4:4, 4:16, 4:23, 12:17 Arbitration or otherwise, **4:16**, **4:19**, **12:5** Bargaining units, standard, 7:23 Certification bars, 7:58, 7:59 card-based, 7:24, 7:52, 7:61 decertification, votes, 2:3 expedition and revocation, 2:3 single date voter eligibility rule, 7:53 two or more unions joined for, 2:3 vote-based, 7:24 Collective bargaining good faith, 2:3 multi-party bargaining, 2:3 Conciliation boards, 2:3 Construction industry, 15:3, 15:5, 15:6 Dependent contractors, 6:2, 6:6 Duty of fair representation. 13:1. 13:8 Employees, individual rights, 2:3 Employers, spin-off clause, 2:3 Essential services, 2:3 First agreement arbitration, 10:47 Industry bargaining, 2:3 Labour Relations Act. 2:3 Labour Relations Code, 2:3 Labour board informal procedure (settlement efforts), 5:8, 11:19 intervenor status, 5:8

ALBERTA—Cont'd Labour board-Cont'd marshalling of proceedings, 5:8 production powers, 5:8 review of arbitrators, 2:3, 4:2, 4:16, 4:23, 12:17 summary dismissal, 5:8, 13:16 Legislation regular revisions, 2:1 Managerial exclusions, 6:3 Mediation boards, 2:3 Membership evidence, curable deficiencies, 7:44 Notice to bargain, extension of time for, 2:3 Notice to extend bargaining freeze, 10:14, 10:47 Oil sands plants, 2:3 Picketing, 11:19, 11:23 Privative clause, **4:2** Reconsideration, 5:13 Regional health authorities, 2:3 Remedial certification, 7:65 Revocation, no employees in bargaining unit for three years, 9:6 Strike and lockout votes, 11:25 Strikes, approval of, 2:3 Strikes or lockouts ex parte injunctions, 2:3 interference with, 10:7 time for, **2:3** Time limits relief against, 5:14, 12:8 Trade union dues disclosure of and consent to political expenditures, 2:3, 3:27, 14:7, 14:27, 14:35 disclosure of political expenses, 2:3, 14:7, 14:27, 14:35 Trade union status, 6:7 Voluntary recognition/revocation, 7:51 War industries fall to national board, 2:3

AMALGAMATION

Generally, **8:2** School boards, **8:5**

ARBITRATION See also REMEDIES Arbitrator appointment of, **4:10, 12:6** **ARBITRATION**—Cont'd Arbitrator-Cont'd general powers of, 12:8 remedial powers of, 12:19 Bargaining in bad faith, 10:48 Clause access to, 12:5 adequacy of, 12:5 requirement of, 1:4 Collective agreement, enforcement, 12:15, 12:16 Compulsory, early legislation, 1:2 Conciliation, early legislation, 1:2 Deferral to, unfair labour practices, 10:31 Employee access, individual rights, 13:8 Enforcement procedures, United States compared, 1:4 Expedited procedures, 2:4 First-agreement, 10:47 Good faith administration of a collective agreement, 12:18 Grievance arbitration damages, 12:8, 12:19 estoppel principles, application of, 4:19.50 general arbitration, vs., 4:16 human rights enforcement, 12:19 institutionalization of, 4:17 labour board jurisdiction, 12:17, 15:20 Human rights enforcement, 3:18, 12:5, 12:19 Industrial democracy, 12:15 Labour board review, 4:2, 4:16, 4:21, 4:23, 12:17 Ministerial appointment, 4:10 Public interest in. 12:4 Quebec municipal sector, 2:11, 4:19 Statutory expedited access collective agreement time-limits, 12:7 procedure, 12:7 provincial variations, 12:7 Strike, alternative to, 11:28 Substantive and justiciable rights, 12:5 Unlawful strike or lockout, time delays, 11:7, 12:19 Voluntary interest collective agreement clause, 11:28 process initiation, 11:28 Wrongful dismissal, Quebec, 12:19

ARBITRATION BOARDS

Hallmarks of, **4:16** Judicial review see JUDICIAL REVIEW

ARTISTS Collective bargaining, access to, 5:19

ATOMIC ENERGY Federal declaratory power, 3:12

BARGAINING AGENTS

Construction industry, employee bargaining agencies, **15:13** Exclusive, Charter rights, **3:27** Municipalities, merger of, **8:5** Reinforcing recognition of, duty to bargain, **10:24** Unions not individuals, **2:1** percentage required, **2:13** Voluntary recognition agreements, revocation of, **15:7**

BARGAINING REPRESENTATIVES

Duties, bad faith, discrimination and arbitrariness prohibited, **2:2**

BARGAINING RIGHTS

Abandonment, 9:8 Attachment of, business not owner, 8:1 Bankruptcy, 8:2 Bargaining, meaning of, 9:4 Cessation of employer, 9:14 Change of employer, 9:12 Change of union, 9:11 Estoppel, 9:8, 12:2, 15:5, 15:13 Insolvency, 8:2 Job functions and customers, not attached to, 8:4 Laches, 9:8, 15:10 Ontario, by ministerial designation, 15:9 Poly-party, 6:7 Privity of contract, alteration of, 8:1 Protection of, related employers finding, 8:6 Successors see SUCCESSORS Termination see TERMINATION OF BARGAIN-ING RIGHTS

BARGAINING UNITS

Accretion as grievance arbitration, 7:17 community of interest, 7:17 conflicting authorities, 7:17 natural expansion, 7:17 Alberta, 7:8, 7:10, 7:16, 7:18, 7:23 Appropriate bargaining unit, 7:2 Bargaining structure, versus, 7:9, 11:31, 15:11 British Columbia bargaining unit consolidation, 7:18 building cleaning services, 7:18, 7:22, 8:4 difficult to organize, thresholds, 7:7 fragmentation and predictability, 7:4, 7:9, 7:10, 7:22 health authority, bargaining agent antiproliferation policy, 7:9 healthcare service provider industry, 7:4.7:10 multiple locations, 7:10 part-time, 7:22 sales staff, 7:22 second unit presumption against proliferation, 7:10 Build-up principle, 7:52, 7:58 Carve out issues, 7:19 Certification see CERTIFICATION Consolidation principles, 7:17 to 7:19, 7:22, 8:5, 15:3 Count individuals included, 7:25 replacements, 7:52 unlawful termination, 7:25 Craft units American experience, 7:11 apprenticeship legislation, 7:16, 15:6 British Columbia, 7:14, 15:3, 15:6 carve outs/severance, 7:13, 7:16 history in particular industry, 7:12, 7:16 hybrid bargaining structures, 15:3, 15:6 industrial-all employee unit, application, 7:8, 7:11, 7:14, 8:6, 15:3, 15:6 initial sympathy, 7:11 no specific reference, 7:16 nurses, 7:4, 7:7

© 2024 Thomson Reuters, Rel. 5, 12/2024

BARGAINING UNITS—Cont'd Craft units-Cont'd Ontario, mandatory, 7:12 policy and provisions, 7:14 precondition, as, 7:12 representative of skills, as, 7:12 review non-union employees, 8:5 Saskatchewan, 7:16 severance considerations, 7:13, 7:14, 7:16 construction industry, 7:13 to 7:15 discretion of board, 7:13 to 7:16 examples of crafts, 7:13 nature of, 7:13 Description principles of interpretation, 7:17 Determination of access to collective bargaining, 7:2, 7:3, 7:10, 7:19, 7:22 an vs. the appropriate unit, 7:5 British Columbia, 7:22 Canada Labour Code, 7:9, 7:10 carving out, fear of fragmentation, 7:4, 7:19 case-by-case, 7:10 Charter considerations, 7:8 choice of units, employee preference vote, 7:8 classifications, functional relationship vs. functional integration, 7:7 criteria community of interest, 7:3 to 7:9 employee freedom vs. labour harmony, 7:3 legislative lack of standards, 7:3 likelihood of serious labour relation harm, 7:3 more than one employee, 7:2, 7:3 specific employees, 7:3 standard units, 7:20 to 7:23 displacement/raid, 7:4, 7:13, 7:53, 9:3, 15:6 employer's familial relations, 6:16, 7:6 employer's territorial and administrative organization, 7:7 fragmentation principles, 7:19 history of collective bargaining, significance, 7:4 industrial stability, 7:2, 7:3, 7:10, 7:19, 7:22 industry patterns, 7:4

BARGAINING UNITS—Cont'd Determination of-Cont'd inquiries, statutory basis, 7:8 intervenors, 7:1 labour board mandate, 7:2 likelihood of serious labour relations harm. 7:4 minimum number of employees, 7:2 Ontario, 7:9 displacement/raid, 7:4, 7:13, 7:53, 9:3.15:6 parallel of employer's organization, 7:7 similarity of skills, duties and conditions, 7:6 statutory limitations, 7:4, 7:9, 15:6 tag end unit, 7:6 Temporary Foreign Worker Program, 7:21 threshold for employee lists, 7:24 trade union organization, 7:8 wishes of employees, 7:8 wishes of parties long-term peace, 7:8 variation of deference, 7:8 Different classifications, 7:10 Employer-wide British Columbia, 7:10 eventually combination of small units, 7:10 something vs. the best, 7:10 Essential service issues, 7:9, 7:19 Exclusions, 6:3, 6:16, 7:6 Expansion, 7:17 Federal airports, 7:10 blue vs. white collar, 7:23 large vs. more local, 7:10 office employees on departmental basis, 7:23 part-time employees, 7:23 sale of business, 7:18 technical employees, 7:23 First Nations, 7:19 Fragmentation, 7:19 Geographic boundaries longshoring, 7:23 one municipality, 7:10 province-wide, 7:10 Greatest attachment, 7:53 Hard to organize, 7:7

BARGAINING UNITS—Cont'd

Hard to organize industries, 7:10 Industry specific rules, 7:9 Initial application, 7:3 Jobs not persons, 7:20 Manitoba, fear of fragmentation, 7:19 Membership evidence see EVIDENCE OF MEMBERSHIP Membership in, prime function test, 6:4, 7:53 More than one employee, 7:2 Multi-employer certification, 7:2, 7:9, 7:23 Multi-location vs. single-location units Alberta, 7:8, 7:10 boundary considerations, 7:10 British Columbia, 7:10 conflicting uses of bargaining unit, 7:10 controversy, 7:10 employer's perspective, 7:10 Newfoundland and Labrador, 7:10 Ontario, 7:10 retail chain. 7:10 standardization of conditions, 7:10 Multiple work locations, 7:10 Multi-union units, 7:18 Nationwide, Canada Labour Relations Board, ideal unit, 7:10 New Brunswick, 7:17, 7:23, 15:6 Newfoundland and Labrador offshore, 3:27, 7:9 Nova Scotia bargaining unit consolidation, 7:18 casual/relief employees, 7:23 One only, 7:53 Ontario displacement, 7:4, 7:13, 7:53, 9:3, 15:6 office, clerical and technical vs. production jobs, 7:21 part-time vs. full-time, seven-week rule. 7:21 part-time vs. school vacations, 7:21 public sector, 6:15 Public Sector Labour Relations Transition Act, 1997, 7:10 sales staff, 7:21 single division, 7:7 technical staff, 7:21 threshold for employee list, 7:24 Poly-party units, 7:18

BARGAINING UNITS—Cont'd Prince Edward Island, 7:23 Related employer, use of, 7:10, 7:22 Representation votes see REPRESENTATION VOTES Restructuring, Charter rights, 3:25 Review Alberta board, 7:18 British Columbia board, 7:18 Canada board, 7:18 criteria, 7:18 New Brunswick, 7:18 Ontario, 7:10, 7:18 related employer, 7:18 successorship, 7:18 Saskatchewan, 7:10, 7:23 Scope new positions, 7:17 unfair labour practice, 7:17, 10:22, 10:39 Size of groupings, considerations, 7:2. 7:23 Standard units, 7:20 to 7:23 Standing, employees, 7:8 Submergence, 7:9 Supervisory units, 7:8, 7:9 System-wide fragmentation, 7:10 politically mandated, 7:10 railway industry, 7:10 trucking, 7:10 Vary, application to, 7.22 Voluntary recognition advantages, 7:51 Ontario competing unions, 7:51 conciliation provisions, 7:51 provisions affecting, purpose of, 7:51 BOARDS

See also ARBITRATION BOARDS; LABOUR BOARDS Minister, referral by, 2:2 Powers bargaining representatives, 2:2 evidentiary regulations, 2:2 increase of, 2:2

BOYCOTTS See PICKETING

© 2024 Thomson Reuters, Rel. 5, 12/2024

BREACH OF CONDUCT Employee, protection of, Master and Servant Act, 1867, 1:2 BRITISH COLUMBIA Administrative Tribunals Act patently unreasonable review standard, 4:2.4:9 Arbitral review, 4:2, 4:16, 4:19, 4:21 Arbitration, 2:4 Bargaining units, consolidation, 7:18, 7:22 Build-up principle, 7:58 Card-based certification, 2:4, 7:24, 7:25, 7:53, 7:56 Certification campaign proper cause for discipline required, 10:3 Certification of unions, pre-war, 2:4 Collective agreements failure to file. 12:2 power to impose, 2:4 uncertified unions, 2:4 Collective bargaining, council power to intervene, 2:4 Complaint investigation, 2:4 Conciliation officers' reports, 2:4 Confidential capacity, 6:5 Confidential capacity exclusions, 6:5 Consumer leafletting, 3:29, 11:12 Court of Appeal arbitral review jurisdiction, 3:17, 4:2, 4:16, 4:21 Deferral to arbitration, 10:31, 12:16 Deferral to human rights tribunal, 10:31 Dismissal during organizing drives, 2:4 Early representation vote, 2:4 Employer free speech, 2:4, 10:9 Employers, unfair practices, 2:4 Employers' organizations, accreditation, 2:4 Essential Services Disputes Act, 2:4 Essential services under School Act, 2:4 Federal pickets, 2:4 Grievance procedures, 2:4 Health Authorities Act, 11:31 health authority, bargaining agent antiproliferation policy, 7:9 Hot cargo clause, **11:2** Industrial Conciliation and Arbitration Act, 2:4 Industrial Relations Act, 2:4

BRITISH COLUMBIA—Cont'd Industrial relations council power. 2:4 rights of individuals and public, 2:4 Industry- and province-wide negotiations, 2:4 Industry councils, 11:29 Judicial Review Procedure Act, 4:21 Labour Code. 2:4 Labour Code of British Columbia Act, 2:4 Labour Relations Act, 2:4 Labour relations board, 2:4, 5:5, 12:17 casual employees, 7:22 jurisdiction, original and appellate, 5:5, 12:17 officers, immunity of, 2:4 powers, 2:4 reconsideration, 5:13 review of arbitrators, 4:2, 4:16, 4:21 voluntary recognition, 7:51 Labour Relations Code, 2:4 Managerial exclusions. 6:3 Mediation commission composition of, 2:4 powers and procedures, 2:4 public interest disputes, 2:4 Mediation Commission Act, 2:4 Mediation officers, 2:4 Mediation Services Act, 2:4 Multi-party bargaining, 2:4 Picketing see PICKETING Privative clauses, broad protection of board. 4:2 Provincial resident for extraprovincial company, 2:4 Public interest binding arbitration, 2:4 essential services, adequate levels, 2:4 industrial relations council, 2:4 inquiry boards. 2:4 ministerial declaration service essential, 2:4 Public's right to information, 5:5 Referee, employee's complaint, 2:4 Replacement workers, 2:4, 10:7 Representation vote, 2:4 Right to communicate, 2:4 Secondary boycott agreements, 2:4 Special advisors to review Code, 11:29

BRITISH COLUMBIA—Cont'd Strike declaration of. 2:4 defined. 2:4 during collective agreement, 2:4 Strike votes, government supervised, 2:4 Successorship, building services, 8:4 Successorship, building services plus, 8:3, 8:4, 8:7, 8:9 Technological change, meaning of, 2:4, 12:14 Trade-unions Act, 1959, 2:4 Unfair employer declarations, 11:2 Unions certification card-based, 2:4, 7:24, 7:25, 7:53, 7:56 construction industry, 2:4 levels. 2:4 mandatory votes, 2:4 poly-party, 7:18 coercion. 2:4 decertification. 2:4 discrimination. 2:4 legal entities, 2:4 power to sue and be sued, 2:4 religious objections, 2:4 successors. 2:4 Voting, majority voting vs. majority eligible, 2:4 Working conditions, freeze, 2:4 Workplace democracy, 2:4

BUSINESS

Bargaining rights, owner compared, **8:1** Employees, vested rights in, **8:1** Nature of functional economic vehicle, **8:2** Ontario, **8:2** Quebec, **8:2** Sale of see SALE OF BUSINESS

CANADA

Future developments alternatives, **1:6** decline of unionization, **1:6** fissuring of work force, **1:6** globalization, **1:6** segmentation of work force, **1:6**

© 2024 Thomson Reuters, Rel. 5, 12/2024

CANADA—Cont'd Unions density statistics, 1:6 **CANADA INDUSTRIAL RELATIONS** BOARD See CANADA LABOUR BOARD: CAN-ADA LABOUR CODE **CANADA LABOUR CODE** Application for certification just cause requirement, 10:3 Appropriate bargaining unit principles, 7:3, 7:5, 7:10, 7:15, 7:17 to 7:19 Bankruptcy, 2:2, 8:2 Bargaining duty, 10:22 Bargaining units, accretion, 7:17 Bridging clauses, 10:14 Certification, levels of support, 2:2 Collective bargaining, good faith, 2:2 Constitutional jurisdiction, board's approach, 3:2 Craft units, policy and provisions, 7:15 Deferral, 8:11 Dependent contractor, defined, 2:2 Employees covered, 2:2 mischaracterization prohibited, 2:2 onus, 2:2 presumption, 2:2 Employer, true, 6:6 Employer free speech, 10:4, 10:9 Employer's property rights, employees' freedoms balanced, 10:8 Enforcement. 10:53 Evolution of, 2:2 Extending time limits, 6:6 Fair representation of all employees, 2:2 Framework for collective bargaining, 10:22 Fraud, 7:46, 9:16 Freeze of working conditions, 10:12, 10:14 Interim relief, 10:39 Labour board, termination of bargaining rights, 9:2 Legislation evolution of, 2:2 origins, 2:2 Managers, as employees, 6:3 Mandatory representation votes, 2:2, 7:24 Membership evidence, 7:46

CANADA LABOUR CODE—Cont'd

Pension, sickness and maternity benefits, 2:2 Postal services. 3:13 Precursors. 1:2 Privative clauses, history of, 4:2 Provincial enabling legislation, 1:2 Remedial certification, 10:49 Sexual harassment, prohibition of, 2:2 Staffing agency, **6:6** Strike replacement prohibitions, 2:2, 10:7 Technological change, notice provisions, 2:2 Time limits, approach, 10:34 Unfair practices, complaints, 2:2 Union dues. deductions. 2:2 Unjust dismissal complaints, 5:19

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Administrative decisions, 3:19 Administrative discretion, 3:20, 3:22, 4:11 Analogous grounds, discrimination, 3:31 Anti-corruption measures, 3:26 Application and enforcement, 3:19 Availability citizens vs. non-citizens, 3:21 collective rights, 3:21 corporations and unions, 3:21 corporations in criminal defence, 3:21 economic liberty/fundamental justice, 3:21, 3:25, 3:26, 3:30, 3:31, 3:34 equality, 3:25, 3:26, 3:30 to 3:32 everyone construed, 3:21 exclusions nurse practitioners, 3:26, 6:10 individual construed, 3:21 persons and individuals, 3:21 Boycotts, private disputes not covered, 11:17 Captive audience, listeners' rights, 3.29, 11:16 Civil servants, political activity, 3:33 Collective agreements avenues of review, 3:30 mandatory retirement, 3:30 municipal defined pension plans permanently restructured, 2:11, 3:25 not government action, 3:30

CANADIAN CHARTER OF RIGHTS AND FREEDOMS—Cont'd Collective bargaining, 3:25, 3:27 constitutional protection, 3:25 Compliance, New Brunswick, 2:6 Compulsory interest arbitration, 3:25 Conflict of interest provisions, 3:26 Constitutional role of courts, 3:19 Construction industry deemed nonconstruction employer, 3:25, 15:5 Contempt orders subject to, 3:28 Discrimination, 3:26, 3:31 defined, 3:26 partial repeal of a statute, 3:26 Duty to consult affected parties, 3:25 Evidence administrative tribunals, 3:20 civil disputes, 3:20 exclusion in criminal context, **3:20** judicial deference, 3:22, 3:25 privately obtained used for prosecutions, 3:20 Exclusions agricultural employees, 3:19, 3:25, 3:26, 3:28, 6:12 agricultural workers, 3:25, 3:26 association, 3:26 casual employees, 3:26 deemed non-construction employer, 3:25, 15:5 domestics, 3:26 economic liberty, 3:26 horticultural employees, 3:26, 6:12 managers, 3:26 non-union spin-offs, 3:27 race or sex, 3:26 RCMP, 3:26, 6:15 security issues, 3:26 Exclusivity all-employee bargaining units, 3:27 bargaining agents, 3:27 collective bargaining security, 3:27 freedom not to associate, 3:27 common law consistency, 11:15 non-affiliation clauses, 3:27 strike and lockouts, 3:27 First Nations, 7:19 Freedom of association see FREEDOM OF ASSOCIATION Freedom of religion, 3:34

