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CANADIAN LABOUR LAW

George W. Adams

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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.

What's New in this Update:

This release updates the case law and commentary in Chapter 2 (Legislative Overview), Chapter 3 (Constitutional Considerations in Collective Bargaining), Chapter 4 (Judicial Review of Labour Relations Tribunals), Chapter 5 (The Labour Relations Board), Chapter 6 (Status Under Collective Bargaining Legislation), Chapter 7 (Acquisition of Bargaining Rights), Chapter 8 (Continuation of Bargaining Rights), Chapter 9 (Termination of Bargaining Rights), Chapter 10 (Unfair Labour Practice Proceedings) and Chapter 11 (Regulation of Industrial Conflict).

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Highlights

Recent court decisions, including:

- *Fram Enterprises Inc. v. Labourers' International Union of North America, Local 900*, 2024 CarswellNB 84, 2024 NBKB 25 (N.B.K.B.), on whether the labour board reasonably determined the applicant business was a successor employer pursuant to s. 60 of the Industrial Relations Act where the alleged predecessor business, both before and after it was certified, assisted one of its employees in a variety of significant ways, including training, financing and the sale of assets as it was winding down its own operations, to establish a similar business: § § 8:1, 8:2
- *OPSEU v. Ontario*, 2024 CarswellOnt 10555, 2024 ONSC 3644 (Ont. S.C.J.), on whether the *Colleges of Applied Arts and Technology Labour Dispute Resolution Act*, 2017, S.C. 2017, c. 21 which ended a 5-week strike by academic staff at 24 colleges across Ontario – the longest strike in the colleges' history – and required the outstanding issues to be referred to binding interest arbitration before a neutral arbitrator infringed s. 2(d) of the *Canadian Charter of Rights and Freedoms* or, alternatively, was justified under s. 1: § 3:25
- *University of Toronto (Governing Council) v. Doe et al.*, 2024 CarswellOnt 9932, 2024 ONSC 3755 (Ont. S.C.J.), on whether a requested interlocutory injunction to remove protest encampments from a university's property would contravene the protesters' Charter freedoms of speech and assembly and on the appropriateness of a police enforcement provision in the order: § § 3:29, 11:9, 11:12, 11:16, 11:21
- *Vancouver (City) v. Vancouver Firefighters' Union, Local 18*, 2024 CarswellBC 186, 2024 BCCA 33 (B.C. C.A.), on the allocation of jurisdiction to review the decision of a grievance arbitrator between the labour board and the Court of Appeal having regard to ss.99 and 100 of the British Columbia Labour Relations Code: § 4:2

Recent labour board decisions, including:

- *Canadian Construction Workers' Union v. Meric Tile Ltd.*, 2024 CarswellOnt 2988 (Ont.L.R.B.), on whether an employee referred to an employer by a trade union pursuant to one collective agreement can be considered by the employer to be employed in another bargaining unit subject to either a certification or displacement application: § 6:6
- *Construction General Labourers, Rock & Tunnel Workers, Local 1208 and Paladin Security Group Ltd., Re*, 2023 CarswellNfld 301 (N.L.L.R.B.), on whether a bargaining unit should include all sites within a client's security contract or could reasonably be confined to those employees working at and trained specifically for the client's psychiatric hospital site as proposed by the applicant trade union: § § 7:1, 7:3, 7:5, 7:7, 7:8, 7:10
- *CSWU, Local 1258 and Wintec Building Services Inc., Re*, 2023 Carswell-Man 421 (Man.L.B.), on whether a provision of a collective agreement which had the effect of requiring notice to commence collective bargain-

ing be given no later than nine months prior to the expiration of the collective agreement was compliant with subsections 61(1) and (2) of the Manitoba Labour Relations Act: § 10:21

- *GCT Canada Ltd. Partnership and ILWU Ship and Dock Foremen, Local 514, Re*, 2023 CarswellNat 6040, 2023 CIRB 1068 (C.I.R.B.), on whether the statutory threshold issue of employer control of a workplace only applied to the obligation to establish a joint health and safety committee and did not limit the duties of that committee once established: § § 4:10, 5:17
- *Mulgrove Machine Works Limited*, 2024 CarswellNat 3214, 2024 CIRB 1108 (C.I.R.B.), on whether a singular loading and unloading of equipment and fabrications for a custom metal fabrication contractor undertaking a project on a vessel constituted longshoring: § 3:7
- *SEIU v. Saskatchewan Health Authority*, 2023 CarswellSask 593 (Sask.L.R.B.), on whether the transfers of five long-term care homes from a private service provider to the Saskatchewan Health Authority constituted successorships; whether “otherwise orders” were appropriate incorporating those facilities into existing broader units with the same and with different bargaining agents, given the extent of intermingling; whether representation votes were or were not appropriate, given the large disparity in size of the intermingled groups of employees; and whether orders ensuring both no interruption of benefits and the dovetailing of seniority should be issued: § 8:5
- *Sunwing Airlines Inc. and IAMAW, Re*, 2023 CarswellNat 6550, 2023 CIRB 1100 (C.I.R.B.), on whether, following a sale of a business, the request by the purchaser for the board to review the existing bargaining units was premature where the two entities continued to function separately: § 8:5
- *Tech Highland Valley Copper Partnership*, 2024 CarswellBC 546, 2024 BCLRB 31 (B.C.L.R.B.), on whether loss prevention officers who monitored fellow employees for several purposes and who could shut down an entire process based on technical and emergency considerations exercised either managerial or confidential labour relations functions and, if not, were entitled to a stand-alone bargaining unit notwithstanding the presumption against unit proliferation: § § 6:3, 6:5
- *Toronto Hospitality Employees Union v. Fairmont Royal York*, 2024 CarswellOnt 1867 (Ont.L.R.B.), on whether persons on layoff because of the pandemic, who did not return to work or returned to work just before or after the application filing date, were eligible to vote: § § 7:24, 7:25, 7:53

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