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LABOUR RELATIONS BOARD REMEDIES IN CANADA, 2nd ed. Jeffrey Andrew 2025-2 November
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Publisher's Special Note 2025

Beginning with this release, *Labour Relations Board Remedies in Canada, 2nd ed.* has been converted into a more user-friendly softbound book. Subscribers will now receive a softbound book to replace any relevant revised content within the work. This should enhance the reader's experience in terms of no longer filing pages within a limited binder system—allowing the work to easily expand as discussion of the law dictates.

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What's New in this Update:

This release includes updates to Chapter 1—Procedure, Chapter 2—Standing, Chapter 4—General Principles, Chapter 7—Cease and Desist, Chapter 8—Declaration, Chapter 9—Compensation, Chapter 12—Certification and Termination of Bargaining Rights, Chapter 13—Bargaining Order, Chapter 14—Settlement of Agreement, Chapter 15—Duty of Fair Representation - Processing of Grievance and Other Union Business, Chapter 19—Notification of Board Decision, Chapter 23—Interim Relief and Chapter 27—Enforcement of Board Orders in Court.

Highlights:

- **Chapter 1—Procedure—VI. Specific Procedures—§ 1:31. Relief in Relation to Organizing and Certification**—The Ontario Board no longer has the express authority to disclose the contact information of employees where a trade union has been able to demonstrate a requisite level of support. The Board may still use its general powers to order the disclosure of contact information where serious concerns have been raised regarding the integrity of a vote, but the threshold for obtaining such information is high.” [*Carpenters’ District Council of Ontario, UBCJA v. Mappi Ltd.*, 2021 CarswellOnt 2944 (Ont. L.R.B.); *CUPW v. Uber Canada Inc.*, 2024 CarswellOnt 9227 (Ont. L.R.B.); and *LIUNA, Ontario Provincial District Council v. Holland, L.P.*, 2018 CarswellOnt 17041 (Ont. L.R.B.)].
- **Chapter 7—Cease and Desist—I. Review of the Statutes; Nature of the Remedial Power; Threatened or Continuing Violation—§ 7:2. Nature of the Remedial Power**—The BC Board upheld the issuance of a ‘bottom line’ decision ordering the employer to cease and desist from breaching the *Labour Relations Code*. The interim nature of the decision meant that no specific breaches were identified. The employer sought to stay this order on the basis that it was incomplete. The BC Board found that cease and desist orders could take the form of a broad direction not to breach a labour relations statute. The BC Board did, however, stay the requirement that the ‘bottom line’ decision be posted in the workplace reasoning that where specific breaches were not identified the exact nature of their employer’s misconduct would be left to the “imagination” of the bargaining unit.” [*Gordon Food Service Ltd.*, 2024 BCLRB 103 (B.C. L.R.B.)].
- **Chapter 12—Certification and Termination of Bargaining Rights—II. Remedial Certification—§ 12:11. Condi-**

tions on Remedial Certification—In one instance, after the BC Board remedially certified an employer, certain employees challenged a collective agreement on the basis that it had not been ratified. The remedial order required that any subsequently negotiated collective agreement was to be ratified but made no comments about agreements imposed as a result of first contract arbitration. The BC board held that the imposition of mandatory ratification in remedial certification orders was not “routine” and found that the remedial order did not require the ratification of an imposed agreement. Accordingly, the employee complaint was dismissed. [*Certain Employees of WCS Waste Control Services Inc.*, 2024 BCLRB 96 (B.C. L.R.B.), reconsideration/rehearing refused 2025 BCLRB 68 (B.C. L.R.B.)].

