

**COMPENDIUM OF FORCED
MEMBERSHIP & DUES
LEGISLATION & JURISPRUDENCE**

PRIVATE SECTOR

Introduction

This project involved conducting a comparison of labour relations legislation and case law across jurisdictions in Canada (excluding legislation that specifically addresses the public sector) as it relates to union membership and dues. Specifically, this project involved:

- Preparing content for a jurisdictional comparison chart
- Reviewing case law concerning union membership/union dues as a mandatory condition of employment
- Confirming if a religious exemption clause existed for union dues/check-off
- Verifying if a province has enacted a construction industry specific labour relations scheme

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Federal Legislation

Relevant legislation: *Canada Labour Code*

Jurisdiction Comparison Chart

Statutory Provisions regarding union dues?

Answer: Yes

Dues mandatory, union request, or negotiable?

Answer: Upon union request

<i>Province</i>	<i>Language</i>
Federal	70. (1) Where a trade union that is the bargaining agent for employees in a bargaining unit so requests, there shall be included in the collective agreement between the trade union and the employer of the employees a provision requiring the employer to deduct from the wages of each employee in the unit affected by the collective agreement, whether or not the employee is a member of the union, the amount of the regular union dues and to remit the amount to the trade union forthwith.

Specific language for written employee authorization for union dues?

Answer: No Statutory Provision

<i>Province</i>	<i>Language</i>
Federal	No Statutory Provision

Union membership as condition of employment?

Membership mandatory, on union request, or negotiable into CA?

Answer #1: Yes

Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
Federal	68. Nothing in this Part prohibits the parties to a collective agreement from including in the collective agreement a provision (a) requiring, as a condition of employment, membership in a specified trade union; or (b) granting a preference of employment to members of a specified trade union.

***Union members as preferred candidates in hiring policy?
Membership mandatory, on union request, or negotiable into CA?***

Answer #1: Yes

Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
Federal	<p>68. Nothing in this Part prohibits the parties to a collective agreement from including in the collective agreement a provision</p> <p>(a) requiring, as a condition of employment, membership in a specified trade union; or</p> <p>(b) granting a preference of employment to members of a specified trade union.</p>

ULP for an employer to fire expelled union member?

Answer: Yes, where the employee has been expelled for any reason other than a failure to pay fees and dues.

<i>Province</i>	<i>Language</i>
Federal	<p>94(3) No employer or person acting on behalf of an employer shall</p> <p>(a) refuse to employ or to continue to employ or suspend, transfer, lay off or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment or intimidate, threaten or otherwise discipline any person, because the person</p> <p>(ii) has been expelled or suspended from membership in a trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union,</p>

ULP for a union to force an employer to expel a union member?

Answer: Yes, where the employee has been expelled for any reason other than a failure to pay fees and dues.

<i>Province</i>	<i>Language</i>
Federal	<p>95. No trade union or person acting on behalf of a trade union shall</p> <p>...</p> <p>(e) require an employer to terminate the employment of an employee because the employee has been expelled or suspended from membership in the trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union;</p>

Third party interference in membership contemplated?

Answer: Yes

<i>Province</i>	<i>Language</i>
Federal	96. No person shall seek by intimidation or coercion to compel a person to become or refrain from becoming or to cease to be a member of a trade union.

Union Membership/Dues as a Mandatory Condition of Employment

The text *Canada Industrial Relations Board*¹ indicates that until the 1984 amendments to the *Canada Labour Code*, employers were not obligated to deduct union dues unless employees provided their consent. This obligation is now mandatory if the union requests it. This is stipulated in s.70. The rationale for the compulsory nature of this deduction is as follows:

The overall justification for this measure was the fact that all members of the bargaining unit, whether union members or not, ultimately benefitted from the union's negotiations on the bargaining unit's behalf. Since the union owed a duty of fair representation to all employees in the unit, Parliament found it equitable for all those employees to pay the union's costs. This compulsory dues scheme is often called the Rand formula.

The decision of *Allsco Building Products Ltd.*², cited in Snyder's *Annotated Canada Labour Code*, described this change as Parliament elevating the Rand Formula from one of permissive enjoyment to one of statutory entitlement, thus replacing the dues check-off authorization clause with a dues shop clause as the mandatory minimum degree of union security guaranteed by the statute at the behest of a trade union."

Exemption on Religious Grounds for Union Dues/Check-off

The *Canada Labour Code* contains a religious exemption for union dues:

70. (1) Where a trade union that is the bargaining agent for employees in a bargaining unit so requests, there shall be included in the collective agreement between the trade union and the employer of the employees a provision requiring the employer to deduct from the wages of each employee in the unit affected by the collective agreement, whether or not the employee is a member of the union, the amount of the regular union dues and to remit the amount to the trade union forthwith.

Religious objections

(2) Where the Board is satisfied that an employee, because of their religious conviction or beliefs, objects to joining a trade union or to paying regular union dues to a trade union, the Board may order that the provision in a collective agreement requiring, as a condition of employment, membership in a trade union or requiring the payment of regular union dues to a trade union does not apply to that employee so long as an amount equal to the amount of the regular union dues is paid by the employee, either directly or by way of deduction from their wages, to a registered charity mutually agreed on by the employee and the trade union.

The Board has developed a 5 criteria text for the purpose of granting a religious exemption under this section:

¹ At 12-39 and 12-40

² (1998), 98 CLLC 220-061 (New Brunswick labour and employment board)

- Applicant must object to all trade unions, not just to a particular trade union
- Applicant does not have to rely on some specific tenets of a religious sect to base his or her objection
- Applicant's religious conviction or beliefs which cause him or her to object to compulsory union membership or dues payment must relate to the Divine or man's perceived relationship with the Divine, as opposed to man-made institutions
- Applicant must convince the Board that he or she is sincere and has not rationalized his or her objections to the union on religious grounds after being made aware of the provisions of the *Code*
- Board is obliged to assess the probable consequences for the applicant of his or her not being granted an exemption³

In essence, exemptions will only be granted when there are compelling reasons for doing so.⁴

Construction Specific Provisions

There are no construction-specific provisions in the *Canada Labour Code*.

³ Snyder's *Annotated Canada Labour Code* at 524; *Richard Barker* (1986) 66 di 91. See also: *Martin J. Doyle* (1993), 91 di 26

⁴ *Martin J. Doyle* (1993), 91 di 26

Alberta

Relevant legislation: *Labour Relation Code*.

Jurisdiction Comparison Chart

Statutory Provisions regarding union dues?

Answer: No (except for language regarding employee authorization for deductions)

Dues mandatory, union request, or negotiable?

Answer: Not Applicable

Specific language for written employee authorization for union dues?

Answer:: Yes

<i>Province</i>	<i>Language</i>
AB	<p>27(1) An employee may, in writing, authorize the employee's employer to deduct from wages due to the employee an amount payable by that employee to a trade union for</p> <ul style="list-style-type: none"> (a) union dues, and (b) initiation fees not exceeding an amount equivalent to one month's union dues. <p>(2) The employer shall, from wages due to the employee, make the deductions authorized by the employee, and the authorization</p> <ul style="list-style-type: none"> (a) is effective only for the amount or the percentage of the wages specified in it, and (b) continues in force for at least 3 months and afterwards until revoked in writing by the employee. <p>(3) The employer shall by the 15th day of each month remit to the trade union named in the authorization</p> <ul style="list-style-type: none"> (a) the dues deducted for the preceding month, and (b) a written statement of the name of the employee for whom the deduction was made and of the amount or percentage of the employee's wages of each deduction, <p>until the authorization is revoked in writing by the employee and the revocation is delivered to the employer.</p> <p>(4) On receipt of a revocation of an authorization to deduct union dues, the employer shall immediately give a copy of the revocation to the trade union concerned.</p>

Union membership as condition of employment?

Membership mandatory, on union request, or negotiable into CA?

Answer #1: Yes

Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
AB	29(1) Subject to subsection (2), nothing in this Act prevents a trade union from continuing an existing collective agreement or entering into a new collective agreement with an employer or employers' organization whereby all the employees or any unit of employees of the employer or of one or more employers represented by the employers' organization are required to be members of a trade union.

Union members as preferred candidates in hiring policy?

