

ONTARIO LABOUR RELATIONS BOARD

BETWEEN

ROBERT MATHEW ALEXANDER

Applicant

and

ELEMENTARY TEACHERS' FEDERATION OF ONTARIO

Respondent

and

RENFREW COUNTY DISTRICT SCHOOL BOARD

Intervenor

AND BETWEEN

NICOLE ALEXANDER

Applicant

and

ELEMENTARY TEACHERS' FEDERATION OF ONTARIO

Respondent

and

RENFREW COUNTY DISTRICT SCHOOL BOARD

Intervenor

APPLICANTS' JOINT WRITTEN SUBMISSIONS

November 24, 2025

CHARTER ADVOCATES CANADA

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PART I – OVERVIEW

1. These are the joint written submissions of Robert Mathew Alexander and Nicole Alexander (the “**Applicants**”) in respect of their separate, companion applications brought under section 96 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1 (the “**Act**”), in which the Applicants allege that the respondent, the Elementary Teachers’ Federation of Ontario (the “**Union**”) breached section 74 of the Act in respect of their employment and termination by their employer, the Renfrew County District School Board (the “**Employer**”). Mr. and Mrs. Alexander’s applications were ordered by the Board on September 8, 2025 to be heard at consultation together, which is scheduled for December 8, 2025.

2. The Applicants were terminated for refusing to attest to the Employer’s policy of “celebrating and affirming” LGBTQ issues. They refused to do so on the basis of their sincerely held religious beliefs that they could not “celebrate and affirm” these issues, but stated that they would continue to ensure their classrooms would be non-discriminatory to all students and staff.

3. The Union’s decision not to refer the grievances to arbitration is arbitrary. The underlying grievances against the Employer are strongly supported by the facts and the law and clearly should have proceeded to arbitration.

4. The facts alleged against the Applicants are questionable, outlandish or baseless. The Applicants have an unblemished service record. The Applicants have religious beliefs that preclude them from “celebrating and affirming” LGBTQ issues. They simply wanted accommodation from the Employer’s policies, which was denied.

5. Caselaw under the *Charter* and *Human Rights Code* strongly supports the Applicants’ religious’ freedom and protection from discrimination. Recent caselaw from the Supreme Court of Canada (“**SCC**”) confirms that the Employer is a governmental entity and subject to the *Charter*. The Applicants’ rights under freedom of religion, expression and association are all engaged by

the Employer's policy. The Applicants have a *Charter* right to refuse to attest to the Employer's beliefs. They also have a right to be free from discrimination in employment.

6. Considering that there is a strong *prima facie* case for the grievance under labour, constitutional and human rights law, it is baffling why the Union refused to refer the grievances to arbitration. The consequences for the Applicants are the most severe possible in the labour context. The Union failed to provide any reasons why the grievances should not proceed. For these reasons, the Union's decision to withdraw the grievances was arbitrary.

7. Additionally, the Union has had a history of disregarding Mr. Alexander's religious beliefs. Considering this issue along with the fact that there is no explanation for why a grievance with a reasonable chance at success was withdrawn, the only reasonable inference is that the Union closed its mind to arbitrating the case and acted in bad faith against Mr. Alexander.

8. Therefore, this Board should find that the Union breached section 74 of the Act by acting arbitrarily against the Applicants and for acting in bad faith against Mr. Alexander. Given the difficulties the Applicants have had with the Union and its external counsel, the Applicants should be allowed selection of counsel of their choice, which is to be paid for by the Union.

PART II - FACTS

9. Mrs. Alexander filed her application in this matter on April 30, 2025 and Mr. Alexander filed his application on May 1, 2025. The pleaded facts are summarized as:

- (a) Mr. Alexander was employed by the Employer for over 23 years. He has by all accounts led an exemplary career as a teacher, without any recorded disciplinary action ever taken against him by the Employer;¹

¹ Application Form A-29 of R. Mathew Alexander Appendix "A" at para 2 ("Matt's Application").

- (b) Mrs. Alexander was employed by the Employer for 3 years without any disciplinary action taken against her;²
- (c) Mrs. Alexander's most recent performance review found that she was a competent teacher and that she practiced non-discrimination in the classroom, creating a welcoming environment for all students and staff;³
- (d) the Applicants are also Christians and have beliefs on gender and sexuality based on their understanding of the Bible;⁴
- (e) the Applicants' religious beliefs are protected by both section 2(a) of the *Charter*,⁵ and also the Ontario *Human Rights Code*;⁶
- (f) despite these protections, Mr. Alexander and the Union have had a troubled history regarding his religious beliefs and the Union's dismissive attitude towards them;⁷
- (g) the Applicants' son Josh Alexander organized a protest against drag queen story hour on April 13, 2023 at a North York public school.⁸ Neither Applicant publicly supported nor attended the protest.
- (h) Union officials promoted and attended a counter-protest against an event the Applicants' son organized;⁹
- (i) four days later, on April 17, 2023 the Applicant, Mr. Alexander, was suspended without being given any details as to why;¹⁰

² Application Form A-29 of Nicole Alexander Appendix "A" at para 2 ("Nicole's Application").

³ Nicole's Application at para 13.

⁴ Matt's Application at para 1, Nicole's Application at para 1.

⁵ [Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982 being Schedule "B" to the Canada Act, 1982 \(UK\), 1982, c. 11](#) (the "*Charter*").

⁶ [Human Rights Code, RSO 1990, c. H.19](#) (the "*Code*").

⁷ Matt's Application at paras 48-61.

⁸ Matt's Application at para 10; Nicole's Application at para 10.

⁹ Matt's at paras 10-11, Nicole's Application at paras 9-11.

¹⁰ Matt's Application at para 12.

- (j) the Applicant, Mrs. Alexander, was suspended on May 5, 2023, after she removed French language LGBTQ related signage from her classroom door, she does not recall seeing anyone in the area who could have seen her remove the signage;¹¹
- (k) at the meeting where she was informed of her suspension by the Superintendent of Human Resources, Mrs. Alexander asked the Superintendent whether it was a requirement for there to be LGBTQ signage on her classroom door, and she was not given a response;¹²
- (l) Mrs. Alexander never received instructions nor was she provided with policies on any specific signage that must be placed on classroom doors, and believed that teachers at her school had discretion to place signage on their doors, based on the usual practice of the school;
- (m) after Mrs. Alexander's suspension the Union handled the carriage of both matters together and met with both Applicants at the same time to discuss the matter;
- (n) on September 13, 2023, the Employer informed the Applicants that they were not complying with some of its policies on diversity and inclusion and demanded that they commit to "affirming and celebrating 2SLGBTQI+ realities and histories." The Employer stated that if they did not comply they would be terminated on a "just cause" basis;¹³
- (o) The Union met with the Applicants on September 18, 2023, with its counsel. Union counsel suggested that school boards in Ontario may be subject to the *Charter*, but that this was not a settled issue and that the Union was arguing the matter before the Supreme Court of Canada later that year;¹⁴

¹¹ Nicole's Application at para 16.

¹² Nicole's Application at para 16.

¹³ Matt's Application at para 19, Nicole's Application at para 21.

¹⁴ Matt's Application at para 29, Nicole's Application at para 30.