CANADIAN CHARTER OF RIGHTS AND FREEDOMS—Cont'd

Freedom of speech see FREEDOM OF SPEECH/ **EXPRESSION** Government action generally, 3:19 administrative tribunals, 3:19 airports, 3:19 as distinct from private action, 3:19 common law, 3:19 executive intervention, 3:25 government inaction as action, 3:19 government inaction not action, 3:19, 3:26, 3:31, 3:32 hospitals, 3:19 managerial discretion, 3:32 municipalities, 3:19 narrowed to review of, 3:19 remedial powers, 3:19 school boards, 3:19, 3:31, 3:32, 4:19.50 underinclusiveness, 3:19 universities, 3:19 Interim/interlocutory injunctions, 2:3, 3:20 Jurisdiction to apply, 4:19 tribunals. 3:20 Labour relations, effect on, 3:24 Liberty (s.7), 3:21, 3:26, 3:27 Limits on rights benefactors of limits considered, 3:22 deference to legislation, 3:22 evidence to support, 3:22 judicial conservatism, 3:22 judicial reluctance to set labour rights balance, 3:22 non-governmental defenders, 3:22 proportionality test. 3:22 right of the individual, 3:21 tests. 3:22 Managerial discretion, 3:19, 3:20, 3:32 Mandatory retirement, 3:19, 3:22, 3:26, 3:30 Methodology of inquiry, 3:22 Notice, 3:5 Notwithstanding clause reasons for. 3:23 uses of, 3:23 Onus, 3:22

CANADIAN CHARTER OF RIGHTS AND FREEDOMS—Cont'd Open court principle, 4:14, 5:12, 10:37.50.13:18 Pay restraint legislation, 3:25 Picketing, degree of protection, 3:29 Positive claims, 3:25, 3:26, 3:28 Practice and procedure labour board powers, 3:31 limited union access, 3:31 offences, burden of proof, 3:31 private disputes, 3:29 reversal of onus, 3:31 role of courts, 3:29 statutory control, 3:29 Prince Edward Island, unfair labour practice, 2:10 Procedural aspects reversal of burden of proof, 3:31 solicitation restrictions, 3:31 speech, anti-union petitions, 3:31 unreasonable search and seizure, 3:31, 3:32, 4:19 Reference, inappropriate forum, 3:22, 3:25 Remedies administrative bodies, 3:20 bases of. 3:20 damages, 3:20, 3:25 declaration (s. 52) and damages (s. 24(1)), 3:20, 3:25 exclusion of evidence, 3:20 expert bodies. 3:20 French vs. English versions, tribunals vs. courts, **3:20** guidelines, 3:20 interim, 3:20 interplay between, 3:20 judicial oversight, 3:20 personal remedy, 3:20 retroactive v. prospective, 3:20, 3:25 rights vs. substantive violations, 3:20 suspended declaration, exemption from, 3:20 suspended declaration, temporary, 3:20 Representation votes employee contact information, entitlement, 3:28, 5:12, 7:53, 10:4 Restructuring bargaining units, 3:25

© 2024 Thomson Reuters, Rel. 5, 12/2024

CANADIAN CHARTER OF RIGHTS AND FREEDOMS—Cont'd

Scope criticism, Oakes test, 3:22 guarantees and restrictions, 3:22 prescribed by law, 3:22 reasonable and demonstrable, 3:22 Seasonal workers, bargaining units, 3:31 Secondary picketing, private parties dispute, 11:15 Standards of review, 3:25, 3:26, 4:11 Standing, 3:19 to 3:21 Statutory interpretation application, 3:19 Charter values, 3:19, 3:20, 3:22, 4:11, 5:5, 11:3 international conventions, relevance, 1:5 Statutory sale of business provision, 3:27 Strikes, right to, **3:25** Strikes and picketing, right to, 3:25, 3:29 Sunday-closing laws, 3:20 Supplementary to judicial system, 3:19 Suspension of union dues power, 3:25 Under-inclusiveness, 3:25, 3:26, 3:28 Unions agency fees, 3:27 right to join, 3:25 Union security, 3:25, 3:27 Wage freezes, 3:25 Wage restraints, 3:25 Wage rollbacks, 3:25

CANADIAN INDUSTRIAL RELATIONS BOARD

Certification procedures, **7:24** Duty to bargain, remedies, **10:40**, **10:48** Employer, true, **6:6** Managers beyond mere direction/evaluation, **6:3** supervisors distinguished, **6:3** Membership evidence, **7:46** Other responsibilities, **5:16 to 5:19** Remedial certification, **10:49** Supervisors as employees, **6:3** bargaining units, **7:9** Unreasonable search and seizure, **3:19**, **3:20**, **3:31**, **3:32**, **4:19.50**

CERTIFICATION

Accreditation compared, 15:8 Automatic, 2:13 Backdoor, 7:17 Bars to abuse of process, estoppel, 7:58 agriculture, seasonal workers, 3:25, 7:58 Alberta, 7:58, 7:59 board imposed, 7:58 build-up principle, 7:52, 7:53, 7:58, 7:59, 15:6 employer-dominated unions, 7:58 following failure, 7:58 human rights discrimination, 7:58 labour supply agreement, terms of, 5:5, 7:58 likelihood of unit increase in size, 7:58 Newfoundland and Labrador. 7:58. 7:59 Nova Scotia, 7:58, 7:59 other, 7:59 Other jurisdictions, 7:58 provincial variations, 7:58 Quebec, 7:58 raiding, British Columbia, 7:58 strike, 9:3 versus refusal to entertain, 7:58 withdrawal, 7:59 Card-based, 7:24, 7:25 Certificate spent, 7:17, 7:18 Construction industry, 15:6, 15:7 loss of, 15:6 Nova Scotia, 5:9 Ouebec, 5:7 Date of application, significance, 7:24, 7:25, 7:53, 15:6 Disclosure, right of, 3:28 Discretion, 7:2 Dismiss, express jurisdiction to, 7:43 Dismiss, inherent jurisdiction to, 7:53 Displacement, 7:53, 9:3 Effect of exclusive authority, 7:60 new step into shoes of old, 7:60 old extinguished, 7:60 Fraud, 7:36, 7:46, 9:16 Health sector (Manitoba) appropriate decision-maker, 7:9 Interim, Canada, 7:61

CERTIFICATION—Cont'd

Interim, Ontario, 7:61 Interim, Quebec, 7:61 Intervenors, 7:1 Jurisdictional claims, not appropriate, 7:1 Longshore industry, 7:23, 7:25 Meaning, 7:1 Multi-employer, British Columbia, 7:2 Multi-union, 7:2, 7:18 Notice, 7:24 Order, ongoing effect, 7:17 Organizing assistance, list of employees, 7:24 Procedure absent employees, 7:24, 7:25, 7:53 administrative vs. adjudicative, 7:1 amendments, 7:24, 7:32, 7:57, 15:6 American, 7:24 Canada Labour Code criterion, 7:24 card-based, 7:24, 7:25 contemporaneous representation applications, 7:55 date of application, significance, 7:24, 7:25, 7:53, 15:6 employee eligibility representation vote, 7:53 threshold count, 7:24, 7:25, 15:6 filing and delivery times, relief from, 7:24, 7:55, 15:6 mandatory voting, Alberta, Nova Scotia and Ontario, 7:24, 7:25 Ontario, time to reconsider, 7:24 procedural fairness, 7:24, 15:6 proof of membership, 7:24 provincial legislation, 2:13 standing, 5:8 time limit, 7:24 Ouebec. 5:7 Raids, 7:53, 9:3 Related employer application combined, 7:2 Remedial certification, 7:61 to 7:68, 10:49 Representation votes see REPRESENTATION VOTES Responsibility, labour board duties, 5:5 Specified industries, 7:52 Standing, 5:8 Statutory just cause triggers, 10:3, 12:9

© 2024 Thomson Reuters, Rel. 5, 12/2024

CERTIFICATION—Cont'd Timeliness British Columbia, rules, 7:56 Canada Labour Code, 7:57 existence of incumbent, 7:54 Manitoba, 7:58 Ontario, rules, 7:55 provincial variations, 7:58 Quebec, rules, 7:58 when conciliation left incomplete, 7:55 Time to apply for, 2:13 Trade union membership see EVIDENCE OF MEMBERSHIP Trade union status, 6:7 Unfair labour practice, et seq., 7:62 to 7:69, 10:49 construction industry, 7:62 Unsuccessful, Canada Labour Code rules, 7:58 Wage freeze during application, 2:13 Without vote board's discretion, 7:61 British Columbia, 7:63 unfair labour practice, 7:62 to 7:69, 10:49

CIVIL SERVANTS

Charter rights, political activity, **3:33** Crown employees, exclusions, **6:15** Territorial government employees, exclusions, **3:6**

COLLECTIVE AGREEMENTS

Adjustment plans, 12:14 Alberta more than one, 12:2 Ancillary documents, 12:2 Arbitration, extension of old agreement, 12:9 Authority to bind, **12:2** Automatic renewal bargaining abandonment, 9:8 perpetual collective agreement, 12:11 validity, 12:11 Avoidance, contracting, 8:4 Bankruptcy, 2:2, 12:19 Binding, imposition of, 2:13 Bridging, statutory provisions, 12:11 Bridging and automatic renewal, 12:11

COLLECTIVE AGREEMENTS—Cont'd Cessation of certification of new bargaining agent, 9:3 termination of bargaining rights, 9:2 Civil actions, 12:19 Class action, 12:19 Clauses, voluntary interest arbitration, 11:28 Common law contract doctrines, 12:2 status. 5:1 Cornerstone of system, 12:2 Defined, 10:21, 10:23, 12:2 Displacing union, bound, 9:3 Dispute resolution, provincial variations, 2:13 Document in writing, 10:21 Duration minimum, 12:9 open periods, 12:9 shortening or waiver of, 7:57, 9:2, 12:9, 12:10 statutory freeze periods, 12:9 Early termination, 7:59, 12:10 Enforcement see ENFORCEMENT OF COLLEC-TIVE AGREEMENTS Equitable principles, 4:10, 12:2 Estoppel, 4:10, 12:2 Expired, grievance procedure, 12:9 Filing obligation, 12:2 Final settlement by government clause, 4:16 Forced arbitration, 4:16 Formation, 4:10, 12:2 Freezes during bargaining, 10:13 Gap between old and new, 12:9 Good faith administration, implied, 12:14, 12:19 Grievance arbitration access. 12:5 arbitral consensus, ignored, 4:19.50 arbitrator, 12:6 concurrent jurisdiction, 12:19 damages, 12:19 during, 11:22 duty to bargain in good faith, Saskatchewan, 10:21, 12:14

COLLECTIVE AGREEMENTS—Cont'd Grievance arbitration-Cont'd human rights incorporated. 3:18, 12:5. 12:19 need for, 12:4 probationary employees, 3:18, 12:5 waiver. 4:19.50 when inadequate, 12:5 Human rights incorporated in, 3:18 Insolvency, 8:2 In writing, 12:2 Joint ventures escape from, labour board powers, 8:6 Jurisdiction and applicability, 12:2 LOU me too agreement, 12:2 Mandatory just cause discipline clause, 12:14 Mandatory retirement provisions, case law, 3:19 Mid-contract change British Columbia labour board, 11:29, 12:7, 12:14 ongoing consultation duty, 12:14 re-opener clause, **12:14** statutory allowances, 12:14 Misrepresentation, 12:2 Mistake, 12:2 Modification, integration of businesses, 8:5 Negotiated outside of Canada or a province. 12:2 New owners and successor unions, legislation, provincial variations, 2:13 Operation of provisions during freeze, 10:13 Parties, representative entities, 12:2 Provincially negotiated, federally recognized, 12:2 Ratification, 11:25, 12:2 Recognition clause, 12:13 Rectification, 12:2 Retroactivity, 12:9 Signing and ratification, **12:2** Status, special legislation, 12:2 Statutory arbitration, time-limits, 12:7 Strikes and lockouts, 12:3 Subcontracting clauses, unfair labour practices protection, 10:6 Technological change, provisions, provincial variations, 2:13

COLLECTIVE AGREEMENTS—Cont'd | COLLECTIVE BARGAINING—Cont'd

Tentative agreement, not a bar, **7:57** Union security clause enforcement, **12:12** statutory clauses, **12:12** Unlawful strikes remedy, **11:22** Without ratification, **12:2**

COLLECTIVE BARGAINING

Certification, heart of process, 7:1 Compulsory, provincial initiatives, 1:4 Concurrent or exclusive jurisdiction divided opinions, 3:3 double aspect doctrine, 3:3 Constitutional rights see CANADIAN CHARTER OF **RIGHTS AND FREEDOMS** Doctrine of civil conspiracy, 1:2 Doctrine of promissory estoppel, application, 10:26 Duties, good faith, 2:13 Economic considerations subcontracting, 10:6 tempering union demands, **10:6** Economic weapons, reluctance to interfere, 10:24 Federal competence constitutionality, 3:2 works and undertakings, defined, 3:2 Federal jurisdiction, integral and essential core activity, 3:4 Fishing, for, 2:4, 2:6, 2:7 Free Trade Agreement, fear of decline from, 1:6 Future of. 1:6 History, 1:2 Imposition, by labour board, related employers, 8:6 Incidence of. 1:6 Judicial discretion disguised as rules of construction, 3:2 legalistic approach, 2:2 Legislation preamble, expression of intent, 5:4 purpose of, 10:21 Legislative responsibility constitutional basis, 3:1, 3:2 divided activities, 3:4 federal lands, 3:4 judicial discretion, 3:1

Legislative responsibility-Cont'd provincial involvement, 3:1 summary of judicial principles, 3:4 test, 3:4 Navigation and shipping see NAVIGATION AND SHIPPING Negotiation vs. administration duty of fair representation, 13:8 exclusive agent throughout, 13:8 Non-accredited employer associations, 10:24 Northwest Territories see NORTHWEST TERRITORIES Ontario, experimentation, 1:4 Ontario and British Columbia, additional purposes, 5:4 Pre-war. 5:1 Professionals, access to, 6:10 Quebec, administrative and legal, 5:4 Relationship improvement, 12:14 Transportation see TRANSPORTATION Uniform legislation provincial call for, 1946, 2:1 provincial diversity, 2:1 Voluntary recognition agreements generally, 7:51 construction industry, 15:7 World War II, acceptance after, 1:4 Yukon see YUKON **COMMON LAW**

Criminal conspiracy, **1:2** Customary international law, **3:18** Right to strike, **11:4**

COMPLAINTS

Time-limits interpretation of, **5:14** lack of, **5:14** strict adherence, settlement discouragement, **5:14** Unsafe work, labour board jurisdiction, **5:17 CONCILIATION**

See also ARBITRATION Board, no adjudication, judicial approach to, **4:15**

© 2024 Thomson Reuters, Rel. 5, 12/2024

CONCILIATION—Cont'd Educational support, request for, 11:26, 11:29 Failure. 11:26 Federal, Minister of Labour, function of, 5:5 Federal policy, **10:21** Goal of, 11:26 Initiation, 11:26 Mediation compared, 11:26 mandatory, 11:26 mid-contract, statutory provisions, 11:29 Ministerial reference, 11:26 Privatization, 2:5, 11:26 When left incomplete, 7:54

CONFIDENTIAL CAPACITY Excluded employees, 6:5

CONSPIRACY Civil constitutional consistency, 11:15 evolution of, 1:2 repeal of doctrine, 1:2 Criminal, history of, 1:2

CONSTITUTION

Aeronautics, 3:10 air ambulance, 3:10 airport operational support representatives, 3:2, 3:10 extraterritorial, 3:10 Banks, customs and excise, 3:15 Cable companies, 3:9, 3:16 Construction industry, 3:9, 3:16 see Canadian Charter of Rights and Freedoms Department of National Defence, 3:16 Divisible/indivisible, 3:4, 3:8, 3:9 Emergencies, 3:11 Employment ultra vires federal government, 1:2 Extra-territorial aspects, 3:7 Federal declaratory power, 3:9, 3:12 Federal undertaking, integral to, 3:4, 3:7 Financial institutions, 3:15 Human rights law, 3:18 BFOR, 3:18 collective agreements, interpretation, 3:18

CONSTITUTION—Cont'd Human rights law, 3:18—Cont'd compensatory purpose, 3:18 employer and union, joint liability, 3:18 enforcement, *fora* for, 3:18, 12:15, 12:19 quasi-constitutional dimension, 3:18 remedies, 3:18 standard of judicial review, 3:18 summary dismissal test, 3:18 Incorporation by reference, 3:2 Inter-delegation, 3:2 Judicature sections access to courts, 3:17 appointment of judges, 3:17 British Columbia, 3:17 core jurisdiction, 3:17 intent of, 3:17 policy vs. adjudication, 3:17 power broadly conformable to s. 96, 3:17 privative clauses see PRIVATIVE CLAUSES procedure, labour board vs. court, 3:17, 3:20 two-stage analysis, 3:17 Jurisdiction, 3:2 to 3:4 concurrent or exclusive, 3:3 derivative, 3:2, 3:7, 3:8 double aspect doctrine, 3:3 integral and essential test, 3:4 interiurisdiction immunity. 3:3 primary, 3:2, 3:7, 3:8 uncertainty, 3:2 Labour relations, shift to provinces, 1:1 Longshoring, 3:2 to 3:4, 3:7 Medical marijuana, 3:4 Navigation and shipping/Sea coast and inland fisheries, 3:7 Notice, 3:5 Paramountcy, 3:3, 3:4 Peace, order and good government atomic energy, 3:12 emergencies, 3:11 matter of national concern, 3:11 Pith and substance, 3:1 Post office, 3:13 drug store retail postal outlet, 3:2 Premature challenge, 3:32 Prisons, chaplaincy services, 3:4

CONSTITUTION—Cont'd Residual power aeronautics, 3:10 telecommunications, 3:9 Sport organizations, 3:2, 6:6 Standards of judicial review, 3:25, 3:26, 4:11 Standing, 3:31 State immunity, 3:35 Telecommunications, 3:9 interactive webcasting online, 3:9 online interactive petition platform, 3:9 Trade Unions Act, change in attitude, 1:2 Transportation, 3:8 essential character. 3:8 for own business, 3:8 interprovincial, nominal amount, 3:8 Written and unwritten norms, 3:17, 3:20

CONSTRUCTION INDUSTRY

Abandonment of bargaining rights, 2:9, 9:8 Accreditation. 15:8 Aeronautics compared, 3:4 Alberta, 15:3, 15:5, 15:6, 15:10 Anti-corruption, measures, 3:26 Application date, 4:9, 15:6 Apprenticeship legislation, 7:16, 15:6 Arbitrated relief where employer economic hardship, 2:9, 15:13 Arbitration, final offer selection, 2:9 Balance of power accreditation, 15:11 responses to correcting, 15:11 strong unified unions vs. fragmented employers, 15:11 Bargaining structure Alberta, 15:14 all-employee unit Alberta, 15:3, 15:6 British Columbia, 15:3, 15:6 Saskatchewan, 15:6 consolidation of units, 15:3 co-ordinated bargaining, 15:11 enabling employer-specific agreement modifications, 15:13 industry-wide strikes and lockouts, 15:12, 15:13 multi-trade approach to, 15:11 British Columbia, 15:14

CONSTRUCTION INDUSTRY—Cont'd Bargaining structure-Cont'd multi-trade-Cont'd constitutionality, 3:27 Quebec, 15:14 other industries compared, 15:11 project collective agreements, 15:16 province-wide, effect of, 15:11 public interest, 15:11 unionized and non-unionized workers, Quebec decree system, 15:11 unit out of step, 15:11 wider-area conservative approach, 15:12 realistic approach, 15:13 trends. 15:15 Bargaining unit all-employee unit, 15:3, 15:5, 15:6, 15:22 craft unit, 15:3, 15:5, 15:6 displacement/raid, 7:4, 7:13, 7:53, 9:3, 15:3.15:6 formwork, 15:22 geographic areas, 15:6 hybrid structure, appropriateness, 15:3, 15:6 hybrid units for one employer prohibited, 15:31, 15:37 off-site, 15:6 off-site employees, 15:5, 15:6 sectoral determination, 15:14 termination application, 9:2 Certification, 15:6, 15:7 application date Saturday, 4:9, 15:6 apprenticeship legislation, relevance, 15:3, 15:6 build-up principle, 15:6 designations, 15:6, 15:9 filing and delivery times, relief from, 7:24, 7:55, 15:6 loss of. 15:6 New Brunswick, 15:6 non-construction industry bargaining rights, 15:6 Nova Scotia, 5:9, 15:6 Ouebec, 5:7 status disputes, 15:6 timeliness, 7:54 to 7:58, 15:6 versus jurisdictional disputes, 15:6 Collective bargaining, Charter rights, 3:27

© 2024 Thomson Reuters, Rel. 5, 12/2024

CONSTRUCTION INDUSTRY—Cont'd Craft unionism, perpetuation of, 15:2 Craft unions, 15:37 bargaining rights acquisition, 15:4, 15:5 certification Alberta, 15:3, 15:6 Canada Labour Code, 15:6 employers in specific geographic area. 15:6 New Brunswick, 15:6 severance, 7:13 to 7:15 consolidation of bargaining units, 15:3 employers not normally in construction industry, 15:5 geographic areas, reluctance to combine, 15:6 local vs. province-wide, 15:6 non-craft applicant, 15:6 one union per craft, 15:3 reluctance to certify, 15:5 shared jurisdiction, 7:14, 15:3 Definition of construction, 15:5 Definition of non-construction employer, 2:9, 15:5 Dependent contractors, 6:2 Designations, purpose, 15:6, 15:9 Employers identity of, 6:6, 15:10 related, 15:10 Employers' organizations accreditation British Columbia, 15:8 Canada Labour Code, 15:8 double majority rule, 15:8 Ontario. 15:8 Factors distinguishing from others, 15:2, 15:6 Fluctuating work force, build-up rare, 15:6 Geographic areas, 15:6 Grievance arbitration OLRB, 12:17, 15:20 Hardship provisions, 15:15 Hiring hall distinguishing feature, 15:30 Quebec prohibitions, 2:11, 15:14 referral restrictions, 2:9, 15:30