Membership mandatory, on union request, or negotiable into CA?

Answer #1: No Statutory Provision

Answer #2: Not Applicable

<i>Province</i>	<i>Language</i>
AB	No Statutory Provision

ULP for an employer to fire expelled union member?

Answer: Yes, where the employee has been expelled for any reason other than a failure to pay fees and dues.

<i>Province</i>	<i>Language</i>
AB	149 No employer or employers' organization and no person acting on behalf of an employer or employers' organization shall (a) refuse to employ or to continue to employ any person or discriminate against any person in regard to employment or any term or condition of employment because the person (i) is a member of a trade union or an applicant for membership in a trade union, (ii) has indicated in writing the person's selection of a trade union to be the bargaining agent on the person's behalf, (iii) has been expelled or suspended from membership in a trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union,

ULP for a union to force an employer to expel a union member?

Answer: Yes, where the employee has been expelled for any reason other than a failure to pay dues.

<i>Province</i>	<i>Language</i>
AB	151 No trade union and no person acting on behalf of a trade union shall (g) require an employer to terminate the employment of an employee because the employee has been expelled or suspended from membership in the trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union;

Third party interference in membership contemplated?

Answer: No Statutory Provision

<i>Province</i>	<i>Language</i>
AB	No Statutory Provision

Union Membership/Dues as a Mandatory Condition of Employment

There is only one case that we are aware of that dealt with union dues and membership in Alberta, *Proud (Re)*, [2003] A.L.R.B.D. No 14 (Wallace). In this case, a religious objector applied to the Alberta Labour Relations Board (“ALRB”) for a redirection of union dues on the basis of her religious convictions under s. 29(2). The ALRB examined her application and granted her the order she sought. The ALRB held that she was not required to pay union dues or continue to be a member of the union. However, pursuant to s. 29(2), her employer was required to have the equivalent sum of the union dues, fees and assessments redirected from her paycheck to charity. The panel did not spend much time deciding this case. It disposed of the application on the basis of written materials alone.

Exemption on Religious Grounds for Union Dues/Check-off

The *Labour Relations Code* provides for a religious exemption at s. 29(2), a subsection of the security clause provision that provides for the deduction of union dues from employee salaries:

Employees to be union members:

29(1) Subject to subsection (2), nothing in this Act prevents a trade union from continuing an existing collective agreement or entering into a new collective agreement with an employer or employers’ organization whereby all the employees or any unit of employees of the employer or of one or more employers represented by the employers’ organization are required to be members of a trade union.

(2) If the Board is satisfied that an employee because of the employee’s religious conviction or religious belief

(a) objects to joining a trade union, or

(b) objects to the paying of dues or other assessments to a trade union,

the Board may order that the provisions of a collective agreement of the type referred to in subsection (1) do not apply to the employee and that the employee is not required to join the trade union, to be or to

continue to be a member of the trade union, or to pay any dues, fees or assessments to the trade union, if amounts equal to any initiation fees, dues or other assessments are paid by the employee to, or are remitted by the employer to, a charitable organization agreed on by the employee and the trade union.

(3) If the employee and the trade union fail to agree on a charitable organization for the purpose of subsection (2), the Board may designate a charitable organization registered as a charitable organization in Canada under Part I of the *Income Tax Act* (Canada) to which the amounts referred to in that subsection must be paid or remitted

Construction Specific Provisions

Sections 34.1, 53.1 and Part 3 (sections 163-206) of the *Labour Relations Code* apply to the construction industry. These sections do not alter any of the items in the Chart.

British Columbia

Relevant legislation: *Labour Relations Code*

Jurisdiction Comparison Chart

Statutory Provisions regarding union dues?

Answer: Yes

Dues mandatory, union request, or negotiable?

Answer: Upon union request

<i>Province</i>	<i>Language</i>
BC	6(3) An employer or a person acting on behalf of an employer must not. (f) refuse to agree with a trade union, certified under this Code as the bargaining agent for his or her employees who have been engaged in collective bargaining to conclude their first collective agreement, that all employees in the unit, whether or not members of the trade union, but excluding those exempted under section 17, will pay union dues from time to time to the trade union.

Specific language for written employee authorization for union dues?

Answer: Yes

<i>Province</i>	<i>Language</i>
BC	Assignment of fees and dues 16 (1) An employer must honour an employee's written assignment of wages to a trade union certified as the bargaining agent for his or her employees under this Code, unless the assignment is declared null and void by the board, or is revoked by the assignor.

Union membership as condition of employment?

Membership mandatory, on union request, or negotiable into CA?

Answer #1: Yes

Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
BC	Collective agreement may provide for union membership 15 (1) Nothing in this Code is to be construed as precluding the parties to a collective agreement from inserting in it, or carrying out, a provision (a) requiring membership in a specified trade union as a condition of employment, or (b) granting preference in employment to members of a specified trade union. ...

***Union members as preferred candidates in hiring policy?
Membership mandatory, on union request, or negotiable into CA?***

Answer #1: Yes
Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
BC	<p>12 (1) A trade union or council of trade unions must not act in a manner that is arbitrary, discriminatory or in bad faith.... (2) It is not a violation of subsection (1) for a trade union to enter into an agreement under which (b) a hiring preference is provided to trade union members resident in a particular geographic area, or ...</p> <hr/> <p>15 (1) Nothing in this Code is to be construed as precluding the parties to a collective agreement from inserting in it, or carrying out, a provision.... (b) granting preference in employment to members of a specified trade union.</p>

ULP for an employer to fire expelled union member?

Answer: No Statutory Provision

<i>Province</i>	<i>Language</i>
BC	No Statutory Provision

ULP for a union to force an employer to expel a union member?

Answer: Yes, where an employer is required to discharge an employee because the employee is or was a member in another union.

<i>Province</i>	<i>Language</i>
BC	<p>Collective agreement may provide for union membership 15 (1) Nothing in this Code is to be construed as precluding the parties to a collective agreement from inserting in it, or carrying out, a provision (a) requiring membership in a specified trade union as a condition of employment, or (b) granting preference in employment to members of a specified trade union. (2) Despite subsection (1), a trade union or person acting on its behalf must not require an employer to terminate the employment of an employee due to his or her expulsion or suspension from that trade union on the ground that he or she is or was a member of another trade union.</p>

Third party interference in membership contemplated?

Answer: Yes

<i>Province</i>	<i>Language</i>
BC	9 A person must not use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become or to refrain from becoming or to continue or cease to be a member of a trade union.

Union Membership/Dues as a Mandatory Condition of Employment

The case of *Excell Agent Services Canada Co. v. IUOE, Local 882* provides instructive commentary as to the scope and meaning of the above-noted BC *Labour Relations Code* (“Code”) provision at issue. The case concerned complaints of organizers’ intimidation and coercion during a union drive. The union organizers had made statements to employees about the possibility of job loss if the union was certified.

The Board found that the statements could objectively and conceivably be seen as a threat to job security and decided against the union, ruling that they had breached s.9 of the *Code*. In doing so, the Board made the following remarks:

Given the validity of union security clauses, it would be lawful for a union to say if we negotiate such a clause and it is enforced, you could lose your job. Under the Code, the use of union security clauses is valid. The negotiation and enforcement of a union security clause are specifically sanctioned by s.15 of the Code. That provision makes it clear that the use of a union security clause does not amount to a violation of section 9....the enforcement of union security clauses may be ‘economic coercion’, but that is not the kind of coercion which the law chooses to prohibit....

....if it were certified as a bargaining agent and a clause negotiated, it would have the power to ask that a union security provision be enforced. Had there been a collective agreement with a union security clause in place, a comment reminding employees of the implications of not joining the union on their job security would not be a threat, but would rather be a warning of something it was legally able to do.

Exemption on Religious Grounds for Union Dues/Check-off

The *Labour Relations Code* does contain an exemption on the basis of religious grounds.