(p) The Union pleads in its response that other members of its executive and the union local, Renfrew County Teachers' Local (“**RCTL**”) were present, namely Union Executive Assistant in Professional Relations Services Greg Weiler, RCTL Chief Negotiator Kayla Chilchirst, and the Union’s external counsel Anna Goldfinch (associate at Howard Goldblatt’s office). The Applicants do not contest this fact, but note that these individuals did not play an active part in the September 18, 2023 meeting, but merely attended and listened;¹⁵

(q) further, the Union pleads that the Applicants omitted the attendance of RCTL local president Kelly Melanson, which is partially incorrect, as Mr. Alexander’s application noted her attendance,¹⁶ while her presence was inadvertently omitted in Mrs. Alexander’s Application materials.¹⁷ In any event, nothing turns on who was in attendance as the Union does not dispute the content of the discussion;

(r) the Applicants replied separately on September 22, 2023, but they both stated that they would comply with the policies, except those requiring them to “celebrate and affirm 2SLGBTQI+ realities and histories,” as that would go against their religious beliefs. They stated that they had always created a safe and welcoming class environment for all students (regardless of their sexual orientation or gender identity), but requested that RCDSB provide accommodation to them under the *Human Rights Code* with respect to its demand that the Applicants “celebrate and affirm” 2SLGBTQI+ realities and history;¹⁸

¹⁵ Union’s Response Form A-30 for Matt’s Application, dated May 26, 2025, Appendix “A” at para 43 [**“Union’s Response to Matt’s Application**”]; Union’s Response Form A-30 for Nicole’s Application, dated May 26, 2025, Appendix “A” [**“Union’s Response to Nicole’s Application**”].

¹⁶ Matt’s Application at para 29.

¹⁷ Nicole’s Application at para 30.

¹⁸ Matt’s Application at para 21, Nicole’s Application at para 23.

(s) on October 26, 2023, the Employer terminated the Applicants' employment, claiming just cause for their refusal to commit to the entirety of its policies. It completely ignored their request for accommodation and made no attempt to understand their position;¹⁹

(t) On November 29, 2023, the Union, through its counsel, informed the Applicants that it would file a grievance on their behalf, but would not commit to actually proceeding to arbitration. The Union's external counsel also stated categorically that he would not seek accommodation for the Applicant, nor would he pursue any human rights or *Charter* related arguments on the Applicants' behalf. He did not explain why;²⁰

(u) in addition to the meetings discussed above, the Union pleads that it met with the Applicants on November 22, November 29, December 7, and December 13, 2023 to discuss the Applicants' interest in challenging their terminations through a grievance, their interest in settlement, and the events leading up to the termination.²¹ The Applicants agree that these meetings also occurred, but note that the final meeting in this list occurred on December 14, 2023.

(v) on December 18, 2023, the Union filed a grievance on behalf of the Applicants, alleging unjust termination;²²

(w) on June 12, 2024, the Applicants retained new counsel, who wrote to the Union's external counsel and raised concerns about the carriage of the grievances. Applicants' counsel raised the issue that the Applicants' human rights and *Charter* rights had been breached;²³

¹⁹ Matt's Application at para 23, Nicole's Application at para 25.

²⁰ Matt's Application at para 30, Nicole's Application at para 31.

²¹ Union's Response to Matt's Application at para 78(g); Union's Response to Nicole's Application at para 71(h)

²² Matt's Application at para 34, Nicole's Application at para 35.

²³ Matt's Application at para 37, Nicole's Application at para 38.

(x) on August 28, 2024, the Union and its counsel met with the Applicants and informed them that it had received a legal opinion in connection with the matter and had subsequently decided against bringing the matter to arbitration *at all*. When asked to provide an explanation as to why it declined to bring the grievance to arbitration the Union refused to provide any explanation;²⁴

(y) the Union refused to provide the legal opinion it relied on when invited to do so by Applicants' counsel on September 10, 2024;²⁵

(z) on October 2, 2024, the Applicants filed an application with the Ontario Human Rights Tribunal in order to preserve their rights under the *Human Rights Code*'s limitation period;²⁶ and

(aa) on December 17, 2024, the Union withdrew the Applicant's grievance, after Applicants' counsel informed the Union's external counsel that they would not accept the proposed terms of settlement.²⁷

10. The Applicants' allegations against the Union are also summarized at paragraph 63 (a) – (d) of their respective applications.

11. The Union delivered its Response on May 26, 2025, and requested that the applications be dismissed on a *prima facie* basis. The Employer also filed its Response, as intervenor, on May 16, 2025, and supported the Union's request that the applications be dismissed on a *prima facie* basis.

12. The Applicants objected to paragraphs from the Employer's response on the grounds that they were irrelevant because it discussed whether the Employer had just cause to dismiss them.

²⁴ Matt's Application at para 39, Nicole's Application at para 40.

²⁵ Matt's Application at para 40, Nicole's Application at para 41.

²⁶ Matt's Application at para 42, Nicole's Application at para 41.

²⁷ Matt's Application at para 46, Nicole's Application at para 47.

13. On September 8, 2025, the Board dismissed the Union and the Employer's request to dismiss the application on a *prima facie* basis. The Board also refused to strike the impugned paragraphs and struck Mrs. Alexander's claim that the Union acted in bad faith but allowed the rest of the application to continue. It ordered that the Applicants' matters be heard together at consultation, given the significant factual overlap.

PART III – ISSUES

14. The issues before the Board are:

- (a) whether the Union breached section 74 of the Act in its representation of the Applicants; and
- (b) if the Union breached section 74 of the Act, what is the appropriate remedy?

PART IV-ARGUMENT

The underlying facts and caselaw strongly support the grievance

15. The underlying facts and case law clearly support the Applicants' position that there is a case with a reasonable chance of success. The fact that there is a reasonable case supported by the facts and caselaw demonstrates arbitrary decision making on the part of the Union, considering there is no explanation why it refused to refer the grievance to arbitration.

16. The Applicants raise the following factors:

- (i) the Applicants both have spotless disciplinary records. Mr. Alexander, in particular, has a very long service record;
- (ii) the allegations against the Applicants are hyperbolic and without merit; and
- (iii) the Union has persisted in its mischaracterization of the Applicants' request for accommodation. The Applicants merely requested an exemption from the

requirement to “celebrate and affirm” LGBTQ policies, which was not a request to be allowed to discriminate;

- (iv) recent caselaw demonstrates that the *Charter of Rights and Freedoms* is clearly applicable to Ontario school boards, and has even been recently considered in the education labour context.

The Alleged Facts are unsupported

17. The allegations for just cause dismissal themselves are unsupported. While the Board does not resolve a grievance, it can take a superficial view of the strengths of a case when determining whether the duty of fair representation was breached. For example, in *Parker v. Service Employees International Union*²⁸ the Board held that the unusual facts underlying the grievance ought to have alerted the union to investigate the merits of the grievance. Further, the Board concluded that while it could not determine whether the grievance would have been upheld at arbitration, it sensed the penalty of discharge was too harsh and the union failed to explain why it did not make the same consideration.²⁹

18. While this Board held that the parties are not required to discuss the merits of whether the Employer had just cause,³⁰ the underlying facts of the grievance present a strong *prima facie* case, given the bizarre, outlandish or baseless allegations made by the Employer.³¹ First, the circumstances around Mr. Alexander’s suspension were extremely suspicious, as it occurred in April 2023 right after his son had organized a protest against drag queen story hour at a public school that was not even operated by the Employer.³² Mr. Alexander had never publicly supported

²⁸ *Parker v. Service Employees International Union*, 2003 CanLII 4234 (ON LRB). [“*Parker*”].

²⁹ *Ibid* at para 25.

³⁰ *Nicole Alexander v. Elementary Teachers’ Federation of Ontario*, 2025 CanLII 97705 (ON LRB) at para 13.

