

HOW TO ONTARIO | CONSTRUCTION File An Unfair Labour Practice Complaint

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The LabourWatch web site and all materials provided by it are intended to provide information of general interest to the public.

They are not intended to offer legal or consulting advice. Accessing information or documents from the LabourWatch web site is not intended to create a solicitor-client relationship.

Although we try to ensure the information we provide is accurate, we cannot guarantee that it is complete, correct, or timely, and make no warranties of any kind. The information on this web site should be used in combination with appropriate professional advice obtained from a qualified professional who understands your particular situation.

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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 Ontario. If you have a problem with a Union's actions that your Employer cannot address with the Ontario Labour Relations Board and the Union, you are expected to take it up with the Union or go to the OLRB on your own, or with a lawyer. Generally, Employees are discouraged from approaching their Employer regarding a Union's actions.

Similarly, Ontario 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, however, 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 Ontario Unfair Labour Practices FAQs. In fact, print and read all nine of the ULP FAQs.

While there are many sections of the Ontario Labour Relations Act about Unfair Labour Practices, most relate to the relationship between Employers and the Union. We will only address 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.

GET THE FORMS

The OLRB has a number forms specifically for Employees to file a ULP. LabourWatch has included all of them in this "How To Guide".

- **Form A33** - Application under Section 96 of the Ontario Labour Relations Act (Unfair Labour Practice)
- **Form A34** - Response to Application under Section 96 of the Ontario Labour Relations Act (Unfair Labour Practice)
- **Form C12** - Notice to Responding Party and/or Affected Party of Application under Section 96 of the Ontario Labour Relations Act (Unfair Labour Practice)

Given the difficulty the average Employee may have with any legislation such as the Ontario Labour Relations Act, completing the Forms will require that you know which section of the Ontario Labour Relations Act you say has been violated. We have included the excerpts from the Ontario Labour Relations Act at the end of this document, combined with an excerpt which outlines the ULP filing procedure.

Our "How To Guide" is only meant to address: situations where you believe a Union has violated the Ontario Labour Relations Act regarding a Union's conduct towards Employees it is trying to unionize, or with unionized Employees the Union actually represents.

COMPLETE THE FORMS

Form A33 is very well laid out, and contains considerable guidance within its text. We suggest that you print and review its contents before you proceed. *You will be required to complete only the **Form A33** and **Form C12**.* The **Form A34** is to be delivered blank to the Union.

You will be the "Applicant" and the Union will be the "Responding Party."

Be sure to complete the "Certificate of Delivery" at the end of **Form A33**. The OLRB considers this a separate form.

You have to deliver the originals to the OLRB, so when you make extra copies for the OLRB and the Union, be sure and keep copies of everything for your own records.

You will be required to state the section of the Ontario Labour Relations Act that you claim has been violated. You will find the complete list at the end of this document.

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

TIMING THE FILING OF YOUR ULP COMPLAINT

While the OLRB has no specific rules about how soon you have to file a ULP after the incident, they do have "discretion" to not hear your complaint, if you wait too long to file it. So, file it as soon as you can.

After you have delivered the copies of the Forms to the Union you must file the originals with the OLRB within five days of delivery.

DELIVER YOUR FORMS

TO THE UNION:

You must deliver a completed copy of **Forms A33** and **C12** (Names and dates must be completed by you) and a blank **Form A34**. You can hand-deliver, fax, courier, or use regular mail. Be aware that if the complaint is in regard to Union conduct during a certification drive you have very little time.

TO THE BOARD:

You must deliver to the OLRB one original and one copy of the **Form A33** within five days of delivering it to the Union.

WHAT HAPPENS NEXT?

If the OLRB 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, or, an application will not be voted on because there are not enough legitimate cards for the Union to obtain a vote.

Form A-33

LABOUR RELATIONS ACT, 1995

FIRE PROTECTION AND PREVENTION ACT, 1997

**APPLICATION UNDER SECTION 96 OF THE LRA OR 56.1 OF THE FPPA
(UNFAIR LABOUR PRACTICE)**

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

Applicant,

- and -

Responding Party.

The applicant states that the responding party has violated section(s)

_____ of the *Labour Relations Act, 1995*. (You must claim that some section OTHER THAN SECTION 96 has been violated.)

OR

_____ of the *Fire Protection and Prevention Act, 1997*. (You must claim that some section OTHER THAN SECTION 56.1 has been violated.)