Religious objections

- 17** (1) If the board is satisfied that an employee, because of his or her religious conviction or belief
- (a) objects to joining trade unions generally, or
 - (b) objects to the paying of dues or other assessments to trade unions generally
- the board may order that the provisions of a collective agreement of the type referred to in section 15 do not apply to the employee and that the employee is not required to join a trade union, to be or continue to be a member of a trade union, or to pay any dues, fees or assessments to the trade union, if amounts equal to any initiation fees, dues or other assessments are paid by the employee to or are remitted by the employer to a charitable organization registered as a charitable organization in Canada under Part I of the *Income Tax Act* (Canada) that may be designated by the board.
- (2) Despite any other provision of this Code, a person exempted under subsection (1) is not entitled to participate in a vote conducted by a trade union or in a vote held for the purposes of this Code.

Construction Specific Provisions

There is no construction-specific labour legislation in British Columbia. In 2001, the *Code* was amended to repeal Part 4.1 Construction Industry Labour Relations.⁵ There are, however, a few provisions which are directly applicable to the construction industry. These sections do not alter any of the items in the Chart.

⁵ *Canadian Construction Labour and Employment Law*, at 3.38; **55.1–55.26** [Repealed 2001-33-10.]

Manitoba

Relevant legislation: *Labour Relations Act*

Jurisdiction Comparison Chart

Statutory Provisions regarding union dues?

Answer: Yes

Dues mandatory, union request, or negotiable?

Answer: Mandatory

<i>Province</i>	<i>Language</i>
Manitoba	76(1) Every collective agreement entered into, revised or renewed, between a union and an employer shall contain a provision requiring the employer (a) to deduct from the wages of each employee in the unit affected by the collective agreement, whether or not the employee is a member of the union, the amount of the regular membership dues payable by a member of the union, except that where the employee is not a member of the union the amount deducted shall not include any portion of such dues that is payable in respect of pension, superannuation, sickness, insurance or other benefits that are available only to persons who are or have been members of the union or in respect of special assessments payable by members of the union;

Specific language for written employee authorization for union dues?

Answer: No Statutory Provision

<i>Province</i>	<i>Language</i>
Manitoba	No Statutory Provision

Union membership as condition of employment?

Membership mandatory, on union request, or negotiable into CA?

Answer #1: Yes

Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
Manitoba	23(2) Nothing in this Act prohibits the parties to a collective agreement from inserting in the collective agreement a provision requiring, as a condition of obtaining employment, membership in a specified union, or granting a preference of employment to members of a specified union or requiring the payment of dues or contributions to a specified union.

***Union members as preferred candidates in hiring policy?
Membership mandatory, on union request, or negotiable into CA?***

Answer #1: Yes
Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
Manitoba	23(2) Nothing in this Act prohibits the parties to a collective agreement from inserting in the collective agreement a provision requiring, as a condition of obtaining employment, membership in a specified union, or granting a preference of employment to members of a specified union or requiring the payment of dues or contributions to a specified union.

ULP for an employer to fire expelled union member?

Answer: No Statutory Provision

<i>Province</i>	<i>Language</i>
Manitoba	No Statutory Provision

ULP for a union to force an employer to expel a union member?

Answer: Yes, where the employee has been expelled for any reason other than a failure to pay fees and dues.

<i>Province</i>	<i>Language</i>
Manitoba	19 Every union, and every person acting on behalf of a union (a) who, in any way, suspends, expels or penalizes a member because he has refused to engage in or refused to continue to engage in a strike that is prohibited under this Act; or (b) who requires an employer to terminate the employment of an employee because the employee has been expelled or suspended from membership in the union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the union as a condition of acquiring or retaining membership in the union; or ... commits an unfair labour practice

Third party interference in membership contemplated?

Answer: Yes

<i>Province</i>	<i>Language</i>
Manitoba	5(1) Every employee has the right (a) to be a member of a union; (b) to participate in the activities of a union; and (c) to participate in the organization of a union. 5(3) Every person who interferes with the right of an employee under subsection (1) or the right of an employer under subsection (2) commits an unfair labour practice.

Union Membership/Dues as a Mandatory Condition of Employment

In *Winnipeg Free Press v. Media Union of Manitoba, Local 191*⁶ the Manitoba Arbitration Board (“MAB”) considered two very broad grievances against the employer. A specific aspect of one of the grievances alleged that the employer failed to deduct monthly dues from the wages of hired part time employees in an amount equal to the monthly union membership dues. The MAB concluded that the employer violated the collective agreement by failing to deduct dues from the part time employees. The MAB ordered that the employer deduct union dues from individuals hired on a part-time basis for the duration of the collective agreement.

Exemption on Religious Grounds for Union Dues/Check-off

Section 76(3) of the *MLRA* allows an employee to seek an order from the Manitoba Labour Relations Board (the “MLRB”) granting the employee an exemption from union membership or financially supporting a union on the grounds of religious objection. It states:

76(3) An employee in a unit in respect of which a collective agreement is in force may apply to the board for a determination that

(a) the employee is a member of a religious group which has as one of its articles of faith the belief that members of the group are precluded from being members of, and financially supporting, any union or professional association; and

(b) the employee has a personal belief in those articles of faith;

and where the board makes the determination,

(c) the union which is a party to the collective agreement ceases to be obligated under this Act or the collective agreement to represent or act on behalf of the employee;

(d) the employer of the employee shall deduct from the employee's wages the amount required under clause (1)(a), but, notwithstanding clause (1)(b) and subsection (2), shall remit the amount so deducted to a charity agreed upon by the employee and the union, or if no such agreement can be reached, to a charity designated by the board; and

⁶ 2000 CarswellMan 710.

(e) the employer is not, by reason solely of complying with clause (d), in breach of any provision of the collective agreement which requires the deduction of regular dues from the wages of the employee and the remittance thereof to the union.

Construction Specific Provisions

The *MLRA* does not have a specific section for the construction industry under the *Labour Relations Act*.

New Brunswick

Relevant legislation: *Industrial Relations Act*

Jurisdiction Comparison Chart

Statutory Provisions regarding union dues?

Answer: Yes

Dues mandatory, union request, on negotiable?

Answer: Upon negotiation

<i>Province</i>	<i>Language</i>
New Brunswick	s. 8(1) Notwithstanding anything in this Act, the parties to a collective agreement may include in the agreement provisions for requiring, as a condition of employment, membership in the trade union that is a party to or is bound by the agreement, granting a preference of employment to members of the trade unions, or requiring the payment of dues or contributions to the trade union.

Specific language for written employee authorization for union dues?

Answer: Yes

<i>Province</i>	<i>Language</i>
New Brunswick	s. 9(1) Every employer shall honour a written authorization for the deduction of wages for union dues to a trade union certified under this Act or recognized by the employer in a recognition agreement.

Union membership as condition of employment?

Membership mandatory, on union request, or negotiable into CA?

Answer #1: Yes

Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
New Brunswick	s. 8(1) Notwithstanding anything in this Act, the parties to a collective agreement may include in the agreement provisions for requiring, as a condition of employment, membership in the trade union that is a party to or is bound by the agreement, granting a preference of employment to members of the trade unions, or requiring the payment of dues or contributions to the trade union.

***Union members as preferred candidates in hiring policy?
Membership mandatory, on union request, or negotiable into CA?***

Answer #1: Yes
Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
New Brunswick	8(2) Where a person is required by the terms of a collective agreement to be a member of a specified trade union, his membership or application for membership shall not be affected by any terms or conditions not applicable to other members.

ULP for an employer to fire expelled union member?

Answer: No Statutory Provision

<i>Province</i>	<i>Language</i>
New Brunswick	No Statutory Provision

ULP for a union to force an employer to expel a union member?

Answer: Yes, where an employer is required to discharge an employee because the employee is a member of another union or where the employee has been expelled for discriminatory reasons.

