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CANADIAN LABOUR LAW

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Available online in *LabourSource* and in print, **Canadian Labour Law, Second Edition** offers a complete and current analysis of collective bargaining laws as they apply to non-government employees across Canada. Labour relations statutes, labour board decisions and judicial cases for all jurisdictions are analyzed, covering a broad range of topics you normally wouldn't find in one resource.

Highlights

Recent court decisions, including:

- *Canadian Broadcasting Corporation v. Canadian Media Guild*, 2023 CarswellOnt 8345, 2023 ONSC 3303 (Ont. Div. Ct.), on whether an arbitrator, uniquely established by parties under their collective agreement to decide certain procedural disputes arising during the grievance procedure, was a statutory tribunal subject to judicial review and, if so, whether the arbitrator's decision requiring the employer to disclose a redacted copy of an external harassment investigator's report was reasonable; 4:17, 4:18, 1:19.

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- *Cassavant v. British Columbia (Minister of Environment and Climate Change Strategy)*, 2023 BCCA 320, 2023 CarswellBC 2303 (B.C. C.A.), on whether a review judge properly exercised her discretion in declining to award the remedies requested by an applicant who had been successful in having the underlying arbitration and labour board proceedings relating to his dismissal as a special provincial constable declared to be nullities; 4:10, 4:20, 4:27.
- *Hammond v. NAV CANADA and CATCA Unifor Local 5454*, 2023 NBKB 101 (N.B. C.K.B.), on whether an arbitrator's decision was reasonable in having found that the grievor intended to resign from his employment and did so voluntarily notwithstanding that the Canadian Industrial Relations Board had referred this matter to arbitration as a remedy for the bad faith representation of grievor by his trade union during the employer's investigation of an harassment complaint made against him by another employee and which had led to the grievor's resignation; 4:10.
- *Imperial Oil Limited v. Haseeb*, 2023 ONCA 364, 2023 CarswellOnt 7546 (Ont. C.A.), on whether a review court correctly applied the reasonableness standard of review when it quashed a decision of the Human Rights Tribunal of Ontario finding that an employer had discriminated against a job applicant on the basis of citizenship when it withdrew a job offer on learning that this successful applicant had misrepresented his permanent resident status in order to avoid being screened out at an earlier stage of the selection process; 3:18, 4:10.
- *Manitoba Federation of Labour et al. v. The Government of Manitoba*, 2023 MBCA 65, 2023 CarswellMan 258 (Man. C.A.), on whether a trial judge's award of substantial damages pursuant to section 24(1) of the Charter was in error where the government had been found to have violated section 2(d) of the *Charter* by secretly intervening in third party collective bargaining negotiations, thereby depriving the affected employees of a superior collective agreement and causing them to strike; 3:20, 3:25.
- *Mulmer Services Ltd. v. LIUNA, Local 183*, 2023 ONSC 4716, 2023 CarswellOnt 12620 (Ont. Div. Ct.), on whether a shuttle bus service was "serving the premises" of a building owner within the meaning of section 69.1 of the *Labour Relations Act*, thereby triggering a deemed section 69 sale of business and successorship upon the selection of a new shuttle bus service provider; 8:4, 8:10.
- *Pereira v. British Columbia (Labour Relations Board)*, 2023 BCCA 165, 2023 CarswellBC 1017 (B.C. C.A.), leave to appeal refused 2023 CarswellBC 3766 (S.C.C.), on whether a labour board's refusal to grant leave for reconsideration of a decision which had dismissed a duty of fair representation complaint without requiring the trade union to respond was biased, procedurally unfair or patently unreasonable and whether two fresh evidence applications before the review judge should have been allowed; 4:2, 4:7, 4:9, 4:14, 4:15, 4:17, 4:20, 4:21, 5:13.

Recent labour board decisions, including:

- *Alberta Health Services and CUPE, Re*, 2023 CarswellAlta 1830 (Alta. L.R.B.), reconsideration / rehearing refused 2023 CarswellAlta 3111 (Alta. L.R.B.), on whether the labour board should order a suspension of union dues payments pursuant to section 114 of the *Code* in response to

an unlawful strike of essential services health care employees and whether section 114 is contrary to section 2(d) of the *Charter*; 3:25.