³¹ See Matt’s Application, Exhibit “M” at para 23.

³² Matt’s Application at para 10.

his son's activities, nor attended any of the events. Mr. Alexander was informed by his Union representative that the suspension was related to his social media posts, which would have been impossible since Mr. Alexander did not have a social media account at the time, nor did he instruct anyone to post on his behalf.³³

19. Examples of these allegations include the fact that Mr. Alexander wore a red tie to his son's graduation, which the Employer inexplicably alleged was a transphobic act which supported "Save Canada"; a completely baseless claim that Mr. Alexander was involved with Diagon and the Coutts border blockade in Alberta; and vague allegations that Mr. Alexander's students were uncomfortable discussing LGBTQ issues with him.³⁴ None of these allegations were supported by any evidence.

20. With respect to the alleged "harmful displays/conduct",³⁵ the posts made by Mr. Alexander (made on a social media account he created after his suspension) reflect his sincerely held religious beliefs on sexuality and gender.³⁶ For example, the Employer alleges that Mr. Alexander's June 25, 2023 post about the Canadian Forces at the Toronto Pride parade was homophobic because of his criticism.³⁷ However, it is clear the criticism is not about sexuality, but the lack of decorum for dancing in uniform. Another absurd allegation includes the fact that Mr. Alexander's son tagged him on Father's Day with a picture of him, which the Employer alleges somehow was support for "Save Canada."³⁸

21. The facts and allegations underpinning the reasons for just cause against Mrs. Alexander are equally untenable. In its submissions, the Employer states that one of the reasons for just cause

³³ Matt's Application at para 13.

³⁴ Matt's Application, Exhibit "M" at para 23(d) and (j)-(k).

³⁵ Employer's Response to Matt's Application, Form A-30, Schedule "A" [**"Employer's Response to Matt's Application"**] at para 12.

³⁶ E.g. Supplementary Documents of the Applicants at **Tab 3**.

³⁷ Supplementary Documents of the Applicants at **Tab 2**.

³⁸ Supplementary Documents of the Applicants at **Tab 1**.

dismissal was that Mrs. Alexander removed LGBTQ signage in an “aggressive and hateful manner”.³⁹ Firstly, Mrs. Alexander denies removing the signage in a “hateful” manner; she merely took down the signage as it was in French and on her classroom door. As the only French immersion teacher for kindergarten at her school, she was concerned that it would signal her approval and agreement with the signage. Secondly, Mrs. Alexander does not recall seeing anyone when she removed her poster, which further casts doubt on her removing the signage “hatefully” or “aggressively”. Finally, Mrs. Alexander was never given instructions to put any particular signage on her door in the first place. This fact was clear when Superintendent Poirier refused to answer that question when she placed Mrs. Alexander on administrative leave.⁴⁰ Additionally, none of the allegations the Employer raises in its response could have been used against Mrs. Alexander as grounds for discipline, as the Employer never brought any charges of discipline forward for these alleged infractions.

22. Additionally, none of the allegations in the Employer’s response was ever raised as a disciplinary issue during Mrs. Alexander’s employment. Therefore, none of the acts raised could have been used as justification, as it did not follow the requirements of progressive discipline. At first glance, Mrs. Alexander’s actions could not have merited even a suspension, let alone discharge.

23. Under the doctrine of progressive discipline, none of the allegations on its face could have supported discharge immediately. It is questionable whether some of the allegations could even be proven by the Employer. Given the untenable and baseless nature of the allegations against the Applicants, they had a reasonable prospect of success if their grievances were permitted to proceed

³⁹ Employer’s Response to Nicole’s Application, Form A-30, Schedule “A” [**“Employer’s Response to Nicole’s Application”**] at para 12 (A).

⁴⁰ Nicole’s Application at para 16.

to arbitration. The Union has provided no explanation why these facts would have been a significant hurdle for success at arbitration.

Service record of the Applicants would favour them at arbitration

24. It is settled law that a lengthy service record is the single most frequently cited and relevant mitigating factor at arbitration. Except in the most egregious of circumstances, arbitrators have considered long service as a significant mitigating factor in reducing disciplinary penalties. For example, in *Toronto Catholic District School Board and OECTA, Re Sena*⁴¹ the arbitrator held that despite a teacher's inappropriate altercation with a customer at a coffee shop, discharge was excessive in light of her 13 years clean record.⁴² Additionally, even a short but exemplary service record can be considered a mitigating factor in discipline.⁴³

25. The Applicants have spotless records. While Mrs. Alexander's service record is relatively short, the Employer's most recent performance appraisal of her found her completely competent as a teacher and praised her efforts to implement non-discrimination practices in her classroom.⁴⁴ Mr. Alexander has had a 23-year service record with the Employer without any disciplinary record. Considering this extensive and clean record, the Union was required to explain why this significant mitigating factor could not overcome the alleged misconduct.

The Union Mischaracterized or Misunderstood the Applicants' Position on Accommodation

26. The Union mischaracterized or misunderstood the Applicants' position on the Employer's policy by stating that the Applicants wanted accommodation to behave in discriminatory ways towards certain students and staff. *This request was never the Applicants' position.* Rather, the

⁴¹ *Toronto Catholic District School Board and OECTA, Re Sena*, [2023 CanLII 70469](#) (ON LA).

⁴² *Ibid* at paras 102-103.

⁴³ *Peel (Regional Municipality) and CUPE, Local 966 (White), Re*, [2012 CanLII 72123](#) (ON LA) at [para 41](#).

⁴⁴ Nicole's Application, Exhibit "D".

Applicants only requested an exemption from the requirement to “celebrate and affirm” LGBTQ issues. There is a fundamental difference between “celebrating and affirming” an issue in particular versus committing to non-discrimination in general. The Applicants here merely requested to be exempted from the former, in accordance with their religion. The Applicants have always practised the latter.

27. The Applicants were willing to commit to all of the Employer’s policies,⁴⁵ except where they were required to “celebrate and affirm” LGBTQ issues. The Applicants deny that they have ever discriminated against anyone in their classrooms and state their classrooms have always been safe and inclusive environments for students and staff, as required by their professional responsibilities. The only point of contention with the September 13, 2023 letter was that it required the Applicants to “celebrate and affirm” LGBTQ+ policies, which would be against their religious beliefs. At no point have the Applicants requested a “right” to discriminate against any students and staff. Indeed, both Applicants in their response to the Employer stated their commitment to ensure a positive, safe, and welcoming environment.⁴⁶

28. Examples of the Union mischaracterizing or misunderstanding include the November 29, 2023 meeting, where the Union’s external counsel stated the Union would not commit to contesting the human rights or *Charter* issues, stating that the Applicants did not have a right to behave in however way they wanted. This statement was made after the Applicants provided their letter to the Employer.⁴⁷ The Union claims that it did not understand what the request for accommodation was.⁴⁸ If the Union did not understand the Applicants’ request, it was required get clarification in order to consider all relevant factors. However, the Union’s response to the

⁴⁵ Matt’s Application at para 19, Nicole’s Application at para 21.

⁴⁶ Matt’s Application at Exhibit “F”, Nicole’s Application at Exhibit “H”.

⁴⁷ Union’s Response to Matt’s Application at para 78(d), Union’s Response to Nicole’s Application at para 78(e).

⁴⁸ Union Response to Matt’s Application, para 78(c), Union Response to Nicole’s Application at para 78(d).