CONSTRUCTION INDUSTRY—Cont'd Industrial, commercial and institutional (ICI) sector abandonment of bargaining rights, 9:8 enabling employer-specific agreement modifications, 15:13 Jurisdiction abuse of process, res judicata, estoppel, 15:20 federal contract, 3:16 interprovincial highways, 3:16 maintenance vs. construction, 3:16 out-of-province headquarters, 3:16 test, 3:16, 15:6 wharf. 3:16 Jurisdictional disputes generally, 15:17 to 15:28 Alberta, 15:18 British Columbia, 15:18 Canada board, 15:17 Canadian Plan, 15:17 criteria, et seq., 15:21 area practice, 15:21, 15:26 balance of criteria, 15:24 board establishment of, 15:21 collective bargaining relationship, 15:22 composite crews, 15:21, 15:23 economy and efficiency, 15:24 employer's practice, **15:21**, **15:25** other factors, 15:21, 15:24 other relevant considerations, 15:26 safety factor, 15:23, 15:27 skill and training, 15:23 trade agreement, 15:26 where area practice and employer's practice conflict, 15:26 damages awarded, 15:28 delay, 15:20 essence of, 15:17 formwork. 2:9 interim order, 15:28 mark-up meeting, importance, 15:20 New Brunswick, 15:18 production requests, 15:18 remedies, 15:28 statutes addressing of, 15:18 starting point, 15:17

CONSTRUCTION INDUSTRY—Cont'd Jurisdictional disputes—Cont'd statutes vs. grievance procedures areas of conflict, 15:20 meaning of agent and assign, 15:20 unequivocal interest in the work, 15:20 statutes vs. private mechanisms British Columbia, 15:19 intervention theories. 15:19 Ontario, 15:19, 15:20 vs. health and safety issues, 5:17 Key person analysis, 8:2, 15:10 Local union autonomy, 2:9 Loss of bargaining rights, abandonment, 9:8 Maintenance compared, 15:5 Managerial exclusion, 6:3, 15:6 Manufacturing compared, 15:11 Membership evidence, 15:6 Multi-trade British Columbia, 15:14 Nature of, mobility and specialization, 15:11 No employees in bargaining unit, termination of agent, 9:6 Non-affiliation clauses, 15:29 to 15:37 Non-construction employer, 2:9, 3:25, 15:5 Ontario abandonment of bargaining rights, 2:9 burden on union to prove support, 15:6 common employer-delay, 15:10 displacement application, 15:6 division of industry sectors, 15:6 employee eligibility on application date, 15:6 extension of bargaining rights, 2:9, 3:20, 15:13 grievance jurisdiction, 12:17 hiring hall restrictions, 2:9 industrial, commercial and institutional (ICI) sector bargaining rights by ministerial designation, 15:6, 15:9 board power to respond to illegal agreements, 15:6 determination of, 15:6 province-wide bargaining mandated, 15:6

CONSTRUCTION INDUSTRY—Cont'd Ontario-Cont'd industrial, commercial and institutional (ICI) sector-Cont'd voluntary recognition agreements, 15:7 jurisdictional disputes, 15:18 non-construction industry employer. 2:9.15:5 province-wide certification affiliated bargaining agent, 15:6 employee bargaining agency, 15:6 non-ICI voluntarily recognized units compared, 15:6 support for, 15:6 related employer, 8:6, 15:10 defined to exclude relationship by blood, etc., 2:9, 8:2, 15:10 key employee defined, 2:9, 15:10 relevant employees for support of unit, 15:6 representation vote entitlement to vote, 15:6 sectors, 15:6 Toronto area residential sector rules, 15:6 Penalizing official without just cause, 2:9 Pre-hire (Nicholls-Radtke) principle, 15:7 Procedures, expedition, 15:6 Project assessment procedures, 2:9, 15:6 Ouebec multi-trade bargaining, 15:14 constitutionality, 3:27 freedom not to associate. 3:27 precarious work needs, 3:27 Related employers, 6:6, 8:6, 15:10 Sale of business transfer of automatic, save for consequential issues, 8:2 fact driven. 8:2 going concern, 15:10 investment by key operator, 15:10 key operator's assets and licenses, 15:10 key person, 15:10 skill and reputation, 8:2 Saskatchewan, province-wide bargaining, 2:12, 15:6, 15:9, 15:13 Sectors, 15:6 Single project agreements, 2:12

© 2024 Thomson Reuters, Rel. 5, 12/2024

CANADIAN LABOUR LAW

CONSTRUCTION INDUSTRY—Cont'd Special projects, 15:16 State intervention in bargaining Manitoba, 15:15 Ouebec, 15:15 Statutes vs. grievance procedures meaning of employer, 15:20 standing under, 15:20 Strikes entire trade division, 15:6 Subcontracts, related employers, 15:10 Successor rights bankruptcy, effect of, 8:2, 15:10 common control and direction compared, 8:6, 15:10 common statutory protection, 8:2, 15:10 fact driven, 8:2 importance due to different shelf companies, 8:2, 15:10 key person test, 8:2, 15:10 subcontracting, distinguished, 8:4, 15:10 Technological advances, 15:26 Trusteeship, 14:2 Unfair labour practice certification Ontario, not available, 15:6 Union security clauses to ensure, 15:29 constitutionality of multi-trade bargaining, 3:27 hiring hall, role of, 15:30 industry system of subcontracting, 15:29 legality of case law, 15:34 statutory provisions, 15:34 non-affiliation clauses see NON-AFFILIATION CLAUSES self-help vs. arbitration, 15:36 s. 70 of British Columbia Labour Relations Code, 15:35 subcontracting clauses bargaining unit protected, 15:32 contract interpretation, 15:32 interpretation, law and fact, 15:32 non-affiliation clauses, 15:31 Voluntary recognition agreements clean hands, 7:52, 9:5, 15:7 cross-over clauses, 15:7

CONSTRUCTION INDUSTRY—Cont'd Voluntary recognition agreements —Cont'd pre-hire agreements, 15:7 requirements, 7:52, 15:7 revocation of bargaining agent, 15:7 show me agreements, 15:8 statutory references, 15:7 COURTS Labour Court, life of, 1:4 **CRAFT UNIONS** See also BARGAINING UNITS; CONSTRUCTION INDUSTRY Apprenticeship/training legislation, 7:12 Bias for, carve-out applications, 15:3 Canada Labour Code, lack of specific provision, 15:3 Carve outs/severance, 7:13, 7:16 Defined Canada Labour Board, 15:3 two formulae, 15:3 Definition, historical, 15:2 Dependence on, hiring hall system, 15:2 Industrial unions, difference, 15:2 Injunctive relief, 10:32, 11:9, 11:12, 11:16, 11:21, 12:19 Jurisdiction, 10:32, 11:9, 11:12, 11:16, 11:21, 12:19 Mass production methods, conflict with, 15:2 Non-craft replacing craft union, 15:3 One union per craft, 15:3 Ontario and British Columbia compared, 15:3 Ontario formula, 15:3 Shared jurisdiction, 7:14, 15:3 Statutory provisions, union must pertain to skill or craft, 15:3 Trade union pertaining to more than one craft. 15:3 **CROWN EMPLOYEES** Agricultural workers, 2:9, 6:12 Employees, excluded as, 6:15 Essential services, 2:9 Whistle-blowing, 2:9

CROWN IMMUNITY

Unfair labour practice proceedings, 6:15

DAMAGES

Against individual employees, **10:42** Back-pay, 10:42 Bargaining in bad faith, **10:30** Canadian Charter of Rights and Freedoms, **3:20**, **3:25** Effective, 10:42 Estimated, paid in trust, **10:42** Human rights damages, 3:18 Legal fees, 10:42 Mental distress, 10:42 Mitigation, 10:42 Non-monetary losses, **10:42** Prospective losses, **10:42** Punitive, 10:42, 12:19 Union liability, **10:42** Unlawful strike, compensatory vs. punitive. 11:22 DECERTIFICATION

See also TERMINATION OF **BARGAINING RIGHTS** Abandonment, et seq., 9:8 onus, 9:8 Authorization. 9:2 Bars to bridged collective agreements, 9:2 Canada Labour Code, s. 39(2), 9:2 timeliness, 9:2 Change of mind, 9:2 Charter rights, 3:27 Clean hands. 9:8 Concurrent first contract claim, 10:47 Displacement, 7:53, 9:3 Employer influence, 9:2 Employer neutrality, 9:2 Entitlement to vote, 9:2 Estoppel, 9:8 Expedited vote, 9:2 Filing and delivery times, relief from, 9:2 Interference with vote, third party, 9:2 Laches, 9:8 Lack of support, voluntariness, 9:2, 9:15 Manitoba, 9:2 Master agreements, 9:2 Multiple employers, 9:2 New Brunswick, 9:18 No employees in unit, 9:6 Notice of procedures to employees, 2:9, 9:2

DECERTIFICATION—Cont'd

Nova Scotia confidential personal statements instead of petitions, 9:2 Partial decertifications, British Columbia, 7:4.9:2 Power of board, 2:1 Procedures, 2:13 Quebec, 9:3, 9:8 Raids, 7:53, 9:3 Secrecy of signatories, 9:2 Self-representation, accommodating for, 9:2 Time bars, 9:2 Timeliness, 9:2, 9:3 Unions, grounds for, abandonment of bargaining rights, 9:8

DEPENDENT CONTRACTORS

Appropriate bargaining unit, 6:2, 7:5, 7:7 Artist and performing contractors, 2:2 Competition Act. 14:36 Construction industry, 6:2 Economic dependence, degree of, 6:2 Status case law, 6:2 casting directors, 6:2 contractors and employers, 6:2 dependence vs. independence, 6:2 employees, distinction, 6:2 employing others, 6:2 factors, 6:2 food delivery couriers, 6:2 helpers, use of, 6:2 incorporation, 6:2 indicators, 6:2 labour and product markets, distinction, 6:2 labour only subcontract, 6:2 newspaper delivery, 6:2 Ontario labour board, 6:2 other countries compared. 6:2 "salts," 6:2 short duration. 6:2 substance and form, 6:2 taxicab lease operators, 6:2 taxicab owner-drivers, **6:2**

DISABLED PERSONS See EQUAL OPPORTUNITY

© 2024 Thomson Reuters, Rel. 5, 12/2024

DISCIPLINE

Mandatory collective agreement clause, 12:14

DISCRIMINATION

Age and sex, **13:5**, **13:8** Areas of, **13:5** Defined, **3:18** Disability, **13:5** Duty to accommodate, **3:18** Human rights law, **3:18** Invidious intention, **13:4**, **13:5** Non-union members security denial, **13:5** Productive settlement balanced, **13:5**

DISPUTES

See STRIKES; LOCKOUTS

DOMESTICS

Charter rights, exclusions, **3:26** Employees, status considered, **6:11**

DUES

Deduction of contribution to charity, 2:2 requirement, 2:2

DUTY OF FAIR REPRESENTATION

Alberta, 13:1, 13:2, 13:12 All employees, union or not, 13:2 Anonymization of complainant, 13:18 Application of the duty, 13:2 Arbitrariness defined. 13:6 agricultural workers, 2:9 delay, 13:6, 13:8 duty to accommodate, 13:6 failure of permission to work at request of employer, 13:6 failure to communicate, 13:6 failure to investigate. 13:6 grievance procedure carelessness, 13:6 failure, 13:6 gross negligence, 13:6 to 13:8 membership meeting vote inherently arbitrary or not, 13:6, 13:8 mistake, 13:6, 13:7 negligent or incompetent conduct, 13:6 no microscopic examination, 13:6 no second guessing, 13:8 not an appeal, 13:8

DUTY OF FAIR REPRESENTATION -Cont'd Arbitrariness-Cont'd not perfection, 13:6 perfunctory conduct, 13:6 ratification votes, 13:7 rational decision-making, 13:9 rational process of decision-making, 13:8 seniority grievance, 13:6 termination of picket-line crossers' employment, 13:6 Bad faith discrimination, 13:4 grievance processing, 13:4 misrepresentation, 13:4 nature of, 13:4 non-members barred from ratification votes. 13:4 British Columbia, 13:1, 13:3 Canada and United States compared, differences explained, 13:1 Canada Labour Code guarantee of objectivity, 13:5 three-fold test, 13:1 two components, 13:3 Carelessness, degree of, 13:7 Civil complaints, 13:1, 13:2 Closure agreements, 13:2 Coercion, 13:6, 13:8 Collective agreement, rights under, 13:2 Collective vs. individual rights, 13:8 Common law duty, 13:1, 13:2 Communication, 13:6 Complaints, remedies, 13:18 Conflicts of interest, 13:5 Contract administration, 13:8 Contract negotiation accrued rights, 13:9 differences from settlement ratified. 13:5.13:9 difficult choices between employees' interests, 13:9 large scale grievance resolutions, 13:8 objective negotiation test, 13:9 realistic choices, 13:9 reasons for non-intervention, 13:9 statutory obligations, 13:9 temporary benefit of one group, 13:9 trade-offs, 13:9

DUTY OF FAIR REPRESENTATION ---Cont'd

Courts, historical jurisdiction of, 13:1. 13:2 Critical employee interests, 13:6, 13:8 Deferral, 13:15 Difficult choices between employee interests, 13:5, 13:9 Discharge grievances, 13:7, 13:8 Disclosure, 13:6, 13:8 Discretion. 13:6 Discrimination see DISCRIMINATION Dispensing with oral hearings, 13:16 Duties and responsibilities, unions and employees, 13:3, 13:6 Employee consent not required, 13:6 contract negotiation vs. administration, 13:9 credibility, 13:6 failure to co-operate, 13:6 not member of unit, 13:2 retirees. 13:2 right to grievance arbitration, 13:8 threats, 13:6, 13:8 Employee exhaustion of procedures not obligated, 13:12 United States, 13:12 Employer as party to complaint and remedy, 13:14 Employer associations, 13:1, 13:19 Essential character of dispute, 13:2 Events prior to certification, 13:2 Exhaust internal union remedies. 10:33. 13:12 Expiry, 13:2 Failure of, termination of bargaining rights, 9:15 Failure to accept a fair and reasonable settlement proposal, 13:8, 13:16 Failure to co-operate, grievor, 13:6 Fair referral to employment alleged violation of union's constitution, 13:10 board's role, 13:10 pensioners, 13:10 remedies, 13:10, 13:19 statutory provisions, 13:10 test, 13:10 Filing preconditions, 13:16

DUTY OF FAIR REPRESENTATION -Cont'd For displacing trade union, 9:3 Global grievance settlement, 13:8 Grievances see GRIEVANCES History, **13:1** Human rights, 13:2, 13:8 Judicial review, 13:6, 13:8 Labour boards, exclusive jurisdiction of, 12:19, 13:1, 13:2 Last chance agreements, 13:6 Legal advice, 13:6, 13:8 Limitation period mandatory, Quebec, 13:11 Majority vote against filing a grievance, 13:6 Manitoba, 13:1, 13:4, 13:6, 13:8 Mistake, 13:7 Negligence see NEGLIGENCE Negotiation of mid-term amendments, 13:9 Not a catch-all provision, 13:2 Not an appeal, 13:8 Nova Scotia, 13:1 Ontario, 13:1 Onus, 13:13 Other fora. 13:2 Pension plan, 13:2 Pleading, required, 13:16 Portability of seniority, 13:2 Pre-statutory requirements, 13:1 Prima facie case required, 13:8 Proactive approach, human rights, health and safety, disability issues, 13:2, 13:5, 13:6, 13:8 Probationary employees, 12:5, 13:6, 13:8 Procedural issues deferral, 13:15 delay/prematurity, 13:11 employer as a party, 13:14 exhaustion of internal union procedures, 3:12 filing preconditions and dispensing with oral hearings, 13:16 naming union officials, 13:17 not identifying parties, 13:18 onus, 13:13 open court principle, 13:18

© 2024 Thomson Reuters, Rel. 5, 12/2024

DUTY OF FAIR REPRESENTATION ---Cont'd

Ouebec. 13:6, 13:7, 13:11, 13:19 Ratification votes, 13:2, 13:7, 13:9 Remaining neutral, 13:5 Remedy, et seq., 13:19 apology, 13:19 apportionment, 13:19 bilingual arbitrator, 13:19 choice and payment of counsel, 13:19 cooperation directed, 13:19 declaration. 13:19 deferral to arbitration, 13:15 financial liability limitations, Alberta, 10:42 general and moral damages, 13:19 legal fees at labour board, 13:19 legal opinion, 13:19 monetary (and limitations), 13:19 objective, 13:19 posting, 13:19 quantification actual harm, 13:19 referral to an independent arbitrator, 3:19 referral to arbitration, 13:19 referral to independent investigator, 10:24, 13:19 standing granted to bring a successor rights application, 13:19 structural. 13:19 waiver of time limits, 10:46, 13:19 Sale of business. 13:2, 13:6 Scope of duty, procedural and substantive. 13:1 to 13:3 Second-guessing negotiators, 13:9 Self-represented, challenges of, 13:16 Settlements. 13:6 Sexual harassment, 13:6 by fellow employees, 13:5 Situations when used, 13:1 Solicitor/client privilege, 13:6, 13:8 Specific, three-fold, 13:1 Standing, 13:2 Status of exclusive bargaining agent, 13:1 Statutory v. implied, 13:1 Summary dismissal, 13:8 Theories justifying, **13:1** Union institutional bargaining rights, 13:9 Unions, internal workings not affected, 13:2, 14:27

DUTY OF FAIR REPRESENTATION -Cont'd Union security clause prohibitions, overlap, 14:6 **DUTY TO BARGAIN** Alteration of position, 10:24 Alternate dispute resolution process, 10:21 Arrogant attitudes, **10:25** Authority, 10:24 Availability, **10:24** Awaiting third party review, 10:23, 10:25 Away from bargaining table advising minister of an impasse, 11:26 communications with employees, 10:27 communications with employers, 3:28, 10:24 strike or lockout before impasse, 10:27 totality of circumstances. 10:27 Bad faith, imposed collective agreement, 10:24, 10:40, 10:47 Bargaining agent maintenance of support, 10:27 reinforcing employer's recognition of, 10:24 Bargaining protocol, failure to abide by, 10:25 Boulwarism, 10:24 Bridging vs renewal clauses, 12:11 Canada Labour Code, meaning, **10:21** Change of agreed upon items, 10:24 Compulsory interest arbitration process, 10:21 Co-ordinated bargaining structure, 10:23 Delay, intentional, 10:24 Direct bargaining with employees, 10:4, 10:9, 10:24, 10:27 Disclosure American experience, 10:26 clarity required, 10:26 de facto decision, 10:26 employee contact information, 10:26 employee terms and conditions of employment, 10:26 limits of, 10:26 privacy issues, 10:26 purpose of, **10:26** redaction of sensitive commercial information, 10:26 solicited, 10:26

DUTY TO BARGAIN—Cont'd Disclosure—Cont'd timely. 10:26 unsolicited, **10:26** Displacement, continue to, 10:24, 11:4 Due diligence, 10:26 Explanation of positions, 10:25 Exploratory talks, **10:25** Failure to meet at all, 10:24 Failure to ratify, 10:25 Failure to recommend, 10:39 Fear of legalized negotiations, 10:22 Final / last offer votes, 10:21, 11:27 Good faith and reasonable efforts, **10:21** Government employer budgetary framework, holding to, 4:9, 10:25 pay equity, including cost impact of, 4:9, 10:25 Government funding, 10:25 Government resolution proposal, 10:23 Hard vs. inflammatory bargaining, 10:24 History, 10:22 Illegal per se, 10:23 to 10:25 Industry-wide bargaining, 10:24 Interest arbitration, continues to, 10:24 Late proposals, 10:24 Media strategy. 10:24, 10:27 Misrepresentation, **10:25** Negotiations Canada vs. United States, **10:23** hard vs. surface bargaining, 10:24 subject matter, United States compared, 10:23 Negotiators with authority and time, 10:25 No employees in bargaining unit, continue to, 10:23 Non-negotiable proposals, 10:24 No notice given, 10:21, 10:25, 11:2 Notice, 10:21, 10:25, 11:2 Novel arguments, 10:25 Observers, right to, 10:4 Out-of-scope positions, **10:23** Premature impasse declared, 10:23, 10:27 Procedural impasses, **10:25** Proposals made in bad faith, 10:24 Publishing proposals, 10:27 Rational discussion and reasonable efforts, 10:25