- *Altrad Services Ltd.*, 2023 BCLRB 118, 2023 CarswellBC 2286 (B.C. L.R.B.), reconsideration / rehearing refused 2023 CarswellBC 2634, 2023 BCLRB 142 (B.C. L.R.B.), on whether it is appropriate for a construction industry employer to be subject to a hybrid bargaining structure, with some employees represented on a craft basis and other employees represented on an industrial or all-employee basis; 7:8, 7:11, 7:14, 15:3, 15:6.
- *Best Service Pros Ltd.*, 2023 BCLRB 102, 2023 CarswellBC 1933 (B.C. L.R.B.), on how the presumption against proliferation of bargaining units and the special weight attached to existing bargaining rights affect the application of IML factors when determining the appropriate bargaining unit following a section 35(2.2) successorship involving two unionized employers; 8:4.
- *CUPE, Local 882 v. Prince Albert Golf and Curling Centre Inc.*, 2023 CarswellSask 398 (Sask. L.R.B.), on whether the purchase of a building located on a municipal golf course constituted the sale of part of a business where the building had been used for storage during the five years prior to the sale but before that was used for the purpose of selling food and beverages to the patrons of the golf course and where the purchaser was a not-for-profit with an existing restaurant business which had operated mobile food and beverage carts on the golf course for the five years preceding its acquisition of the building; 8:2.
- *CUPE, Local 5412 and Paladin Security Group Ltd., Re*, 2023 CarswellNB 434 (N.B. Labour & Employment Bd.), on whether an employer's memo, sent to employees during an organizing drive and which made derogatory comments about unions in general and recommended a known anti-union website as a source of accurate information on unionization, interfered with union representation contrary to section 3(1) of the Act and whether this same conduct was serious enough to merit a section 106(8)(e) remedial certification with the submitted membership evidence being less than 10 percent; 7:62, 7:69, 10:49.
- *Golden Life Management Corp.*, 2023 BCLRB 144, 2023 CarswellBC 2712 (B.C. L.R.B.), on whether the proposed bargaining unit was appropriate where the incumbent union represented the employees working at nine long-term care facilities under the same collective agreement and the application for certification was brought by another trade union for a newly opened and geographically remote tenth location; 7:10, 7:22.
- *LIUNA, Local 183 v. CTS (ASDE) Inc.*, 2023 CarswellOnt 9012 (Ont. L.R.B.), on the appropriate assessment of human rights damages where a grievor's dismissal was found to be unjust under a collective agreement and discriminatory contrary to the Ontario Human Rights Code; 3:18.
- *Meneguzzi v. Deputy Head (Office of the Director of Public Prosecutions)*, 2023 FPRLREB 67, 2023 CarswellNat 2667 (Can. F.P.S.L.R.E.B.), on whether a decision dismissing a complaint of bad-faith discrimination in the conduct of an appointment process should be sealed or anonymized having regard to the applicable "open court" principles; 5:12, 10:37.50, 13:18.
- *Richmond Inn Hotel Ltd. dba Sheraton Vancouver Airport Hotel*, 2023 BCLRB 110, 2023 CarswellBC 2021 (B.C. L.R.B.); *Richmond Inn Hotel*

dba Sheraton Airport Hotel, 2023 BCLRB 114, 2023 CarswellBC 2168 (B.C. L.R.B.), on whether an earlier related employer declaration had section 68 strike replacement implications for all three hotel employers when the employees of the sole unionized employer in the group went on strike; 8:6, 10:7.

- *Tessier, Teamsters Local Union No. 938 and Thunder Airlines Limited*, 2023 CarswellNat 4136, 2023 CIRB 1063 (C.I.R.B.), on whether an incumbent trade union had made a reasonable effort to enter a collective agreement, including keeping the employees in the bargaining unit informed on the progress of the negotiations, in order to be shielded by section 39(2) of the *Code* against a revocation order; 9:2.

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