Applicants shows that they probably did understand the request, as they advised at the September 18, 2023 meeting that the Union could try and get a meeting with the Employer and discuss the request, even if they were doubtful such a meeting could resolve the issues between the parties.⁴⁹ This shows it is likely the Union mischaracterized the Applicants' beliefs to obtain the result it wanted (i.e. refuse to refer the grievance to arbitration).

29. The Applicants' response to the Employer clearly demonstrates that they have always and would continue to ensure a non-discriminatory classroom environment, and that the only contention was this requirement to "celebrate and affirm" LGBTQ issues. Indeed, Mr. Alexander's opposition to this requirement was because he did not understand what that required of him.⁵⁰ Their counsel's letter to the Union's external counsel further clarified this was the main point of contention with the Employer.⁵¹

30. Furthermore, the Union, through its counsel, asserted at the November 22, 2023 meeting that the Applicants' refusal to agree to the policy documents would hinder the Employer's educational curriculum. Union's external counsel questioned whether the Applicants could teach LGBTQ curriculum issues. However, there was never an allegation that the Applicants refused to teach anything required by the curriculum. Neither of the Applicants were ever instructed to teach LGBTQ issues. The Union thus considered factors and hypothetical situations that were irrelevant to the grievance before it.

31. Even in its pleadings before the Board, the Union continues to assert this mischaracterization, such as stating that because the Applicants believe certain religious doctrines towards LGBTQ issues, their "statements and conduct are not discriminatory and are immune from

⁴⁹Union Response to Matt's Application at para 78(e), Union Response to Nicole's Application at para 78(f).

⁵⁰ Matt's Application, Exhibit "F".

⁵¹ Matt's Application at Exhibit "M" at paras 28-29; Nicole's Application at Exhibit "N".

discipline.”⁵² The Union also asserts that the Applicants’ position fails to balance the rights of other parties,⁵³ further demonstrating the mischaracterization of the Applicants’ position, as if they wanted to have a “right” to discriminate.

32. The Applicants’ position has always been that they did and would continue to provide a safe and inclusive environment in the classroom for all students and staff, regardless of their characteristics. Their only point of contention with the letter from September 13, 2023 was that they were required to “celebrate and affirm” the Employer’s policy, which is a fundamentally different thing than requesting a “right” to discriminate. There are no rights of other parties to consider or balance here, as the Applicants have never requested that their accommodation affect anyone else.

The Applicants’ grievances are supported by labour, constitutional and human rights law

33. The Applicants, through their counsel, raised both their *Charter* protected freedoms and their right to be free from discrimination on the basis of religion under the *Human Rights Code* with the Union previously.⁵⁴ The Applicants had a strong *prima facie* case, which was inexplicably denied by the Union.

34. **First**, the Applicants submit that their 2(a) and (b), and (d) rights under the *Charter* were violated when they were required to subscribe to the Employer’s ideology regarding LGBTQ issues, which was placed in the guise of enforcing policy required by law. The Applicants were willing to ensure an inclusive and welcoming environment for everyone in their classrooms, but could not celebrate or affirm LGBTQ issues, as precluded by their religious beliefs.

⁵² Sur-reply of the Union to Reply of Nicole Alexander, August 6, 2025 at paras 12-13.

⁵³ *Ibid* at para 12.

⁵⁴ Matt’s Application at Exhibit “M”, Nicole’s Application at Exhibit “N”.

35. The SCC held that Ontario public school boards are government actors and that the *Charter* applies to them.⁵⁵ Following the Supreme Court’s guidance in *Syndicat Northcrest v. Amselem*⁵⁶ the Applicants’ religious beliefs are protected if they show they have a sincere belief and that the practice/belief has a nexus with religion.⁵⁷ The Applicants’ sincere belief was that they could not celebrate or affirm LGBTQ issues. This belief is fundamentally different from asking an exemption to any anti-discrimination policy, which the Applicants were willing to commit to.

36. Further, the Employer violated the Applicants’ right to freedom of expression by requiring them to affirm particular beliefs and punishing Mr. Alexander for his social media posts, both real and purported. The test for a 2(b) *Charter* violation is: (a) does the activity in question have expressive content, (b) is the activity excluded from the protection as a result of either the location or method of expression? and (c) if the activity is protected, does an infringement of the protected right result from either the purpose or effect of government action?⁵⁸ Of particular relevance, the Ontario Court of Appeal has held that, “...if the government’s purpose [is] to put a particular message into the mouth of the plaintiff....the action giving effect to that purpose will run afoul of s. 2(b).”⁵⁹

37. The Employer’s requirement that the Applicants affirm particular beliefs also infringes their freedom of association. The SCC has held that:

Freedom not to associate, like freedom to associate, must be based on the value of individual self-actualization through relations with others. The justification for a right not

⁵⁵ *York Region District School Board v. Elementary Teachers’ Federation of Ontario*, [2024 SCC 22](#) at paras 81-84. The Union was a party to this case and hired the same external counsel to successfully argue the point that the *Charter* applies to Ontario school boards.

⁵⁶ *Syndicat Northcrest v. Amselem*, [2004 SCC 47](#).

⁵⁷ *Ibid* at para [69](#).

⁵⁸ *Canadian Broadcasting Corporation v. Canada (Attorney General)*, [2011 SCC 2](#), at para [38](#) [“CBC”].

⁵⁹ *McAteer v. Canada (Attorney General)*, [2014 ONCA 578](#) at para [70](#).

to associate would appear to be the individual's interest in being free from enforced association with ideas and values to which he or she does not voluntarily subscribe.⁶⁰

38. The Applicants have a right to refuse to associate with the Employer's views. The Employer's explanation that they are statutorily required to employ these policies is also wrong, as the only requirement is to ensure a non-discriminatory environment. There is no requirement to have all teachers agree with this particular worldview. In this case, the Employer violated the Applicants' 2(d) freedom by requiring them to accept political views that conflicted with their religious beliefs. Section 2(d) protects them from associating with these views.

39. **Second**, the Employer's actions constitute a breach of the Applicants' human right to be free from discrimination on the basis of creed. The three-part test for a *prima facie* claim under the *Human Rights Code* is: (1) the applicant has a protected characteristic under the *Code*, (2) they experienced adverse impact (treatment) in a regulated activity under the *Code*, and (3) the protected characteristic was a factor in the alleged adverse treatment.⁶¹

40. All three steps of test are easily made out. The Applicants are clearly protected by the *Code* on the basis of their creed.⁶² The Applicants' termination is an adverse impact. There is a clear connection between their termination and their religious beliefs. The Applicants were terminated because their faith precluded them from celebrating LGBTQ issues as the Employer required.

41. Finally, recent arbitral jurisprudence supports the proposition that the Applicants have a grievance with a reasonable chance of success. In *Ontario English Catholic Teachers' Association v. Northwest Catholic District School Board, Re Gerber*,⁶³ a teacher mistakenly sent out an

⁶⁰ *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211 at p. 344.

⁶¹ *Haseeb v. Imperial Oil*, [2023 ONCA 364](#) at paras [50-51](#). [*"Imperial Oil"*]

⁶² See *Clipperton-Boyer v. RedFlagDeals.com*, [2014 HRTO 1796](#) at paras. [15-16](#) (HRTO). See also *Syndicat Northcrest v. Amselem*, [2004 SCC 47](#) at para [69](#) (SCC).

