Ontario

ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0393-25-U**

Robert Mathew Alexander, Applicant v Elementary Teachers' Federation of Ontario, Responding Party v Renfrew County District School Board, Intervenor

BEFORE: Danna Morrison, Vice-Chair

DECISION OF THE BOARD: September 8, 2025

1. This is an application under section 96 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") in which the applicant alleges that the Elementary Teachers' Federation of Ontario (the "Union") has breached section 74 of the Act in respect of his employment and the termination thereof by Renfrew County District School Board (the "Employer").

2. The Union filed a response and the Employer filed an intervention. Both have requested that the application be dismissed on a preliminary basis without a hearing for failing to establish a *prima facie* violation of the Act. The parties, with the assistance of a Board mediator, agreed to a schedule to file further submissions addressing this request, as well as a request by the applicant to strike certain portions of the Employer's intervention. All parties filed further submissions in accordance with the agreed upon timetable.

The Duty of Fair Representation

3. A duty of fair representation application is an unfair labour practice complaint alleging a violation of section 74 of the Act, which provides as follows:

> 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.

4. A plain reading of section 74 of the Act makes it clear that this section only regulates the representation of employees by trade unions. It does not place any obligations on employers or on any other party. Due to this, the Board will not make any finding about the appropriateness of the actions of an employer.

5. For a violation of section 74 of the Act to be established, whether in a *prima facie* review or on the merits, the union must be found to have acted in a manner which was arbitrary, discriminatory, or in bad faith in the representation of the applicant. In the oft-cited *Chrysler Canada Ltd.*, 1999 CanLII 20145 (ON LRB), the Board defined these terms as follows:

> (a) "arbitrary" means conduct which is capricious, implausible, or unreasonable in the circumstances. That is often demonstrated by a failure by the union to properly direct its mind to a situation, or to conduct a proper and meaningful investigation where one appears to be called for;
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> (b) "discriminatory" means distinguishing between or treating employees differently without good reason;
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> (c) "bad faith" is conduct motivated by hostility, malice, ill-will or dishonesty.

6. In order to establish a *prima facie* violation of section 74 of the Act, the Board must be satisfied that, based on the material facts pleaded by the applicant, the Union has acted in a manner which is arbitrary, discriminatory, or in bad faith.

The Applicant's Motion to Strike Portions of the Intervention

7. The applicant submits that the Employer's allegations at paragraphs 11-13 of its Intervention ought to be struck, asserting that those paragraphs describe the steps taken by the Employer to terminate the applicant's employment, enumerating the alleged improper conduct of the applicant which the Employer asserts justifies dismissal and the Employer's conclusion that the applicant's behaviour constituted harmful public displays. The applicant submits that nothing in these

paragraphs pertains to the actions taken by the Union and is, therefore, not matters which are before the Board. In support of this motion, the applicant relies on *Mary Spina*, 2025 CanLII 34562 (ON LRB), submitting that this case stands for the proposition that the Board will not consider allegations pertaining to whether or not an employer had just cause to terminate an employee's employment in a section 74 application.

8. The paragraphs that the applicant seeks to have struck are as follows (emphasis in the original pleadings):

> 11. On or about October 26, 2023 the Applicant was discharged from RCDSB employment for *just cause* after having engaged in repeated conduct and displays both on and off duty which ran contrary to the RCDSB's Equity Policies and/or the *Education Act* including, but not limited to Equity Policies/provisions designed to promote a *positive school climate inclusive and accepting of pupils of… any sex, sexual orientation, gender identity and/or gender expression* ["The Harmful Public Displays/Conduct"].
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> 12. The Applicant's just cause discharge followed:
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> (a) the RCDSB having received complaints about the Applicant's Harmful Public Displays/Conduct;
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> (b) the RCDSB having placed the Applicant on an administrative leave while it investigated complaints received;
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> (c) the RCDSB having met with the Applicant to discuss his Harmful Public Displays/Conduct (June 9, 2023), giving him an opportunity to respond to concerns raised and *counselling him against engaging in further Harmful Public Displays/Conduct;*
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> (d) the Applicant (subsequent to the June 9, 2023 meeting) *intensifying* the Harmful Public Displays/Conduct and the RCDSB receiving further complaints concerning same;
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> (e) the Applicant, subsequent to his *intensification* of the Harmful Public Displays/Conduct (as above), refusing to meet with the RCDSB pursuant to the standard terms and conditions (confidentiality) in place for investigative meetings;

> (f) the Applicant ultimately confirming in writing (on September 22, 2023) that he would *not* be adhering to the RCDSB's Conduct and Equity Policies, going forward, specifically those designed to promote "a *positive school climate inclusive and accepting of pupils of … any sex, sexual orientation, gender identity and/or gender expression*", asserting that he should be exempted therefrom on the basis of creed;
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> (g) the Applicant thereafter continuing to engage in Harmful Public Displays/Conduct.
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> 13. Contrary to what is alleged in the Application, the RCDSB's decision to discharge the Applicant from employment was (as set out in the October 26, 2023 termination letter) taken after careful consideration of the Applicant's September 22, 2023 correspondence and "the respective rights and obligations all impacted parties".