DUTY TO BARGAIN—Cont'd Reasonable efforts, 10:21, 10:23, 10:25 Reasonableness of proposals, 10:24 Refusal to abide by last offer vote, **10:24** Refusal to discuss cost of a proposal, 10:24 Refusal to execute agreement, 10:24 Refusal to meet, 10:24, 10:25 Reluctance to interfere, 10:24 Remedy imposition of collective agreement (provision), 10:24, 10:47 Interim order, 10:39 loss of opportunity to bargain, 10:42 ministerial consent, where required, 10:30 Subject matter of negotiations, 10:23 Sudden change of position, 10:24 Surface bargaining, 10:24, 10:47 Temporal limits, 10:21 Threat of plant closure, 10:24 Unilateral change to bargaining structure, 10:24 Unreasonable conditions, 10:25 Wage reopener negotiations, 10:21 Work jurisdiction, 10:23 **EMPLOYEES**

Agricultural workers, 2:9, 3:25, 6:12 Artist and performing contractors, 2:2 Athletes, rugby, 6:6 Bargaining unit membership, prime function test, 6:4, 6:6, 7:18, 7:53 British Columbia, 7:22 Business, vested rights in, 8:1 Canada Labour Code mischaracterization prohibited, 2:2, 6:2 onus. 2:2. 6:2 presumption, 2:2, 6:2 Casual. 7:22 Cessation as, strike or lockout, 2:10 Construction industry, status of a referral, 6:6, 15:6 Domestics, status, 6:11 Double date principle, 4:9, 7:52 Elected union officials, 6:6 Eligibility for union membership, provincial variations, 2:13 Evidence see EVIDENCE OF MEMBERSHIP

© 2024 Thomson Reuters, Rel. 5, 12/2024

EMPLOYEES—Cont'd Exclusions Canada board. 6:3 confidential capacity British Columbia, 6:5 factors warranting, 6:5 incidental vs. material, 6:5 nature of information, 6:5 Ontario, balance of interests, 6:5 police and firefighters, 6:13 serious issue, 6:5 use of information, 6:5 Crown employees, 6:15 dependent contractors see DEPENDENT CONTRACTORS farmers and fishermen, 6:12 horticultural employees, 6:12 managers see MANAGERS professionals, 6:10 Ouebec, 6:3 teachers, special provisions, 6:14 Film industry, **4:9**, **7:52** Firefighters, special provisions, 6:13 Freedom of speech, 3:28 Full- vs. part-time, craft units, 7:13 Graduate students. 6:6 Horticultural exclusion, 6:12 Identity of, subcontracting, 6:6 Individual, sanctions, **11:22** Intermingled labour board discretion, 8:5 subsequent to closure, 10:6 two unionized groups, 8:5 Lists of employees, right to, 7:24 Partners, contrasted, 6:6 Performing arts, 6:6 Police, special provisions, 6:13 Post-doctoral fellows, 6:6 Prisoners as. 6:15 Probationary, grievance arbitration, 12:5 Public office holder, 6:6 Related employers declarations, unwanted unions, 8:6 key employee defined by statute, 2:9, 8:6, 15:10 labour board precluded from considering relationship by blood, etc., 2:9, 8:2, 15:10

EMPLOYEES—Cont'd Related employers-Cont'd multiple related companies, which one of. 6:6 Retirees, versus, 4:19 Rights, union security provisions, 14:6 "Salts," 6:6 Seasonal. 7:22 Security guards, potential conflicts, 6:8 Sexual harassment see SEXUAL HARASSMENT Striking, status of, 11:24 Subcontractors, successors, 8:4 Supervisory employees, covered, 6:3 Trade union organizers, 6:6 Union duties, fair representation, 2:2 **EMPLOYER PROPERTY RIGHTS** Agricultural workers, 2:9 Balance of interests, strangers' access, 10:8

Canada Labour Code, employees' freedoms balanced, 10:8 Conditions, aimed at union officials, 10:8 Employee access to information, less opportunity test, 10:8 Lists of employees, right to, 7:24 No-solicitation rule past non-work communications, 10:8 proof of harm to efficiency, 10:8 Quebec, administrative approach, 10:8 Remote locations. 10:8 Working hours, lunch breaks and rest periods, 10:8 Workplace employees vs. non-employee organizers, 10:8 place of production vs. forum for union organizing, 10:8

EMPLOYERS

Accreditation, **15:8** Bargaining structures, **10:24, 15:11 to 15:16** Certification of two or more, **7:2** Cessation of, bargaining rights on, **9:13** Change of, bargaining rights on, **9:12** Construction industry, **6:6** Employee fair representation complaints, party to, **13:14**

EMPLOYERS—Cont'd Freedom of speech see FREEDOM OF SPEECH/ **EXPRESSION** Identity of bankrupt subcontractor, 6:6 common employer declaration, 6:6, 8:4, 8:6 construction industry, 6:6 contracted work, 4:10, 6:6, 8:4, 8:6 interview and hiring, 6:6 labour supplier, 6:6 payment vs. control, 6:6 related employer, 4:10, 6:6, 8:4 temporary agency, 6:6 Interference, termination of bargaining rights application, 9:2 Membership evidence see EVIDENCE OF MEMBERSHIP New division. 8:6 Non-construction industry employers, 2:9, 15:5 Organizations, accreditation British Columbia, 15:8 Canada Labour Code, 15:8 meaning, 15:8 Ontario, 15:8 Related construction industry, 8:6, 15:10 declaration by board considerations, 8:6 delay, 8:6 employer applicants, 8:6 franchises, 8:6 liability, 8:6 limited scope declaration, 6:6, 8:4, 8:6.8:7 mandatory, Alberta, 6:6, 8:6, 15:10 material facts, obligation to adduce, 6:6.8:6 nature of, 8:6 onus, 8:6 preserve bargaining rights, not extend, 8:6 purpose, 8:6 retroactive, 8:6 declaration by board erosion, actual or real potential, 8:6 deferral to arbitration, 6:3, 8:6 delay, 8:6

EMPLOYERS—Cont'd Related—Cont'd discretion, labour board, 6:6, 8:6, 10:7 effective labour relations test, 8:6 franchises, 8:6 joint ventures escape from collective agreements, powers of labour boards, 8:6 key employee defined by statute, 2:9, 8:6.15:10 labour board discretion, 8:6 labour board power to find. 8:6 labour board precluded from considering relationship by blood, etc., 2:9, 8:2, 15:10 liability, 8:7 merger, 8:6 motives, 8:6 piercing corporate veil, 8:6 purpose, 8:6 Quebec, 8:6 remedies, 8:6, 8:7 reorganization, 6:6 strike replacement implications, 8:6 Restrictions not a "gag" order, 10:9 Standing, 7:1, 7:48, 7:52 Subcontract, legitimate defined, 6:6, 8:4 Subcontractors, successors, 8:4, 8:6 Successors bargaining process, 8:1 freeze, 10:13 liability for predecessor's breaches, 8:7 True employer, 6:6 EMPLOYMENT STANDARDS Arbitral enforcement, 3:18 **ENFORCEMENT** Contempt, 10:53 General considerations, 5:15, 10:53 Offences false and misleading information, 2:4

ENFORCEMENT OF COLLECTIVE AGREEMENTS Arbitration, 12:15 Arbitrators and labour boards appropriate forum, 12:12, 12:19 concurrent jurisdiction, 12:19 exclusive jurisdiction, 12:19 general heart of process, 12:16

© 2024 Thomson Reuters, Rel. 5, 12/2024

ENFORCEMENT OF COLLECTIVE AGREEMENTS—Cont'd Arbitrators and labour boards-Cont'd good faith administration, implied, 12:19 related statutes, 12:19 remedial powers, 12:19 Bankruptcy, 8:2, 12:19 Civil action court jurisdiction: Weber v Ontario Hydro, 12:19 death of individual rights, 12:19 defamation, 12:19 discrimination, 12:19 independent duty of care, 12:19 inherent remedial jurisdiction, 12:18, 12:19 insured benefits, 12:19 pay in lieu of notice, 12:19 strain on labour policy, 12:19 tort. 12:19 unfair competition, 12:19 unpaid wages, 12:19 where no mandatory arbitration, 12:19 workplace injury, 12:19 Federal board review, after arbitration, 12:17 Human rights compliance, 3:18, 12:5, 12:14, 12:19 Injunctions, 11:9, 11:21, 12:18 Insolvency, 8:2 Original jurisdiction of labour board, 12:17 Police services legislation, exception, 12:19, 13:1, 13:2 Prosecutions, 12:18 Residual judicial discretion, 12:19 EQUALITY Mandatory retirement, 3:30 EQUAL OPPORTUNITY Existence of barriers, 2:2

ESSENTIAL SERVICES Agreements, 2:9 Alberta, 11:30 British Columbia board, 11:30 Canada board, 11:30 Canadian Charter of Rights and Freedoms, 3:25, 11:30 Common site, 11:30

ESSENTIAL SERVICES—Cont'd Definition immediate and serious danger, 11:30 Employees outside the bargaining unit, 11:30 Maintenance of, 11:30 New Brunswick, 11:30 Newfoundland and Labrador, 11:30 Ontario, 11:30 Quebec, 11:30 Saskatchewan, 11:30 **EVIDENCE OF MEMBERSHIP** Alberta, 7:25, 7:44 Application form, signing, 7:25 Arrears, dues, 7:44 Barometer of support, 7:25 British Columbia, 7:25, 7:42 Confidentiality to be maintained, 3:28, 5:12, 7:63 Electronic, 7:25, 7:39, 7:42, 7:46, 15:6 Employee opposition Alberta, card signing, 7:44 change of heart, relevance, 7:26 confidentiality of, 7:26 federal, fee payment, 7:46 natural justice, 7:26 New Brunswick, 7:26 New Brunswick, intimidation, 7:48 Newfoundland and Labrador, oral evidence. 7:47 Nova Scotia, repayment of employee loans, 7:43 Ontario card date, 5:12, 10:49 sister local, 7:30 representation at hearing, 7:26 Saskatchewan, card signing, 7:45 timing. 7:26 weight of, 7:26 Employer opposition British Columbia fraud and intimidation, 7:42 procedures, 7:42 New Brunswick, intimidation, 7:26, 7:48 Ontario card date. 7:27 cards, collection of, 7:28 certainty of employee intention, 7:35

EVIDENCE OF MEMBERSHIP -Cont'd Employer opposition-Cont'd Ontario-Cont'd curable deficiencies, 5:12, 7:24, 7:25, 7:27, 7:32 essential mistake, 7:34 fees. loan of. 7:28 inquiries by board, 7:39 intimidation and misrepresentation, 7:36, 7:53 irregularities in form, 7:31 management support, 7:37 non-payment of fees, 7:28 rules of evidence, 7:27 signature missing, 7:29 tainting, 7:38 time of card signing, 5:12, 7:32 union improperly named, 7:30 union's constitution, 7:33 Employer standing, 7:43 Federal, 7:43 Fraud, 7:36, 7:46, 9:16 High standards, 7:27 Integrity of, 7:43 Labour board procedures, 7:24 Manitoba, 7:50 Misrepresentation, 7:36, 7:44 New Brunswick, 7:48 Newfoundland and Labrador, 7:47 Nova Scotia. 7:43 Overview, 7:25 Prince Edward Island, 7:49 Proof of, 7:25 Ouebec, 7:50 Revocation, 7:26 Saskatchewan, 7:45 Sister local, 7:30 Two-tiered initiation fee, 7:36 Validity (federal), 7:46 Versus pledge/authorization, 7:35, 7:47 **FARMERS** Employees, exclusions, 3:25, 6:12 FEDERAL WORKS Core activity, integral and essential, 3:4 Defined, 3:2

Requirements, **3:8** Works vs. undertakings, **3:8**

© 2024 Thomson Reuters, Rel. 5, 12/2024

FILINGS See UNIONS

FINAL-OFFER VOTES See VOTING, final offer

FINANCIAL INSTITUTIONS Jurisdiction, constitutional basis, 3:15

FIREFIGHTERS Constitutionality of changes to interest arbitration, Quebec, 2:11, 3:25 Employees, special status, 6:13

FIRST AGREEMENT ARBITRATION See REMEDIES

FISHERMEN Employers, exclusions, 6:12

FRAUD Board discretion, 9:16 Collusion, 9:16 Status before board, 9:16 Statutory basis, 9:16 Test, 7:36, 7:46, 9:16

Timeliness, 9:16

FREEDOM OF ASSOCIATION Anti-corruption measures, 3:26 Back-to-work legislation interference, whether, 3:25 justification, whether, 3:25 negotiation impasse, when, 3:25 Ontario, 3:25 Quebec, 3:25 Bargaining unit consolidation, 3:25 Certification, date of application rule, 3:28 Collective bargaining, 3:25 Compulsory interest arbitration, Quebec, changes to, 3:25 Contract prohibitions, 3:25 Defined, 3:25, 3:27 agricultural workers, 2:9, 3:19, 3:25, 3:26

Essential service restrictions, 2:11, 2:12 Excessive delay, 3:31, 7:52 Exclusions, 3:26 agricultural workers, 3:19, 3:25, 3:26 construction industry, 3:27 managerial employees, 3:26 RCMP, 3:26, 6:15 underinclusiveness, 3:19 FREEDOM OF ASSOCIATION—Cont'd Freedom not to associate, 3:19, 3:27 Government executive intervention, 3:25 Impossible to achieve, 3:26 Mandatory dues check-off, constitutionality, 3:25 Picketing, 3:29 Police protests by uniform changes, prohibition of, 3:25 Representation votes employee contact information, entitlement, 3:28, 5:12, 7:53, 10:4 Statutory sale of business provision, **3:27** Trespass, blockades, encampments, 3:29, 11:9, 11:12, 11:21 Wage restraints, 3:25 Wage rollbacks, 3:25

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY Certification disclosure. 3:28

FREEDOM OF SPEECH/EXPRESSION American position, 3:28 Captive audience, listeners' rights, 3.29, 11:16 Consumer leafleting, 11:12 Contempt orders subject to, 3:28 Election Finances Act (Ontario), **3:28** Employees, 3:28, 10:4, 10:8 Employers Alberta, 10:9 American style campaign, 7:62, 10:9 away from bargaining table, 10:27 captive audience meetings, 7:62, 10:9 conditions violation, breach of good faith bargaining, 10:9 direct communications, 10:9, 10:24 employer preference of unions, 10:9 New Brunswick. 10:9 Nova Scotia. 10:9 parameters, 10:9 petitions following employer address, 10:9 reasonable employee resilience, 10:9 restrictions British Columbia, 10:9 Canada Labour Board. 10:9 Charter. 3:28 corporate reorganizations, 10:4

FREEDOM OF SPEECH/EXPRESSION

-Cont'd Employers-Cont'd restrictions-Cont'd creation by Canada Labour Board, 3:28 direct communication, 3:28 employee input, 10:9 imposition of collective agreement, 3:28 intimidation, 10:9 maturity of bargaining relationship, 10:9 Ontario. 10:9 opinion vs. coercion, 10:9 organizing vs. bargaining, 10:9 provincial variations, 10:9 Saskatchewan, 10:9 underlying assumptions, 10:9 Saskatchewan, 10:9 unfair labour practices of, 10:9 Enforcement Issues, 10:9 Labour boards, rights of, 3:28 Leafleting, 3:29, 11:2, 11:17 Ontario, **10:9** Open court principle, 3:28, 5:12 Picketing, 3:29, 11:15 Police protests by uniform changes, prohibition of, 3:28 Representation votes employee contact information, entitlement, 3:28, 5:12, 7:53, 10:4 Restrictions captive audience, 10:9 direct communications, 10:9 intimidation, 10:9 Restrictions on employers intimidation, 10:9 labour statutes. 3:28 not a "gag" order, 10:9 union's bargaining rights, 3:28 Restrictions on unions, employer's time, 3:28 Strike, 3:25, 3:28 Trade union leaders, 3:28 Trespass, blockades, encampments, 3:29, 11:9, 11:12, 11:21 Union rules, 3:28

FREE TRADE AGREEMENT Collective bargaining, fear of decline, **1:6**

FREEZES

See also WORKING CONDITIONS After notice of desire to bargain all legal incidents of relationship, 10:13 business as before, 10:13 business as before vs. static freeze, 10:13 changes during, presumption of illegality, 10:13 collective agreement provisions, effect of, 10:12, 10:13, 10:25 continuation period, 10:13 contracting out, 10:26 dismissal, notice before effective after, 10:13 dismissal for cause, 10:13 employer policies, 10:13 government reorganization, 10:13 hours of employment, 10:13 iob security. 10:13 notice to extend, first agreement, 10:14, 10:47 persons covered, 10:13 purpose of, 10:13 reasonable expectation approach, 10:13 statutory basis, 10:13 unfair labour practice, interference with trade union's role, 10:13 wage increase payment practices, 10:13 wages, change of, no perception of penalty, 10:13 Anticipated salary increase, 10:12 Any application, Saskatchewan, 2:12, 10:15 Application for labour board's consent jurisdictions compared, 10:12 Augmented perspective, **10:13** Before certification business as usual. 10:12 retender/successorship context, 10:12 unfair labour practice, 10:13 wage increases, 10:12 Weber, 12:19 Business as before employer straitjacket, 10:12 planned before application, 10:12 Changes during, presumption of illegality, 10:13 Classifications, new, 10:12 Closures, 10:12

FREEZES—Cont'd Compared, **10:13** Dismissal for cause, 10:12 Duration, 10:14 Established practice of salary reviews, 10:12, 10:13 Layoffs, 10:12, 10:13 Liberal interpretation, 10:13 Necessity, defence of, 10:13 Overlapping unfair labour practices, 10:13 Purpose, **10:12** Raises for improved productivity, 10:12 Statutory changes, 10:12 Unfair labour practices compared, antiunion animus, 10:12, 10:13 Unilateral change, when permitted, 10:13 **GREAT DEPRESSION** Change in public attitudes, 1:1 Legislative solutions, 1:3 GRIEVANCES Canada Labour Relations Board threestep analysis, 13:8 Collective vs. individual, balancing critical job interest theory, 13:8 Control of, debate language and theories, 13:8 Discharge, inevitable arbitration vs. selfcorrection. 13:8 Factors to be considered by union in crpursuing cost, 13:6 relationship with employer, 13:6 Failure on basis of age and sex, 13:5 Individual rights theory, 13:8 Interests of entire unit, 13:8 Mediation of. 12:15 Merit and legal advice, 13:8 Notice of meeting to decide course of action. 13:8 Psychological harassment, Quebec prohibition against, 2:11 Union control vs. individual rights theory, 13:8 discretion of, 13:8 Verbal and written warnings, 13:8

GUARDS

See SECURITY GUARDS

© 2024 Thomson Reuters, Rel. 5, 12/2024

HEALTH AND SAFETY

Harassment, **5:17** Inspector's powers, **5:17** Judicial review, **4:9** Mandatory committee inspections, **4:10**, **5:17** Precautionary principle, **5:17** Retaliation, **5:17** Right to refuse unsafe work, **5:17** Suspension of an order, **5:17** Voluntary corrective measures, **5:17**

HEARING

Conduct of, bias, 4:15

HISTORY

Bibliographical note, 1:6
Black Death, scarcity of workers, 1:2
Breach of contract, employee protection, 1:2
Collective bargaining, 1:2
Common law, criminal conspiracy, 1:2
Industrial Revolution, abundance of workers, 1:2
Journeymen and apprentices, 1:2
Picketing, 1:2

HUMAN RIGHTS

Arbitral enforcement, 3:18, 12:19 Bona fide occupational qualification, 3:18 Constitutional status, 3:18 Contractualizing vs contracting-out, **3:18** Customary international law, 3:18 Discrimination, bar to certification, 7:58 Employers and unions as targets of complaints, 3:18 Employer's duty to accommodate, 3:18 General damages, 3:18 General vs. labour statute, 10:16 Intentionality of discrimination, 3:18 Jurisdiction (courts vs. tribunals), 3:18, 12:19 Liability for violation, 3:18 Partial discrimination, 3:18 Proof of discrimination, 3:18 Quasi-constitutional dimension of laws, 3:18 Reasonable accommodation, 3:18 Standard of judicial review, 3:18, 4:10

INDIGENOUS PEOPLES AND RESERVES

Ambulance/medical services, constitutional basis, 3:14
Cultural propriety of collective bargaining, 1:6
First Nations labour code vs. provincial labour code, 3:14
Jurisdiction, constitutional basis, 3:14
Police services, constitutional basis, 3:14
Unions, band councils, 3:14
United Nations Declaration on the Rights of Indigenous Peoples, 1:2, 1:5, 1:6, 3:14

INJUNCTIONS

See REMEDIES

INTEREST ARBITRATION

Imposition beyond first contract, **2:5** Police bargaining units in Nova Scotia, and, **2:8** Where strike in excess of sixty days, **11:28**

INTERNATIONAL ASPECTS

International conventions effect of, 1:5 eight core conventions, 1:5 federal state complexity, 1:5 International Labour Organization, membership, 1:5 eight core conventions, 1:5 United Nations Declaration on the Rights of Indigenous Peoples, 1:2, 1:5, 1:6, 3:14

JUDICIAL REVIEW

Abuse of authority, **4:1** Abuse of process, **4:20** Adequacy of reasons, **4:14** Administrative excess, necessary redress, **4:1** Advisory opinions and reports, **4:29** Alberta board review of grievance arbitrations, **2:3, 4:2, 4:16, 4:23, 12:17** court-labour board division, **4:2, 4:16, 4:23, 12:17** standard of review, **4:2, 4:16, 4:23, 12:17** Appeal court's role, **4:19**