The applicant requests the following:

(Describe **in detail** what you wish the Board to order as a result of this application.)

Form A-33

[Before you file your application with the Board, you must deliver to the responding party and to the person(s) named in paragraph 2(a): a copy of your application, a blank response form, and a Notice to Responding Party and/or Affected Party of Application under Section 96 of the LRA or 56.1 of the FPPA (Form C-12) with the names of the parties and the date inserted. You must also complete the attached Certificate of Delivery.]

3. In support of its request, the applicant relies on the following material facts:

(Include **all** of the material facts on which you rely including the circumstances, what happened, where and when it happened, and the names of any persons said to have acted improperly. Please note that you will not be allowed to present evidence or make any representations about any material fact that was not set out in the application and filed promptly in the way required by the Board's Rules of Procedure, except with the permission of the Board.)

4. Other relevant statements:

DATED _____.

**Signature for the
Applicant**

Form A-33

CERTIFICATE OF DELIVERY

1. I certify that the following documents were delivered to [] the responding party, and [] any affected party named in paragraph 2 of the application:

- Application under Section 96 of the LRA or 56.1 of the FPPA;
- a blank copy of a Response to Application under Section 96 of the LRA or 56.1 of the FPPA (Form A-34); and
- Notice to Responding Party and/or Affected Party of Application under Section 96 of the LRA or 56.1 of the FPPA (Form C-12) **with the names of the parties and the date inserted.**

Name of Organization and name
and title of person to whom
documents were delivered

Address or facsimile number to
whom documents were delivered

Name of Organization and name
and title of person to whom
documents were delivered

Address or facsimile number to
whom documents were delivered

[Complete either section 2 or section 3 or section 4 below.]

2. These documents were delivered by [] facsimile transmission or [] hand delivery on _____ at _____ a.m./p.m.
(Date)

3. These documents were sent by [] regular mail on _____ at _____ a.m./p.m.
(Date)

Form A-33

4. These documents were given to _____
(Name of Courier)

on _____ and I was advised that they would be
(Date)

delivered not later than _____ at _____ a.m./p.m.
(Date)

NAME: _____

TITLE: _____

SIGNATURE: _____

Form A-33

IMPORTANT NOTES

FRENCH OR ENGLISH

Si vous communiquez avec la Commission, vous avez le droit de recevoir des services en français et en anglais. Vous pouvez consulter les règles de la Commission, les formulaires et les bulletins d'information sur le site Web de la Commission au www.olrb.gov.on.ca ou composer le 416-326-7500 ou (sans frais) le 1 877 339-3335 pour de plus amples renseignements.

Veillez prendre note que la Commission n'offre pas de services d'interprétation dans les langues autres que le français et l'anglais.

You have the right to communicate with, and receive available services from, the Board in either English or French. You can access the Board's Rules, Forms and Information Bulletins from its website at www.olrb.gov.on.ca or by calling 416-326-7500. Please note that the Board does not provide translation services in languages other than English or French.

CHANGE OF ADDRESS

Please notify the Board immediately of any change in your address, phone or fax numbers, or your e-mail address. If you fail to notify the Board of any changes, correspondence sent to your last known address may be deemed to be reasonable notice to you and the application may proceed in your absence.

EMAIL

If you have provided an e-mail address with your contact information, the Board will in all likelihood communicate with you by e-mail from a generic out-going address. Please be advised that the Board is not yet equipped to receive communications from you by e-mail.

OLRB RULES OF PROCEDURE

The Board's Rules of Procedure describe how an application, response or intervention must be filed, what information must be provided and the time limits that apply. You can obtain a copy of the Rules from the Board's office at 505 University Avenue, 2nd Floor, Toronto, Ontario, M5G 2P1 (Tel: 416-326-7500) or from the Board's website.

ACCESSIBILITY and ACCOMMODATION

In accordance with the *Accessibility for Ontarians with Disabilities Act, 2005*, the Board makes every effort to ensure that its services are provided in a manner that respects the dignity and independence of persons with disabilities. Please tell the Board if you require any accommodation to meet your individual needs.

FREEDOM OF INFORMATION and PROTECTION OF PRIVACY

Form A-33

Personal information is collected on this form under the authority of the Board's governing legislation to assist in the processing of this application. In addition, information received in written or oral submissions may be used and disclosed for the proper administration of the Board's legislation and processes. The *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 F.31 governs the collection, use and disclosure of this information.

