



ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **0374-25-U**

Nicole 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 her 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;
- (b) "discriminatory" means distinguishing between or treating employees differently without good reason;
- (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 11-15¹ of its Intervention ought to be struck, asserting that the allegations are inflammatory and irrelevant to the issues raised by

¹ In the Applicant's July 4, 2025 submissions, the applicant asserts that she is seeking to strike paragraphs 11-15 in one portion of the submissions, but paragraphs 11-13 later in the submissions. The Board will assume for the purposes of this decision that she intended to request that paragraphs 11-15 be struck.

the applicant against the Union in this proceeding. 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 comment 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 Applicant's Harmful Conduct"].

12. The Applicant's Harmful Conduct included, without limitation:

(A) on more than one occasion, tearing down 2SLGBTQI+ positive RCDSB school signage and doing so in a manner described as aggressive and inciting of hatred;

(B) otherwise showing disdain for 2SLGBTQI+ in schools – for example, by regularly making negative comments and expressions when 2SLGBTQI+ issues were raised and/or 2SLGBTQI+ materials were posted;

(C) instructing colleagues not to educate RCDSB students about 2SLGBTQI+ dates of significance recognized by RCDSB.

13. When the RCDSB attempted to meet with the Applicant in the course of its investigative process, the Applicant refused to agree to the standard terms for investigative meetings (confidentiality).

14. When the RCDSB extended the Applicant an opportunity to commit to adhering to RCDSB Equity Policies going forward (without prejudice to discipline to be invoked

for misconduct, to date) she confirmed in writing (on September 22, 2023) that she would not be doing so – asserting that she should be exempt therefrom on the basis of creed.

15. 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 her 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 11-15 of the Intervention, but makes it clear that it does not make any finding as to whether 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 County District School Board and had been for three years as of the date her employment was terminated on October 26, 2023. She taught French

Immersion kindergarten at the Eganville and District Public School and was, at all relevant times, a member of the Union, with her local union representative for the school district where she was employed being the Renfrew County Teachers' Local. The applicant asserts that she has been a Christian for over 25 years and espouses biblical beliefs on various topics, including gender and sexuality.

18. On May 5, 2023, the applicant arrived at work and removed a Pride poster from her classroom door, placing it in a cupboard. Later that morning, she was called to a meeting with the Superintendent of Human Resources, who asked whether the applicant had removed the Pride poster. The applicant admitted that she had done so. At this point, the applicant was informed that she was placed under investigation and the Union was notified. On June 9, 2023, the applicant and her husband² met with the Superintendent and a member of the human resources department. While she does not explicitly state so in her pleadings, it appears that a Union representative was also in attendance. The applicant asserts that the meeting was terminated before any questions were asked on the basis that the applicant refused to agree to a confidentiality agreement regarding the investigation into her suspension. At this meeting, the applicant alleges that she informed the Superintendent that her religious beliefs preclude her from "promoting a LGBT agenda", which is why she removed the Pride poster from her classroom door.

19. On September 13, 2023, the applicant received a letter from the Superintendent stating that she was of the view that the applicant was not complying with certain policies on affirming and celebrating the diversity of students and, in particular, that the applicant 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 policies, she would be terminated from employment. On September 22, 2023, the applicant provided a letter in response stating that her views on gender and sexuality were based on her sincerely held Christian beliefs, which include the beliefs that there are only two genders; and that lying is a sin. She stated that she could commit to nearly all of the Employer's

² The applicant's husband, Robert Mathew Alexander, was also employed by the Renfrew County District School Board, albeit in a different school. He was also terminated on October 26, 2023 and his termination, and the Union's decision not to pursue a grievance to arbitration on his behalf, forms the subject matter of a separate section 74 application (Board File No. 0393-25-U). While many of the facts between these two applications overlap, given some differences, the Board will address them in separate decisions.

policies, except for the provision that required her to “celebrate or affirm” student diversity as it relates to gender and sexuality. She then requested a religious accommodation from the Employer’s policies that she affirm and celebrate LGBTQ issues.

20. On October 26, 2023, the applicant attended a meeting with the Superintendent. Also present was her 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 her that there was no mention of the accommodation issue. The applicant pleads that the Union did not participate in the accommodation process.

