

INSTRUCTION SHEET

Duty of Fair Representation Complaint (Trade Union Act, Section 54(A))

This form can be used to file a complaint under Part 1 (non-construction industry) of the *Trade Union Act*.

By filing this complaint, you claim that:

- You have been represented by your union in a way that is discriminatory, arbitrary and or in bad faith as it relates to your rights under a collective agreement.
- You have satisfied pre-requisites for filing a complaint under Section 55 (2), (3), (4), and (5) of the *Act*.
- You have read the [Information Bulletin on Duty of Fair Representation](#) prior to completing this form

Important to note:

- Do not modify this form.
- Applications may be delivered by email, personal service, or by registered mail or other similar mail services.
- If a complaint is filed on a Saturday, Sunday, or holiday, it will be deemed to be filed on the following business day, as set out in the *Trade Union Act General Regulations*.
- A complaint filed with the Board is not an “appeal” of a union decision.
- Although you may disagree with the union’s decision this does not necessarily mean that the union violated its duty of fair representation ([see *Paulin v. Canadian Union of Public Employees, Local 99, 2018 NCLB 24\(CanLII\)*](#)).
- The union’s duty of fair representation may be higher in cases where human rights and accommodation issues are at stake, and where the consequences for the employee are more serious, such as if you have been fired ([see *MF v. Union, 2019 NSLB 55 \(CANLII\)*](#)).
- The Board may also refuse to hear a complaint if it considers it frivolous, vexatious, or otherwise not worthy of a hearing.
- The Duty of Fair Representation provisions in the *Trade Union Act* do not apply to teachers within the meaning of the *Teachers’ Collective Bargaining Act*.

Useful resources are available at <https://novascotia.ca/lae/labourboard/>, including:

- [The Nova Scotia Trade Union Act and Regulations](#)
- [Labour Board Rules of Procedure](#)
- [Past decisions of the Labour Board \(CanLII\)](#)
- [Information Bulletin: Duty of Fair Representation](#)

Applications can be submitted to:

Labour Board
1601 Lower Water Street, 3rd Floor
PO Box 202
Halifax NS B3J 2M4
Email: labourboard@novascotia.ca

Access

The Board aspires to provide services that are universally accessible. Once your application is submitted, the Board will contact you to provide information about the process. Any accessibility requests that you have can be discussed at that time including language translation and any accommodation that may be required. The Labour Board does not provide legal advice. You may want to contact the [Legal Information Society of Nova Scotia](#) for legal assistance.

Privacy Statement

Any personal information requested in this form is collected under the authority of the Nova Scotia *Trade Union Act* (“TUA”) and the Nova Scotia *Freedom of Information and Protection of Privacy Act* (“FOIPOP”). It is collected for the purpose of processing your Application to the Labour Board. The collection, use, and disclosure of this information is managed under the TUA and FOIPOP. Any information provided to the Board may be shared with all parties affected by this application, subject to the discretion and policies of the Board. The Board’s decision in this matter will be published online on CanLII and Carswell, both of which are publicly accessible databases.

SECTION A – CONTACT INFORMATION

We need to know how to reach the individuals involved in this complaint. Fill out as much of this section as possible. It is your responsibility to update the Board if there are any changes in your contact information.

COMPLAINANT INFORMATION

Full Name:		
Gender Pronouns:	Phone No.:	
Email Address:		
Street Address:		
Town/City:	Province:	Postal Code:

COMPLAINANT COUNSEL or REPRESENTATIVE

(complete if applicable)

Law Firm Name:		
Counsel Name:		
Gender Pronouns:	Phone No.:	
Email Address:		
Street Address:		
Town/City:	Province:	Postal Code:

TRADE UNION INFORMATION

Full Legal Name of Union:		Local No.:
Contact Person and Position:		
Gender Pronouns:	Phone No.:	
Email Address:		
Street Address:		
Town/City:	Province:	Postal Code:

TRADE UNION REPRESENTATIVE INFORMATION

(complete this section if your complaint is also against Union Representative(s))

Name of Union Representative(s):		
Position Title:		
Gender Pronouns:	Phone No.:	
Email Address:		
Street Address:		
Town/City:	Province:	Postal Code:

EMPLOYER INFORMATION

Full Legal Name of Employer:		
Contact Person and Position:		
Gender Pronouns:	Phone No.:	
Email Address:		
Street Address:		
Town/City:	Province:	Postal Code:

SECTION B – EMPLOYMENT INFORMATION

1. When did the Employer hire you? _____
2. What is or was your position/job title? _____
3. What is or was your employment status?
 FULL TIME PART TIME CASUAL PROBATIONARY OTHER if
other, please explain: _____

SECTION C – PRE-REQUISITES TO FILING A COMPLAINT

The *Trade Union Act* requires that certain conditions must be met before you can file a complaint with the Board. The complaint must be filed within **90 days** after the date on which you first knew, or ought to have known, of the action or circumstances giving rise to your complaint.