.JUDICIAL REVIEW—Cont'd Arbitration boards apprehended bias, whether to remit, 4:15 arbitral consensus, ignored, 4:19.50 arbitrator vs designated officer, 4:19 assault, 4:19 Canada Labour Code grievance arbitrators, 4:24 consensual boards, 4:16, 4:17, 4:19 costs as damages, 4:9 Crown duty, impact on, 4:17 deference, post Nor-Man, 4:18 Dunsmuir, 4:9, 4:18 employee free-expression, 4:19 estoppel principles, application of, 4:19.50 external law, application of, 4:17 formation of question to the board, 4:18 forum non conveniens, 4:19, 4:20, 5:5 forum selection, 4:19 hallmarks of grievance arbitration, 4:16 interest arbitration, bias, 4:15 interlocutory decisions, 4:19 judicial distortion, 4:16 jurisdiction to review, British Columbia, 4:19, 4:21 labour board review, 4:2, 4:16, 4:21, 4:23, 12:17 mediation-arbitration bias, 4:15 mitigation, 4:17 natural justice, 4:16, 4:17 nature of. 4:18 reasonableness. 4:16 rectification. 4:18 remit back to same or different arbitrators, 4:15, 4:16 role of courts, 4:16 scope of review of, 4:16 sexual harassment, 4:19 similar cases, similar treatment, 4:19 specific vs. general question, 4:18 standard of review overview, 4:16 patently unreasonable, 4:10 unification post-Dunsmuir, 4:19 Vavilov, 4:10, 4:19.50 statutory creation of, 4:17

JUDICIAL REVIEW—Cont'd Arbitration boards—Cont'd statutory—Cont'd errors of jurisdiction and law, 4:17, 4:19 no longer relevant, 4:16 staying effect of, 4:25 time limits OLRB, 12:17 waiver, 4:19.50 Bargaining rights, 4:7 Bias, 4:15 ex parte discussions, 4:15 impartiality presumed, 4:15 managing the litigation, versus, 4:15 undue intervention, 4:15 Board's remedial actions, considered, 4:5 British Columbia board review of grievance arbitrations, 4:2, 4:16, 4:21, 12:17 court-labour board division, 4:2, 4:21, 12:17 standard of review, 2:4, 4:2, 4:9, 4:21, 12:17 Certiorari, grounds for, 4:2 Certiorari and mandamus, Alberta, 4:2 Conciliation boards, approach to, 4:15 Damages, not available, 4:24 Degree of analysis of merits of a decision, 4:7 Differences of legal opinion, permission of. 4:6 Discretion, 4:10, 4:19.50, 4:20 Divergent outcomes and deference, 4:9 Exhaustion, 4:20 External law, 4:11 Final and binding effect of, 4:2 vs. rule of law, 4:16 Finality vs., no-certiorari clause, 4:8 Fragmentation, judicial policy against, 4:20, 4:25 Functional and pragmatic approach, 4:7 Functus officio, 4:13 Human rights laws, 3:18, 4:10 Intervenor status, 4:28 Judicial discretion, 4:20 Judicial independence and labour boards, 4:15 Judicial notice, 4:13

© 2024 Thomson Reuters, Rel. 5, 12/2024

.JUDICIAL REVIEW—Cont'd Jurisdiction administrative tribunals generally, 4:7 correctness test, 4:6 courts administrative agencies, compared, 4:1 historic role. 4:1 statutes limiting judicial role, 4:1 describing, listing and limiting approach, 4:6 functional and pragmatic approach, 4:7 honest differences, 4:7 jurisdictional error approaches to, 4:3 categories of reviewable error, 4:6 non-jurisdictional error, compared, 4:3 role of Supreme Court of Canada, 4:3, 4:4 meaning of. 4:2 patent unreasonable test, 4:7 privative clause, effect of, 4:2 refinement, 4:3 Labour boards bias, 4:15 Charter values, 4:11 discretion, principled exercise of, 4:10 mootness, 4:9 power to reconsider, in lieu of appeal, 5:5 reasons required, 4:10, 4:14, 5:10 review of own panels, 4:2 standing, 4:26 staying effect of, 4:25 time limits, relief against, 4:10 unit exclusions, 6:5 Labour disputes deferral to labour boards, availability of alternated remedy, 11:9 defined, 11:9 multiple forums, problem of, 11:9 Legal, administrative and legislative tension. 4:5 Limits to administrative action, consensus, 4:3 Natural justice see NATURAL JUSTICE Ontario and British Columbia timelines, 4:21

JUDICIAL REVIEW—Cont'd Open court principle, 4:14, 5:12, 10:37.50, 13:18 Polycentricity principle, 4:7 Preliminary matter, meaning of, 4:4 to 4:6 Prematurity, 4:20, 4:25 Prerogative writs, 4:1 Privative clauses see PRIVATIVE CLAUSES Procedural fairness, 4:13, 4:15 audio recording/transcript, 4:12 functus officio, 4:13 independence, 4:15 notice, **4:13** policy changes, 4:13 public employees, 4:9 Procedure affidavit evidence, 4:21 application not automatic stay of tribunal, 4:25 British Columbia Judicial Review Procedure Act, 4:21 service requirements, 4:21 federal courts, 4:24 Ontario Judicial Review Procedure Act, 4:21 urgency, 4:21, 4:25 Ontario and British Columbia appeal, 4:21 factums. 4:21 new evidence, 4:21 return to tribunal, 4:21 service requirements, 4:21 staying orders, 4:25 other provinces, no specific legislation, 4:23 Prince Edward Island differences from Ontario and British Columbia. 4:22 Judicial Review Act. 4:22 Quebec, 4:23 standing employees, 4:27 labour boards, 4:26 staying of operation of decision, 4:20, 4:25 staying order, public interest, 4:25 Recent restraint of, 11:9 Reconsideration, 4:20, 5:13

.JUDICIAL REVIEW—Cont'd Regulations, vires of, 5:5 Remedies deference to labour board's expertise, 10:1 discretion, 4:16, 4:20, 4:21 fashioned by administrative agencies, judicial caution, 4:5 judicial substitution, 4:21 Representation votes, 4:6 Sale of business, rights on, 4:7 Scope, ministerial power to contract, 4:21 Standards of review, **4:2**, **4:9** to **4:11**, 4:17, 4:21 Alberta, 4:2, 4:16, 4:23 British Columbia, 4:2, 4:9, 4:21 Charter, 3:25, 3:26, 4:11 clarification and new framework, Vavilov. 4:10 Constitution Act, 3:25, 3:26, 4:11 external law. 4:11 iurisdictional lines between tribunals. 4:10, 4:11, 4:17 to 4:19, 5:12 new approach, Dunsmuir, 4:9, 4:17 Newfoundland and Labrador, 4:18 patently unreasonable, 4:2, 4:9, 4:10, 4:17, 4:21 patent unreasonableness, 4:2, 4:21 review of reviewing judge, 4:10 Standing, 4:26 Strikes, board's ambit, 4:6 Supreme Court of Canada caution in doctrine setting, 4:1 early indifference, 4:3 evolving guidelines, 4:4, 4:6, 4:7, 4:9, 4:11, 4:15 Timeliness, 4:21, 4:23 Tort and property law, ex parte relief, 11:9 Trade union's exclusive control over, 4:27 Tribunal decision making, deferential approach, 4:15 Unfair labour practices, jurisdiction, 10:32 United States, methods to settle to be agreed to, 4:16 JURISDICTIONAL DISPUTES See also CONSTRUCTION INDUSTRY Abuse of process, **15:20** Certification, 15:3

Context essential, 15:21

© 2024 Thomson Reuters, Rel. 5, 12/2024

.JURISDICTIONAL DISPUTES—Cont'd Criteria, 15:21 Multiple bargaining units, 6:6, 15:17 Upstream sources of work, 15:25 LABOUR BOARDS Abuse of process, 5:5 Adjournments, considerations, 5:8, 5:10, 5:14 Administrative discretion, 5:2 Administrative Tribunals Act (B.C.), 2:4, 4.2 ADR hearings, 5:2, 5:9 Appointees from industry, bias, 4:15 government appointees directive, 5:6 right to complete cases, 4:15, 5:6 Arbitrators, collective agreement enforcement shared, 12:16 Bankruptcy, 8:2 Build-up principle, 7:52, 7:58 Clustering of tribunals, 2:2, 2:4, 2:8, 2:11 Collective agreements, original jurisdiction over, 12:17 Composition no right to review, 5:6 quorum, 5:6 tripartite, rationale, 5:6 tripartite variation, 5:6 Conduct of counsel, **5:5** Confidential information, 5:11, 5:12, 7:25, 7:27 Conflicted counsel, 5:5 Consistency, value of, 5:2 Consultation process, 4:13 Courts compared with, 5:3, 5:5, 10:32, 11:19, 11:21, 12:19 policy reasons, compared, 4:1 specialization and expertise, compared, 4:1 Damages, not available, 4:24 Dangers of over-scrutiny, 10:24 Decisions time limits, 5:7 Delays abuse of process, 5:5, 5:14 effect of, 5:14 full hearing vs. prejudice, 5:14 health and safety, 5:17 reasonableness, 5:14

LABOUR BOARDS—Cont'd Delays-Cont'd statutory time-limits, 5:14 treatment of. 5:14 Disclosure, 5:12 Discretion consolidation, Ontario and British Columbia. 7:18 craft units, 7:13 to 7:15 deferral to arbitration. 12:16 religious convictions of employees, 14:7 representation votes, 7:52 termination of bargaining rights fraud, 9:16 lack of support, 9:2 time limits, relief against, 4:10, 5:14 Employer's identity, test for, 6:6 Estoppel, 5:11 Evidence burden of proof, and, 5:11, 5:12 confidential commercial information, 5:12 confidential date of membership, disclosure only by temporal ranges, 5:12, 10:49 confidential, implied undertaking rule, 5:12 expert testimony, 5:11 hearsay, exceptions, 5:11 implied undertaking rule, 5:12 interim relief. 5:8 joint caucus discussions, 5:11 polygraph, 5:11 privileged, 5:8 to 5:12 scope of hearing, **5:8** surreptitious audio recordings, 5:11 test of relevance, **5:8, 5:11** video evidence, 5:11 witness exclusion. 5:11 Functus officio, 5:11 Hearings conduct of, 5:9 contradictory evidence, 5:9 cross-examination when calling an adverse witness, 5:11 discretionary nature, 4:10, 4:13, 5:8, 5:9 examinations and investigations, 5:8 no oral hearing, 4:13, 5:9

LABOUR BOARDS—Cont'd Hearings—Cont'd standing, 5:8, 7:24 video-conferencing, 5:9 view of workplace, 5:11 Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020, 2:2.5:9 Immunity, 5:6 Insolvency, 8:2 Inter-jurisdictional deference, 8:5 Intermingling, rival unions, 8:5 Judicial independence, 4:15 Judicial review see JUDICIAL REVIEW Jurisdiction attornment, 5:3, 6:15, 7:2, 10:28, 11:23 by necessary implication, 5:5 Canadian Charter of Rights and Freedoms, to apply, 3:20 Charter values, 3:19, 5:5 collective bargaining, 5:5 comprehensive, attributes of, 5:5 conflicted counsel, 5:5 essential character of a dispute, 5:5, 12:19 exclusive, whether, 5:5, 10:32, 11:8, 11:23, 12:19 forum non conveniens. 5:5 House of Commons/NDP Caucus/ provincial legislative assemblies, 5:5 interference with economic interests, 12:19 lack thereof. 5:5 membership support, 7:25 mootness, 5:8 over foreign corporations, 5:5 parliamentary privilege, 5:5 prospective ruling, 6:2 stavs. 4:21. 5:13 Weber v Ontario Hydro, 5:5, 12:19 Labour disputes British Columbia, unlawful strike or lockout, 11:8 multiple forums, problem of, 11:9 Labour relations officers, Quebec, 5:7 Limits to administrative action, judicial right to intervene, 4:3 Members, office at pleasure of executive, 4:1

LABOUR BOARDS—Cont'd

Orders compliance with, measure of effectiveness. 5:15 enforceable as judgment, duty to file with court, 5:15 enforceable by courts, 5:15 enforcement of committal for contempt, 5:15 contempt of court, 5:15 criminal sanctions, 5:15 imprisonment, 5:15 opportunity to purge contempt, 5:15 Other duties, 5:16 to 5:19 Overlapping jurisdiction, 6:16 Parliamentary privilege, 5:5 Powers and duties abuse of process, 5:5 arbitral review, 4:2, 4:16, 4:21, 12:17 bargaining rights, termination vs. reconsideration, 9:9 bargaining units criteria, 7:2 size of. 7:2 certification, 5:5 Charter rights, 3:31 collective bargaining, reluctance to interfere, 10:24 declaratory ruling, 5:8 deferral, 5:5, 8:11 detailed questions, 5:5 general remedial powers, 10:38 marshalling powers, 5:8 modification of collective agreements on intermingling, 8:5 mootness, 5:8 more responsibilities, 5:19 notice, ordering of, 5:8 party agents, exclusion of, 5:9 power to reconsider, in lieu of appeal, 5:5 privilege litigation, 5:11 procedure anonymization requests, 5:12, 10:37 control of, 5:5 non-suit, 5:11 settlement activity, 5:7, 5:8 related employers collective bargaining imposed, 8:6 finding of, 8:6

LABOUR BOARDS—Cont'd

Powers and duties—Cont'd related employers-Cont'd joint ventures escape from collective agreements, 8:6 preconditions to discretion, 8:6 purpose of exercise of discretion, 8:6 remedies, 8:6 test of common control or direction, 8:6 test of functional integration, 8:6 remedial power, unfair labour practices, 10:1 remedies see REMEDIES rule making, 5:2 summary dismissal, 5:8, 13:16 summons to witness, 5:8 termination of bargaining rights, abandonment, 9:8 termination of voluntarily recognized agent's rights, 9:5 time limits, relief against, 5:14 trusteeships, 14:2 unfair labour practices, general complaints, 10:29 unsafe work complaints jurisdiction, 5:5, 5:17, 5:18 picket lines, 5:17 procedural election, 5:17 proper skills, 5:17 recent jurisdiction, 5:17 vexatious litigants, 5:5 Preamble, 5:4 Privilege settlements, 5:11 solicitor-and-client, 5:11 Procedure burden of proof, 5:8, 10:2, 10:20 case management systems, 5:7 change in dispute resolution culture, 5:8 conducting representation votes, 5:7 credibility findings, 5:11 decisions without formal hearings, 5:7 to 5:9 failure to file timely pleadings, 7:24 field centres, 5:7 inferences, drawing adverse, 5:11

© 2024 Thomson Reuters, Rel. 5, 12/2024

LABOUR BOARDS—Cont'd Procedure—Cont'd interim relief. 10:39 onus, 5:11 intervenors, right to intervene, 4:28, 5:8 lack of prima facie case, 5:8, 5:9, 10:29 non-suit principles, 5:11 no requirement to transcribe/audio record, 4:12 notice of proceedings, 5:8 open court principle, 4:14, 5:12, 10:37.50, 13:18 particulars, orders for, 5:8 pleadings, amendments, 5:8 privacy interests, 4:14 processing time, 5:7 production, orders for, 5:8 recording of proceedings, 5:9 service. 5:8 settlement activity, 5:7 virtual online proceedings, 5:7 will-say statements, **5:11** Prosecution of offenders by others, **10:1** Public service, jurisdiction over, 5:18 Quebec Administrative Labour Tribunal, 5:13 Ouebec Commission des relations du travail. 5:6 Reasons, need for, 4:14, 5:8 Reconsideration, 5:13 Regulations, vires of, 5:5 Remedies see REMEDIES Reporting relationships, 5:6 Representation votes, conduct conditions, 7:52 Reprisals, 2:2 Res judicata, **5:11**, **5:13** Review and reconsideration Alberta. 5:13 British Columbia, 5:13 Canada board, 5:13 conflicting authority, 5:13 evidence, reweigh, 5:17 expansive vs. narrow approach, 5:13 first impression, **5:13** interim procedural rulings, 5:13 Manitoba, 5:13 natural justice, 5:13

LABOUR BOARDS—Cont'd Review and reconsideration-Cont'd New Brunswick. 5:13 new evidence. 5:13 Nova Scotia, 5:13 Ontario. 5:13 own initiative, 5:13 powers of, 5:13 preliminary rulings, 5:13 process, 5:13 Quebec, 5:13 reasons, absence of, 4:10, 4:14, 5:10, 5:13 requests for, 5:13 res judicata, 5:13 same panel, by, 5:13 Saskatchewan, 5:13 timeliness, 5:13 Review of grievance arbitrators, 4:2, 4:16, 4:23, 4:26 Review of own panels, 4:2 Rights of employees, general vs. statutory, 10:16 Rule making and decisions, 5:2, 5:10 United States, in, 5:10 Sale of business, determination of, 8:1 Security of tenure, nature and effect of, 5:6 Settlement activity, 10:35, 15:7 confidential from board, 4:14 importance. 5:7 settlement, determination, 5:7 settlement, enforcement, 10:35 settlement privilege, 5:11 Settlement officers, pleadings and discoveries, 4:14 Standing generally, 4:26 before the board, 5:8, 7:24 intervenors direct interest, 4:28 public interest, **4:13**, **4:28** special interest, 4:28 limits, no bootstrapping, 4:26 standard of review, 4:13 unlawful strike declaration, 11:23 Statutes extrinsic to enabling legislation, 4:8, 4:11 Statutory interpretation, modern approach, 5:4
LABOUR BOARDS—Cont'd Statutory Powers Procedure Act (Ont.), 5:15 Time-limits constitutional challenges, 5:13 criteria to extend, 5:14 directory, health/safety, 5:17 for decisions, 2:9 relief against, 5:14 Tribunal Adjudicative Records Act, 2019 (Ont.), 2:9 Tripartite basis, elimination of bias, 4:15 Unfair labour practices, remedial powers, provincial variations, 2:13 Unified labour board Nova Scotia, 2:8 Unsafe work employer precautions, 5:17 skill of fellow employee, 5:17 LABOUR-MANAGEMENT **COMMITTEES** Newfoundland and Labrador, 11:29, 12:14 LABOUR RELATIONS Administrative approach, United States, 5:1 Discretion legislation, 5:2 undue legalism, 5:2 LEGISLATION Arbitration, early statutes, 1:2 Boards of investigation, enforceability of decisions, 1:2 Canada Labour Code see CANADA LABOUR CODE Compulsory conciliation, early statutes, 1:2 Criminal activity, limitations, 1:2 Industrial Relations and Disputes Investigation Act, 1948 as model, 2:1 compulsory collective bargaining, 2:2 principles, 1:4 Railways Labour Disputes Act, 1903, 1:2 Trade unions, attempt to legitimize, 1:2

Uniform provincial laws, 1:4

LOCKOUTS

Before impasse, duty to bargain, **10:27** Canada board, freeze context, **10:14**, **11:5**

© 2024 Thomson Reuters, Rel. 5, 12/2024

LOCKOUTS—Cont'd Continuation of employment, statutory bases, 10:7 Defined. 11:2. 11:5 Employer's motivation, 11:5 Notice, 11:25 Notice of contingent layoff, 11:5 Relocation as, unfair labour practices, 10:6 Strike compared, 11:5 Test, revocability of decision, 11:5 Unlawful board dispositions, 11:8 board powers, British Columbia, 11:8 Voting see VOTING

LONGSHORE INDUSTRY

Certification date of application, significance, **7:23** Constitutional jurisdiction over, **3:2 to 3:4, 3:7** Legislative evolution, **2:2**

MANAGERS

Alteration to status quo, 6:4 Canada Labour Code, employees, 6:3 Collective bargaining rights to, 6:3 Construction industry, 6:3 Effective authority, 6:3 Effective control test, 6:3 Effective determination test, 6:3 Excluded as employees arbitral jurisdiction, 6:4 Canadian Charter of Rights and Freedoms, 3:26, 6:3, 6:5, 10:17 confidential capacity, 6:5 conflict of interest, 6:3, 6:5 directors. 6:3 explanation for, 6:3 eyes and ears perspective, relevance, 6:3 family members of owners, 6:3 federal and provincial employees, 6:3 genuine responsibilities, 6:3 health care industry, 6:3 hired as manager, **6:3** impact on employment of others, 6:3 independent decision-making test, 6:3 insoluble conflict of interest test, 6:3

MANAGERS—Cont'd Excluded as employees-Cont'd loss prevention officers, distinguished, 6:3 management team concept, 6:3 narrow interpretation, 6:3 ownership distinguished, 6:3 primary responsibilities, 6:3 ratio of supervisors to employees, relevance, 6:3 seasonal variations. 6:3 shareholders. 6:3 sprinkling of managerial tasks, 6:3 statutes, 6:3 supervisors, distinguished, 6:3 temporary seconded, 7:53 Inclusion Manitoba, 6:3 Loyalty to employer, 6:3 Meaning of, statutory, 6:3 Prince Edward Island, 6:3 Professionals, 6:3, 6:10 Saskatchewan provisional determination power, 6:5 Versus supervisors, 6:3 MANDATORY RETIREMENT

Case law, **3:19** Collective agreements, Charter rights, **3:30**

MANITOBA

Administrative Tribunal Jurisdiction Act, 2:5 Arbitration, mid-term process, 2:5 Arbitrators, procedural powers, 2:5 Bargaining unit determinations, 7:10, 7:16, 7:19 Bilingual requirements, 2:5 Burden of proof (ULP), 10:2 Certification, 7:7 Code of employment, 2:5 Collective agreements, rights after termination, 2:5 Conciliation, 2:5 Conciliation/grievance mediation, privatization, 2:5, 11:26 First agreement arbitration, 2:5, 10:47 Health sector appropriate decision-maker, 7:9