<i>Province</i>	<i>Language</i>
New Brunswick	<p>8(3)No trade union that is party to or bound by a collective agreement, containing a provision mentioned in subsection (1), shall require the employer to discharge an employee where such employee has been expelled or suspended from membership, or denied membership in the trade union where</p> <p>(a)the reason for expulsion, suspension or denial of membership is that the employee was or is a member of another trade union, or has engaged in activity against the trade union or on behalf of another trade union, or</p> <p>(b)the employee has been discriminated against by the trade union in the application of its membership rules in circumstances where the employee is qualified to engage in the trade or work and is otherwise eligible for membership.</p> <p>8(4)Subsection (3) does not apply to an employee who has engaged in unlawful activity against the trade union mentioned in subsection (1) or an officer or representative thereof, or whose activity against the trade union or on behalf of another trade union has been instigated or procured by the employer or a person acting on behalf of the employer, or whose employer or a person acting on behalf of the employer has participated in such activity or contributed financial or other support to the employee in respect of such activity.</p> <p>8(5)A trade union or council of trade unions and the employer of the employees concerned shall not enter into a collective agreement that includes provisions requiring, as a condition of employment, membership in the trade union that is a party to or is bound by the agreement unless the</p>

	<p>trade union has established at the time it entered into or became bound by the agreement that not less than fifty-five per cent of the employees in the bargaining unit were members of such trade union, and any such provision entered into contrary to this subsection is void.</p> <p>8(6) Subsection (5) does not apply</p> <p>(a) where the trade union has been certified as the bargaining agent of the employees of the employer in the bargaining unit,</p> <p>(b) where the trade union has been a party to or bound by a collective agreement with the employer for at least one year,</p> <p>(c) where the employer becomes a member of an employers' organization that has entered into a collective agreement with the trade union or council of trade unions containing such a provision and agrees with the trade union or council of trade unions to be bound by such agreement, or</p> <p>(d) where the employer and his employees in the bargaining unit are engaged in the construction industry.</p> <p>8(7) Notwithstanding anything in this Act, where the parties to a collective agreement have included in it any of the provisions permitted by subsection (1), any of such provisions may be continued in effect during the period when the parties are bargaining with a view to the renewal or revision of the agreement or to the making of a new agreement.</p> <p>8(8) Notwithstanding anything in this Act, where the parties to a collective agreement have included in it any of the provisions permitted by subsection (1) and the employer who was a party to or was bound by the agreement sells his business within the meaning of section 60, any of such provisions, as were included in the collective agreement, may be continued in effect during the period when the person to whom the business was sold and the trade union or council of trade unions, that is the bargaining agent for his employees in the appropriate bargaining unit by reason of the sale, bargain with a view to the making of a new agreement.</p> <p>8(9) Nothing in subsection (7) or (8) affects the application of section 35.</p> <p>8(10) No employer, and no person acting on behalf of an employer, shall discharge or otherwise discriminate against an employee within the meaning of this section when he has reasonable grounds for believing that membership was not available to the employee on the same terms and conditions generally applicable to other members or when he has reasonable grounds for believing that membership, subject to subsection (4), was denied, suspended or terminated for a reason specified in subsection (3).</p> <p>8(11) Where a dispute arises as a result of a provision in a collective agreement permitted by subsection (1), the employer's obligation to discharge an employee is arbitrable under the terms of that collective agreement.</p>
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Third party interference in membership contemplated?

Answer: Yes

<i>Province</i>	<i>Language</i>
New Brunswick	s. 6(1) No employer, employers' organization, trade union, council of trade unions, or other person shall use coercion or intimidation of any kind with a

	<p>view to encouraging or discouraging membership in, or activity in or for, an employers' organization.</p> <p>s. 6(2) No trade union, council of trade unions, employer, employers' organization, or other person shall use coercion or intimidation of any kind with a view to encouraging or discouraging membership in, or activity in or for, a trade union or council of trade unions.</p> <p>s. 6(3) No employer, employers' organization, trade union, council of trade unions, or other person shall seek to influence the manner in which an employee may vote, in any vote taken under this Act, by intimidation or coercion or by giving, or offering to give, money or any other valuable consideration.</p> <p>s. 6(4) No employers' organization, trade union, council of trade unions, or other person shall seek to influence the manner in which an employer may vote, in any vote taken under this Act, by intimidation or coercion.</p>
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9(1) Every employer shall honour a written authorization for the deduction of wages for union dues to a trade union certified under this Act or recognized by the employer in a recognition agreement.

9(2) An authorization pursuant to subsection (1) shall be substantially in the following form:

To (name of Employer)

I hereby authorize you to deduct from my wages and pay to (name of trade union) my regular dues (in the amount of \$. or in the per cent of per cent or as assessed) per

9(3) Unless an authorization under subsection (1) is revoked in writing pursuant to subsection (4), the employer shall remit the dues deducted to the trade union named in the authorization at least once each month together with a written statement of the names of the employees for whom the deductions were made and the amount of each deduction.

9(4) An authorization under subsection (1) shall continue in effect for a minimum period of three consecutive months and thereafter the employee may revoke the authorization by delivering or sending to the employer a revocation in writing

- (a) at any time when there is no collective agreement in operation, or
- (b) when there is a collective agreement in operation, within the period of two months prior to the expiry date of the collective agreement.

9(5) When an authorization is revoked pursuant to subsection (4), the employer shall give notice thereof to the trade union.

9(6) Notwithstanding anything in this section, there shall be no financial responsibility on the part of an employer for the dues of an employee unless there are sufficient unpaid wages of that employee in the employer's hands.

Union Membership/Dues as a Mandatory Condition of Employment

There are no cases regarding compulsory union membership or compulsory payment of union dues in New Brunswick.

Exemption on Religious Grounds for Union Dues/Check-off

There is no legislative exemption from union membership or payment of union dues on the basis of religious belief.

Construction Specific Provisions

Sections 39 to 51.9 of the *Industrial Relations Act*, entitled “Bargaining Rights in the Construction Industry” apply specifically to the construction industry. These sections do not alter any of the items in the Chart.

Newfoundland & Labrador

Relevant legislation: Labour Relations Act

Jurisdiction Comparison Chart

Statutory Provisions regarding union dues?

Answer: Yes

Dues mandatory, union request, or negotiable?

Answer: Upon union's request

<i>Province</i>	<i>Language</i>
NFLD	87. (1) Except in the construction industry, where a trade union that is the bargaining agent for employees in a bargaining unit so requests, there shall be included in the collective agreement between the trade union and the employer of the employees a provision requiring the employer to deduct from the wages of each employee in the unit affected by the collective agreement, whether or not the employee is a member of the union, the amount of the regular union dues and to remit the amount to the trade union immediately.

Specific language for written employee authorization for union dues?

Answer: Yes

<i>Province</i>	<i>Language</i>
NFLD	Assignment of wages, etc. 35. (1) An employer shall honour a written assignment of wages to a bargaining agent.

Union membership as condition of employment?

Membership mandatory, on union request, or negotiable into CA?

Answer #1: Yes

Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
NFLD	Closed shop 31. Nothing in this Act prohibits the parties to a collective agreement from inserting in the collective agreement a provision requiring, as a condition of employment, membership in a specified trade union, or granting a preference of employment to members of a specified trade union.

***Union members as preferred candidates in hiring policy?
Membership mandatory, on union request, or negotiable into CA?***

Answer #1: Yes
Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
NFLD	<p>Closed shop</p> <p>31. Nothing in this Act prohibits the parties to a collective agreement from inserting in the collective agreement a provision requiring, as a condition of employment, membership in a specified trade union, or granting a preference of employment to members of a specified trade union.</p>

ULP for an employer to fire expelled union member?

Answer: No Statutory Provision

<i>Province</i>	<i>Language</i>
NFLD	No Statutory Provision

ULP for a union to force an employer to expel a union member?

Answer: Yes, where an employer is required to discharge an employee because the employee is a member in another union, or continues to be engaged in activities on behalf of another union

<i>Province</i>	<i>Language</i>
NFLD	<p>Invalid provision</p> <p>32. A provision in a collective agreement that requires an employer to discharge an employee because the employee is or continues to be a member of or engages in activities on behalf of a union other than a specified trade union is not valid.</p>

Third party interference in membership contemplated?

Answer: No Statutory Provision

<i>Province</i>	<i>Language</i>
NFLD	No Statutory Provision

Union Membership/Dues as a Mandatory Condition of Employment

There are no cases regarding compulsory union membership or compulsory payment of union dues in Newfoundland.

Exemption on Religious Grounds for Union Dues/Check-off

There is no legislative exemption from union membership or payment of union dues on the basis of religious belief.

Construction Specific Provisions

Sections 58-68 of the Newfoundland and Labrador *Labour Relations Act* apply only to the construction industry. These sections do not alter any of the items in the Chart.

Nova Scotia

Relevant legislation: *Trade Union Act*

Jurisdiction Comparison Chart

Statutory Provisions regarding union dues?