⁶³ *Ontario English Catholic Teachers' Association v. Northwest Catholic District School Board, Re Gerber*, [2024 CanLII 6043](#) (ON LA). [*"Gerber"*]

offensive and discriminatory email regarding her views on Pride Month to all teachers with the employer and was terminated. The teacher had only intended to send her views to the school chaplain but mistakenly sent it to the entire list of teachers. Arbitrator Beatty accepted that that her termination violated 2(b).⁶⁴ Furthermore, the arbitrator held that in labour law, progressive discipline and section 1 of the *Charter* draw a close parallel, and held that termination in this case was excessive and failed the minimal impairment requirements under the *Charter* for government action to be reasonably justifiable.⁶⁵

42. The *Gerber* case strongly supports the Applicants' position that they have a reasonable chance of success at arbitration. Indeed, the facts in *Gerber* were arguably more difficult for the union in that case to contend with, as the arbitrator found that the statements included hateful and discriminatory language.⁶⁶ The Applicants' actions, by contrast, were never hateful or discriminatory. Mr. Alexander's social media posts are his expression of his religious beliefs. Mrs. Alexander never posted on social media at all, and it is questionable how removing a sign off a door could be "hatefully" or "aggressively" done, especially when it appears no one saw her do it.

43. Given the strength of Applicants' grievances, it seems likely the Union ignored the above-cited relevant jurisprudence and considered less relevant cases. The serious consequences for the Applicants, coupled with the constitutional and human rights issues, required the Union to provide a persuasive reason why it chose not to proceed to arbitration. It has completely failed to do so.

The Union Acted Arbitrarily

Overview of Section 74

⁶⁴ *Gerber* at paras [189-190](#).

⁶⁵ *Ibid* at paras [191-196](#).

⁶⁶ *Ibid* at para [201](#).

44. While there is no absolute right for an employee to have a grievance referred to arbitration, the union's exclusive power to act as the spokesperson for all employees in a bargaining unit requires it to conform to a corresponding obligation for a union to represent all employees fairly. In considering whether to proceed with a grievance, a union must exercise its discretion in good faith, and in an objective manner.

45. In the seminal case of *Canadian Merchant Service Guild. v. Gagnon*, the SCC provided the requirements of the duty of fair representation. The Court held that:

1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.
2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.
3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.
4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.
5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.⁶⁷

46. Furthermore, while a union is granted a degree of deference in its exercise of discretion, it must not act in a manner that is arbitrary, discriminatory or in bad faith. In *Switzer v. C.A.W.-Canada*, the Board described these three elements as follows:

- (a) "arbitrary" means conduct which is capricious, implausible, or unreasonable in the circumstances. This 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 when one appears to be called for;
- (b) "discriminatory" means distinguishing between or treating employees differently without good reason;

⁶⁷ [*Canadian Merchant Service Guild. v. Gagnon*, \[1984\] 1 S.C.R. 509](#), at p. 527 (SCC).

(c) "bad faith" is conduct motivated by hostility, malice, ill-will or dishonesty.⁶⁸

Higher Standard of Conduct

47. Unions are held to a higher standard of conduct when an employee has suffered the ultimate sanction of dismissal. The Board held in *Rock v. Unifor, Local 1285*⁶⁹ that "...unions will be held to a higher standard of conduct when an application alleges that a union has refused to take a discharge grievance to arbitration..."⁷⁰

Arbitrary decision making and the requirement to provide a persuasive account

48. A decision is arbitrary when it fails to consider relevant factors. A union must turn its mind to the matter at hand. The Board has described arbitrary decision making as an:

...absence in decision-making of those things which should be present. A decision will be arbitrary if it is not the result of a process of reasoning applied to relevant considerations. The duty not to act arbitrarily requires a trade union to turn its mind to the matter at hand.⁷¹

49. In addition to properly considering all relevant factors, a union must provide a satisfactory explanation when it refuses to proceed with a termination grievance. In *Plummer v. O.P.C.M.I.A., Local 172*, the Board held that:

Where, however, an employee has been discharged there is an obligation on a union to provide a satisfactory explanation for its decision not to process a grievance. While the legal burden in a section 68 [now section 74] complaint is on the individual complainant, ***once it is established that a union member has suffered the ultimate sanction of discharge, this Board expects a persuasive account from the union to justify its refusal to file a grievance, or having done so, to carry the grievance to arbitration.***⁷² [Emphasis added]

⁶⁸ *Switzer v. C.A.W.-Canada*, [1999 CanLII 20145](#) at para 21 (ON LRB).

⁶⁹ *Rock v. Unifor, Local 1285*, [2015 CanLII 82465](#) (ON LRB) ["Rock"]

⁷⁰ *Rock* at para 27.

⁷¹ *Bartlett v. A.C.T.W.U., Local 307*, [1983 CanLII 791](#) at para 36. ["Bartlett"]

⁷² *Plummer v. O.P.C.M.I.A., Local 172*, [1983 CanLII 867](#) (ON LRB) at para 47. ["Plummer"]

50. In *Plummer*, the union failed to conduct a proper investigation of the allegations against the applicant. It merely accepted that the applicant's work performance was unsatisfactory and that none of his fellow employees would support him. The union failed to hear the applicant's side of the story and investigate the claims the employer made. The Board described the investigation as superficial, cursory and antagonistic that constituted arbitrary behaviour.⁷³

51. When considering a union's assessment of a case:

...the Board will take into account such factors as the importance of the grievance in question to the grievor, the material facts underlying the grievance (without the Board adopting the role of arbitrator) and the depth of consideration given by the trade union to the grievance, including factors which the trade union considered in arriving at a decision not to proceed further.⁷⁴

52. While the Board does not require a specific way a union turns its mind to a matter on a question of whether to proceed with a grievance, a union must demonstrate that it carried out its duty in a fair, genuine and not merely apparent manner. The consideration must reflect a thorough study of the grievance and the circumstances of the case against an applicant.⁷⁵ A satisfactory explanation of how it arrived at its conclusion is a requirement to demonstrate this fact.

53. In *Malcampo*, the union had a Grievance Committee to determine whether to proceed with a grievance. The Board held that while it was possible the Grievance Committee had reasons to conclude the discharge grievance was unlikely to succeed, the Grievance Committee provided no reasons on how it reached this conclusion. The union only provided bald assertions that it had looked into the policies, jurisprudence and mitigating factors, without describing what specific policies, jurisprudence or mitigating factors it actually considered.⁷⁶ Based on this point, the Board

⁷³ *Plummer* at para 48.

⁷⁴ *Malcampo v. U.F.C.W. Canada, Local 333*, [2017 CanLII 84202](#) (ON LRB) at para 33. [*"Malcampo"*]

⁷⁵ *Ibid* at para 34.

⁷⁶ *Ibid* at para 35.

was not persuaded that the union had properly turned its mind sufficiently to an assessment of the grievance. The Board thus found the union acted arbitrarily in this case.⁷⁷

54. Similarly, in *Parker* the Board held that a union could not simply assert it thought it would lose and did not want to damage relations with the employer with a grievance was a sufficiently persuasive account of its decision to not proceed to arbitration.⁷⁸

55. Therefore, the Board holds a union to a higher standard in section 74 applications when an applicant has suffered the ultimate sanction of discharge. A union's failure to provide a persuasive account of why it refused to either file a grievance, or refer a grievance to arbitration is in itself arbitrary behaviour. It is further exacerbated when it fails to explain why it did not pursue a grievance in light an employee's long service or clean disciplinary record.

