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### CANADIAN LABOUR LAW

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### Publisher's Special Release Note 2021

The pages in this work were reissued in June 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the June 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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Available online in *LabourSource* and in print, **Canadian Labour Law, Second Edition** offers a complete and current analysis of collective bargaining laws as they apply to non-government employees across Canada. Labour relations statutes, labour board decisions and judicial cases for all jurisdictions are analyzed, covering a broad range of topics you normally wouldn't find in one resource.

## Highlights

### Recent court decisions, including:

- *Bragg Communications Inc v. Unifor*, 2021 FCA 59, 2021 CarswellNat 746, on the appropriateness of an enlarged bargaining unit and the *Vavilov* standard of judicial review; 4:11.
- *Canadian Union of Public Service, Local 5380 v. Quebec Coroner's Office*, 2021 CarswellQue 725, 2021 QCCA 961, on whether being the holder of a public office is incompatible with being an employee who can access collective bargaining; 6:6.
- *Red Chris Development Ltd v. United Steelworkers, Local 1-1937*, 2021 BCCA 152, 2021 CarswellBC 1117, on the board's exclusive role in bargaining unit determinations and the post-*Vavilov* judicial review standard of patent unreasonableness; 4:2, 4:21, 7:2, 7:53.
- *Turkiewicz v Ontario Labour Relations Board*, 2021 ONSC 1259, 2021 CarswellOnt 7823, on "key persons", significant intervening events, a related employer determination and the *Vavilov* standard of judicial review; 4:11, 8:6, 15:10.
- *Unifor Canada Local 594 v. Consumers' Co-operative Refineries Limited*, 2021 SKCA 34, 2021 CarswellSask 149, on a court's discretion to determine a "driver's exception" condition attached to an injunction as part of a restriction on the delay that could be imposed by picketers on those seeking to cross picket lines associated with a lawful strike at an employer's facility; 3:29, 11:9, 11:16.
- *United Food and Commercial Workers Union of Canada, Local 175 v. Silverstein's Bakery Ltd.*, 2020 ONSC 5649, 2020 CarswellOnt 13473, on an arbitral decision disclaiming jurisdiction to make requested orders against corporate directors under either the *Employment Standards Act* or Ontario *Business Corporation Act* and the standard of judicial review according to *Vavilov*; 4:19, 8:7.
- *United Nurses of Alberta v. Alberta Health Services*, 2021 ABCA 194, 2021 CarswellAlta 1257, on the test for *prima facie* discrimination in family status human right cases and the *Vavilov* standard of judicial review; 3:18, 4:19.

### Recent labour board decisions, including:

- *Applicant, Re*, 2021 CarswellAlta 415, on the policy considerations in refusing a request by a complainant in a duty of fair representation case to have his name masked as the board processed his complaint; 13:18.
- *Carpenters' District Council of Ontario, UBCJA v. Finesse Drywall Inc.*, 2021 CarswellOnt 4579, on the test of dependence for a short duration construction subcontractor to be treated as a dependent contractor; 6:2.
- *Certain Cancrew Employees and Cancrew Ltd., Re*, 2021 CarswellBC 209, 2021 BCLRB 10, on constitutional jurisdiction over the labour relations of those who harvest fish from coastal fish farms in British Columbia; 3:7.

- *CUPE, Local 5083 and GDI Services (Canada) LP, Re*, 2021 CarswellNB 114, on whether the loss of a janitorial services subcontract by an encumbent subcontractor upon a retendering of the contract by a building owner constituted the sale or transfer of a business to the winning replacement subcontractor; 8:4.
- *Labourers' International Union of North America, Ontario Provincial District Council v. Holland*, 2021 CanLII 67617 (ON LRB), on constitutional jurisdiction over the labour relations of a multi-national track welding and repair company which performed over 90% of its Canadian work for either of two inter-provincial railroads using a cutting-edge technology; 3:8.
- *SEIU, Local 2 and Tri-County Regional Centre for Education, Re*, 2021 CarswellNS 114, on the determination that membership card evidence will not be discounted or subjected to a representation vote because it was solicited on company premises and company time; 7:43.
- *Shahsavaran and Unifor, Local 1928, Re*, 2021 BCLRB 29, 2021 CarswellBC 508, on the duty of fair representation and the type of arbitrary union investigation attracting a labour board order of an independent review of the grievance at the union's expense with related directions; 10:50, 13:19.
- *Sheraton Vancouver Airport Hotel and Unite-Here, Local 40, Re*, 2020 CarswellBC 2824, 2020 BCLRB 121, on the test the board uses in considering a request under s. 139 of the Code to remove an employer from a previously agreed upon multi-employer bargaining structure; 10:24.
- *Smart, Local 296 Local 296 v. Vent Pro Mechanical Inc.*, 2021 Carswell-Sask 131, on when a mail-in ballot is deemed to have commenced; 7:53

## ProView Developments

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