Answer: Yes

Dues mandatory, union request, or negotiable?

Answer: Upon negotiation

<i>Province</i>	<i>Language</i>
Nova Scotia	s. 60(1) Nothing in this Act prohibits the parties to a collective agreement from inserting in the agreement a provision requiring the employer to honour a written authorization for deduction of wages for initiation fees and union dues to the bargaining agent.

Specific language for written employee authorization for union dues?

Answer: Yes

<i>Province</i>	<i>Language</i>
Nova Scotia	s. 60(2) Every employer shall honour a written authorization for deduction of wages for initiation fees and union dues to a trade union certified or recognized by the employer as the bargaining agent.

Union membership as condition of employment?

Membership mandatory, on union request, or negotiable into CA?

Answer #1: Yes

Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
Nova Scotia	s. 59(1) Nothing in this Act prohibits the parties to a collective agreement from inserting in the agreement a provision requiring, as a condition of employment, membership in a specified trade union or granting a preference of employment to members in a specified trade union.

Union members as preferred candidates in hiring policy?

Membership mandatory, on union request, or negotiable into CA?

Answer #1: Yes

Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
Nova Scotia	s. 59(1) Nothing in this Act prohibits the parties to a collective agreement from inserting in the agreement a provision requiring, as a condition of employment, membership in a specified trade union or granting a preference of employment to members in a specified trade union.

ULP for an employer to fire expelled union member?

Answer: Yes, where the employee has been expelled for any reason other than a failure to pay fees and dues.

<i>Province</i>	<i>Language</i>
Nova Scotia	<p>s. 53(3) No employer and no person acting on behalf of an employer shall</p> <p>(a) refuse to employ or to continue to employ any person or otherwise discriminate against any person in regard to employment or any term or condition of employment, because the person</p> <p>(i) is or was a member of a trade union,</p> <p>(ii) has been expelled or suspended from membership in a trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union</p>

ULP for a union to force an employer to expel a union member?

Answer: Yes, where (1) the employee has been expelled for any a failure to pay fees or dues or (2) the discharge is required because the employee is a member of another union or continues to be engaged in activities on behalf of another union.

<i>Province</i>	<i>Language</i>
Nova Scotia	<p>s. 54 No trade union and no person acting on behalf of a trade union shall</p> <p>(e) require an employer to terminate the employment of an employee because he has been expelled or suspended from membership in the trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union;</p>

Third party interference in membership contemplated?

Answer: No Statutory Provision

<i>Province</i>	<i>Language</i>
Nova Scotia	No Statutory Provision

Union Membership/Dues as a Mandatory Condition of Employment

There are no cases regarding compulsory union membership or compulsory payment of union dues in Nova Scotia.

Exemption on Religious Grounds for Union Dues/Check-off

There is no legislative exemption from union membership or payment of union dues on the basis of religious belief.

Construction Specific Provisions

Part II (ss. 92-107) of the *Trade Union Act*, entitled “Construction Labour Relations” applies specifically to the construction industry. These sections do not alter any of the items in the Chart.

Ontario

Relevant legislation: *Labour Relations Act*.

Jurisdiction Comparison Chart

Statutory Provisions regarding union dues?

Answer: Yes

Dues mandatory, union request, or negotiable?

Answer: Upon union's request

<i>Province</i>	<i>Language</i>
Ontario	47. (1) Except in the construction industry and subject to section 52, where a trade union that is the bargaining agent for employees in a bargaining unit so requests, there shall be included in the collective agreement between the trade union and the employer of the employees a provision requiring the employer to deduct from the wages of each employee in the unit affected by the collective agreement, whether or not the employee is a member of the union, the amount of the regular union dues and to remit the amount to the trade union, forthwith.

Specific language for written employee authorization for union dues?

Answer: No Statutory Provision

<i>Province</i>	<i>Language</i>
Ontario	No Statutory Provision

Union membership as condition of employment?

Membership mandatory, on union request, or negotiable into CA?

Answer #1: Yes

Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
Ontario	51. (1) Despite anything in this Act, but subject to subsection (4), the parties to a collective agreement may include in it provisions, (a) for requiring, as a condition of employment, membership in the trade union that is a party to or is bound by the agreement or granting a preference of employment to members of the trade union, or requiring the payment of dues or contributions to the trade union;

Union members as preferred candidates in hiring policy?

Membership mandatory, on union request, or negotiable into CA?

Answer #1: Yes

Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
Ontario	51. (1) Despite anything in this Act, but subject to subsection (4), the parties to a collective agreement may include in it provisions, (a) for requiring, as a condition of employment, membership in the trade union that is a party to or is bound by the agreement or granting a preference of employment to members of the trade union, or requiring the payment of dues or contributions to the trade union;

ULP for an employer to fire expelled union member?

Answer: No Statutory Provision

<i>Province</i>	<i>Language</i>
Ontario	No Statutory Provision

ULP for a union to force an employer to expel a union member?

Answer: Yes, where an employer is required to discharge an employee because the employee is a member of another union, has engaged in activities or dissent against the union, has been expelled for discriminatory reasons, or has failed to pay unreasonable initiation fees or dues.

<i>Province</i>	<i>Language</i>
Ontario	(2) No trade union that is a party to a collective agreement containing a provision mentioned in clause (1) (a) shall require the employer to discharge an employee because, (a) the employee has been expelled or suspended from membership in the trade union; or (b) membership in the trade union has been denied to or withheld from the employee, for the reason that the employee, (c) was or is a member of another trade union; (d) has engaged in activity against the trade union or on behalf of another trade union; (e) has engaged in reasonable dissent within the trade union; (f) has been discriminated against by the trade union in the application of its membership rules; or g) has refused to pay initiation fees, dues or other assessments to the trade union which are unreasonable.

Third party interference in membership contemplated?

Answer: Yes

<i>Province</i>	<i>Language</i>
Ontario	76. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

Union Membership/Dues as a Mandatory Condition of Employment

In *Ellens v. Service Employees' Union, Local 204*⁷ an employee made an application to the Ontario Labour Relations Board "OLRB" for an exemption from the payment of union dues because of her religious beliefs. The union did not oppose this application but the OLRB dismissed the grievance because it was without proper jurisdiction as the employee began work after the time limited by the *OLRA*. Following this, the employee wrote to the union asking if she could pay the equivalent of union dues to a charity instead of to the union. The union rejected this proposal and advised that she pay her outstanding dues and continue paying dues or it would seek termination from her employment. The employee refused to pay and she was dismissed. The OLRB concluded that the union acted throughout the matter in the genuine belief that the collective agreement required that an employee in the bargaining unit must, as a condition of continued employment, pay dues to the union and that it was obliged to enforce that requirement even to the detriment of the individual employee. The OLRB found that the action of the union in regard to the employee was not arbitrary, discriminatory or taken in bad faith.

In *Centre Manufacturing Inc. v. CAW-Canada, Local 222*⁸ the union alleged that the continued employment of an individual who refused to sign a union membership card, was in violation of the collective agreement. The individual's personal convictions ran contrary to becoming a union member and he adamantly refused to sign a membership card. The Ontario Arbitration Board ("OAB") concluded that the employer had failed to enforce the provisions of the collective agreement and ruled that the employer must take all reasonable efforts to have the individual sign a union application card. The OAB gave the individual eight months to sign a card or the employer would have to terminate him.

In *Windsor Regional Hospital v. I.B.E.W., Local 636*⁹ the union sought an order requiring the employer to discharge an employee because she failed to become or remain a member of the union in good standing as a condition of her employment. Article 2.02 of the collective agreement provides that; "All future employees must become and remain members in good standing of the Union as condition of employment during this Agreement." The employer and the employee argued that she was not a "future employee" within the meaning of article 2.02 because she was a longstanding employee and was not a new employee. The OAB concluded that "future employees" should not be narrowly interpreted to mean only new employees and that the employee fell into this category. Further, The OAB rejected the employee's argument

⁷ 1972 CarswellOnt780.

⁸ 2003 CarswellOnt 1867.