1. What is the date when you feel the union violated its duty of fair representation? _____
2. What happened on this date to support your claim? (*use additional page if necessary*)

The *Trade Union Act* requires that all internal union grievance and appeal processes be accessed before filing a complaint with the Board (*unless certain conditions apply*).

3. Is there currently an active grievance the union is pursuing on your behalf?
 YES NO

4. If yes, what is the status of the active grievance?

5. If no, did you contact your union about filing a grievance? If so, what was the result? Provide the name of union contact and attach any relevant emails, letters, copy of grievance, etc. regarding the grievance.

6. Are you aware of any internal union process to appeal the union's decision?

YES NO

7. If yes, was an appeal pursued? If so, what is the status or result of the appeal? Please provide the name of the union contact and attach any relevant emails, letters, etc. regarding the appeal.

SECTION D – COLLECTIVE AGREEMENT AND GRIEVANCE INFORMATION

The Duty of Fair representation provisions **does not apply** to collective bargaining activities.

1. Does your concern relate to collective bargaining such as Collective Agreement negotiations?

YES NO

The Duty of Fair Representation provision **does apply** to rights within the applicable collective agreement.

2. Does this complaint relate to a dispute with your employer for which your union is representing you? If yes, please identify the sections of your collective agreement are under dispute.

(provide a copy of the applicable section(s) with your complaint)

3. Provide a summary of the issues respecting your rights under the collective agreement which you believe the union was supposed to provide you with representation.

4. Is there an arbitration award, settlement agreement or court decision regarding your grievance?
(if yes, provide a copy with your complaint form)

YES NO

SECTION E – UNFAIR UNION REPRESENTATION COMPLAINT DETAILS

1. Who do you feel unfairly represented you in relation to the incident(s) or issue(s) described above:

- Union
 Union Representative – provide name of representative(s) _____
 Both

2. Choose **one** of the following that applies the most to the reason for your complaint against the union in relation to the incident(s) or issue(s) described above:

- Refusal to file grievance
 Grievance not referred to grievance procedure
 Grievance not referred to arbitration
 Grievance discontinued or withdrawn
 Grievance settled without your consent
 Handling of grievance at arbitration
 Grievance decision not communicated
 Other. Describe below:

3. A breach of the Duty of Fair Representation alleges that either the union, union representative(s) or both represented the unionized employee with arbitrary, discriminatory or bad faith conduct. Review the options below and indicate the way(s) you believe your union unfairly represented you and provide a brief explanation:

ARBITRARY

This is conduct that is ill-formed or reckless, or where the union has not given sufficient consideration to or has been indifferent with regard to your interests. For example, if the union accepted an employer's version of a grievance without giving you a chance to respond to it, or if the union failed to adequately investigate your grievance, then this may be considered arbitrary. However, it is not necessarily a violation if the union makes an honest mistake or exercises poor judgment. If applicable, describe how you believe this type of conduct is relevant to your complaint:

DISCRIMINATORY

This includes differential treatment based on a person's characteristics as defined by the *Human Rights Act of Nova Scotia*, or just based on individual favoritism, except where justified. For example, if you were treated differently based on one of the above noted characteristics or irrational or unreasonable grounds, then this may be considered discriminatory. If applicable, describe below how you believe this type of conduct is relevant to your complaint:

BAD FAITH

This includes conduct based on ill-will, hostility, or revenge toward an employee. For example, if the union refused to pursue your grievance because you opposed union officials in a union election, or if engaged in dishonest or deceitful conduct, then this may be to be in bad faith. If applicable, describe how you believe this type of conduct is relevant to your complaint:

SECTION H– REMEDIES

1. What are you asking the Board to do as a remedy?

IMPORTANT: This Complaint Form must be completed in full, with all applicable documents attached. An incomplete form may be delayed or not processed. Further, except where protected by statute or Board policy, all information and documents collected by filing this form with the Board will be shared with the other parties involved in this matter as part of the complaint process. Decisions of the Labour Board are published online with CanLII and Carswell and are public record.

I, _____ of _____, _____
(print name) (city/town) (province)

declare that the statements and information contained in, attached to, and submitted with this Complaint are true and accurate to the best of my knowledge and belief. I understand that this information is subject to verification and that any false or misleading representations may result in the dismissal of my Complaint.

(signature)

DATED this _____ day of _____, 20_____.
(day) (month) (year)