- **Chapter 23—Interim Relief—II. Equitable Interim Remedies—§ 23:5. Basis for Relief**—Since 2017, the Ontario board has favoured an approach which reviews a non-exhaustive list of factors adapted specifically to the labour relations context and which is consistent with its interim jurisprudence as it has developed during periods when interim relief was permitted but was more closely circumscribed by legislation. The Ontario board now assesses each request for interim relief based on factors such as the nature of the relief sought, a weighing of the apparent strength of the complaint and defence, the balance of harm and convenience and the nature of the harm. [*Society of Energy Professionals, IFPTE, Local 160 v. National Judicial Institute*, 2018 CarswellOnt 9003 (Ont. L.R.B.)]. In weighing relative harm, the board considers the declarations filed by both parties. The Ontario board, for example, has held that interim proceedings are generally intended to be completed in a single day without cross examination [*U.S.W. v. Metrican Stamping Co.*, 2005 CarswellOnt 8035 (Ont. L.R.B.); *LIUNA v. Percon Construction Inc.*, 2010 CarswellOnt 5612 (Ont. L.R.B.); *James Dick Construction Limited v. LIUNA, Local 506*, 2012 CarswellOnt 10025 (Ont. L.R.B.)]. The Ontario board has held that the “apparent strength” of each sides position will be determined both in a high level review which looks to see if a party’s explanation is beset by gaps or inconsistencies. [*UFCW v. The Original Cakerie Ltd.*, 2018 CarswellOnt 12274 (Ont. L.R.B.); *Fairmont Royal York*, 2018 CanLII 83145 (ON LRB);] The Ontario board has found sufficient “gaps and inconsistencies” in an employer’s explanation for its actions to warrant interim relief in a wide variety of circumstances. These have ranged from cases where an employer’s explanation for the termination of a union organizer [*U.S.W. v. SITEL Customer Care Inc.*, [2006] O.L.R.B. Rep. 625, [2006] O.L.R.D. No. 2923 (Ont. L.R.B.); *Cotton Inc. v. LIUNA, Local 837*, 2014 CarswellOnt 3630 (Ont. L.R.B.); *LIUNA, Local 837 v. Modern*

Mosaic Ltd., 2020 CarswellOnt 9957 (Ont. L.R.B.);] or supporter were flawed, to instances where the reasons for layoffs were poorly explained and/or flawed. [*Jennmar Canada v. TC, Local 938*, 2013 CarswellOnt 16462 (Ont. L.R.B.); *LIUNA, Local 183 v. Brickstone Construction Ltd.*, 2017 CarswellOnt 15083 (Ont. L.R.B.); *LIUNA, Local 183 v. Brickstone Construction Ltd.*, 2017 CarswellOnt 15083, (Ont. L.R.B.); *TC, Local 938 v. Bolt Technologies Inc.*, 2023 CarswellOnt 20298 (Ont. L.R.B.). In weighing relative harm, the board considers the declarations filed by both parties. The Ontario board has held that the “apparent strength” of each sides position will be determined both in a high-level review which looks to see if a party’s explanation is beset by gaps or inconsistencies. [*UFCW v. The Original Cakerie Ltd.*, 2018 CarswellOnt 12274 (Ont. L.R.B.); *Fairmont Royal York*, 2018 CanLII 83145 (ON LRB)];]. The Ontario board has found sufficient “gaps and inconsistencies” in an employer’s explanation for its actions to warrant interim relief in a wide variety of circumstances. These have ranged from cases where an employer’s explanation for the termination of a union organizer [*U.S.W. v. SITEL Customer Care Inc.*, [2006] O.L.R.B. Rep. 625, [2006] O.L.R.D. No. 2923 (Ont. L.R.B.); *Cotton Inc. v. LIUNA, Local 837*, 2014 CarswellOnt 3630 (Ont. L.R.B.); *LIUNA, Local 837 v. Modern Mosaic Ltd.*, 2020 CarswellOnt 9957 (Ont. L.R.B.);] or supporter were flawed, to instances where the reasons for layoffs were poorly explained and/or flawed. [*Jennmar Canada v. TC, Local 938*, 2013 CarswellOnt 16462 (Ont. L.R.B.); *LIUNA, Local 183 v. Brickstone Construction Ltd.*, 2017 CarswellOnt 15083 (Ont. L.R.B.); *LIUNA, Local 183 v. Brickstone Construction Ltd.*, 2017 CarswellOnt 15083, (Ont. L.R.B.); *TC, Local 938 v. Bolt Technologies Inc.*, 2023 CarswellOnt 20298 (Ont. L.R.B.).

