

# INTERNAL TRADE UNION UNFAIR LABOUR PRACTICES

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## INTRODUCTION

Trade unions are the exclusive bargaining agents for a group of employees. Bargaining unit employees—whether union members or not—give up their rights to bargain individually with their employer. In return, they receive the benefits of “strength in numbers” and experienced union representation. This relationship gives unions a measure of control and influence over employees’ work lives and ability to earn a living.

Because of this influence, governments and the courts have regulated how unions relate with their members. These restrictions are narrow and mostly allow unions to govern their own affairs. The [Labour Relations Code](#) requires unions to be fair and non-discriminatory in their dealings with the employees they represent.

Trade unions may determine membership rules and discipline individuals. The [Code](#) requires that a union must apply its rules in a uniform manner. It cannot single out persons for special treatment in membership or discipline.

This policy describes:

- the Board’s general approach;
- the statutory provisions;
- processing applications;
- dispute resolution strategies; and
- remedies.

## GENERAL APPROACH

Trade unions must have a constitution and bylaws. These are a contract between individual members and the group. See: [[Trade Union Status, Chapter 33\(a\)](#)]. Sometimes, a member disagrees with the union about the interpretation or enforcement of that contract. This usually involves an allegation of “breach of contract,” which the courts can deal with. The [Labour Relations Code](#) sets out an exception to this in Section 152, dealing with membership and discipline rules.

Membership and discipline rules govern the relationship between the union and the employees it represents. Membership rules set out who may become a member, who may remain a member, and who may be expelled or suspended. These rules usually explain how and why they can be applied. Discipline rules similarly set out reasons a union may discipline a person, and procedures for doing so. These disciplinary rules refer to a person’s actions within or toward the union.

Application of both types of rules can seriously affect an employee. When a union denies a person membership, it may effectively deny that person work, or make it very hard to get employment. Similarly, suspension or expulsion can interfere with a person's employment. Disciplinary actions may also interfere with an employee's opportunity to participate in union affairs or activities.

Because of the potential impact on employees, Section 152 of the [Code](#) ensures that the union applies these rules fairly. In addition, Section 26 of the [Code](#) sets up some minimum procedural standards to be used by all unions in imposing discipline. These standards provide due process in the application of the rules.

## STATUTORY PROVISIONS

Section 152 deals with union's internal practices. Each subsection of Section 152 is discussed below. There is also discussion of the prohibited labour practices outlined in Section 151.

### **Section 152(1)**

Section 152(1) provides:

152(1) No trade union or person acting on behalf of a trade union shall

- (a) expel or suspend a person from membership in the trade union or deny membership in the trade union to a person by applying to the person in a discriminatory manner the membership rules of the trade union;
- (b) take disciplinary action against or impose any form of penalty on a person by applying to the person in a discriminatory manner the standards of discipline of the trade union.

When a complaint is filed, the Board does not judge the contents of these rules, except to require that they not unfairly single out certain individuals or types of individuals.

### **Section 152(2)**

Section 152(2) sets out preconditions for the Board to hear a complaint:

152(2) The Board has no jurisdiction to hear a complaint made under subsection (1)(a) or (b) unless the complainant establishes to the satisfaction of the Board that

- (a) the complainant presented an appeal to the trade union in accordance with the appeal procedure established by the trade union, and
- (b) the trade union failed to deal with the matter within 6 months of the date the complainant made that appeal.

Section 152(2) means the Board will not have jurisdiction to hear a complaint under Section 152(1) unless the individual has used the union's internal appeal process **and** the union has not dealt with the matter within six months of the appeal.

### **Section 152(3)**

Section 152(3) provides exceptions to the preconditions for jurisdiction set out in 152(2):

152(3) Subsection (2) does not apply when the Board is satisfied that

- (a) the action or the circumstance giving rise to the complaint is such that the complaint should be dealt with without delay, or
- (b) the trade union has not given the complainant ready access to a reasonable appeal procedure.

The Board will accept jurisdiction for a complaint if **either** of the preconditions applies to a complaint. See: [*Jim Curran v. IUEC 130 and Thomas McCann* [2001] Alta.L.R.B.R. 1].

### **Related Provisions**

Section 151 contains numerous prohibited practices by unions. See: [[Unfair Labour Practice by Trade Union, Chapter 27\(c\)](#)]. Four of these prohibited practices relate to union application of membership rules or disciplinary standards. As a result, complainants may apply to the Board under both Section 152 and the related part of Section 151.

Section 151(g) prohibits the union from requiring the employer to terminate an employee because the individual has been expelled or suspended from the union. This applies only if the reason for the discipline is **other than** a failure to pay dues or other assessments that all union members must pay to join or remain a member of the union.

The following three sections prohibit the union from expelling or suspending from membership, or disciplining a person, for:

- Refusing to do something illegal under the Code. See: [[Section 151\(h\)](#)]. An example would be suspending a person from membership for refusing to join an illegal picket line.
- Performing work in accordance with the collective agreement. See: [[Section 151\(i\)\(i\)](#)].
- Working for an employer who is not party to a collective agreement with the union. Punitive union actions are only prohibited if the union fails to make reasonable alternate employment available, within a reasonable time frame, with an employer who is party to a collective agreement with the union, unless there is a legal strike ongoing. See: [[Section 151\(l\)\(ii\)](#)].