9. The applicant submits that these paragraphs ought to be struck on the basis that nothing contained therein pertains to the actions taken by the Union and is, instead, an attempt by the Employer to justify the applicant's dismissal. Since the Board is only concerned with the actions of the Union in a section 74 complaint, the applicant argues, the Board ought to save its resources by limiting pleadings to what is relevant.

10. In *Mary Spina, supra*, as it has in this decision, the Board reminded the parties that in a section 74 application, the Board is concerned only with the conduct of the Union.

11. While the impugned paragraphs in the Intervention do not touch on the actions of the Union, they do provide a context for the situation leading to this application. It bears noting that much of the applicant's own application sets out, in detail, meetings and discussions between the applicant and the Employer which do not touch upon the Union's conduct either. While those portions of the application attempt to explain why the Employer did not have just cause to terminate his employment, it appears that the underlying purpose of including those paragraphs is the same as the Employer's – to provide a context for the situation which resulted in the section 74 application being filed.

12. The Board makes no finding as to whether the Employer's reasons for terminating the applicant meet the standard of just cause. That is not the question before the Board. However, the fact that the

Employer did terminate the applicant's employment, asserting that it had just cause to do so, created the factual context underlying this application.

13. The Board declines to strike paragraphs 11-13 of the Intervention, but makes it clear that it does not make any finding as to whether that the Employer did – or did not – have just cause to terminate the applicant's employment. Rather, the Board accepts that the Employer relies on its position that it had just cause to terminate the applicant's employment, which led to a grievance being filed by the Union on behalf of the applicant. Neither the applicant nor the Union (nor the Employer, for that matter) are required to expend any time discussing whether the applicant's actions were harmful to the Employer or whether the Employer had just cause to terminate the applicant's employment except to the extent this may have been considered by the Union.

The No *Prima Facie* Case Motion

14. The requests of the Union and the Employer to dismiss this application for failing to establish a *prima facie* violation of section 74 of the Act are based on Rule 39.1 of the Board's Rules of Procedure, which provides as follows:

> 39.1 Where the Board considers that an application does not make out a case for the orders or remedies requested, even if all of the facts stated in the application are assumed to be true, the Board may dismiss the application without a hearing or consultation. In its decision, the Board will set out its reasons.

15. The Board will not dismiss an application for failing to make out a *prima facie* case unless it is clear, or plain and obvious, that it has no reasonable chance of success for establishing a violation of the Act based on the allegations made by the applicant. In conducting a *prima facie* review of an application, the Board assumes that all of the facts pleaded by the applicant are true and provable, and it does not consider any contradictory facts or defenses put forward by any other party. If the applicant's facts could not possibly constitute a contravention of the Act, then the Board will dismiss the application on a *prima facie* basis: see, for example*, Dofasco Inc.,* 2005 CanLII 26889 (ON LRB).

16. With those facts in mind, the Board will now review the relevant facts pleaded by the applicant, some of which are provided by way of context and do not relate to the conduct or actions of the Union.

The Facts Pleaded by the Applicant

17. The applicant was employed as a teacher in the Renfrew Country District School Board, most recently teaching grades 7 and 8 at the Cobden District Public School. As of October 26, 2023, the date his employment was terminated, he had been employed for 23 years. He was, at all relevant times, a member of the Union represented by the Renfrew County Teachers' Local. The applicant asserts that he has been a Christian since he was 17 years old and that he espouses biblical beliefs on various topics, including gender and sexuality.

18. On April 17, 2023, the principal of Cobden District Public School informed the applicant that he was being suspended and placed under investigation. The applicant pleads that no further details were provided to him at that time, although his Union representative informed him that his suspension and investigation were related to his social media posts and conduct online. The applicant pleads that he did not have any social media accounts at the time of his suspension and that he opened a Twitter account in May 2023 and used it to post Bible verses.