MANITOBA—Cont'd Health Sector Bargaining Review Act, 2:5, 7:9 Interest arbitration, imposition beyond first contract, 2:5, 11:28 Labour board, composition and power, 2:5 Labour Relations Act. 2:5 Labour relations board, powers of, 2:5 Mandatory representation votes, 2:5, 7:24 Pay Equity Act, 2:5 Professional employees, 2:5 Public Service Act, 2:5 Public Services Sustainability Act, 2:5, 3:25 Replacement workers, 2:5 Review and reconsideration, 5:13 Strikes and lockouts, when valid, 2:5 Subsequent agreement arbitration, 2:5, 10:48 Teachers, 6:14 Termination of bargaining rights, 9:2 Unfair labour practice certification, 7:66 Unfair labour practices, 2:5 Unions certification process, 2:5 decertification, 2:5 disclosure of officials' salaries, 2:5 power to sue, 2:5 status, 6:7 Votes, majority votes vs. majority eligible, 2:5 **MEDIATION** See CONCILIATION **MEMBERSHIP** Actions alteration of constitution or rules, 14:32 breach of work opportunity provision, 14:29 conduct of union elections. 14:30 misapplication of union funds, 14:33 removal of union officers, 14:31 to enforce constitution, rules and by-

laws, as breach of contract, **14:28** Applicants, statutory protections, **14:6** Complaints, duty to exhaust internal crremedies constitutional basis, **14:26** expulsion, **14:26** extent of, **14:26**

MEMBERSHIP—Cont'd Complaints, duty to exhaust internal crremedies-Cont'd futility of appeals, 14:26 harshness of, 14:26 when relaxed, 14:26 Condition of agreements, 2:13 Confidentiality, 5:12 Criteria, **2:13** Curable deficiencies, 5:12, 7:24, 7:25, 7:27, 7:32, 7:44 Declaration of union, 7:28, 7:31, 7:32 Evidence see EVIDENCE OF MEMBERSHIP Fees, proof of, 7:25 Forms of, standards of propriety, 7:25 Hearsay allegations, 7:29 High standards of reliability, 7:27, 7:46, 7:51.9:3 Initiation fee two-tiered. 7:36 Local vs. parent union, in, 7:35 Minimum percentages, labour board jurisdiction, 7:25 Minors, 7:25 Misrepresentation, 7:36, 7:47 New Brunswick fishing, 2:6, 7:25 unions membership, one dollar repealed, 2:6.7:25.7:48 Online, Internet, 7:46 Onus, balance of probabilities, 7:26 Overview, 7:25 Proof of, 7:25 Religious objections, dues to charity, 2:13 Remedies accounting, 14:35 damages in tort, 14:35 declaration, 14:35 injunction, 14:35 mandamus, 14:35 Revocation British Columbia, 7:42 Ontario, 7:26 Saskatchewan, 7:24, 7:45 Tainting, management involvement, 7:26 Timing, relevance of, 7:25, 7:26, 7:42

© 2024 Thomson Reuters, Rel. 5, 12/2024

MEMBERSHIP—Cont'd Union's charter practice of ignoring exclusions, 7:25, 7:33 requirements and exclusions, 7:25 Union's practices, 7:25 Voting documentary compared, 7:25 employee wishes as alternative, 7:25 Who may challenge, Ontario, 7:40 Written vs. oral, 7:25 **MINORITIES** See EQUAL OPPORTUNITY MINORS Union membership, status of, 6:16 NATIONAL LABOR RELATIONS **BOARD** See UNITED STATES NATURAL JUSTICE Adjournment policies, 4:13 Audio recording/transcript, 4:12 Bias allegation of in application, 4:15 allegation of in record of hearing, 4:15 common law rule against, 4:15 conduct of hearing, 4:15 direct relationship with litigant, 4:15 industry appointees, 4:15 language rights, 4:15 mid-hearing comments, 4:15 previous adjudication, 4:15 previous relationship, 4:15 recusal, not subject to agreement, 4:15 retired judges, 4:15 test for, 4:15 tripartite board composition, 4:15 Consultation process, 4:13 Fair hearing, 4:9, 4:12 to 4:14, 4:16 Full disclosure cross-examination, 4:14 evidence, receipt of, 4:14 membership secrecy, 4:14 open court principle, 4:14, 5:12, 10:37.50, 13:8 pleadings and discoveries, 4:14 privacy interests, 4:14 procedural straitjacket, 4:14

rules of procedure, 4:14

NATURAL JUSTICE—Cont'd

Functus officio, 4:13
Good faith and evenness, 4:12
Internal trade union affairs, 14:27
Jurisdictional errors, 4:12
Neutral facilitators, exclusion of evidence of, 4:14
Notice requirements, 4:13
Procedural fairness, 4:14
Right to be heard, 4:13

NAVIGATION AND SHIPPING

Extraprovincial voyages, **3:7** Provincially regulated industries, when ancillary to, **3:7**

NEGLIGENCE

Carelessness, degree of, **13:7** Mere vs. gross, **13:6 to 13:8** Quebec DFR prohibition, **13:7** Quebec prohibition, **13:7** Ratification votes, **13:7** Standard of care at all times, **13:7** Union volunteers and professionals, **13:7**

NEW BRUNSWICK

Bargaining units fragmentation, 7:19 Charter of Rights compliance, 2:6 Collective agreements expedited arbitration, 2:6 mandatory arbitration, 2:6 Collective bargaining, final offer votes, 2:6 Firefighters, 2:6, 6:13 First agreement arbitration, 2:6, 10:47 Human rights, role of labour board, 5:19 Interest arbitration, criteria, 2:6, 6:13 Labour board, duties and powers, 2:6, 5:19 Legislation, evolution, 2:6 Police, 2:6, 6:13 Reconsideration, 5:13 Remedial certification, 7:69, 10:49 Secondary picketing, 11:15, 11:20 Strikes conditions for, 2:6 slowdowns. 2:6 Time limits, interpreted, 5:14 Unfair labour practices, 2:6 Unions certification procedure, 2:6

NEW BRUNSWICK—Cont'd

Unions—Cont'd employer interference prohibited, **2:6** legal status, **2:6** local compulsory membership, **2:6**

NEWFOUNDLAND AND LABRADOR

Abandonment, bargaining rights, 9:8 Arbitration binding, 2:7 compulsory, hospital workers, 2:7 Bargaining unit community of interest, 7:23 Bill 37 (2012), 2:7 Card-based certification, 7:24 Collective agreements, binding on new owners. 2:7 Construction industry, 2:7 Employers, extraprovincial company, 2:7 Employers' organizations, 2:7 Essential services, 11:30 First-agreement arbitration, 10:47 Fishing, 2:7 Freeze/dismissals, 10:12 Labour board, powers and procedures, 2:7 build-up principle, jurisdiction, 7:53, 7:59, 15:6 Labour Relations Act, 2:7 Legislation, evolution of, 2:7 Public Sector Restraint Act, 2:7, 3:30 Representation votes, 2:7, 7:24 application for certification, 2:7 termination of bargaining rights, 2:7 Secondary picketing, 11:15, 11:20 Slowdowns, 2:7 Special projects, 2:7 Trade Union Act, 2:7 Unions compulsory registration, 2:7 decertification, 2:7 legal status. 2:7 reporting requirements, 2:7

NON-AFFILIATION CLAUSES

Construction industry constitutionality, **3:27** exclusion of unionized workers, **15:33** nature of, **15:33** purpose of, **15:33** triggering of, **15:37** working with, meaning of, **15:37**

NORTHWEST TERRITORIES Collective bargaining, federal authority, 3.6 **NOVA SCOTIA** Bargaining unit consolidation, 7:18 Certification additions and exclusions, 7:17 backdoor, 7:17 construction industry, 5:9, 15:6 date of application, 7:26 dismissal, remedial, 7:43 remedial, 7:68, 10:49 Confidential capacity exclusion, 6:5 Construction industry, 2:8, 5:9, 15:6, 15:14 **Construction Projects Labour Relations** Act, 2:8, 15:16 Duty of fair representation, 13:1 Essential service employees, 2:8, 11:30 Evidence of membership employer standing, 7:43 Expedited arbitration procedure, 12:7 First contract arbitration, 2:8 Fishermen, collective bargaining rights, 2:8 Interest arbitration and police units, 2:8 Inter-sectoral disputes, 15:6 Labour board consolidation. 2:8 reconsideration limitations, 5:13 unfair labour complaints, 2:8 work stoppage, 2:8 Legislation, evolution of, 2:8 Michelin Bill, 2:8 Native born preference, 2:8 Pay equity for women, 2:8 Representation vote, amalgamation, 8:5 Trade Union Act, 2:8 Transfer of business, successor rights clause, 2:8 Unions certification procedure, 2:8 certification requirements, 2:8

NUNAVUT

Collective bargaining, federal authority, 3:6

© 2024 Thomson Reuters, Rel. 5, 12/2024

OCCUPATIONAL HEALTH AND SAFETY Labour board responsibilities, 5:5, 5:17 discretion to inquire, 5:17 Reprisal lesser penalties, 5:17 Requirement pending investigation, 5:17 Right to refuse unsafe work, 5:17 **ONTARIO** See also CONSTRUCTION INDUSTRY Ambulance essential services, 2:9 Arbitration first contract. 2:9 procedures, 2:9 Bargaining units collective bargaining, agricultural workers, 2:9 consolidation, 7:18 statutory provisions, 7:9 Certification card-based, 7:25 certificate spent, 7:18 Conciliation, 2:9 Construction industry, 2:9 arbitrated relief where employer economic hardship, 2:9, 15:13 arbitration, final offer selection, 2:9 definition of non-construction employer, 2:9, 15:5 hiring hall referral restrictions, 2:9, 15:30 project agreement procedures, 2:9, 15:6 White Areas eliminated, 15:6 Craft units policy and provisions, 7:12 Crown Employees Collective Bargaining Act, 1993, 2:9, 8:2 Digital Platform Workers' Rights Act, 2:9 Dismissal and discipline, just cause, 10:3 Early legislation, 2:9 Employees, dependent contractors, 2:9 Employers' organizations, 2:9 Essential services, 2:9, 11:30 Fraud, 7:36, 9:16 Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020, 2:9 Hiring hall referral restrictions, 15:30 Judicial Review Procedure Act, 4:21

ONTARIO—Cont'd Labour board decision time-limits, 2:9 dependent contractors, interpretation, 6:2 powers, 2:9 Labour Relations Act, 2:9 Labour Relations Act, 1995, 2:9 Legislation, evolution of, 2:9 Managers, interpretation of, 6:3 Notification of decertification procedures, 2:9 Pay equity for women, 2:9 Picketing see PICKETING Ratification votes. 2:9 Related employer key employee defined by statute, 2:9, 8:6, 15:10 labour board precluded from considering relationship by blood, etc., 2:9, 8:2, 15:10 Return to work legislation power workers, 2:9 School boards bargaining structures, 2:9 Strikes professional strikebreakers, 2:9 right of non-union employees, 2:9 Successor cleaning, food and security, 8:2, 8:4, 8:10 Ontario, 8:10 rights provision, 2:9 Teachers bargaining structures, 2:9, 6:14 subject to Labour Relations Act, 2:9, 6:14 Toronto Transit Commission, 2:9 Trade qualifications, 2:9, 7:12, 15:6 Unfair labour practices, 2:9 Unions audit of financial records. 2:9 dues deductions, 2:9 fair representation, 2:9 hiring hall referral restrictions, 2:9, 15:30 rights, 2:9 trusteeships, just cause, 2:9, 14:2

ONTARIO—Cont'd Volunteer firefighters two-hatting protection, 2:9 PICKETING Alberta business closed, entitlement to picket, 11:19 secondary or expanded, 11:15, 11:19, 11:23 wrongful act, defined, 11:19, 11:23 Boycotts Charter rights, private disputes not covered, 11:17 federal pickets, 2:4, 11:2, 11:3, 11:18 free speech vs. right to trade, 11:17 leafleting, 3:29, 11:12, 11:17 nature of. 11:17 British Columbia access of a federal employer, 3:3, 11:18 ally active assistance, 11:18 defined, 11:18 marked change in relationship, 11:18 separate and distinct operations, 11:18 back-to-work legislation, in context of, 11:18 business closed, entitlement to picket, 11:18 Charter values, relevance, 11:18 common situs picketing, 11:18 criteria, 11:18 defined, 11:18 effect on non-parties, 11:18 federal pickets, 2:4, 11:2, 11:3, 11:18 judicial and legislative sensitivity, 11:13 labour board sophistication, 11:18 liability and ex parte injunctions, 2:4 petty trespass, exclusive court jurisdiction, **11:18** picketing vs. hot declaration, 11:18 piercing corporate veil, related companies, 11:18 primary vs. secondary, 11:18 restrictions, 2:4 safety concerns, 11:18 secondary site while collective agreement in force, 11:18 statutory history, **11:18**

PICKETING—Cont'd Canadian Charter of Rights and Freedoms, 3:29 Captive audience, **3.29**, **11:16** Common law regulation, 11:10 Common situs picketing, 11:15 Communicating information vs. persuading, 11:11 Consumer leafleting, 3:29, 11:10, 11:12, 11:15, 11:17, 11:18 Control by criminal contempt, 11:11 Courts' subversion, 11:12 Criminal liability for restraint of trade, 11:11 Economic torts caveats, 11:13 civil conspiracy, 11:13 inducing breach of contract, 11:13 interference with economic relations, 11:13 no action provision, British Columbia, 11:13, 11:15 reasoning obscure, 11:13 unlawful interference, 11:13 Freedom of speech, 3:29, 11:15, 11:19 Free speech, 3.29, 11:9, 11:15, 11:16, 11:19 General meaning, 11:10 Hot declaration as picketing, 11:18 Injunctions see REMEDIES Lawful picketing, communication involves persuasion, 11:14, 11:15 Leafleting, 3:29, 11:12, 11:17 Legalizing, 14:20 New Brunswick secondary picketing, 11:15, 11:20 Newfoundland and Labrador secondary picketing, 11:15, 11:20 Obstruction, delay allowed, 3.29, 11:16 Ontario courts, 11:9 related employer, 11:20 secondary employers and customers, 11:20 signal effect, 11:20 statutory provisions, 11:9, 11:20 Peaceful, 11:14, 11:15 Combination Amendment Act, 1:2 legalization of, 1:2

© 2024 Thomson Reuters, Rel. 5, 12/2024

PICKETING—Cont'd Personal residences of employer representatives, at, 11:9, 11:15 Persuasion by rational appeal, 11:11 Secondary ally vs. common situs, 11:15 Canadian Charter of Rights and Freedoms, 3:29, 11:15 common law re, struck down, 11:18 legal confusion about, 11:15 overruled, 11:15 right to trade paramount, 11:15 work normally performed by striking employees, 11:15 Signal effects, 11:15 Traditional torts, 11:12, 11:13 assault or negligence, 11:12 defamation, 11:12 intimidation, 11:9, 11:12 nuisance. 11:12 property, interference with use, 11:9, 11:12 secondary picketing, 11:12, 11:19 threats, **11:9**, **11:12** trespass, 11:12 Unfair employer declarations, **11:2** United States, 3:29 Unsafe work complaints, as a source of, 5:17 Vehicle interference, 11:12, 11:16 Videotaping/Internet posting, 11:14 With or without strike, 11:10

POLICE

Constitutionality of changes to compulsory interest arbitration, 2:11, 3:25 Constitutionality of prohibiting changes to police uniforms as a form of protests, 3:25, 3:28, 10:4 Employees, special status, 6:13 Police services legislation, exclusive jurisdiction of, 12:19, 13:1, 13:2 POST OFFICE Jurisdiction, subcontractors, 3:13 No relationship required, 3:13

PRINCE EDWARD ISLAND

Certification votes, **2:10** Conciliation officers, **2:10** Construction industry, **2:10**

PRINCE EDWARD ISLAND—Cont'd

First agreement arbitration, 2:10, 10:45
Industrial Relations Act, 2:10
Interference with union representation, 10:4
Judicial Review Act, 4:22
Labour Act, 2:10
Labour board, powers and procedures, 2:10
Salary reopener clause, 2:10
Seasonal businesses, 2:10
Strikes, cessation of employment, 2:10
Trade Union Act, 2:10
Unfair labour practice reverse onus, Charter of Rights, 2:10

PRIVATIVE CLAUSES

Alberta Labour Relations Code, 4:2 Arbitral processes, **4:2** British Columbia constitutional constraint, 3:17 former provision, 4:2 Canada Labour Code, 4:2 Constitutional restraint, 4:2 Construing of, 3:17 Error of law vs. jurisdiction, 3:17, 4:2 Finality clauses, 4:2, 4:8 In face of clear error, **4:3** Limits, 3:17 Non-constitutional issues, 3:17 Rationale, 4:4 Relevance, 4:9, 4:19 Restrictions of, 4:1 Strict construction, 4:1 Subjective judicial opinion, 4:1

PROCEDURAL FAIRNESS See NATURAL JUSTICE

PROFESSIONALS Collective bargaining, access to, 6:10 Employees, excluded from, 6:10 Managers, effective control test, 6:3

PROPERTY RIGHTS See EMPLOYER PROPERTY RIGHTS

PROVINCES

Employment, jurisdiction in field of, **1:2**, **3:1 to 3:16** Uniform legislation, **1:4** PUBLIC SERVICE Labour boards, jurisdiction over, 5:18 **PUBLIC UTILITIES** Defined, early legislation, 1:2 **QUEBEC** Access to information. 2:11 Administrative Labour Tribunal, 2:11 delay, 5:14 enforcement, 5:15 interim orders, criteria, 10:39 rules of evidence and procedure, 5:10 vexatious matters, summary disposition, 5:8, 5:9 Arbitration, 2:11 Bargaining unit fragmentation policy, 7:10, 7:19 Certification procedures, 5:7, 7:24 Charter of Human Rights and Freedoms, 3:18 Collective Labour Agreements Extension Act, 2:11 Conciliation officers, pre-strike report, 2:11 Constitutionality of back-to-work legislation, 3:25 Constitutionality of changes to compulsory interest arbitration, 2:11, 3:25 Constitutionality of prohibiting changes to police uniforms as a form of protest, 3:25, 3:28, 10:4 Construction industry bargaining structure, 15:11, 15:14 building commissioners, 2:11 Commission de la construction du Québec, 2:11 commission's jurisdiction, 2:11 compulsory province-wide bargaining, 2:11 constitutionality, 3:27 juridical extension of agreement, 2:11 freedom of association, protection of, 2:11 trade union referrals prohibited, 2:11, 15:14 Construction Industry Labour Relations Act. 2:11 Decertification, 9:3 Employee, defined, 6:3, 7:24

QUEBEC—Cont'd Employee associations, certification, 2:11 Employer, true, **6:6** Employer property rights, 10:8 Employment agency employer status, 6:6 Essential services council procedure, 2:11 designation procedure, 2:11, 11:30 Essential services, council procedure, 2:11 Farm workers, 2:11, 3:26, 6:12 Injunctions/stays, 4:25 Labour board, abolition, 2:11 Labour Code. 2:11 Labour Court. 2:11 Labour Relations Act, 2:11 Managerial exclusion, 3:26, 6:3 Membership evidence, 7:25, 7:50 Municipal defined pension plans permanently restructured, 2:11, 3:25 Municipal sector, 2:11 Notice to bargain/timing of strikes, **11:2** Psychological harassment, prohibition against, 2:11 Public and parapublic sectors, 2:11, 11:30 collective agreements in excess of three years allowed, 2:11 Regulatory structure, administrative and legal, 5:4 Representation votes employee contact information, entitlement, 3:28, 5:12, 7:53, 10:4 Sale of business, 4:7, 8:3, 8:4, 8:8 Successor rights, 2:11, 4:7, 8:4, 8:8 Successorship, defined where part of business transferred. 2:11 Unions certification. 2:11 employer domination, 6:7 employer interference, 10:4 Professional Syndicates Act, 2:11 recognized vs. certified, 2:11, 7:52 successor rights, 14:9

RACE

Charter rights, exclusions, **3:26**

RAID

See TERMINATION OF BARGAINING RIGHTS

 $\ensuremath{\mathbb{C}}$ 2024 Thomson Reuters, Rel. 5, 12/2024

RAND FORMULA Elements of, 14:5 **RATIFICATION VOTES** Colleges Collective Bargaining Act (Ont.), **11:25** Not required, 11:25 Separate strike and ratification votes, 2:5, 2:9, 11:25 RECONSIDERATION See LABOUR BOARDS **RELATED BUSINESSES** See EMPLOYERS RELATED EMPLOYERS See EMPLOYERS RELIGION Charter rights, 3:34 Exemptions Canada board test, 14:7 competing values, 14:7 confined to collective agreements, 14:7 criteria for beliefs, 14:7 due to charity in lieu, 14:7 labour board's discretion, 14:7 meaning of religious, 14:7 objection, all vs. particular union, 14:7 objection to some vs. all union activities. 14:7 religious vs. ideological, 14:7 religious vs. moral, social or political, **14:7** Union membership, objection to, 2:13 REMEDIES See also CANADIAN CHARTER OF **RIGHTS AND FREEDOMS** Access orders, **10:44** Apology, 10:43 Arbitration remedy in bad faith bargaining, 10:48 Arbitrator, remedial powers of, 12:19 Bargaining, binding dispute resolution, 10:46 Certainty and predictability, 10:28 Certificate, 7:62 to 7:69, 10:49 Certification, 7:62 to 7:69, 10:49