⁹ 2000 CarswellOnt 2692.

that she was a member of good standing because she paid union dues. The OAB said that there was more to becoming and remaining a member of good standing in a union than simply paying union dues. The OAB concluded that the employee's decision not to become a union member and nevertheless assert that she was a member in good standing was inexplicable and therefore the OAB directed her employer to terminate her.

In *Milltronics Ltd. v. U.E., Local 567*¹⁰ the union brought a policy grievance before an Arbitrator insisting that the employer comply with what the union believed to be a contractual commitment by the employer to require all employees in the bargaining unit to pay the amount of union dues as a condition of his or her employment. The interpretation of Articles 4.1 and 4.2 of the collective agreement was at issue. Article 4.1 provided that all employees employed in the bargaining unit pay union dues as a condition of employment. Article 4.2 stated that the employer would provide for the deduction of union dues upon presentation of signed authorized forms. The employer argued that it did not violate the terms of the collective agreement by failing to deduct dues from those employees who had not signed authorization form. This argument was based on the employer's belief that signing an authorization form was not a condition of employment. The Arbitrator concluded that permitting an employee to retain employment without paying union dues granted them employment terms different than provided for in the collective agreement. The Arbitrator found that the employer was not in compliance with its obligation under article 4 of the collective agreement.

Exemption on Religious Grounds for Union Dues/Check-off

Section 52 *OLRA* of the allows an employee to seek an order from the OLRB granting the employee an exemption from union membership or financially supporting a union on the grounds of religious objection.

52. (1) Where the Board is satisfied that an employee because of his or her religious conviction or belief,

(a) objects to joining a trade union; or

(b) objects to the paying of dues or other assessments to a trade union,

the Board may order that the provisions of a collective agreement of the type mentioned in clause 51 (1) (a) do not apply to the employee and that the employee is not required to join the trade union, to be or continue to be a member of the trade union, or to pay any dues, fees or assessments to the trade union, provided that amounts equal to any initiation fees, dues or other assessments are paid by the employee to or are remitted by the employer to a charitable organization mutually agreed upon by the employee and the trade union, but if the employee and the trade union fail to so agree then to a charitable organization registered as a charitable organization in Canada under Part I of the *Income Tax Act* (Canada) that may be designated by the Board. 1995, c. 1, Sched. A, s. 52 (1); 2004, c. 16, Sched. D, Table.

Application of subs. (1)

(2) Subsection (1) applies to employees in the employ of an employer at the time a collective agreement containing a provision of the kind mentioned in subsection (1) is first entered into with that employer and only during the life of such collective agreement, and does not apply to employees whose employment commences after the entering into of the collective agreement. 1995, c. 1, Sched. A, s. 52 (2).

To succeed under this section of the *OLRA* the applicant must satisfy the OLRB that his or her beliefs are sincerely held, that they are religious and are the cause of the objection.¹¹

¹⁰ 1980 CarswellOnt 1218.

¹¹ (*University of Ottawa v. C.U.P.E., Local 1956* 1976 CarswellOnt 670).

Construction Specific Provisions

Sections 126 to 168 of the *Labour Relations Act* apply only to the construction industry. These sections do not alter most of the items in the Chart.

The only section of the *Labour Relations Act* that impacts on the construction industry differently (for our purposes) is Section 47(1) which addresses union dues. It states:

“Except in the construction industry and subject to section 52, where a trade union that is the bargaining agent for employees in a bargaining unit so requests, there shall be included in the collective agreement between the trade union and the employer of the employees a provision requiring the employer to deduct from the wages of each employee in the unit affected by the collective agreement, whether or not the employee is a member of the union, the amount of the regular union dues and to remit the amount to the trade union, forthwith...”

Section 47(1) exempts the construction industry from the deduction of union dues occurring upon request of the union. The rest of the *OLRA* is silent in this regard. Therefore, the chart question, “*dues mandatory, union request, or negotiable*” will be different for the construction and non construction industry. It cannot be answered by relying on a plain reading of the *OLRA*. Secondary source and case law research did not provide guidance as to the interpretation. As such, our conclusion is that dues can be included in a collective agreement upon negotiation between the parties.

Prince Edward Island

Relevant legislation: *Labour Act*

Jurisdiction Comparison Chart

Statutory Provisions regarding union dues?

Answer: Yes

Dues mandatory, union request, or negotiable?

Answer: Upon negotiation

<i>Province</i>	<i>Language</i>
PEI	9 (9) Nothing in this Part prohibits the parties to a collective agreement from inserting in the collective agreement a provision granting preference of employment to members of a specified trade union or requiring as a condition of employment membership in or the payment of dues or contributions to a specified trade union but no bargaining agent shall require an employer to discharge an employee for non-membership in such trade union, if membership is not available to the employee on the same terms and conditions generally applicable to other members.

Specific language for written employee authorization for union dues?

Answer: Yes

<i>Province</i>	<i>Language</i>
PEI	45. (2) Where no such provision exists in a collective agreement, the deduction shall be made by the employer only if an individual employee in a unit delivers to the employer a signed written request that such deductions be made from the wages due to him therein and indicating the officer of such trade union to whom the deductions shall be paid..

Union membership as condition of employment?

Membership mandatory, on union request, or negotiable into CA?

Answer #1: Yes

Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
PEI	9 (9) Nothing in this Part prohibits the parties to a collective agreement from inserting in the collective agreement a provision granting preference of employment to members of a specified trade union or requiring as a condition of employment membership in or the payment of dues or contributions to a specified trade union but no bargaining agent shall require an employer to discharge an employee for non-membership in such trade union, if membership is not available to the employee on the same terms and conditions generally applicable to other members.

***Union members as preferred candidates in hiring policy?
Membership mandatory, on union request, or negotiable into CA?***

Answer #1: Yes
Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
PEI	9 (9) Nothing in this Part prohibits the parties to a collective agreement from inserting in the collective agreement a provision granting preference of employment to members of a specified trade union or requiring as a condition of employment membership in or the payment of dues or contributions to a specified trade union but no bargaining agent shall require an employer to discharge an employee for non-membership in such trade union, if membership is not available to the employee on the same terms and conditions generally applicable to other members.

ULP for an employer to fire expelled union member?

Answer: No Statutory Provision

<i>Province</i>	<i>Language</i>
PEI	No Statutory Provision

ULP for a union to force an employer to expel a union member?

Answer: Yes, where membership is not available to the employee on the same terms and conditions it is available to other members

<i>Province</i>	<i>Language</i>
PEI	9 (9) Nothing in this Part prohibits the parties to a collective agreement from inserting in the collective agreement a provision granting preference of employment to members of a specified trade union or requiring as a condition of employment membership in or the payment of dues or contributions to a specified trade union but no bargaining agent shall require an employer to discharge an employee for non-membership in such trade union, if membership is not available to the employee on the same terms and conditions generally applicable to other members.

Third party interference in membership contemplated?

Answer: No Statutory Provision

<i>Province</i>	<i>Language</i>
PEI	No Statutory Provision

Union Membership/Dues as a Mandatory Condition of Employment

There are no cases regarding compulsory union membership or compulsory payment of union dues in Prince Edward Island.

Exemption on Religious Grounds for Union Dues/Check-off

There is no legislative exemption from union membership or payment of union dues on the basis of religious belief.

Construction Specific Provisions

Part II (sections 51-60) of the Prince Edward Island *Labour Act* applies specifically to the construction industry. These sections do not alter any of the items in the Chart.

Quebec

Relevant legislation: *Labour Code*, and *An Act Respecting Labour Relations, Vocational Training and Workforce Management in the Construction Industry*.

Jurisdiction Comparison Chart

Statutory Provisions regarding union dues?

Answer (general): Yes

Answer (construction): Yes

Dues mandatory, union request, or negotiable?