Effect of a legal opinion

56. Typically, a union fulfils its obligations under section 74 where it acts in accordance with a legal opinion it obtains. However, there are two exceptions, that being (1) the legal opinion was materially affected by incorrect or incomplete information or (2) where the actions or opinion of the legal advisor are in some way fundamentally flawed.⁷⁹

57. While a union is not required to disclose a legal opinion, the Board requires a sufficient explanation when a union refuses to proceed with a discharge grievance. In *Broster v. C.U.P.E., Local 79*, the Board held that a summary with sufficient information regarding the basis of a legal opinion should have been provided if privilege was a concern.⁸⁰ An applicant cannot determine whether an opinion is materially affected by incomplete or incorrect information or if it is

⁷⁷ *Malcampo* at para 39.

⁷⁸ *Parker* at para 24. See also *De Leon v. C.U.P.E. Local 1590-01*, 2022 CanLII 9076 (ON LRB) at paras 52-53.

⁷⁹ *Howell v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union., Local 7135*, 2014 CanLII 5375 at para 8.

⁸⁰ *Broster v. C.U.P.E., Local 79*, 2017 2017 CanLII 54147 (ON LRB) at para 33. ["*Broster*"]

fundamentally flawed unless he or she is given access to its reasoning.⁸¹ The Board went with a cursory analysis of the facts of the discharge, and held that even on a preliminary basis it appeared the discipline imposed was too harsh.⁸²

58. Furthermore, in *Ouellette v. Unifor, Local 80-0*⁸³ the Board held that “...the mere fact of obtaining a legal opinion is not sufficient to insulate the Union from a finding that it has breached section 74 of the Act.”⁸⁴ In *Ouellette*, the union’s opinion letter failed to describe the information and documents the lawyer reviewed in preparing the opinion, and the Board held that “...an opinion reached without relevant, fulsome information is of little to no assistance.”⁸⁵

Principles Applied

59. The Applicants submit that the Union’s failure to provide any explanation, let alone a persuasive one, is arbitrary behaviour, and the Board ought to grant this application on this ground alone. Per the Board’s requirements in *Plummer*, a union must provide a satisfactory explanation when it refuses to grieve a discharge, especially when the applicant is a long serving employee.⁸⁶ In the case before the Board, both Applicants have a spotless disciplinary record. Mr. Alexander has an especially long service record of over 20 years, without a single disciplinary action taken against him by the Employer. Mrs. Alexander, while having had a shorter employment record, has an unblemished disciplinary record as well. Also, as discussed above, the grievances had a reasonable chance of success, considering the supporting constitutional, human rights and labour law jurisprudence.

⁸¹ *Broster* at para [21](#).

⁸² *Parker* at para [25](#).

⁸³ *Ouellette v. Unifor, Local 80-0*, [2023 CanLII 116989](#) (ON LRB).

⁸⁴ *Ibid* at para [36](#).

⁸⁵ *Ibid*.

⁸⁶ *Plummer* at para 47.

60. Given this fact, there must be a satisfactory reason for the Union not referring these grievances to arbitration. As the Board held in *Malcampo*, “[t]he union must be taken to know that the Board expects it to provide a compelling and sufficiently detailed explanation for refusing to arbitrate a discharge grievance, particularly in circumstances where a grievor has a very long record of service.”⁸⁷ No reason, let alone a compelling and sufficiently detailed reason has been provided in this case.

61. The Union insists that it carefully considered the case because of the multiple meetings it had with the Applicants. However, there is no evidence that anything the Applicants submitted to the Union was considered *at all*, given the fact there is no explanation for the Union’s refusal to take the grievance to arbitration. It cannot be the case that the mere fact of holding meetings and hiring external counsel satisfies the duty of fair representation, especially when there is no persuasive account for a union’s decision to not arbitrate a discharge grievance. In *Ouellette* the Board held that the union acted arbitrary when it failed to turn its mind to the reasons relied on by the employer for termination of employment, and that multiple meetings and conversations with the grievor did not cure the breach of the Act.⁸⁸

62. While meetings and communication with a grievor is essential their existence alone does not prove a union satisfied section 74 of the Act. As the Board stated repeatedly, in cases such as *Plummer*, *Malcampo* and *Rock*, when an employee is discharged, the Board will hold a union to a higher standard and expects a persuasive reason why a union refused to take a case to arbitration. In the instant case, while the Union met with the Applicants, it failed this higher standard when it provided no reasons why it refused to grieve the Applicants’ discharge.

⁸⁷ *Malcampo* at para [37](#).

⁸⁸ *Ouellette* at para [37](#).

63. Similar to *Malcampo*,⁸⁹ the Union merely states it considered all policies, jurisprudence and mitigating factors without describing what policies, jurisprudence or mitigating factors it considered. The Union's response is to baldly assert that it carefully considered the case and provided reasons why it would not refer the grievance to arbitration.⁹⁰ Yet, there is nothing in the record to demonstrate that any reasons have been provided.

64. The legal opinion obtained by the Union does not cure its failure to provide reasons for its refusal to refer the grievances to arbitration. The Union has refused to provide the legal opinion it relies on, despite several invitations to do so,⁹¹ nor has it provided a summary explanation of the opinion if privilege is a concern. Merely asserting that all relevant factors have been considered and believing that the grievance will likely lose is entirely insufficient to satisfy section 74 of the Act, as was the case in *Parker*.⁹²

65. Like the Applicants, the Board has no way of knowing what information was considered in the opinion. While the Union's counsel received the Applicants response to the allegations and submissions on relevant caselaw regarding the *Charter* and human rights, there is no evidence that any of that was considered at all. The Union merely asserted that it asked their legal counsel to consider the *Charter* and human rights issues regarding the Applicants' grievances, and that their counsel advised them that the grievances were unlikely to be successful.⁹³

66. If a union is not entitled to rely on a legal opinion as evidence it satisfied section 74 of the Act if insufficient information was provided or it is fundamentally flawed, then surely a complete refusal to disclose the reasoning in the opinion would also be insufficient evidence of having met

⁸⁹ *Malcampo* at para [35](#).

⁹⁰ Union's Response to Matt's Application at para 74, Union's Response to Nicole's Application at para 67.

⁹¹ Matt's Application at paras 39-40, Nicole's Application at paras 40-41.

⁹² *Parker* at para [24](#).

⁹³ Response to Matt's Application at para 78(n)-(o), Response to Nicole's Application at para 71(o)-(p).

the duty of fair representation. If the mere existence of a legal opinion were sufficient to meet the requirements of the Act, a union could obtain an opinion, refuse to disclose any reasoning, and say it carefully considered all relevant information. This cannot be correct in law. The Board's two exceptions stated above would be meaningless if a union were allowed to withhold the reasons in a legal opinion, as there is no way to assess whether an opinion is missing information or is fundamentally flawed.

The Union acted in bad faith with respect to Mr. Alexander's grievance

Previous History with Union is admissible

67. The Applicant's previous history with the Union is admissible, as it forms the backdrop to the application. Where there is a history between the parties, the Board can scrutinize the evidence carefully for improper motives.

68. In *Martins v. Labourers' International Union of North America, Local 527*⁹⁴ the Board considered the facts underlying an acrimonious history between the applicant and union, despite the matters referred to not being pleaded as a breach of the Act. The Board accepted these facts as background evidence going to the motive of the union.⁹⁵

69. Mr. Alexander does not claim that the Union's past actions against him constitute a breach of the Act. Rather, its past actions against him demonstrates a history of uncaring behaviour towards his religious concerns.

The Union acted in bad faith against Mr. Alexander

70. Employees have an expectation that a union will represent them honestly and without malice or hostility. In *Bartlett*, the Board held that:

⁹⁴ *Martins v. Labourers' International Union of North America, Local 527*, [1994 CanLII 9786](#) (ON LRB).