Any information that you provide to the Board that is relevant to this application must in the normal course be provided to the other parties to the proceeding.

HEARINGS and DECISIONS

Board hearings are open to the public unless the panel decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library, and over the internet at www.canlii.org, a free legal information data base. Some summaries and decisions may be found on the Board's website under *Highlights* and Recent Decisions of Interest.

Form A-34

File No. _____

LABOUR RELATIONS ACT, 1995

FIRE PROTECTION AND PREVENTION ACT, 1997

**RESPONSE TO APPLICATION
UNDER SECTION 96 OF THE LRA OR 56.1 OF THE FPPA
(UNFAIR LABOUR PRACTICE)**

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

Applicant,

- and -

Responding Party.

The responding party states in response to the application:

OR

_____ **intervenes in this**
(Name of Intervenor)

proceeding and states in response to the application:

1. (a) Correct name of the responding party/intervenor:

(b) Address, telephone number, facsimile number and e-mail address of the responding party/ intervenor:

Form A-34

4. The following statements in the application are not agreed to:

5. In support of its response, the responding party/intervenor relies on the following material facts:

(Include **all** of the material facts on which you rely including the circumstances, what happened, where and when it happened, and the names of any persons said to have acted improperly. Please note that you will not be allowed to present evidence or make any representations about any material fact that was not set out in the response and filed promptly in the way required by the Board's Rules of Procedure, except with the permission of the Board.)

6. In respect of the order(s) requested by the applicant, the responding party/intervenor states:

(Describe your position with respect to the order(s) requested by the applicant.)

7. **[Complete this section only if you are intervening in this case.]**

The intervenor claims to be affected by the application for the following reasons:

Form A-34

8. Other relevant statements:

DATED _____.

**Signature for the Responding
Party/Intervenor**

Form A-34

CERTIFICATE OF DELIVERY

1. I certify that a completed copy of the response was delivered to [] the applicant, [] the responding party, and/or [] any affected party named in paragraph 2 of the application or in a response filed by another party, as follows:

Name of Organization and name
and title of person to whom
documents were delivered

Address or facsimile number to
which documents were delivered

Name of Organization and name
and title of person to whom
documents were delivered

Address or facsimile number to
which documents were delivered

2. **[Complete this section only if you named an affected party in paragraph 2 of your response that was not named in paragraph 2 of the application or in a response filed by another party.]**

I certify that the following documents were delivered to the affected party named in paragraph 2 of this response, as follows:

- a copy of the application;
- a copy of the Notice to Responding Party and/or Affected Party of Application under Section 96 of the LRA or 56.1 of the FPPA (Form C-12);
- a completed copy of the response; and
- a blank copy of a Response to Application under Section 96 of the LRA or 56.1 of the FPPA (Form A-34).

Name of Organization and name
and title of person to whom
documents were delivered

Address or facsimile number to
which documents were delivered

Form A-34

[Complete either section 3 or section 4 or section 5 below.]

3. The documents were delivered by [] facsimile transmission or [] hand delivery on _____ at _____ a.m./p.m.
(Date)

4. The documents were posted by [] regular mail on _____ at _____ a.m./p.m.
(Date)

5. The documents were given to _____ on
(Name of Courier)

_____, and I was advised that they would be delivered
(Date)

not later than _____ at _____ a.m./p.m.
(Date)

NAME: _____

TITLE: _____

SIGNATURE: _____

Form A-34

IMPORTANT NOTES

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FREEDOM OF INFORMATION and PROTECTION OF PRIVACY

Form A-34

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Any information that you provide to the Board that is relevant to this application must in the normal course be provided to the other parties to the proceeding.

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Form C-12

LABOUR RELATIONS ACT, 1995

FIRE PROTECTION AND PREVENTION ACT, 1997

**NOTICE TO RESPONDING PARTY AND/OR
AFFECTED PARTY OF
APPLICATION UNDER SECTION 96 OF THE LRA OR 56.1 OF THE FPPA
(UNFAIR LABOUR PRACTICE)**

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

Applicant,

- and -

Responding Party.