19. On June 9, 2023, the Employer's Superintendent of Human Resources met with the applicant and his Union representative for over three hours. At that meeting, the Superintendent reviewed the Employer's policies and guidelines related to human rights, equity and inclusion and stated that the applicant's conduct was contrary to these policies. She asked for the applicant's Twitter handle and asked him about posts he had made. The applicant was also questioned on his connection with various groups, as well as his association with individuals he met at a Christian conference.

20. On September 13, 2023, the applicant received a letter from the Superintendent stating that he was not complying with certain policies on affirming and celebrating the diversity of staff and students at the school and, in particular, that he was not in compliance with the Employer's policies of "… affirming and de-stigmatizing 2SLGBTQI+ histories and realities". The Superintendent stated that if the applicant did not adhere to the Employer's policies, he would be terminated from employment on a "just cause" basis. The applicant denies that he

created an unsafe environment for his students or staff and pleads that there were no allegations, at any time, that he did so.

21. On September 22, 2023, the applicant responded to the Employer in writing stating that his views on gender and sexuality were based on his sincerely held Christian beliefs which include the beliefs that there are only two genders – male and female; and that lying is a sin. He stated he could commit to nearly all of the Employer's policies, except for the provision that required him to "celebrate or affirm" student diversity as it relates to gender and sexuality. He requested a religious accommodation from that portion of the Employer's policies.

22. On October 26, 2023, the applicant attended a meeting with the Superintendent. Also present was his Union representative. At this meeting, the termination letter was read out and following the reading of the termination letter, the applicant pleads that the Union representative told him that there was no mention of the accommodation issue.

23. The applicant pleads that the Union commenced the grievance procedure by processing a grievance on his behalf. At the same time, the Union processed a grievance on behalf of his wife, who was also terminated for similar reasons.[1] He pleads that on September 18, 2023, he attended a conference call with his wife, their personal counsel, a Union representative, and Union counsel. The applicant pleads that Union counsel explained the grievance process to the applicant and his wife, and stated that the Employer policies may have Charter issues involved and acknowledged the applicant's religious beliefs but stated that people can interpret the Bible in many ways. On November 29, 2023, Union counsel informed the applicant and his wife that he had discussed the case with the highest level of Union staff and stated that the Union would file grievances but would not commit to proceeding to arbitration. He further stated that the Union would not seek an accommodation as part of the grievance, nor would it pursue the human rights issue against the Employer. On December 6, 2023, the applicant provided the Union with his comments on a draft grievance, advising that instead of reinstatement, he wished to receive compensation from

[1] The applicant's wife, Nicole Alexander, was also employed by the Renfrew County District School Board, albeit in a different school. She was also terminated on October 26, 2023 and her termination, and the Union's decision not to pursue a grievance to arbitration on her behalf, forms the subject matter of a separate section 74 application (Board File No. 0374-25-U). While many of the facts between the two applications overlap, given some differences, the Board will address them in separate decisions.

the Employer. He also noted his view that the Employer's behaviour ran contrary to the *Charter* and the *Human Rights Code*.

24. On December 14, 2023, Union counsel verbally presented a settlement offer to the applicant. The terms of the settlement included a full and final release and a non-disclosure agreement. The applicant advised the Union on December 15, 2023 that he would be rejecting the offer. On December 18, 2023, Union counsel filed a grievance on behalf of the applicant, taking the position that the Employer breached the collective agreement by unjustly and without cause terminating the applicant's employment, and seeking remedies, including either reinstatement or an order to compensate the applicant.

25. On March 14, 2024, the Union representative contacted the applicant and his wife, notifying them that the Union was in receipt of the allegations against them and providing them a chance to review the materials and take notes, and to discuss a response to the grievance. They were advised that Union counsel made an undertaking not to share or reproduce any of the materials. On April 9, 2024, the Union was authorized to allow the applicant and his wife to view the allegations against them at Union counsel's offices. They were permitted to take general notes, but were not allowed to make a copy.

26. On June 12, 2024, the applicant's personal counsel wrote to Union counsel to outline his concerns about the carriage of the grievance, providing the applicant's responses to the allegations made against him by the Employer, noting that the allegations were almost entirely related to his posts of Bible passages on social media and raising concerns that the applicant's human and *Charter* rights were breached by the Employer's refusal to accommodate him. Furthermore, the letter outlined what he describes as the absurdity of some allegations.

27. On August 23, 2024, the Union informed the applicant and his wife that the Union had obtained a legal opinion, had reviewed it internally, and would like to discuss it with them. The applicant requested that the Union provide them with its position on the grievances in writing. The Union representative responded that she was not clear what they were requesting, but that the Union is not required to produce the legal opinion. She stated that the purpose of the meeting was to discuss the decision the Union had made on the grievance and potential next steps.