⁹⁵ *Ibid* at [para 34](#).

The requirement that a trade union not act in a manner which is in bad faith protects the legitimate expectation that an individual employee's bargaining agent will act honestly and free of any personal animosity toward him.⁹⁶

71. On bad faith, the Board has described it as:

Without limiting the definition of bad faith it might be said that in the context of processing grievances a union would be acting in bad faith if its treatment of a grievance is motivated by hostility or ill will, if it deals dishonestly with the grievors in an attempt to deceive or if it refuses to fulfill its duty of processing the grievance fairly because of some sinister motive.⁹⁷

72. As described above, the Union's relationship with Mr. Alexander was difficult at times.

The Union demonstrated its disregard for Mr. Alexander's religious concerns in the past, despite his clearly worded explanations. In both instances where the Union disciplined him, Mr. Alexander stated that his religious beliefs precluded him from participating in walk-outs or strikes. There is no evidence that the Union even attempted to accommodate him or understand his beliefs. Instead they merely received his materials and moved on to sanction him. None of the discipline letters demonstrate that they considered his religious beliefs nor did they balanced it against the interests of the Union in collective action.⁹⁸

73. Furthermore, Kelly Melanson, the Union's local president who participated in the Applicants' grievance process, was also a member of the executive who voted in favour of disciplining Mr. Alexander in 2013 on account of his refusal to participate in the walk-out.⁹⁹ These examples demonstrate a history of an uncaring attitude towards Mr. Alexander's religious beliefs, and a refusal to consider them in the context of labour relations.

⁹⁶ *Bartlett* at para 36.

⁹⁷ *Murphy v. International Printing & Graphic Communications Union, Local 482*, [1977 CanLII 492](#) (ON LRB) at [para 27](#). ["*Murphy*"]

⁹⁸ Matt's Application at paras 48-50 and 56-57.

⁹⁹ Matt's Application at para 56.

74. In light of these points, there is a strong inference that can be drawn that the Union's decision to proceed with the grievances was motivated by improper hostility towards Mr. Alexander. The Board can make reasonable inferences to motive if the facts suggest it. In *Murphy*, the union was found to have acted in bad faith when it refused to grieve the termination of two employees when the assistant foreman's son and a union official's nephew were brought in to replace them. While the Board concluded the union acted arbitrarily, it also inferred that this arbitrary behaviour could be traced to the union's desire to protect the position of the union's executive's nephew and the assistant foreman's son.¹⁰⁰

75. Similarly in this case, the Union refused to provide any explanation for its refusal to refer the grievances to arbitration. This fact is especially strange, since the Union successfully argued in *York Region* that Ontario school boards are government entities covered by the *Charter*. It would be inconceivable that the Union did not recognize this legal development, since *York Region* was released on June 21, 2024, a full four months before it informed the Applicants of its decision. Given the arbitrary behaviour pleaded above, the Board can also infer that the Union acted in a non-caring, dismissive manner towards Mr. Alexander's concerns regarding his grievance, and sought to find a way to end it.

76. Therefore, the reasonable inference drawn from the facts pleaded is that the Union had no intention of processing Mr. Alexander's grievance and sought the most expeditious way to end it without appearing to violate section 74 of the Act. There is no evidence that any of Mr. Alexander's *Charter* or human rights were considered by the Union, except from bald assertions that this was done. Mr. Alexander submits that the Union acted in bad faith, as evidenced by its arbitrary behaviour against him. The Board should draw a reasonable inference that the Union had closed

¹⁰⁰ *Murphy* at para [30](#).

its mind to Mr. Alexander's rights under the *Charter* or human rights under the collective agreement because of its past and ongoing hostility towards him.

The Board should order a referral to arbitration

77. The Applicants request that the Board refer their matters directly to arbitration and order the Union to provide the Applicants with counsel of their choice at arbitration.

78. Referral to arbitration is the conventional remedy for a union's failure to discharge its duty of fair representation so that the matter can be decided by an impartial adjudicator. Absent exceptional circumstances which make it unnecessary or inappropriate, referral of an applicant's grievance to arbitration is the primary remedy in duty of fair representation cases.¹⁰¹ There are no such exceptional circumstances which militate against granting referral to arbitration.

79. Only arbitration would provide the Applicants the opportunity to have their grievances heard on the merits, which they were deprived of by the Union's breach of s. 74.¹⁰² In *Lecuyer v. Canadian Paperworkers Union, Local 132*, the Board reviewed the reasons for granting referral to arbitration as the conventional remedy for breaches of the duty of fair representation.¹⁰³ The Board explained that, generally, there exists an underlying disagreement between the employee and employer. Typically, the employee is seeking an opportunity to "contest their employer's position on the underlying dispute" and hopefully prevail at arbitration.¹⁰⁴ Where the Union's breach of the duty of fair representation deprives the employee of that opportunity, actually arbitrating the dispute is necessary to remedy the loss.

¹⁰¹ *Hill v International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 938*, [1995 CanLII 9916 \(ON LRB\)](#) at para. 8.

¹⁰² *Senia v. Ontario Public Service Employees Union, Local 213*, [2011 CanLII 43086 \(ON LRB\)](#) at para. 13.

¹⁰³ *Lecuyer v. Canadian Paperworkers Union, Local 132*, [1985 CanLII 1008 \(ON LRB\)](#).

¹⁰⁴ *Ibid.* at para. 78.

80. This remedy is particularly necessary in the present matters because the Union has taken the position on these applications that the Applicants' grievances are unlikely to succeed at arbitration. In its responses, the Union states that it refused to proceed to arbitration because it assessed the Applicants' grievances as having a low chance of success.¹⁰⁵ The Union will be unable to effectively advance the Applicants' interests at arbitration if it does not itself see how the Employer's termination lacked just cause and constituted discrimination on the basis of creed or was a breach of the *Charter*.

81. Further, where an adversarial relationship exists before the Board, expecting a "fresh and proper review" by a union can be "an illusory remedy."¹⁰⁶ The Union's refusal to recognize the Applicants' rights to religious accommodation and its ongoing strained relationship with Mr. Alexander in particular make a reconsideration by the Union inappropriate in the circumstances.

82. For similar reasons, the Union is disqualified from choosing the Applicants' representation at an arbitration hearing. The Board may order that a union pay for an employee to retain counsel of his or her choice for the arbitration hearing. Such an order is appropriate where the union "would be unable to effectively present an argument on behalf of" the employee.¹⁰⁷ A union may find itself unable to effectively represent an employee because of the position it has taken before the Board,¹⁰⁸ the relationship between the union and employee has become strained,¹⁰⁹ or the Board finds the union dealt with the employee in bad faith.¹¹⁰

¹⁰⁵ Union Response to Matt's Application at paragraphs 7 and 74; see also Union's Response to Nicole's Application at paragraphs 6 and 74.

¹⁰⁶ *Singh v. Teamsters Local Union 938*, [2012 CIRB 639](#) at para. 144.

¹⁰⁷ See *Danos v. Canadian Union of Public Employees, Local 1750*, [2009 CanLII 55684 \(ON LRB\)](#) at para. 30 cit'g *Abdel Elejel*, [1985] OLRB Rep. June 841 at para. 62.

¹⁰⁸ *Ibid.*

¹⁰⁹ While a strained relationship was found not to be present in *Anonymous Applicant v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada, Local 40)*, [2012 CanLII 19653 \(ON LRB\)](#) at para. 20, the discussion implies it is a factor which can make an order to provide counsel of choice necessary [*National Automobile*].