TO THE RESPONDING PARTY AND/OR AFFECTED PARTY:

1. The applicant has initiated an application with the Ontario Labour Relations Board alleging that the responding party has contravened the Labour Relations Act.
2. **A copy of that application is enclosed.** Also enclosed is a blank Response to Application under Section 96 of the LRA or 56.1 of the FPPA (Form A-34).
3. This Notice and other material are being sent to you because you are the Responding Party or because you have been identified in paragraph 2 of the application or response as a person who may be affected by the application. **An application under the Labour Relations Act is a legal proceeding and may affect your legal rights and obligations. You may wish to seek legal advice immediately.**
4. **IF YOU ARE THE RESPONDING PARTY,** your response to the application must be filed in the offices of the Board, 2nd Floor, 505

Form C-12

University Avenue, Toronto, no later than ten (10) days after the Application was delivered to you.

You may file your Response with the Board by any method, except facsimile transmission, e-mail or registered mail.

You must also deliver a copy of your Response to the Applicant (and to any affected person identified in paragraph 2 of the application or paragraph 2 of your response) before you file your response with the Board. The response may be delivered by facsimile transmission, hand delivery, courier, or regular mail. You must also complete a Certificate of Delivery.

5. **IF YOU HAVE BEEN NAMED AS A PARTY WHO MAY BE AFFECTED BY THE APPLICATION**, and if you choose to participate in this case, you must file a response to the application in the offices of the Board, 2nd Floor, 505 University Avenue, Toronto, no later than ten (10) days after the Application under Section 96 of the LRA or 56.1 of the FPPA was delivered to you.

You may file your Response with the Board by any method, except facsimile transmission, e-mail or registered mail.

You must also deliver a copy of your Response to the Applicant and to the Responding Party (and to any other affected person identified in paragraph 2 of the application or paragraph 2 of any response) before you file your response with the Board. The response may be delivered by facsimile transmission, hand delivery, courier or regular mail. You must also complete a Certificate of Delivery.

6. Please note that periods of time referred to in this notice, in other Board forms and notices, and in the Board's Rules of Procedure do not include weekends, statutory holidays, or any other day that the Board is closed.
7. The Board's Rules of Procedure describe how a response must be filed with the Board, what information must be provided and the time limits that apply.

If you do not file your response and other required documentation in the way required by the Board's rules, the Board may not process your response and documents, and may decide the application without further notice to you. Furthermore, you may be deemed to have accepted all the facts stated in the application.

Form C-12

Please consult the Board's Rules of Procedure before completing your response. Copies of the Board's Rules may be obtained from the Board's offices located on the 2nd Floor at 505 University Avenue, Toronto, Ontario (Tel. (416) 326-7500) or downloaded from the Board's website at www.olrb.gov.on.ca.

8. The Board's Rules of Procedure require the Applicant to deliver the enclosed application to the responding party (and to any affected party named in the application) before filing it with the Board.

The Rules of Procedure also require that a responding party that identifies an affected party must deliver a copy of the application to that affected party.

Once the application is filed, the Board sends to the parties a confirmation of the filing, a Board file number, and information about the appointment of a Board Officer and the scheduling of a hearing (if any).

If you do not receive a confirmation of filing from the Board within seven (7) days after you receive the application, you may wish to contact the Board.

9. In the normal course, an Officer of the Labour Relations Board will contact you soon to arrange a time to meet and discuss the application with you.

DATED _____.

The Registrar
Ontario Labour Relations
Board

NOTE: All communications should be addressed to:

The Registrar
Ontario Labour Relations Board
505 University Avenue
2nd Floor
Toronto, Ontario
M5G 2P1
(416) 326-7500

Form C-12

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Form C-12

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Excerpts from the Ontario Labour Relations Act concerning Unfair Labour Practices against Unions.

73 (2) No trade union council of trade unions or person acting on behalf of a trade union or council of trade unions shall, so long as another trade union continues to be entitled to represent the employees in a bargaining unit, bargain with or enter into a collective agreement with an employer or an employers' organization on behalf of or purporting, designed or intended to be binding upon the employees in the bargaining unit or any of them.

74 A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.

75 Where, pursuant to a collective agreement, a trade union is engaged in the selection, referral, assignment, designation or scheduling of persons to employment, it shall not act in a manner that is arbitrary, discriminatory or in bad faith.

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.

77 Nothing in this Act authorizes any person to attempt at the place at which an employee works to persuade the employee during the employee's working hours to become or refrain from becoming or continuing to be a member of a trade union.

79

(7) A strike vote or a vote to ratify a proposed collective agreement or memorandum of settlement taken by a trade union shall be by ballots cast in such a manner that persons expressing their choice cannot be identified with the choice expressed.

