

HOW TO FEDERAL AND TERRITORIES | NON-CONSTRUCTION File An Unfair Labour Practice Complaint

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Employees, whether unionized or not, who want to be more informed, should refer fellow employees to this web site and may certainly download, print, copy, transmit and distribute these materials to fellow employees or any interested parties by any means whatsoever. You do not need to contact us for permission to do so.

Employers may do the same, for management training and communication purposes, whether within their organization or with other interested parties. In some situations, employers may provide these materials to their employees. However, we suggest, in the strongest possible terms, that you only do so in consultation with a labour lawyer who knows your individual situation.

Unions may do the same, for training and communication purposes, whether within their union or with other interested parties such as their Members and or non-Members they may represent.

For help, call LabourWatch TOLL-FREE at

1-888-652-2687

INTRODUCTION

At this time there is no "Employee Advisor or Ombudsman" funded by taxpayers or union dues to help you address concerns about a Union in the Federal sector. If you have a problem with a Union's actions, that your Employer cannot address with the Canada Industrial Relations Board and the Union, you are expected to take it up with the Union or go to the CIRB on your own, or with a lawyer. Generally, Employees are discouraged from approaching their Employer regarding a Union's conduct.

Similarly, Federally regulated Employers are discouraged from offering assistance to you if you have concerns with the Union's actions. While they may not, in most situations, pay legal fees of the employees, there are times that Unfair Labour Practices (ULP) against a Union could be raised by an employer. These situations are unusual so please read [Question #1](#) of our Federal and Territories Unfair Labour Practices FAQs - in fact print and read all nine of the ULP FAQs.

While there are many sections of the Canada Labour Code about Unfair Labour Practices, most relate to the relationship between Employers and the Union. We will only be addressing those between Employees and the Union. The Union will provide significant help to Employees who want to file a ULP against the Employer and LabourWatch does not attempt to duplicate the excellent information and resources available to Employees from Unions.

Note: Some concerns unionized Employees have with a Union may have to be first addressed through your Union's internal procedures. Only after coming to the end of the internal process can you go to the CIRB and file a Duty of Fair Representation (DFR) Complaint. Contact the CIRB for DFR information as LabourWatch does not yet have DFR materials online. Click [here](#) for Canada Industrial Relations Board - [DFR materials](#).

GET THE FORMS

The CIRB does not have a Form specifically for Employees to file a ULP. LabourWatch has created one for Employees to use.

Given the difficulty the average Employee may have with any legislation such as the Canada Labour Code, and its Regulations, completing the Form will require that you have a copy of our "How To Guide" because you will need to know which section of the Canada Labour Code you are saying has been violated. Another good resource for filing a ULP complaint is available on the CIRB website - [Information Circular #5-01](#).

Our Download is only meant to address situations where you believe a Union has violated the Canada Labour Code regarding a Union's conduct towards employees it is trying to unionize or with unionized Employees the Union actually represents.

COMPLETE THE FORMS

The first few sections of the Form are easy, requiring primarily names, addresses, phone and fax numbers. There is a section for "Counsel or Representative". If you feel that filing a ULP it is too complicated please contact one of the Employee Advisors in your area - see the [Contacts](#) section of our website.

You will be required to state the section of the Canada Labour Code that you claim has been violated, they will be one of these:

- Section 50 - Union must meet and make every effort to bargain collectively and enter into a collective agreement.
- Section 69 - Union must keep referral information in a conspicuous place.
- Section 87.3 (1) & (3) - Strike vote must be by secret ballot and employees must be given a "reasonable opportunity" to participate in a vote before a strike is called.
- Section 95 (a) to (j) - There are many conditions within this section and they are detailed at the end of this document. For section 95 (f) or (g) some additional information will be required and the timing for

filing your ULP is different for these two sections.

- Section 96 – Coercion and intimidation.
- Section 110 – Union required to provide financial statements to members.

Each of these sections should be reviewed before completing your ULP complaint.

TIMING THE FILING OF YOUR ULP COMPLAINT

The CIRB states that an Unfair Labour Practice Complaint should be filed no later than 90 days from "the date on which you knew, or in the opinion of the CIRB ought to have known", of the incident(s) leading to the complaint. In an organizing campaign, file your ULP as soon as possible as it may affect the organizing campaign. Same in a decertification campaign.

There is a special timing provision in the Canada Labour Code relating to complaints under section 95 (f) and (g). These deal with treatment like expulsion, fines, and discriminatory application of the Union's rules against you. The CIRB bases the allowable time to file a ULP on the internal procedures of your Union. We have the detailed wording of this section at the end of this document.

DELIVER YOUR FORMS

You must deliver the Forms to the CIRB. You can deliver them by, hand, mail, registered mail, courier or fax. The various offices of the CIRB addresses and fax numbers can be found on their [website](#).

If your complaint is being made during an organizing or decertification campaign we suggest sending by fax as time limits are very tight and your complaints could affect the campaign in your favour.

WHAT HAPPENS NEXT?

Once a CIRB panel has considered the evidence and arguments presented either at a hearing or by way of written submissions, it will arrive at a decision. That decision will then be sent to the parties in writing. In some cases, the CIRB may choose to give its decision orally at the conclusion of the hearing, to be confirmed in writing eventually.