¹¹⁰ *Mark Wulfand v Public Service Alliance of Canada*, [2025 CanLII 108260 \(ON LRB\)](#) at para. 27. [*Wulfand*]

83. By contrast, where the duty of fair representation was breached owing to mere negligence, an order to provide counsel of choice may not be necessary to ensure effective representation.¹¹¹

Similarly, a union's concession that it breached the duty of fair representation can indicate that the breach was inadvertent and thus militate against providing counsel of choice to the employee.¹¹²

84. The Applicants must be provided counsel of their choice to ensure that their interests are fully and fairly advanced at the arbitration. First, the Union's position before the Board that the Applicants' grievances are unlikely to succeed demonstrates that the Union is unable to see the merits in the Applicants' arguments. As in *Abdel Elejel*, there would be a conflict between the position taken by the Union on these Applications and the position that would need to be taken at arbitration. Second, as argued above, the Union acted in bad faith with respect to Mr. Alexander, making an order to provide counsel of choice necessary. Third, the Applicants' relationship with the Union (and its external counsel) is strained, which warrants representation by counsel of their choice at arbitration.

PART V REMEDY REQUESTED

85. The Applicants request that the Board grant the following relief:

- (a) a declaration that the Union breached its duty of fair representation, in contravention of section 74 of the Act;
- (b) an order referring the Applicants' grievances to arbitration, pursuant to the Collective Agreement, and directing that it not be withdrawn without the Applicants' consent;

¹¹¹ *National Automobile*, *supra*, at para. [20](#); *Wulfand*, *supra*, at paras. [27-28](#).

¹¹² *Wulfand*, *supra*, at para. [29](#).

- (c) an order waiving, or directing the Employer to waive any time limits or any other procedural provisions under the Collective Agreement that could impede referral of this matter to arbitration; and
- (d) an order directing that the Applicants be represented at arbitration by counsel of their choice, and that all associated costs be borne by the Union.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

November 24, 2025



CHARTER ADVOCATES CANADA

[REDACTED]

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Darren Leung, LSO 87938Q

Hatim Kheir, LSO 79576J

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SCHEDULE A – LIST OF AUTHORITIES

<i>Anonymous Applicant v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada, Local 40)</i> , 2012 CanLII 19653 (ON LRB)
<i>Bartlett v. Amalgamated Clothing and Textile Union. Local 307</i> , 1983 CanLII 791 (ON LRB)
<i>Canadian Broadcasting Corporation v. Canada (Attorney General)</i> , 2011 SCC 2.
<i>Canadian Merchant Service Guild v. Gagnon et al.</i> , 1984 CanLII 18 (SCC)
<i>Clipperton-Boyer v. RedFlagDeals.com</i> , 2014 HRTO 1796
<i>Corey Broster & David Markle v. Canadian Union of Public Employees Local 79</i> , 2017 CanLII 54147 (ON LRB)
<i>Danos v. Canadian Union of Public Employees, Local 1750</i> , 2009 CanLII 55684 (ON LRB)
<i>De Leon v. C.U.P.E. Local 1590-01</i> , 2022 CanLII 9076 (ON LRB)
<i>Elejel v. International Molders & Allied Workers Union, Local 49</i> , 1985 CanLII 981 (ON LRB)
<i>Haseeb v. Imperial Oil</i> , 2023 ONCA 364
<i>Hill v International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 938</i> , 1995 CanLII 9916 (ON LRB)
<i>Howell v United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 7135</i> , 2014 CanLII 5375 (ON LRB)
<i>Lavigne v. Ontario Public Service Employees Union</i> , [1991] 2 S.C.R. 211.
<i>Lecuyer v. Canadian Paperworkers Union, Local 132</i> , 1985 CanLII 1008 (ON LRB) .
<i>Malcampo v. U.F.C.W. Canada, Local 333</i> , 2017 CanLII 84202 (ON LRB)
<i>Mark Wulfand v Public Service Alliance of Canada</i> , 2025 CanLII 108260 (ON LRB)
<i>Martins v. Labourers’ International Union of North America, Local 527</i> , 1994 CanLII 9786 (ON LRB) .
<i>McAteer v. Canada (Attorney General)</i> , 2014 ONCA 578
<i>Murphy v. International Printing & Graphic Communications Union, Local 482</i> , 1977 CanLII 492 (ON LRB)
<i>Nicole Alexander v. Elementary Teachers’ Federation of Ontario</i> , 2025 CanLII 97705 (ON LRB)

<i>Ontario English Catholic Teachers' Association v. Northwest Catholic District School Board, Re Gerber</i> , 2024 CanLII 6043 (ON LA).
<i>Ouellette v. Unifor, Local 80-0</i> , 2023 CanLII 116989 (ON LRB).
<i>Parker v. Service Employees International Union, Local 183</i> , 2003 CanLII 4234 (ON LRB)
<i>Peel (Regional Municipality) and CUPE, Local 966 (White), Re</i> , 2012 CanLII 72123 (ON LA)
<i>Plummer v. O.P.C.M.I.A., Local 172</i> , 1983 CanLII 867 (ON LRB)
<i>Rock v FCA Canada Inc.</i> , 2015 CanLII 82465 (ON LRB)
<i>Senia v. Ontario Public Service Employees Union, Local 213</i> , 2011 CanLII 43086 (ON LRB)
<i>Singh v. Teamsters Local Union 938</i> , 2012 CIRB 639
<i>Switzer v National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)</i> , 1999 CanLII 20145 (ON LRB)
<i>Syndicat Northcrest v. Amselem</i> , 2004 SCC 47 (SCC)
<i>Toronto Catholic District School Board and OECTA, Re Sena</i> , 2023 CanLII 70469 (ON LA).
<i>York Region District School Board v. Elementary Teachers' Federation of Ontario</i> , 2024 SCC 22 .

SCHEDULE B – LIST OF STATUTES/REGULATIONS

<u><i>Canadian Charter of Rights and Freedoms</i>, Part I of the Constitution Act, 1982 being Schedule “B” to the Canada Act, 1982 (UK), 1982, c. 11</u>
<u><i>Human Rights Code</i>, RSO 1990, c. H.19</u>
<u><i>Labour Relations Act</i>, 1995, S.O. 1995, c. 1, Sched. A,</u>

SCHEDULE B EXCERPT

Labour Relations Act, 1995

S.O. 1995, CHAPTER 1

Schedule A

Historical version for the period March 8, 2018 to May 7, 2018. Last amendment: 2018, c. 3, Sched. 5, s. 30. Legislative History: 1997, c. 4, s. 83; 1997, c. 31, s. 151; 1998, c. 8, s. 1-23; 2000, c. 24; 2000, c. 38, s. 1-38; 2002, c. 16, s. 20; 2002, c. 18, Sched. J, s. 4; 2004, c. 8, s. 46, Table and s. 47 (1); 2004, c. 16, Sched. D, Table; 2005, c. 15, s. 1-12 (See also s. 14); 2006, c. 19, Sched. M, s. 3; 2006, c. 21, Sched. F, s. 136 (1); 2006, c. 35, Sched. C, s. 57; 2009, c. 33, Sched. 20, s. 2; 2014, c. 5, s. 50; 2014, c. 10, Sched. 3; 2015, c. 11, s. 20; 2015, c. 38, Sched. 12; CTS 25 AU 10 - 1; 2017, c. 22, Sched. 2, s. 1-14; 2018, c. 3, Sched. 5, s. 30.

Duty of fair representation by trade union, etc.

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. 1995, c. 1, Sched. A, s. 74.