Collective agreement, 10:24, 10:49 10:48 Compensatory vs. punitive, 10:1 **REMEDIES**—Cont'd Courts, 11:8, 11:9, 12:19 Damages see DAMAGES Declarations, 10:51 Deterrence, 10:28 Disclosure, 10:26 Discretion, 10:29 Dismissal of proceedings, 10:20, 10:50 Enforcement, 10:53 Exhaustion of internal union remedies, 10:33 Fairness and compensation, 10:28 Fair representation complaints, 10:50, 13:19 First agreement arbitration Alberta, 10:47, 10:49 British Columbia, 10:25, 10:47, 10:49 Canada Labour Code. 10:47 concurrent decertification, 10:47 jurisdiction, 10:47 Manitoba, 10:47 New Brunswick, 2:6, 10:47 Newfoundland and Labrador, 10:47 normal result, 7:62 Nova Scotia, 10:47 Ontario, 10:24, 10:47 Prince Edward Island, 2:10, 10:45 purpose of, 10:47 Quebec, 10:47 Saskatchewan, 10:47 single-day hearing, 10:47 triggering (access), 10:46 voluntarism preferred, 10:47 Grievance arbitration during collective agreement, 11:22 individual employee, sanctions, **11:22** Importance, 10:38 Imposed collective agreement, 10:40 Injunctions attempt at balance, 11:16 constitutional consideration, 11:9, 11:15, 11:21 constraints, **11:9**, **11:21** courts, 10:32, 11:8, 11:9, 11:12, 11:16, 11:21, 12:19 discretion, 11:23 interim relief. 10:39 interlocutory, 4:25 labour boards, issued by, 10:38, 10:39

REMEDIES—Cont'd Injunctions-Cont'd limits on picketing, 4:25, 11:9, 11:15, 11:16, 11:19, 11:21, 11:23 non-party warnings, 11:16 partial injunctions, 11:16 police enforcement provisions, 11:16 purpose of, 11:21 serious question test prevails, 4:25 stays, 4:2, 4:23, 4:25 strong prima facie test, 4:25, 11:21 types, 11:21 Weber, 11:9, 12:19 Interest on monetary losses, 10:41 Interim relief, 10:39 Judicial deference to board's expertise, 10:1 Labour board consent to prosecute, 11:23 cost to attend, 10:42 discretionary, 11:23, 11:25 enforcement, 11:23 interim orders, 10:39 labour relations policy vs. precedent, 11:23 legal costs, 10:42 mandatory orders, 10:46 Ontario policy directions, 11:23 overtime bans, 11:23 Natural justice, **10:40** New location, names and preferences, 10:45 Nominal damages, 10:42 Orderly recall of employees after prolonged strike, 10:46 Plant shut-downs, relocation orders, 10:45 Posting, publishing and mailing declarations, orders and decisions, 10:43 Preliminary issues, 10:3 consent of Minister of Labour. 10:30 deferral to arbitration and other tribunals, 10:31 exhaustion of internal trade union remedies, 10:33 jurisdiction of courts, 10:32 naming individuals, 10:36 not identifying parties, 10:37 obligation to inquire, 10:23 settlement activity, 5:7, 10:35 standing, 10:37

REMEDIES—Cont'd Preliminary issues, 10:3—Cont'd time limits. 10:34 Principles, 10:40 Punishment vs. deterrence, 10:28 Punitive purposes, 10:40, 10:42 Qualities of, 10:28 Realities of workplace, 10:40 Reinstatement, 10:40, 10:42 Settlement encouraged, 10:35 Socio-political values, 10:28 Subsequent agreement arbitration, 2:5, 10:48 Time-limits, 10:34 Trusteeship power of board to intervene, 14:2 power of court to intervene, 14:31 Unfair employer declarations, 11:2 Unfair labour practices, 10:41 to 10:51 Union members see MEMBERSHIP Union practices, 10:50 Union recognition at relocation site, 10:45 Union unfair labour practices, 10:20, 10:50 Unlawful strike, damages, compensatory vs. punitive, 11:22 **REPRESENTATION VOTES** Alberta, 7:24, 7:26 Authority, 7:53 Ballots, when counted, 7:53 Ban on propaganda, 7:53 Build-up principle, 7:53, 7:58 Campaign content, 7:53, 10:4, 10:20 Casual employees, 7:53 Changes to bargaining unit, impact, 7:2, 7:53 Custody of ballot box, 7:53 Date of application, employees absent on, 7:53 Discretion for other votes, 7:53 Displacement application, 7:53 Electioneering, limits on, 7:53, 10:20 Electronic and telephone voting, 5:7, 7:53 union access to voter contact information, 7:53 Eligibility for threshold count, 7:53 Eligibility to vote, 7:53 Eligible voters, majority of, 7:53

REPRESENTATION VOTES—Cont'd Employees contact information, entitlement, 3:28, 5:12, 7:53, 10:4 Employees eligible, 7:53 High standard but not perfection, 7:24 Mail-in ballot, 5:7, 7:24, 7:53 Majority, votes eligible vs. votes cast, 7:53 New Brunswick, 7:53 Nova Scotia, pioneer of "speedy" votes, 7:53 Percentages to trigger board discretion, 7:53 displacement, 7:53 provincial variations, 7:53 rehearing if employees trade union members, 7:53 Pre-hearing vote, 7:53 Procedure deference, 7:24, 7:53 multiple option ballot, administration, 7:53 provincial variations. 7:53 speed, 7:24, 7:27, 9:2 Proof in lieu of, 7:52, 7:53 Proxy voting prohibited, 7:53 Saskatchewan, 7:24, 7:53 agent discretion, 7:24 Seasonal work status, 7:53 Secret ballot, 7:53 Setting aside, 7:53 Silent period, 7:53 Threats to job security, chilling effect, 7:62 Threshold issues notwithstanding, 7:53 Timely complaints, 7:53 Unfair labour practice dismissal, right to vote, 7:43, 7:53 Union mergers, 14:14 Unreliable membership evidence, 7:53 Validity danger of packing, 7:53 requirements, 7:53 REVOCATION

See DECERTIFICATION; TERMINA-TION OF BARGAINING RIGHTS SALE OF BUSINESS

See also CONSTRUCTION INDUSTRY Amalgamation, **8:2**

© 2024 Thomson Reuters, Rel. 5, 12/2024

SALE OF BUSINESS—Cont'd Application delay, 8:2, 8:6 Asset sale compared, 8:2, 8:3 Automatic, save for consequential issues, 8:2 Balance interests, 8:2 Bankruptcy and insolvency, 8:2 Bargaining unit review, 8:1, 8:5 Building services, 8:4 Change of business methods compared, subcontracting, 8:4 Client records, 8:4 Commercial agreements revised, 8:3, 8:4 Competition Bureau ordered divestiture, 8:2 Construction industry, skill and reputation, 8:2, 15:10 Contracting in and out closure. 8:4 Contracting to avoid collective agreement, 8:4 Deemed transactions, 8:2, 8:4 Delay. 8:2 Delay, abuse of process, 8:2 Delay, application, 8:2 Duty of fair representation, 13:2 Dynamic interpretation of tests, 8:2 Employee wishes, 8:5 Expropriation, 8:2 Fact driven, 8:2 First collective agreement, imposed, 8:1 Franchises, 8:2, 8:6 Going concern, 8:2 Goodwill in location, 8:2 Government intervention, compared, 8:2 Hiatus, operational, 8:2 Intermingling collective bargaining fragmented, 8:5 collective bargaining solution promoted, 8:5 functional integration, 8:14 large disparity test, 8:5 occurrences, 8:5 seniority, 7:18, 8:5 Intra-corporate transfer, 8:2 Inventory and accounts receivable, 8:2 Investment by key operator, 15:10 Judicial sale, 8:2 Key person analysis, 8:2, 15:10 Know-how, 8:4

SALE OF BUSINESS—Cont'd Labour board determination of, 8:1 Licences, 8:2, 8:3 Mergers, 8:2, 8:5 Nexus and transfer, 8:2 No extension of bargaining rights, 8:1, 8:6 Non-union business acquired, 8:5 Non-union purchaser, 8:5 Obligation to employ, 8:3, 8:4 Part of continuation of business, 2:11, 8:3 Ouebec, 8:2 to 8:4, 8:8 right to stay with vendor, 8:3 Production hiatus. 8:2 Public sector, 8:2, 8:5 Public to private sector, 8:5 Receivership. 8:2 Relevant factors, 8:2 Reorganization, 6:6, 8:2 Representation vote, 8:5 Rescission of, 8:1 Retendering, 8:3, 8:4, 8:7, 8:9, 8:10 Shut-downs, 8:2 Standing, 8:9 Statutory definition, 8:2 Subcontracts, 8:3, 8:4, 8:7, 8:9, 8:10 Substantial change in nature resulting, 8:10 Substantial renovation, 8:2 Successorship policies, 8:2 Tests, 8:2 Through intermediary, 8:2 Transfer between jurisdictions, 8:5 Transfer of assets vs. job functions, 8:4 Transfer of essential elements, 8:2, 15:10 SASKATCHEWAN Abuse of process, certification, 7:58 Bargaining units one employee, 7:2, 7:3 Collective agreements arbitration of disputes, 2:12 legislatively deemed provisions, 2:12 mandatory through union, 2:12 rights on expiry, 2:12 Construction industry, 2:12 Dispute settlement procedures, 2:12

Duty to bargain, out-of-scope positions, **10:23**

SASKATCHEWAN—Cont'd Employee, defined, 6:3 Employer freedom of speech, 10:9 Essential services, 2:12 Hiring boycott, **11:2** Injunctions, ex parte, 2:12 Jurisdiction internal trade affairs, 14:27 Labour board, powers, 2:12 production. 5:8 Strikes benefits, 2:12 prohibition of, health care and during elections. 2:12 return to work protocol, 2:12 vote on employer's offer, 2:12 votes, 2:12 Successorship federal to provincial transfer, 2:12 franchises. 8:2 service employees, 2:12 Summary dismissal process, 5:9 Technological change, 2:12 Trade Union Act, 2:12 Trade unions defined. 6:7 denial of justice, 14:27 True employer, 6:6 Unfair labour practices, 2:12 Union dues, check-offs, 2:12 Unions certification, 2:12 majority support, 2:12 prohibition of coercion, 2:12 successor rights, 2:12

SCHOOL BOARDS See TEACHERS/SCHOOL BOARDS

SECURITY GUARDS

Employees, potential conflicts, **6:8** Federal vs. provincial provisions, **6:8** Meaning of, jurisprudence, **6:8** Special provisions, **6:8**

SEX

Charter rights, exclusions, **3:26**

SEXUAL HARASSMENT Prohibition of, legislative base, 2:2

© 2024 Thomson Reuters, Rel. 5, 12/2024

STATE IMMUNITY

Limits of, **3:35** Mexican workers, **3:35** U.S. Defense Contract Management Agency, **3:35** U.S. naval base, **3:35**

STATUTORY FREEZES See FREEZES

STRIKES

Arbitral jurisdiction, 11:23 Before impasse, duty to bargain, 10:27 Boycotting new vacancies, 11:2 Boycotting promotional training system, 11:2 Charter rights, exclusivity, 3:27 Closure as result of, unfair labour practices. 10:6 Conflict of interest restrictions, 3:26 Constitutional rights, 3:25 Consumer leafleting, 11:12 Continuation of employment just cause, 11:4, 11:24 no right if no work, 10:7 right to displace, 10:7 right to reinstatement, 10:7, 11:4 statutory bases. 10:7 Cooling-off period, provincial variations, 2:13.11:26 Defined Charter values, relevance, 11:3 common understanding and activity, 11:2 element of purpose, 11:2 hot cargo clauses compared, 11:2 motive, relevance, 11:2 objective and subjective elements, 11:2 obstruction of workers and strikes, 11:2 picket line exception. British Columbia. 2:4, 11:2, 11:3 political protest, 6:14, 11:2 refusal to abide by last offer vote, 11:2, 11:27 refusal to dispatch, 11:2 refusal to do work, 11:3 refusal to perform extracurricular activities, 6:14, 11:2 refusal to refer, hiring hall, **11:2** refusal to work overtime, 11:2 right to refuse struck work, 11:2

CANADIAN LABOUR LAW

STRIKES—Cont'd Essential service agreements, 11:30 Frequency and severity, 19th century, 1:2 Hot collective agreement provisions, **11:2** Hot declarations, 11:18 Labour board remedies, 11:23 Legal, conciliation as precondition, 1:2 Legalizing, 14:20 Mandatory mediation, 11:26 Notice, 11:25 Protections, 11:4 Provincial variations resolution techniques, 2:13 secret ballots. 2:13 Refusal to cross picket line, 11:2, 11:3 Replacement workers, 10:7 Right to strike common law, 3:25, 11:4 constitutional, 3:25 crystallization of right, 7:55, 11:25 guarantees, 10:7, 11:4 restrictions timeliness, 11:4 voting requirements, 11:4 Strikebreakers, statutory prohibitions, 14:6 Unlawful generally, 11:2 arbitral jurisdiction, 11:23 arbitral remedy, **11:22** board discretion to file order, 11:8, 11:23 board dispositions, 11:8 board powers, British Columbia, 11:8 court deference, 11:9 court jurisdiction, 11:6, 11:9 encouragement, 11:2 essential services, 11:30 threats, **11:2** untimely tiered bargaining, 11:4 Untimely, **11:2** Voting see VOTING Wildcat, union's responsibilities, 11:2 SUCCESSORS See also CONSTRUCTION INDUSTRY Asset sale compared, 8:2, 8:3, 15:10

Automatic, save for consequential issues, 8:2 SUCCESSORS—Cont'd

Bargaining unit review, 8:5 British Columbia, 8:9 Concept of, 8:1 Construction industry, skill and reputation, 15:10 Continuation of business where part transferred, 2:11 Continuation of process, 8:1 Deemed transactions, 8:2, 8:4 Delay, abuse of process, 8:2 Employee wishes, 8:5 Employers, freeze after notice of desire to bargain, **10:13** Fact driven, 8:2 First collective agreement, imposed, 8:1 Franchises, 8:6 Going concern, 8:2 Government intervention, compared, 8:2 Hiatus, operational, 8:2 Intermingling, 8:5 Key person analysis, 8:2, 15:10 Liability for predecessor, 8:7 Licences, 8:2, 8:3 Notice to bargain, 8:1 Obligation to employ, 8:3, 8:4, 8:7 Ontario. 8:10 Public sector, 8:2, 8:5 Ouebec, 2:11, 8:8, 14:9 Retendering, 8:3, 8:4, 8:7, 8:9, 8:10 Retroactive order, 8:5 Rights of Canada Labour Code, 14:9 certification vs. ministerial designation, 14:9 change of name, 14:12 employee ratification, 14:13 employer concerns, 14:19 importance of constitution. 14:13 Manitoba, 14:9 merger defined, 14:10 notice, absolute vs. constitutional requirement, 14:15 Ontario, 14:9 predecessor not a union, 14:16 procedural fairness, 14:15 Ouebec, 14:9 representation votes, 8:5, 14:14 right to merge distinguished, 14:11 Saskatchewan, 14:9

SUCCESSORS—Cont'd Rights of—Cont'd statutory background, 14:9 substantial completion before recognition, 14:17 substantial compliance, 14:13, 14:17 timeliness. 14:18 trade union status, statutory provisions, 14:16 trade union vs. council of trade unions, 14:16 trends and purpose, 14:8 Subcontracting building services, 8:4, 8:10 date of disposition, 8:7 employees, 8:4 employers, 8:4 legitimate subcontract, 8:4 related employer, 8:4, 8:6, 8:7, 15:10 Union amalgamation, mergers, transfer, 14:9, 14:33, 14:35

TEACHERS/SCHOOL BOARDS

Bargaining structures, **2:9** Identity of, definition, **6:14** Strikes definitions, **6:14** summer and night schools, **6:14**

TECHNOLOGICAL AND OTHER MATERIAL CHANGE

Clauses in collective agreement, unfair labour practices protection, **10:6** Collective agreement reopened, **12:14** mediation, **12:14** notice, **12:14** remedy, **10:42, 12:14** trigger, **12:14** Purpose, **12:14** Unfair labour practices as defence to, **10:3** bona fides, **10:5**

TELECOMMUNICATIONS

Cable installation, maintenance and repair, federal jurisdiction, 3:9, 3:16
Cable television, federal jurisdiction, 3:9
Consolidation, 3:9
Federal jurisdiction, residual power, 3:9
Provincially regulated workplace, federal dispute, 3:9
Signals, reception and transmission, 3:9

© 2024 Thomson Reuters, Rel. 5, 12/2024

TELECOMMUNICATIONS—Cont'd Telephones, jurisdiction, 3:9 TERMINATION Entitlement to vote, 9:2 **TERMINATION OF BARGAINING** RIGHTS See also DECERTIFICATION Abandonment see ABANDONMENT Application during strike, 9:2 status to bring, 9:2 Bars to generally, 9:2 bridged collective agreements, 9:2 Canada Labour Code, s. 39(2), 9:2 British Columbia. 9:6 By certification of other new automatically replaces old, 9:3 notice provisions, 9:3 Cessation of union, 9:13 Change in business model, 9:6 Change of mind, 9:2 Collateral ruling, 9:17 Construction industry, 9:3, 9:17 Counter-petition, 9:2 Defensive certification, Quebec, 9:2 Delay, 9:2 Displacement/raid, 7:4, 7:53, 9:3, 15:6 Employees on layoff, status of, 9:2 Employer influence, 9:2 Employer request, 9:6 Entitlement to vote, 9:2 Estoppel, in comparison to, 9:8 Failure of fair representation, 9:15 Failure to give notice or bargain depth of employee support for union, 9:4 employer obstructions weighed, 9:4 overall performance considered, 9:4 response to application considered, 9:4 statutory time-limits, 9:4 First agreement, delay, 9:2, 9:10, 10:47 Fraud see FRAUD Lack of support board's discretion, 9:2 certification bar, 7:59 clarity, 9:2

TERMINATION OF BARGAINING

RIGHTS—Cont'd Lack of support—Cont'd effect of order, 9:2 employee status, 9:2 employer interference, forms of, 9:2 evidence, 9:2 majority, change of heart of, 9:2 one employee sufficient to apply, 9:2 time-limits for application, 9:2 voluntariness, 9:2, 9:15 who can apply, 9:2 Manitoba, 9:2 Multi-employer collective agreement, 9:2 No agreement after time. 9:7 No employees in unit completed construction projects, 9:6 considerations, 9:6 construction industry, 9:6 employer excluded from decertification process, 9:6 seasonal employment concerns, 9:6 test, 9:6 Nova Scotia confidential personal statements instead of petitions, 9:2 Overview, 9:1 Partial raid, 7:4 Ouebec defensive certification. 9:19 Reconsideration by board discretion policies, 9:9 statutory basis, 9:9 termination sections compared, 9:9 Replacement workers, status of, 9:2 Sale of business, intermingling, 8:5 Self-representation, accommodating for, 9:2 Significant number of employees, 9:15 Successorship, intermingling, 8:5 Time extension for judicial review. 9:2 Timeliness, 9:2, 9:3 Trade union request, 9:6 Trade union status lost, 9:13 Voluntarily recognized agent, labour board involvement, 9:5, 9:10 Voluntarily recognized unions, first year Alberta, 7:51, 9:5 Canada Labour Code, 9:10 estoppel principle, 9:10

TERMINATION OF BARGAINING **RIGHTS**—Cont'd Voluntarily recognized unions, first year -Cont'd evidence required, 9:10 implied by certification of another, 9:10 onus. 9:10 proof of representation, 9:10 statutory basis, 9:10 TRADE UNION STATUS Constitutional compliance, 6:7 Constitutional continuity, 6:7 Continuity, 6:7 Defined Alberta, 6:7 British Columbia, 6:7, 7:55, 12:2 Ontario. 6:7 Saskatchewan. 6:7 Discrimination, 6:7 Elements of, 6:7 Employee associations, 6:7 Employer-dominated prohibited, 6:7 Employer support, 6:7, 7:52, 10:4 Establishment of, 6:7 Financial viability, 6:7 Formal provisions, 6:7 International, presence in province, 6:7 Lost, 9:13 Merger of unions, 6:7 Name, confusing, 6:7 Organization and cohesion, 6:7 Poly-party, 6:7 Service agreements, 6:7 Successorship, 6:7 Sweetheart unions, 6:7, 7:58 Valid constitution, 6:7 TRANSPORTATION Federal works vs. undertakings, 3:8

Interprovincial activity ancillary work, **3:8** federal authority, **3:8** proportion of, **3:8**

TRUSTEESHIP

American presumption of validity, **14:2** Construction industry restrictions, **2:9**, **14:2** Extension, test, **14:2** Fiduciary duties, **14:33**, **14:35**