If the CIRB upholds a Complaint, it may order a remedy that is not aimed at punishing the party that committed a violation, but rather at putting the affected employees in the position they would have been in had the violation not occurred. The remedies could include compensation to the employee for lost pay, reinstatement of the employee, or revocation of disciplinary action taken. It could lead to the rejection of the Union's application for certification, the rejection of cards that could mean an automatic certification based on cards will now be voted on or an application will not be voted on because there are not enough legitimate cards for the Union to obtain a vote.

The CIRB does not have the power to fine a party who has been found to be in violation of the Canada Labour Code.

**Unfair Labour Practice Complaint Against a Union
CANADA LABOUR CODE**



Complainant (i.e. Employee) Information

Name: _____
Address: _____
Telephone Number (s) _____ Fax: _____

Counsel or representative (if applicable)

Name: _____
Address: _____
Telephone Number (s) _____ Fax: _____

Name and address of others who may be affected by the application

Name: _____
Address: _____
Telephone Number (s) _____ Fax: _____

Name: _____
Address: _____
Telephone Number (s) _____ Fax: _____
Attach another page if required

Section of the Code under which the application is being made:

- Section 50
- Section 69
- Section 87.3 (1) & (3)
- Section 95 (a) to (j)
- Section 96
- Section 110

Full particulars of the facts, relevant dates and grounds for the application:

Where a complaint is being made against a Union under section 95(f) or (g) of the Code, a description is required of efforts you have made to resolve this matter through your Union's internal grievance procedures. Explain those efforts here:

List all documents in chronological order that support your complaint, and attach copies of listed documents with this complaint:

If applicable, list the date and description of any order or decision of the CIRB relating to the application:

A description of the order or decision being sought by the applicant - what would you like the Board to do about this?

The following are excerpts from the Canada Labour Code defining what an Unfair Labour Practice is, against a Union.

50. Where notice to bargain collectively has been given under this Part,

(a) the bargaining agent and the employer, without delay, but in any case within twenty days after the notice was given unless the parties otherwise agree, shall

(i) meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith, and

(ii) make every reasonable effort to enter into a collective agreement; and

(b) the employer shall not alter the rates of pay or any other term or condition of employment or any right or privilege of the employees in the bargaining unit, or any right or privilege of the bargaining agent, until the requirements of paragraphs 89(1)(a) to (d) have been met, unless the bargaining agent consents to the alteration of such a term or condition, or such a right or privilege.

69. (1) In this section, “referral” includes assignment, designation, dispatching, scheduling and selection.

(2) Where, pursuant to a collective agreement, a trade union is engaged in the referral of persons to employment, it shall establish rules for the purpose of making such referrals and apply those rules fairly and without discrimination.

(3) Rules applied by a trade union pursuant to subsection (2) shall be kept posted in a conspicuous place in every area of premises occupied by the trade union in which persons seeking referral normally gather.

87.3

(1) Unless a lockout not prohibited by this Part has occurred, a trade union may not declare or authorize a strike unless it has, within the previous sixty days, or any longer period that may be agreed to in writing by the trade union and the employer, held a secret ballot vote among the employees in the unit and received the approval of the majority of the employees who voted.

(3) A vote held under subsection (1) or (2) must be conducted in such a manner as to ensure that those employees or employers who are eligible to vote are given a reasonable opportunity to participate in the vote and to be informed of the results.

95. No trade union or person acting on behalf of a trade union shall

(a) seek to compel an employer to bargain collectively with the trade union if the trade union is not the bargaining agent for a bargaining unit that includes employees of the employer;

(b) bargain collectively for the purpose of entering into a collective agreement or enter into a collective agreement with an employer in respect of a bargaining unit, if that trade union or person knows or, in the opinion of the Board, ought to know that another trade union is the bargaining agent for that bargaining unit;

(c) participate in or interfere with the formation or administration of an employers’ organization;

(d) except with the consent of the employer of an employee, attempt, at an employee's place of employment during the working hours of the employee, to persuade the employee to become, to refrain from becoming or to cease to be a member of a trade union;

(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;

(f) expel or suspend an employee from membership in the trade union or deny membership in the trade union to an employee by applying to the employee in a discriminatory manner the membership rules of the trade union;

(g) take disciplinary action against or impose any form of penalty on an employee by applying to that employee in a discriminatory manner the standards of discipline of the trade union;

(h) expel or suspend an employee from membership in the trade union or take disciplinary action against or impose any form of penalty on an employee by reason of that employee having refused to perform an act that is contrary to this Part;
or

(i) discriminate against a person with respect to employment, a term or condition of employment or membership in a trade union, or intimidate or coerce a person or impose a financial or other penalty on a person, because that person

(i) has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Part,

(ii) has made or is about to make a disclosure that the person may be required to make in a proceeding under this Part,
or

(iii) has made an application or filed a complaint under this Part.

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.

110. (1) Every trade union and every employers' organization shall, forthwith on the request of any of its members, provide the member, free of charge, with a copy of a financial statement of its affairs to the end of the last fiscal year, certified to be a true copy by its president and treasurer or by its president and any other officer responsible for the handling and administration of its funds.

(2) Any financial statement provided under subsection (1) shall contain information in sufficient detail to disclose accurately the financial condition and operations of the trade union or employers' organization for the fiscal year for which it was prepared.

(3) The Board, on the complaint of any member of a trade union or employers' organization that it has failed to comply with subsection (1), may make an order requiring the trade union or employers' organization to file with the Board, within the time set out in the order, a statement in such form and with such particulars as the Board may determine.

(4) The Board may make an order requiring a trade union or employers' organization to provide a copy of a statement filed under subsection (3) to such members of the trade union or employers' organization as the Board in its discretion directs.