21. The applicant pleads that the Union commenced the grievance procedure by processing a grievance on her behalf. She pleads that on September 18, 2023, she attended a conference call with her husband, their personal counsel, a Union representative, and Union counsel. The applicant pleads that Union counsel explained the grievance process to the applicant and her husband, and stated that the Employer’s 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 her husband 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 her comments on a draft grievance, advising that instead of reinstatement, she wished to receive compensation from the Employer. She also noted her view that the Employer’s behaviour ran contrary to the *Charter* and the *Human Rights Code*.

22. On December 14, 2023, Union counsel presented a settlement offer to the applicant verbally. 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 she 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.

23. On March 14, 2024, the Union representative contacted the applicant and her husband, 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 her husband 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.

24. 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 her by the Employer, noting that the allegations were vague, and raising concerns that the applicant's human and *Charter* rights were breached by the Employer's refusal to accommodate her.

25. On August 23, 2024, the Union informed the applicant and her husband 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 on what they were requesting, but that the Union is not required to produce the legal opinion. She stated that the purpose of the meeting is to discuss the decision the Union made on the grievance and potential next steps.

26. On August 28, 2024, the Union representative and Union counsel met with the applicant, her husband, 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.

27. 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.

28. 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 she 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.

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

30. 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 she would not accept the settlement in its current form, as it required a non-disclosure agreement, which she 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 she was rejecting the offer of settlement, stating that the broad non-disclosure clause made further negotiations futile.

31. On December 17, 2024, Union counsel advised the applicant that he had informed the Employer, and that the Union was withdrawing the grievance. The present application was filed on May 1, 2025.

The Applicant's Submissions

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

- (a) unfairly discriminating against her when, among other things, it (i) failed to advance her grievance because of her religious beliefs/status; (ii) failed to consider her 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 her 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 her, despite them being raised by her;

- (b) acting arbitrarily in a manner that is capricious, implausible and unreasonable when, among other things it (i) failed to advance her grievance, whether at all or because of her religious beliefs/status; (ii) refused to provide any reasons for refusing to bring her grievance to arbitration; and
- (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 her grievance, but rather merely went through the motions to appear that it had acted fairly.

Analysis and Decision

33. 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, her views on the merits and strength of her grievance.

34. The applicant submits that the behaviour of the Union, as described in her application, has been antagonistic and could lead to a reasonable inference of bad faith. She further submits that a strong inference can be drawn that the Union's decision not to proceed to arbitrate her grievance was due to improper motives based on hostility towards the applicant. The applicant argues that a reasonable inference should be drawn that the Union had closed its mind to the possibility of bringing the case to arbitration because of its past (and ongoing) hostility towards the applicant.

35. However, the applicant fails to plead any facts to establish any past or ongoing hostility, malice, or ill-will, or any facts relating to the "past relationship" between the Union and the applicant which would ground a finding of bad faith. It is not enough to plead conclusions or suppositions. An allegation of bad faith conduct must be supported by material facts. The Board, therefore, dismisses this portion of the application on a *prima facie* basis.

36. With respect to the applicant's allegations that the Union acted arbitrarily or in a discriminatory manner by failing to advance her grievance because of her religious beliefs/status, failing to properly direct its mind to the circumstances and consider the situation fairly and objectively, failing to consider *Charter* or *Code* arguments, and/or failing to provide any reasons for refusing to bring her grievance to arbitration, the Board cannot determine these issues on a *prima facie* basis.

37. The Board has consistently held that a union is not required to file grievances simply because an employee asks it to do so, nor is it required to pursue grievances to arbitration based on the employee's request. Therefore, the mere fact that the Union decided not to pursue the applicant's grievance to arbitration would not form a basis, on its own, for a finding that the Union has violated its duty under section 74 of the Act.

38. There is no dispute that the Union obtained a legal opinion from its counsel and, based on that opinion, decided that it would not arbitrate the applicant's grievance. The applicant alleges that the Union refused to provide her with a copy of the legal opinion, or to discuss the basis of the legal opinion or how the Union counsel came to the conclusion that the Union ought not to proceed to arbitration and, instead, that Union counsel only stated that he had "carefully considered their cases". The parties' pleadings concerning the circumstances of that decision diverge, such that the Board cannot determine, at this time, whether or not the Union's actions were arbitrary or discriminatory.

39. As such, the Board declines to dismiss the portions of the application in which the applicant alleges that the Union acted in a discriminatory or arbitrary manner and directs that this matter be set down for Consultation by the Registrar.

40. Given the significant factual overlap between this application and a similar application filed by the applicant's husband, forming the subject matter of Board File No. 0393-25-U, the Board directs that these two applications be listed for Consultation together.

41. I am not seized.

"Danna Morrison"
for the Board