(8) All employees in a bargaining unit, whether or not the employees are members of the trade union or of any constituent union of a council of trade unions, shall be entitled to participate in a strike vote or a vote to ratify a proposed collective agreement or memorandum of settlement.

(9) Any vote mentioned in subsection (7) shall be conducted in such a manner that those entitled to vote have ample opportunity to cast their ballots. If the vote taken is otherwise than by mail, the time and place for voting must be reasonably convenient.

87

(2) No trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions shall,
(a) discriminate against a person in regard to employment or a term or condition of employment;
or
(b) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that the person may testify in a proceeding under this Act or because the person has made or is about to make a disclosure that may be required in a proceeding under this Act or because the person has made an application or filed a complaint under this Act or has participated in or is about to participate in a proceeding under this Act.

88 No person shall wilfully destroy, mutilate, obliterate, alter, deface or remove or cause to be destroyed, mutilated, obliterated, altered, defaced or removed any notice that the Board has required to be posted during the period that the notice is required to be posted.

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- (1) Every trade union shall upon the request of any member furnish the member, without charge, with a copy of the audited financial statement of its affairs to the end of its last fiscal year certified by its treasurer or other officer responsible for the handling and administration of its funds to be a true copy, and, upon the complaint of any member that the trade union has failed to furnish such a statement, the Board may direct the trade union to file with the Registrar of the Board, within such time as the Board may determine, a copy of the audited financial statement of its affairs to the end of its last fiscal year verified by the affidavit of its treasurer or other officer responsible for the handling and administration of its funds and to furnish a copy of the statement to the members of the trade union that the Board in its discretion may direct, and the trade union shall comply with the direction according to its terms.
- (2) Where a member of a trade union complains that an audited financial statement is inadequate, the Board may inquire into the complaint and the Board may order the trade union to prepare another audited financial statement in a form and containing the particulars that the Board considers appropriate and the Board may further order that the audited financial statement, as rectified, be certified by a person licensed under the *Public Accounting Act, 2004* or a firm whose partners are licensed under that Act.

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- (1) In this section, “administrator” means any trade union, trustee or person responsible for the control, management or disposition of money received or contributed to a vacation pay fund or a welfare benefit or pension plan or fund for the members of a trade union or their survivors or beneficiaries.
- (2) The administrator, upon the request in writing of any member of the trade union whose employer has made payments or contributions into the fund or plan, shall furnish to the member without charge a copy of the audited financial statement required to be filed by subsection (2).
- (3) Where an administrator has failed to comply with subsection (2) or (3), upon a certificate of failure so to comply signed by the Minister or upon complaint by the member, the Board may direct the administrator to comply within the time that the Board may determine.

APPLICATION UNDER SECTION 96 OF THE ACT (UNFAIR LABOUR PRACTICE)

SPECIAL RULES THAT APPLY	None.
MATERIAL TO BE DELIVERED BY APPLICANT	<ul style="list-style-type: none"> • A completed copy of the Application under Section 96 of the Act (Form A-33); • A blank copy of a Response to Application under Section 96 of the Act (Form A-34); and • Notice to Responding Party and/or Affected Party of Application under Section 96 of the Act (Form C-12) with the names of the parties and the date inserted.
MANNER OF DELIVERY BY APPLICANT	Hand delivery, courier, regular mail, facsimile transmission or any other way agreed upon by the parties.
TIME LIMIT FOR FILING BY APPLICANT	Application to be filed not later than five days after the application was delivered to the responding party. Documents to be filed not later than ten days before the first date set for hearing.
NO. OF COPIES OF APPLICATION TO BE FILED	One signed original and one copy
MANNER OF FILING BY APPLICANT	Any manner except Registered Mail, e-mail or facsimile transmission.
MATERIAL TO BE DELIVERED BY RESPONDING PARTY	A completed copy of the Response to Application under Section 96 of the Act (Form A-34).
MANNER OF DELIVERY BY RESPONDING PARTY	Hand delivery, courier, regular mail, facsimile transmission or any other way agreed upon by the parties.
TIME LIMIT FOR FILING BY RESPONDING PARTY	Response to be filed not later than ten days after the application was delivered. Documents to be filed not later than ten days before the first date set for hearing.
NO. OF COPIES OF RESPONSE TO BE FILED	One signed original and one copy
MANNER OF FILING BY RESPONDING PARTY	Any manner except Registered Mail, e-mail or facsimile transmission.