- **Chapter 23—Interim Relief—V. Specific Interim Orders—§ 23:11. Reinstatement and Compensation—**In 2017, Bill 148 restored the Ontario board’s power to order interim relief in a wide variety of circumstances. The Ontario board now assesses each request for interim relief based on factors such as the nature of the relief sought, a weighing of the apparent strength of the complaint and defence, the balance of harm and convenience and the nature of the harm. [*Society of Energy Professionals, IFPTE, Local 160 v. National Judicial Institute*, 2018 CarswellOnt 9003 (Ont. L.R.B.)]. In Ontario, interim relief which reinstates union organizers and/or supporters are now commonplace and include the reinstatement of individuals allegedly terminated for cause [*SITEL Customer Care Inc.*, 2006 CanLII 27540 (ON LRB); *Authen-Tech Communications Canada Inc. v. L.I.U.N.A.*, 2011 CarswellOnt 18871 (Ont. L.R.B.); *Cotton Inc. v. LIUNA, Local 837*, 2014 CarswellOnt 3630 (Ont. L.R.B.); *Alpine Sodding &*

Landscaping v. LIUNA, Local 183, 2014 CarswellOnt 15881 (Ont. L.R.B.); *Special Buys Clothing Company Inc. operating as Teamsters Local Union 938 v. Special Buys Clothing Co. Inc.* (March 25, 2019), Doc. 3751-18-U (Ont. L.R.B.); *LIUNA, Local 837 v. Modern Mosaic Ltd.*, 2020 CarswellOnt 9957 (Ont. L.R.B.);], as well as those terminated without cause, for example where layoffs are implemented [*Jennmar Canada v. TC, Local 938*, 2013 CarswellOnt 16462 (Ont. L.R.B.); *LIUNA, Local 183 v. Brickstone Construction Ltd.*, 2017 CarswellOnt 15083 (Ont. L.R.B.); *LIUNA, Ontario Provincial District Council v. Dennis Home Corp.*, 2022 CarswellOnt 11832 (Ont. L.R.B.); *TC, Local 938 v. Bolt Technologies Inc.*, 2023 CarswellOnt 20298 (Ont. L.R.B.)]. The Ontario board has held that an employee’s status as a “salt” will not prevent their reinstatement [*Miller Paving Limited C.O.B. Georgian Paving*, 2019 CanLII 86754 (ON LRB)] at para. 15].

- **Chapter 23—Interim Relief—V. Specific Interim Orders—§ 23:15. Other Specific Orders**—The Saskatchewan Board has issued an interim order protecting the right of employees to wear pro-union buttons in the workplace. [*Winners Merchants International L.P.*, 2005 CanLII 63024 (SK LRB); *Canadian Hotels Income Properties Real Estate Investment Trust #19 Operations Inc., operating as Regina Inn Hotel and Convention Centre*, [1999] Sask. L.R.B.R. 190 (Sask. L.R.B.)]. The Ontario board has ordered declaratory interim relief where an employer allegedly failed to implement salary increases. While employees were not provided with any monetary compensation as part of the Board’s award, the Board ordered the posting of a notice which stated, in part, that employees would be compensated if the union succeeded on the merits. [*Society of Energy Professionals, IFPTE, Local 160 v. National Judicial Institute*, 2018 CarswellOnt 7884 (Ont. L.R.B.)]. In another case, the Board ordered an employer to refrain from making changes to a defined benefit plan pending the resolution of an underlying unfair labour practice complaint. [*IAMAW, Local 1542 v. Arnprior Aerospace Inc.*, 2021 CarswellOnt 16488 (Ont. L.R.B.)]. In one recent case, the BC Board issued interim orders with respect to “the appropriate unions to represent the craft of carpentry on BCBCBTU in the aftermath of the dissolution of the British Columbia Regional Council of Carpenters.” [*United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canada, Local 170*, 2024 CarswellBC 2467, 2024 BCLRB 121 (B.C. L.R.B.), reconsideration/rehearing refused 2024 BCLRB 175 (B.C. L.R.B.)].