28. On August 28, 2024, the Union representative and Union counsel met with the applicant, his wife, and their personal counsel. At that meeting, the Union informed them that the Union would not be referring their grievances to arbitration. When asked why the matter would not proceed, Union counsel replied that he provided a legal opinion to the Union. The applicant pleads, however, that no details on the content of the legal opinion were provided. When asked by their counsel the basis of this opinion, the applicant pleads that Union counsel only stated that he had carefully considered their cases.

29. On September 10, 2024, the applicant's personal counsel sent a letter to Union counsel requesting that the legal opinion be provided for review. Union counsel replied that the Union was not consenting to releasing the opinion, and that it had no obligation to do so.

30. The Union informed the applicant that while it would not refer the grievance to arbitration, it would try to negotiate a settlement. On September 13, 2024, the applicant replied that he would consider a settlement made in good faith, but that the Union ought to consider the human rights and *Charter* issues to maximize a settlement offer.

31. On October 2, 2024, the applicant filed an application with the Human Rights Tribunal of Ontario.

32. On November 1, 2024, the applicant received a call from Union counsel to discuss the Employer's settlement proposal. The proposal included a full and final release and non-disparagement and non-disclosure clauses. On November 18, 2024, the applicant informed Union counsel that he would not accept the settlement in its current form, as it required a non-disclosure agreement, which he would not agree to. On December 13, 2024, Union counsel informed the applicant that the Employer had an offer of settlement, and on December 14, 2024, Union counsel informed the applicant about the conditions the Employer imposed for sharing the draft settlement agreement – which included confidentiality and that the documents would not be directly disclosed to the applicant. On December 17, 2024, the applicant informed Union counsel that he was rejecting the offer of settlement, and Union counsel thereafter replied that he had informed the Employer and that the Union was withdrawing the grievances.

33. The present application was filed on May 2, 2025.

34. The applicant also pleads additional facts which describe the past relationship between him and the Union. These facts include: his refusal to engage in a work-to-rule campaign in 2003 on the basis of his religious beliefs which resulted in disciplinary sanctions imposed against him by the Union; and his refusal to engage in a one-day walk out in 2012 on the basis of his religious beliefs and his subsequent crossing of a picket line, which resulted in the Union conducting an investigation and imposing penalties against him for violating the Union's Constitution.

The Applicant's Submissions

35. The applicant pleads that by virtue of all of the conduct set out in his application, the Union breached its duty of fair representation owed to him by:

> (a) unfairly discriminating against him when, among other things, it (i) failed to advance his grievance because of his religious beliefs/status; (ii) failed to consider his extensive unblemished service record and the fact that the Employer provided no evidence of harm towards any students, (iii) failed to properly direct its mind to his circumstances and consider the situation fairly and objectively; and (iv) failed/refused to turn its mind to the *Code*- or *Charter*-based arguments that are available to him, despite them being raised by him;
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> (b) acting arbitrarily in a manner that is capricious, implausible and unreasonable when, among other things it (i) failed to advance his grievance, whether at all or because of his religious beliefs/status; (ii) refused to provide any reasons for refusing to bring his grievance to arbitration; and
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> (c) acting in bad faith, motivated by hostility, malice and ill-will, in light of the circumstances described above, including the past relationship between the applicant and the Union. The applicant submits that the Union never had the intention of properly considering and advancing his grievance, but rather merely went through the motions to appear that it had acted fairly.

Analysis and Decision

36. Given that the Board is conducting a *prima facie* review, it will not consider the facts pleaded by either the Union or the Employer. Suffice to say that the Union and the Employer, while they do not dispute many of the facts pleaded by the applicant, they do dispute the applicant's characterization of much of the facts, and particularly, his views on the merits and strength of his grievance.

37. While the Union has pleaded facts in its response (and the Employer in its intervention) which could result in a finding that the Union did not violate the duty of fair representation, the Board cannot consider those facts and defences in a *prima facie* review.

38. The Board has reviewed the applicant's pleadings in this matter and cannot determine, at this time, that it is plain and obvious, based only on the pleadings of the applicant, that there is no reasonable chance of success for establishing a violation of the Act. As a result, I am satisfied that the applicant has met the minimal test for pleading a *prima facie* case. Accordingly, this matter is referred to the Registrar to be scheduled for a Consultation.

39. Given the significant factual overlap between this application and a similar application filed by the applicant's wife, forming the subject matter of Board File No. 0374-25-U, the Board directs that these two applications be listed for Consultation together.

40. I am not seized.

"Danna Morrison"
for the Board