Answer (general): Mandatory

Answer (construction): Mandatory

<i>Province</i>	<i>Language</i>
Quebec (general)	<p>47 An employer must withhold from the salary of every employee who is a member of a certified association the amount stated as an assessment by such association.</p> <p>Other employee The employer must also withhold from the salary of every other employee who is a member of the bargaining unit in respect of which such association was certified, an amount equal to the amount provided for in the first paragraph.</p> <p>Remittance The employer must remit monthly to the certified association the amounts so withheld with a statement indicating the amount taken from each employee and the employee's name.</p>
Quebec (construction)	<p>38 The fact that an employee has made an election in accordance with this chapter authorizes an employer to deduct in advance from the salary of such employee the union assessment and requires the employer to remit such assessment to the Commission with his monthly report.</p> <p>The Commission shall remit the assessments so received to the representative associations accompanied with a nominal roll.</p> <p>61 The collective agreement must also contain clauses respecting union security, including the advance deduction of assessments</p> <p>61(1) Clauses respecting the following matters must be common to the collective agreements of each of the sectors:</p> <p>(1) union security, including the advance deduction of union assessments;</p> <p>82 (1) Every employer is liable for the payment to the Commission of the compulsory levy and assessment to be withheld from an employee's wages, even if he fails to withhold such levy or assessment.</p>

Specific language for written employee authorization for union dues?

Answer (general): *No Statutory Provision (save for logging operations)
 Answer (construction): No Statutory Provision

<i>Province</i>	<i>Language</i>
Quebec (general)	<p>*No statutory provision except for a section regarding logging projects:</p> <p>8. Subject to the Forest Act (chapter F-4.1), the logging operator or the owner of any land where logging operations are carried on must allow any representative of an association of employees holding a permit issued by the Commission in accordance with the regulations made for such purpose under section 138 to pass thereon and to have access to the living quarters of the employees...</p> <p>Advance for first dues On the written application of an employee, he shall advance him the sum required as first dues to an association of employees, provided that such employee has that amount to his credit.</p> <p>Authorization constitutes payment The written authorization given by any employee to withhold from his salary the above amount constitutes a payment within the meaning of subparagraph c of section 36.1; the employer must remit to the association indicated, within the following month, the amounts so withheld accompanied with a memorandum of the list of names.</p>
Quebec (construction)	No Statutory Provision

Union membership as condition of employment?

Membership mandatory, on union request, or negotiable into CA?

Answer (general): No Statutory Provision
 Answer (construction): Yes, Mandatory

<i>Province</i>	<i>Language</i>
Quebec (general)	No Statutory Provision
Quebec (construction)	<p>19 No professional employer may hire, directly or through an intermediary, the services of an independent contractor other than an independent contractor belonging to the “Heavy equipment contractor” or “Excavation and earthwork contractor” subcategory for the purpose of carrying out construction work.</p> <p>Hiring of independent contractors No person other than a professional employer may hire the services of an independent contractor who does not belong to the “Heavy equipment contractor” or “Excavation and earthwork contractor” subcategory, except for the purpose of carrying out maintenance, repair and minor renovation work.</p>

	<p>Minimum remuneration</p> <p>An independent contractor shall require a remuneration at least equal, on an hourly basis, to the remuneration in currency and to the compensation or benefits having pecuniary value determined by a collective agreement for an employee doing similar work, except benefits relating to a complementary social benefits plan.</p> <p>39. No employer may, as regards construction work, use the services of a person subject to this Act as an employee, or assign such a person to construction work as an employee, unless the person holds a document referred to in section 36 validly bearing in accordance with this chapter the name of one of the associations referred to in section 28.</p>
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Union members as preferred candidates in hiring policy?

Membership mandatory, on union request or Negotiable into CA?

Answer (general): No Statutory Provision
 Answer (construction): Not Applicable, as union membership is mandatory for all workers

<i>Province</i>	<i>Language</i>
Quebec (general)	No Statutory Provision
Quebec (construction)	N/A

ULP for an employer to fire expelled union member?

Answer (general): No Statutory Provision
 Answer (construction): No Statutory Provision

<i>Province</i>	<i>Language</i>
Quebec	No Statutory Provision
Quebec (construction)	No Statutory Provision

ULP for a union to force an employer to expel a union member?

Answer (general): Yes, except where membership is suspended or denied on the basis that (1) the employee was employed contrary to the terms of the collective agreement or (2) the employee participated in activities against the union

Answer (construction): No Statutory Provision

<i>Province</i>	<i>Language</i>
Quebec	63 No employer shall be bound, under any provision of a collective agreement, to dismiss an employee for the sole reason that the certified association has refused or deferred his admission as a member, has suspended his membership or excluded him from the association except in the following cases:

	<p>(a) the employee has been employed contrary to a provision of the collective agreement;</p> <p>(b) the employee has participated, at the instigation or with the direct or indirect assistance of his employer or a person acting on behalf of his employer, in an activity against the certified association.</p>
Quebec (construction industry)	No statutory provision

Third party interference in membership contemplated?

Answer (general): Yes

Answer (construction): Yes

<i>Province</i>	<i>Language</i>
Quebec	13. No person shall use intimidation or threats to induce anyone to become, refrain from becoming or cease to be a member of an association of employees or an employers' association.
Quebec (construction)	<p>101. No person may intimidate, threaten or coerce a person or discriminate or take reprisals against a person with the aim or effect of infringing on the person's freedom of association, penalizing the person for choosing a union affiliation or becoming a member of a union, compelling the person to become, abstain from becoming or cease being a member or officer of an association, penalizing the person for having exercised a right under this Act or inciting the person to forfeit such a right.</p> <p>Deemed intimidation Any person who, for the purposes or reasons stated in the first paragraph, does any of the following contravenes that paragraph:</p> <p>(a) refuses to employ, dismisses or threatens to dismiss a person;</p> <p>(b) imposes a disciplinary penalty on an employee, reduces his workload, demotes him, denies him a promotion he would normally be entitled to, or shows favouritism toward him when transferring employees or assigning work.</p> <p>Intimidation by an association An association that acts in an arbitrary or discriminatory manner when making employment references with respect to employees it represents also contravenes the first paragraph.</p> <p>Interpretation As well, a person intimidates another person when the person pressures a third party in any way to do any of the actions prohibited by the first paragraph.</p>

Union Membership/Dues as a Mandatory Condition of Employment

In *Lajoie c. Syndicat des employées & employés de syndicats & organismes collectifs du Québec (SEESOCQ)*¹², the complainant requested the reimbursement of a portion of his union dues by making a claim in Small Claims Court. He believed that his union dues had been raised secretly and that the union did not follow the proper procedure to change the amount deducted from his pay. In response, the union insisted that the question of union dues was covered under section 47 of the *Code* and as such, the *Commission des relations du travail* (“CRT”) was the competent Tribunal for the matter. The Small Claims Court decided that the matter should indeed be decided by the CRT.

In *Tremblay c. Association unie des compagnons & apprentis de l’industrie de la plomberie & de la tuyauterie de Chibougamau-Chapais, Saguenay-lac St-Jean & Côte Nord (Locale 500)*¹³, the complainant stated that he was discriminated against when he was expelled from the union and was no longer given work as a result of his not being a union member. In defence, the union made reference to *An Act Respecting Labour Relations, Vocational Training and Workforce Management in the Construction Industry* which states that a construction worker must be a member of a union in order to work in the construction industry in Quebec. In addition, it made reference to the recent Supreme Court of Canada judgment which confirmed the constitutionality of this section in *R. v. Advance Cutting & Coring*. Furthermore, the union stated that he was no longer a member since he did not pay his union dues and had not made any efforts to rectify the situation. The Court held that there was no discrimination in this case.

In *Syndicat de l’hôtellerie & de la restauration, métallos 9400 c. Manoir St-Castin*¹⁴, the union alleged that the employer was not following the collective agreement provision regarding the deduction of union dues when it refused to use one of the two methods of deduction, namely the percentage method, and insisted on solely providing a fixed amount. Although the employer had previously used both the percentage and fixed amount methods in accordance with the collective agreement, the new pay system software did not allow the employer to use the percentage method. The subject of the arbitration was the correct interpretation of section 47 of the *Quebec Labour Code* which states that “An employer must withhold...the amount stated as an assessment by such association”. The arbitrator decided that the correct interpretation of section 47 would obligate the employer to respect both formulas in the collective agreement despite the new pay system.