TRUSTEESHIP—Cont'd Judicial intervention, 14:27, 14:31 Just cause requirement, 2:9, 14:2, 14:13 Labour board remedial powers, 14:2 Meaning of, 14:2 Ontario and British Columbia, statement of terms, 14:2 Removal from office, 14:2 Reporting requirements, 14:2 Restrictions, 14:2 UNFAIR LABOUR PRACTICE COMPLAINTS See COMPLAINTS UNFAIR LABOUR PRACTICES Abandonment of bargaining rights, threat of, 9:8, 10:20 Access to e-mail addresses, 10:4 Access to employee contact information, 3:27 Access to employer property, 10:8 Activity against the trade union defined, 14:6 protection from dismissal, 14:6 American style campaign, 10:9 Anti-union animus crucial determination, 10:3 inference. 10:6 main or incidental, 10:3, 10:6 not advertised, 10:3 whether required, 10:2 to 10:4, 10:6, 10:11 Apology, purported, 7:66 Bargaining directly with employees, 10:4 Bargaining in bad faith, 10:21 to 10:27 Bargain unit scope placement of new positions, 7:17 Basic freedoms. **10:1** Bifurcation, 10:42 Boards' remedial powers, 10:1 Bona fide purpose abusive union representative, 10:4 balancing interests, 10:3, 10:4 branch closing, 10:6 British Columbia requiring just cause, 10:3 business pattern, **10:5** closure, 10:6 closure and intermingling, 10:6

© 2024 Thomson Reuters, Rel. 5, 12/2024

UNFAIR LABOUR PRACTICES -Cont'd Bona fide purpose—Cont'd compelling business purpose, 10:3, 10:4 corporate reorganization, dead-end department, 10:6 costs of collective agreement, 10:5 economic forces vs. arbitrary action, 10:5 existing business plan, 10:6 relocations, lockout, 10:6 sale and relocation. 10:6 subcontracting, 10:6 technological change, 10:5 timing and impact, 10:5 versus intent, 10:3, 10:4 Breach of settlement, 5:7, 10:19 British Columbia clean hands doctrine, 10:29 proper cause for discipline required. 10:3 Burden of proof mixed onus cases, 10:2 Nova Scotia. 10:12 reversal, rationale for, 10:2, 10:20 Canada Labour Code, declaration of rights, 10:1 Canvassing employee strike intentions, 10:4 Captive audience, 10:2, 10:9 Ceasing to operate inter-provincially, 10:6 Check-off, flagrant disregard of, 10:4 Closure, 10:3, 10:4, 10:6 Complaints, consent of Minister of Labour, 10:30 Continuation of strikers' employment refusal, inherently destructive, 10:7 refusal to recall on basis of seniority. 10:7 Contracting out, 8:4, 10:3, 10:13, 10:26 Courts, jurisdiction, 10:32 Crown immunity, 6:15 Deferral to arbitration qualifications, 10:31 statutory and practice, 10:31 Deferral to human rights tribunal, 10:31 Defined. 10:1 Degree of protection of employees, 10:7 Delay in filing, 10:34

UNFAIR LABOUR PRACTICES -Cont'd Denial of names/addresses of bargaining unit members. 10:26 Derivative rights, union remedy for excluded employees, 10:17 Description of, provincial variations, 2:13 Discretion to inquire into, 10:29, 10:31. 10:34.10:38 Dismissals board jurisdiction, bankruptcy, 10:32 constructive, treatment of, 10:3 good faith, 10:3 just cause required, 10:3, 10:7, 11:4 technological change, 10:3 Duty to bargain see DUTY TO BARGAIN Economic conflicts employer's rights, temporarily replacing strikers, 10:7 legislated outcomes or limitations, 10:7 parties' choice of weapons, 10:7 Employee protection, 10:2 Employer inaction, **10:4** Employer preference for a particular union, 10:4 Employer property rights see EMPLOYER PROPERTY RIGHTS Employer speech see FREEDOM OF SPEECH/ **EXPRESSION** Enforcement, 10:53 Exclusion from protection constitutional implications, 3:25 agricultural workers, 3:25 freedom of association, 3:25 Extra-jurisdictional effect, 10:6 Fears of future union activity. 10:3 First agreement bargaining see REMEDIES Freeze, breach of, compared, anti-union animus, 10:12 Freeze, closure, 10:3 Freezes see FREEZES General remedial powers ancillary request for damages, 10:40 interests to be considered, 10:40 Newfoundland and Labrador, 10:40

UNFAIR LABOUR PRACTICES -Cont'd General remedial powers-Cont'd Ontario, 10:38 Implied rights declaratory vs. effective sanctions, 10:16 political speech, 10:16 varying interpretations, 10:16 Weingarten rights, **10:16** Inducements to cross picket lines, 10:11, 10:27 Inference, 10:6 Inference vs. balancing of interests, 10:3 Interference with witnesses, 10:18 Intent circumstantial evidence, 10:3 mixed. 10:3 violation prerequisites, 10:3 Interference with union see UNIONS Interim order affidavit evidence, 10:39 criteria, 10:39 employer communications, considerations, 10:39 onus, 5:11 preservative interim order, distinguished, 10:39 Intimidation, 10:3, 10:9 Judicial review, jurisdiction, 10:32 Labour boards duties, general complaints, 10:29 duty to expedite, 10:3 duty to expedite proceedings, 5:8 exclusive jurisdiction, 5:5, 10:32 freedom to testify, **10:20** remedial powers, provincial variations, 2:13Lay-offs, factors, 10:3 Managerial employees, unprotected, 3:26, 10:17 Manipulation of working conditions, 10:9 to 10:14 Motive fictional use of, 10:3 time of action, **10:6** Naming individuals, 10:36 No-reprisal issues, 10:23 No-solicitation cases, approach, 10:3

UNFAIR LABOUR PRACTICES —Cont'd

Notices and decisions, posting and mailing of. 10:43 Not identifying parties, 10:37.50 Obligation to inquire, 10:29 Offenders, prosecution of, parties, 10:1 Ontario, limited balancing of interests, 10:3 Past practice, meaning of, 10:3 Prima facie case, 10:29 Probationary employees protected, 10:3 Professional strikebreakers, legislation against, 10:7 Prosecutions consent of labour board, 10:52 historical, 10:52 policy, 10:52 refusal of consent, 10:52 time-limits, 10:52 Protection from, employees, employers and unions, 10:1 Protection of witnesses, 10:18 Raid proofing, 10:4 Rectification plan, **10:40** Refusal of struck work, protections, 10:7 Remedies see REMEDIES Replacement workers bargaining unit work, 10:7 British Columbia, 10:7 Canada, 10:7 common employer declaration, 10:7 customers, self-help, 10:7 employer defined, 10:7 essential services exception, 10:7 evidence of use, 10:7 labour board investigation, 10:7 Ontario, **10:7** out-of-province, 10:7 place of operations, 10:7 Ouebec, 10:7 rehiring strikers after strike, 10:7 shared work, 10:7 telecommuting, 10:7 use by employer, 10:7 Reprisal, 4:9 Settlement enforcement, 10:19, 10:39 Standing, 10:37 Standing to complain, 10:1

UNFAIR LABOUR PRACTICES -Cont'd Statutorily specified, 10:1 Statutory freezes, 10:9 to 10:14 Striking employees, protections, 10:3 Summary dismissal, 10:29 Termination of union organizer, 10:49 Time limits relief against, 5:14, 10:34 Trusteeship, power of board to intervene, 14:2 Unilateral changes of conditions of employment, freezes on, 10:1, 10:3 Unilateral out-of-scope transfers, 10:4 Union finances, board encouragement of employee involvement, 14:4 Union formation interference, confined examination, 10:3 Union information requests, 10:4 Unions coercion vs. democratic debate, 10:20 discriminatory expulsions/fines, 10:20, 14:27 dual unionism rights, 10:20, 14:6, 14:27 election interference, 7:43, 7:53, 10:20, 10:50 employer support, 10:4 internal matters, 10:11, 10:20 intimidation, 10:20, 14:27 political activity, protection, 10:16, 10:20, 14:6, 14:7, 14:27 prohibitions, general and specific, 10:20 remedy, 10:8, 10:50 standing to bring, 10:20 use of complaints and social media, 10:20 working hours vs. lunch breaks and rest periods, 10:8 Union security requirement ignored, 10:4, 12:12 Union T-shirts/buttons, 10:4 Voluntary recognition agreement, when, 10:4 Weingarten rights, 10:4, 10:16 Withholding discretionary benefits, **10:3** Witnesses' rights, general protection, 10:18, 14.6

© 2024 Thomson Reuters, Rel. 5, 12/2024

CANADIAN LABOUR LAW

UNION DUES

See DUES

UNION ORGANIZING Communications with employees, protected activities, political activity, **10:8** Workplace access of union representatives, **10:8** working hours, **10:8**

UNIONS

Actions and motives, related employers, employee rights, 8:6 Active promotion of members' interest, time-limits, 9:4 Admission of individual, discrimination, 14:27 Admission of individual, judicial review, 14:25 AFL and CIO, 2:9 Anti-corruption, 3:26 Audit of financial records, 2:9 Bargaining, good faith, 2:13 British Columbia, 6:7 Canadian Charter of Rights and Freedoms, application of, 3:21 Canadian Labour Union, growth of, 1:2 Certification see CERTIFICATION Certified council of unions, 6:7 Cessation of, bargaining rights on, 9:13 Change of, bargaining rights on, 9:11 Coercion vs. democratic debate, 10:20 Combinations Combination Act, 1:2 criminal conspiracy, 1:2 Common law, status, 5:1 Company-dominated prohibited, 2:1, 6:7, 10:4 Competition policy, 14:36 Constitution, rules and by-laws, membership contract terms, 14:28 dominant concept doctrine, 14:31 Constitutional rights, right to join, 3:25 Council of unions, 6:7 Craft, history of, 7:11, 7:12 Decertification see DECERTIFICATION Decline in density, 1:6 Decline in power, 1:6

UNIONS—Cont'd Denial of justice, 14:27 Density, Canada and U.S., 1:6 Disclosure of officials' salaries, 2:5 Disclosure of political expenditures, 2:3, 3:27, 14:4, 14:7, 14:27 Discrimination, 6:7, 14:27 Due diligence standard, erosion of rights, related employers, 8:6 Duties check-off regulation, 2:13 fair representation of all employers, 2:2 financial affairs, 2:2 Employee associations, trade union status as intervenors, 6:7 Employer support, 6:7, 10:4 Expulsion accords with natural justice, 14:27 acting in good faith, 14:27 authorized by rules. 14:27 denial of justice, 14:27 dual unionism, 10:20, 14:6, 14:27 extension of principles, 14:27 just cause, Ontario, 14:2 minimum standards of procedural fairness, 14:27 unfair labour practice, 14:7 wrongful, action sustainable, 14:27 Extent of unionization Canada and United States. 1:6 Filings advantage of exacting requirements, 14.3 audited financial statements components of, 14:4 varying obligations, 14:4 constitution and by-laws labour board power to order, Ontario and Quebec, 14:3 provincial requirements, 14:3 return to Chief Statistician of Canada, 14:3 financial information Canada Labour Code, 14:4 privileged information, 14:4 unions based outside Canada, 14:4 financial reporting, United States compared, 14:4 financial statements, 2:3, 2:13, 14:4 political activity, 14:4, 14:7, 14:27

UNIONS—Cont'd Filings—Cont'd standard of board review. 14:4 trusteeships, 14:2 Freedom of association, 3:25, 3:27 Freedom of speech, 3:28 Global economy, impact of, 1:6 Globalization, impact of, 1:6 Hiring hall referral restrictions, 15:30 Hiring hall restrictions, 9:2 Interference with assisting with alternatives, 10:4 canvassing employees' strike intentions, 10:4 committee membership, 12:14 concerted campaign, 10:4 condoning interference, 10:4 constructive effect, 10:4 direct employer communications, 10:27 employee associations, extension to, 10:4 employees, public comments, 10:4 employer communications, 10:4, 10:9 employer domination or support, 6:7, 10:4 employer investigation, 10:4 exclusive bargaining agent status, 10:4 foreman, as extension of employer, 10:4 independent contractor agreements, whether, 10:4 infiltration. 10:4 inherently destructive conduct, 10:4 intent vs balancing of interests, 10:3, 10:4 letter to employees, 10:4 notice boards, 10:4 observers at bargaining, 10:4 parent union, by, 14:2 payment of employees' legal costs, 10:4 ratifying tainted actions, 10:4 refusal of access, 10:4, 10:8 refusal of information, 10:4, 10:20, 10:26 representation vote, employer obligations, 10:4 retention of union mail, 10:4 spies, 10:4 standing, 10:1, 10:4 statutory prohibition, 10:4

UNIONS—Cont'd Interference with-Cont'd surveillance. 10:4 threatening organizers, 10:4 unilateral changes to terms of employment, 10:3 unilateral out-of-scope decision, 7:17, 10:22, 10:39 union provided buttons, clothing with insignia, etc., 10:4 union security, 10:4 union vulnerability, 10:9 voluntary recognition agreement, 10:4 Weingarten rights, 10:4, 10:16 witnesses, 10:18 Intermingling of employees, two unionized groups, 8:5 Internal affairs generally, 14:10, 14:11, 14:13, 14:15 Alberta, 14:27 British Columbia Labour Board, 14:6, 14:27 discrimination, 14:27 fair hearing requirements, 14:27 judicial deference, 14:27 labour board jurisdiction, 14:2, 14:27, 14:32 mediation, 14:2 Ontario. 14:2 right to discipline members, 10:4, 14:34 right to legal counsel, 14:27 Invalid executive resolution, 14:31 Legal personality actions between members, vs. against union, 14:21, 14:25 as between members, 14:21 confused, jurisdictional ground for intervention, 14:25 early statutory existence, 14:21 entity to be enjoined or liable in tort, 14:21 for the purposes of, 14:21 historic illegality, 14:20 international union entity for damages, 14:21 legality not personality, 14:25 Ontario Rights of Labour Act, 14:22 to 14:24 proceedings against, 14:21 prosecutions against, 14:21

© 2024 Thomson Reuters, Rel. 5, 12/2024

CANADIAN LABOUR LAW

UNIONS—Cont'd Legal personality-Cont'd Quebec, incorporation or not, 14:21 regulatory default, 14:25 representative actions communality of interest, 14:23 only way to sue or be sued, 14:23 Ontario Rights of Labour Act, 14:24 requirements, 14:23 split, 14:21 tort liability, 14:21 trustees for, 14:21 unincorporated associations, 14:21 voluntary unincorporated association deficiencies of concept, 14:25 private social club rules, 14:25 Membership see MEMBERSHIP Mergers and amalgamations, 14:8, 14:11, 14:33, 14:35 Penalizing officials without just cause, 2:9 Post-war growth, **1:6** Property, 14:33 Quebec, 6:7 Rates of unionization, 1:4 Recognition at relocation site, 10:45 Recognized vs. certified. Ouebec. 2:11 Removal of union officers, 14:2, 14:31 Representation votes, mandatory, 2:13 Service agreements, 6:7 Status, 6:7 Successor rights see SUCCESSORS Suit against by member breach of contract, 14:25 loss of status, tort offshoot, 14:25 protection of member's property, 14:25 tort. 14:25 Suits against employees, 14:33 Threats to picket/strike, when unlawful, 11:3.11:4 Trade union status see TRADE UNION STATUS Transfer of jurisdiction, 14:11 Trusteeship see TRUSTEESHIP Unfair labour practices, 10:20, 10:50, 14:27 Alberta, 10:20, 14:6, 14:7, 14:27 burden of proof, 10:20

UNIONS—Cont'd Union security activity against the trade union, employee dismissal, 14:6 British Columbia power to regulate clauses, 14:6 clause limitation, employee protection, 14:6 closed shop, 14:5 closed shop vs. agency shop, 14:5 constitutionality, 3:25, 3:27, 4:2 elements of, 14:5 employer dues deductions, 14:5 fines for picket-line crossers, 14:6 interference with, 10:4 maintenance of membership clause, 14:5 meaning of, 14:5 no union denial if condition of employment, 14:6 religious exemptions see RELIGION statutory clause limitations, duty of fair representation overlap, 14:6 strikebreakers, statutory prohibitions, 14:6 variation of support, 14:5 voluntary check-off, 14:5 Wartime recognition, 1:4 UNION SECURITY

Alberta, 14:5, 14:7, 14:27

UNITED KINGDOM Historical comparison, 1:2 History, unsatisfactory approach, 1:1

UNITED STATES

Boycotts secondary, 1:3 prohibited vs. permitted, 11:17 Certification, procedure, 7:24 Certification without vote, remedial powers, 7:61 Civil rights freedom of speech, 3:28 picketing, 3:29 union shop agreement, 3:27 Collective bargaining, Clayton Act shelter, 1:3 Conciliation, enforced, 1:3

UNITED STATES—Cont'd Construction industry, jurisdictional dispute board, 15:17 Continuation of strikers' employment, no right if no work, 10:7 Craft unions, historical protection, 7:11 Decline in union growth, 1:6 Duty of fair representation collective bargaining, 13:9 development of concept, 13:1 mere negligence, 13:7 Duty to bargain disclosure, unsolicited, 10:26 mandatory/permissive dichotomy, 10:22, 10:23 terms and conditions of employment, 10:23 Employer's freedom of speech election interference vs. unfair labour practices, 10:9 employees' economic dependence, 10:9 non-coercive captive audience speech. 10:9 union preference vs. strict neutrality, 10:9 Expired collective agreement, grievance procedures, 12:9 Final adjustment of collective agreement, 4:16 Freedom of association. 3:25 History hands-off approach, 1:3 legislative accommodation, 1:1 Judicial review, deference to grievance arbitration, 4:16 Labour legislation federal vs. state, Canada compared, 1:2 trade and commerce clause, 1:2 Manipulation of working conditions, as employer inducement, 10:11 National Labor Relations Board election process, 7:24 New Deal, 1:3 New Deal legislation, 5:1 No-solicitation rule, policy objectives, 10:8 Proposed Reforms Biden government (2021), 1:6 Obama government (2008), 1:6 Rule making, 5:10 Strikes, early views, 1:3

© 2024 Thomson Reuters, Rel. 5, 12/2024

UNITED STATES—Cont'd

Trusteeships, regulation of, 14:2 Unfair labour practices deferral to arbitration, 10:31 granting or withholding benefits during bargaining period, 10:13 intent, violations, 10:3 shut-down, 10:6 Unions constitutionality of trade union agency fees in the public sector, 3:27 density statistics, 1:6 filing requirements, constitution, bylaws and policies, 14:3 filings, financial information, 14:4 legal personality, states' variations, 14:21 Union security closed shop prohibited, 14:5 restriction of clauses in collective agreement, 14:5 right to work laws, 14:5 Union successor rights, 14:13 Weingarten rights, 10:16 **UNSAFE WORK**

Labour board review, 5:17

VOLUNTARY RECOGNITION Across Canada, 7:52 British Columbia, 7:52, 9:10 Clean hands required, 7:52, 15:7

Construction industry, 15:7 Continuing support required, 7:52 Cross-over clauses, 7:52, 15:7 Employer misrepresentation, 8:6 Ontario, 7:52 Pre-hire agreements, 7:52, 9:10, 15:7 Representation vote, when, 7:52 Requirements, 7:52, 15:7 Saskatchewan, limitations, 7:52, 15:7 Strike-out provisions, 15:7 Termination of, 9:5, 9:10 Uncertified council of trade unions, 7:52, 15:7 Unfair labour practice, when, 7:52, 10:4 Union misrepresentation, 7:52, 15:7 Union's entitlement to represent, 7:52, 9:10

Validity, 6:7

VOTING See also REPRESENTATION VOTES Final offer bargaining duty, implications of, 10:24, 11:27 bars, 11:27 clear offer required, 11:27 electronic, 11:27 entitlement, when it arises, 11:27 entitlement to vote, 11:27 extinguished right, 11:27 joint bargaining, 11:27 justification to reject results, 4:10, 10:24, 11:2, 11:27 objectives, 11:27 polling of employers, not applicable, 11:27 procedural fairness, 11:27 provincial variations, 11:27 ratification, not applicable, 11:27 requirements, 11:27 unlawful interference, 11:27 unlawful terms, 11:27 Lockout generally, 11:25 dualing strike and lockout votes, 11:25 single and multiple employer lockouts, 11:25 Ratification, 11:25, 12:2 Strike improper exclusion, 11:25 improper interference with, 11:25 internal union affairs, 11:25 precondition, 11:25 requirements, 11:25 supervised by board, 11:25 who is eligible, **11:25** WAGES Freezes, Charter rights, 3:25

WAR

End of, ensuing legislation, **1:4** Federal jurisdiction during, **1:4**

WAR—Cont'd Union growth during, 1:4 WARTIME REGULATIONS Beginning of industrial relations legislation, 2:13 WEBER V. ONTARIO HYDRO See also ENFORCEMENT OF COLLEC-TIVE AGREEMENTS Human rights tribunal jurisdiction, 12:19 Inherent superior court jurisdiction, 12:19 Injunctions, 11:9, 12:19 Misrepresentation, 12:19 Retirees, 4:19 WOMEN See EQUAL OPPORTUNITY WORKING CONDITIONS Freezes after notice of desire to bargain hours of employment, 10:13 job security, 10:13 reasonable expectation approach, 10:13 statutory bases, 10:13 unfair labour practice, 10:13 following application for certification anticipated salary increase, 10:12 business as before, 10:12 Canada Labour Code, 10:12 reasonable expectations of employees, 10:12 statutory intrusion, 10:12 Weber, 12:19 Manipulation as employer inducement, 10:11 prevention, purposes of, 10:11 Manipulation and freezes, overview, 10:9 YUKON

Collective bargaining, federal authority, **3:6**