As noted above, Section 152(2) requires the Board to defer to the union's internal appeal process. It can only accept jurisdiction if the internal appeal process has been exhausted or if the exceptions under Section 152(3) are met. If, however, the same facts are submitted in an application under Section 151, the Board does not have to defer to the union's appeal process—it may proceed with the Section 151 complaint immediately.

## PROCESSING APPLICATIONS

The Board receives inquiries and complaints from employees who believe their union has unfairly applied membership rules or discipline standards. This section outlines how to handle complaints.

### ***Preliminary Inquiries***

Often, employees call the Board for advice when they feel the union has unfairly applied membership rules or discipline standards. Board staff provide quick, flexible and informal help. Ensure the caller understands:

- the right of the union to create and apply membership rules and disciplinary standards; and
- the importance of exhausting the union's internal appeal process.

Board staff should learn from the caller:

- the reasons and ways the employee believes the union is discriminating against them; and
- why the Board should consider the application if the complainant hasn't exhausted the internal appeal process. Board staff should check to see if the fact situation would also justify a Section 151 complaint, as this might eliminate the necessity for exhausting the internal appeal process.

The caller should understand that these last two points must be clearly explained in any application.

### ***Timeliness***

Employees seeking to file a complaint outside the 90-day guideline must give the Board a satisfactory explanation for the time delay. Section 16(2) applies to this section although the Board has raised some questions as to how the two sections work together. Specifically, Section 152(2) provides a different timeframe than Section 16(2).

### ***Reviewing the Application***

A person may file a complaint on the Board-issued form or by letter. An officer reviews the complaint. If delivered personally, the officer meets with the complainant immediately.

Check the complaint for completeness including:

- name, address, telephone number of the complainant, trade union and employer;
- who the complaint is against—the union, someone acting for the union or both;
- whether the person is a member of the bargaining unit, now or in the past;
- the membership rule or discipline standard applied to the complainant, and the result;
- the specifics of the complaint (names, dates, addresses, description of events, and how the complainant feels the union discriminated against them. See: [[Particulars, Chapter 19\(b\)](#)]);
- the remedy the individual is requesting. See: [[Remedies, Chapter 19\(d\)](#)]; and
- was a copy properly served on the union, someone acting for it, or both and the employer?

Stamp the complaint as received by the Board. Enter the matter on the database and create a process file. The Director of Settlement may refuse to accept an application for lack of particulars. The Director may also request further information and recommend proceeding only after the complainant has provided these particulars. See: [[Rule of Procedure 22](#); [Particulars, Chapter 19\(b\)](#)].

### ***Notifying the Parties***

Contact the parties by telephone. Discuss:

- the name of the complainant;
- the names of the affected parties;
- a brief description of the particulars;
- a convenient appointment time to discuss the matter with an officer; and
- resolution options.

The officer must notify any employer or former employer if the outcome of the complaint may directly affect that employer. The employer or former employer may wish to attend any hearing into the matter.

## **DISPUTE RESOLUTION STRATEGIES**

Once the Board accepts the complaint, the Director of Settlement will choose a dispute resolution strategy appropriate to the complaint. See: [[Dispute Resolution Initiatives, Chapter 19\(c\)](#)].

This type of complaint requires a problem-solving approach. The dispute resolution strategy must be flexible and responsive to the circumstances at hand. Within the chosen strategy will arise different tactics. The officer assigned to the file takes an active role in resolving the matters, and may use more than one tactic. Consequently, the officer and the Director of Settlement must monitor both the strategy and the tactics, and update the database entries as necessary.

Prepare letters appropriate to the strategy selected and send them to the affected parties. The dispute resolution strategy will vary with the circumstances of each case. Some options include:

- **Try to effect a settlement before a hearing.** The Director of Settlement and the officer should be alert to settlement opportunities. Discussing the matter with the union can sometimes resolve it. Having the parties meet face-to-face, with a neutral third party present may also lead to resolution. Even a conference call may have the same effect. Other settlement strategies might include a settlement meeting, a Section 11 informal Board member hearing or a resolution conference. See: [[Rule of Procedure 30](#); [Dispute Resolution Initiatives, Chapter 19\(c\)](#); [Information Bulletin #3](#)].

- **Set the matter directly to an early hearing with directions or conditions.** An officer can ask the parties to exchange documents, agree on the documents that will be exhibits in the hearing, and prepare an agreed statement of facts for the hearing. The officer can prepare an outline of the facts. This approach might be used where there is little dispute over the basic facts but the conclusion or interpretation of these varies. These strategies shorten the hearing and crystallize the issues. In these cases, the officer works with the parties, up to and including drafting the list of documents or facts after receiving input from both parties.
- **Set the matter to hearing and assign an officer to investigate and issue a report.** This strategy is useful when there appears to be merit on the face of the complaint, or the facts are complex, or involve significant issues. This strategy is also appropriate when there is little dispute of the basic facts but the conclusion or interpretation of these varies. The officer may prepare an outline of the facts or a full investigative report. The parties should understand that the report will draw no conclusions—only outline facts and positions.

## REMEDIES

If the Board finds a membership rule or disciplinary standard was applied in a discriminatory manner, it can impose remedies. Section 17 of the [Code](#) authorizes the Board to direct the union to:

- cease the discipline or other action found to be in contravention of the [Code](#);
- reinstate or admit the complainant as a member of the union;
- rescind any disciplinary action taken or pecuniary or other penalty imposed contrary to the [Code](#); and
- compensate the complainant for a sum equivalent to the pecuniary penalty.

For further detail on remedies, see: [[Remedies, Chapter 19\(d\)](#)].