In *R. v. Advance Cutting & Coring Ltd*¹⁵, the Court dismissed a *Charter* challenge by a 5:4 majority, which was brought by a group of contractors, real estate promoters and construction workers. Section 119.1 of the *Quebec Act Respecting Labour Relations, Vocational Training and Manpower Management in the Construction Industry* obligates all workers in the construction industry to become a member of one of five designated unions in order to work. The contractors were charged with the violation of section 119.1 when they hired non-union workers. The latter were also charged for having accepted work without the proper designation. The appellants argued that the Act’s complex collective bargaining provisions breached the right to freedom of association guaranteed by s. 2(d) of the *Charter*. The appellants did not, however, present any evidence that the legislation imposed any form of ideological conformity or threatened any liberty interest. Even if the legislation infringed the right not to associate, it was justified under s. 1 of the *Charter*. Legislatures are entitled to a substantial degree of latitude in settling social and economic policy issues. Courts should avoid second-guessing

¹² CarswellQue 13115 (C.Q., Dec 04, 2006).

¹³ CarswellQue 12017 (C.S.Q., Oct 27, 2006)

¹⁴ CarswellQue 14087 (T.A. Que, Dec 2., 2008)

¹⁵ [2001] 3 S.C.R. 209, 2001 SCC 70.

legislatures on controversial and complex political choices, especially in the area of labour relations¹⁶.

Exemption on Religious Grounds for Union Dues/Check-off

There is no legislative exemption from union membership or payment of union dues on the basis of religious belief.

Construction Specific Provisions

The construction specific legislation, *An Act Respecting Labour Relations, Vocational Training and Workforce Management in the Construction Industry* has been addressed in Section 1 of this material.

¹⁶ Ontario Bar Association, “Administrative Law Newsletter”, Volume 10, No. 2, February 2002.

Saskatchewan

Relevant legislation: *Trade Union Act*.

Jurisdiction Comparison Chart

Statutory Provisions regarding union dues?

Answer: Yes

Dues mandatory, union request, or negotiable?

Answer: Upon union's request

<i>Province</i>	<i>Language</i>
SK	32(1) Upon the request in writing of an employee, and upon request of a trade union representing the majority of employees in any bargaining unit of his employees, the employer shall deduct and pay in periodic payments out of the wages due to the employee, to the person designated by the trade union to receive the same, the union dues, assessments and initiation fees of the employee, and the employer shall furnish to that trade union the names of the employees who have given such authority.

Specific language for written employee authorization for union dues?

Answer: No Statutory Provision

<i>Province</i>	<i>Language</i>
SK	No Statutory Provision

Union membership as condition of employment?

Membership mandatory, on union request, or negotiable into CA?

Answer #1: Yes

Answer #2: Upon union's request

<i>Province</i>	<i>Language</i>
SK	36(1) Upon the request of a trade union representing a majority of employees in any appropriate unit, the following clause shall be included in any collective bargaining agreement entered into between that trade union and the employer concerned, and, whether or not any collective bargaining agreement is for the time being in force, the said clause shall be effective and its terms shall be carried out by that employer with respect to such employees on and after the date of the trade union's request until such time as the employer is no longer required by or pursuant to this Act to bargain collectively with that trade union:

	<p>Every employee who is now or hereafter becomes a member of the union shall maintain his membership in the union as a condition of his employment, and every new employee whose employment commences hereafter shall, within 30 days after the commencement in his employment, apply for and maintain membership in the union, and maintain membership in the union as a condition of his employment, provided that any employee in the appropriate bargaining unit who is not required to maintain his membership or apply for and maintain his membership in the union shall, as a condition of his employment, tender to the union the periodic dues uniformly required to be paid by the members of the union;</p>
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***Union members as preferred candidates in hiring policy?
Membership mandatory, on union request, or negotiable into CA?***

- Answer #1: Yes
Answer #2: Upon negotiation

<i>Province</i>	<i>Language</i>
SK	<p>11(1) It shall be an unfair labour practice for an employer, employer's agent or any other person acting on behalf of the employer: (e) to discriminate in regard to hiring or tenure of employment or any term or condition of employment or to use coercion or intimidation of any kind, including discharge or suspension or threat of discharge or suspension of an employee, with a view to encouraging or discouraging membership in or activity in or for or selection of a labour organization or participation of any kind in a proceeding under this Act, and if an employer or an employer's agent discharges or suspends an employee from his employment and it is shown to the satisfaction of the board that employees of the employer or any of them had exercised or were exercising or attempting to exercise a right under this Act, there shall be a presumption in favour of the employee that he was discharged or suspended contrary to this Act, and the burden of proof that the employee was discharged or suspended for good and sufficient reason shall be upon the employer; but nothing in this Act precludes an employer from making an agreement with a trade union to require as a condition of employment membership in or maintenance of membership in the trade union or the selection of employees by or with the advice of a trade union or any other condition in regard to employment, if the trade union has been</p>

	designated or selected by a majority of employees in any such unit as their representative for the purpose of bargaining collectively;
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ULP for an employer to fire expelled union member?

Answer: Yes, provided that membership is not available to the employee and the employee has paid the requisite union initiation fees and periodic dues.

<i>Province</i>	<i>Language</i>
SK	11(1) It shall be an unfair labour practice for an employer, employer's agent or any other person acting on behalf of the employer: (p) to discharge an employee for failure to acquire or maintain membership in a trade union, where such membership is a condition of employment, if the employee complies with subsection 36(3).

ULP for a union to force an employer to expel a union member?

Answer: Yes, unless employee refuses to pay fees and dues.

<i>Province</i>	<i>Language</i>
SK	11(2) It shall be an unfair labour practice for any employee, trade union or any other person: (e) to seek or take steps to have an employee discharged for failure to acquire or maintain membership in a trade union, where such membership is a condition of employment, if the employee complies with subsection 36(3);

Third party interference in membership contemplated?

Answer: Yes

<i>Province</i>	<i>Language</i>
SK	(2) It shall be an unfair labour practice for any employee, trade union or any other person: (a) to interfere with, restrain, intimidate, threaten or coerce an employee with a view to encouraging or discouraging membership in or activity in or for a labour organization, but nothing in this Act precludes a person acting on behalf of a trade union from attempting to persuade an employer to make an agreement with that trade union to require as a condition of employment membership or maintenance of membership in the trade union or the selection of employees by or with the advice of a trade union or any other condition in regard to employment, if such trade union has been designated or selected by a majority of employees in an appropriate unit as their representative for the purpose of bargaining collectively;

Union Membership/Dues as a Mandatory Condition of Employment

We are aware of only one case from Saskatchewan in which plaintiffs challenged the constitutionality of s. 36 of the *Trade Union Act*, which provides for compulsory payment of union dues and allows for compulsory union membership in certain situations. In *Strickland v. Ermel*, [1992] S.J. No. 267 (Sask. Q.B) the plaintiffs were engineers who were previously employed by several technical institutes run by the government of Saskatchewan. They were previously un-unionized until and government created the Saskatchewan Institute of Applied Science and Technology, (“SIAST”) which amalgamated the former separate institutes. After the SIAST became unionized, the plaintiffs objected to the requirement to pay union dues and join the union. Particularly, they challenged s. 36, which requires maintenance of union dues for all employees and union membership for certain employees as a condition of employment. “Those persons who are union members at the time s. 36 is invoked are required to maintain their membership and new employees are required to join the union and continue membership.” *Ibid*. The court considered whether s. 36 violated s. 2(d) of the *Canadian Charter of Rights and Freedoms*, and found that it did not. It relied on *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211 and reasoned that many provinces have compulsory union membership provisions in their legislation so Saskatchewan’s law was acceptable.

Exemption on Religious Grounds for Union Dues/Check-off

Yes, the *Trade Union Act* provides for a religious exemption at s. 5(1), a subsection of the provision that enumerates the general powers of the board:

Powers of board:

5 The board may make orders:

(1) excluding from an appropriate unit of employees an employee whom the board finds, in its absolute discretion, objects;

- (i) to joining or belonging to a trade union; or
- (ii) to paying dues and assessments to a trade union;

as a matter of conscience based on religious training or belief during such period that the employee pays:

- (iii) to a charity mutually agreed upon by the employee and the trade union that represents a majority of employees in the appropriate unit; or
- (iv) where agreement cannot be reached by these parties, to a charity designated by the board;

an amount at least equal to the amount of dues and assessments that a member of that trade union is required to pay to the trade union in respect of such period;

Construction Specific Provisions

There are no specific provisions in the *Trade Union Act* that apply specifically to the construction industry.