**Limitations on Freedom of Contract**

* Human Rights Code prevents you from discriminating in hiring or on the job.
* Can’t contract below ESA minimums.
* Seneca College: HRT is a comprehensive answer to discrimination claims.
* Can’t contract to violate a statute or public policy.
* Contracts must be genuinely agreed to by the parties without undue influence or misrepresentation.

**Changing the Contract Through Policies**

* Ellison: new policy must clearly represent itself as a change to contract.
* Employer can’t unilaterally impose new terms without the employee clearly accepting those terms, usually expressly.
* Employers can’t force the employee to accept them but can give them the choice of accepting or quitting with notice entitlements. Courts will construe these policies strictly.
* Ellison: where terms aren’t crystal clear, they will be interpreted in favour of employee.

**Notice Periods**

* Ceccal: a constant string of unending short-term contracts will be construed as employment for an indefinite period, not fixed term. The ESA is a floor you can’t contract below, and can’t due it through constant short-term contracts.
* Reasonable notice kicks in when there is no express notice provision or when the provision goes below the ESA minimum.
* Cronk: factors to consider in determining reasonable notice period – character of employment, length of service, employee’s age, and availability of similar employment having regard to employee’s experience, training/education, and qualifications. Re-employability is not the dominant factor and nature of position must be considered – low-level won’t get long notice.
* Factors are non-exhausitve; inducement and relocation may be considered.
* Interruption in service does not wipe out the first period of employment in calculating length of service (Cronk).

**Constructive Dismissal**

* Implied term in contract that management has ability to manage the work place and make the necessary day-to-day changes. Those don’t amount to constructive dismissal.
* Farber: employee gets right to resign and get damanges when the changes lead to the job being something different than what they signed on for. Like a clear demotion and pay-cut.
* Farber: test – changes must be substantial and must be to the essential terms of the contract (wages, authority, responsibility, opportunities for advancement, etc). Would the reasonable person consider there to have been a substantial change to essential terms?
* After the fact evidence is irrelevant: it’s what was reasonably foreseeable to the employee at the time of the changes. Employee also need not immediately reject the new job: it’s not about what they were willing to accept, it’s whether there was a substantial change.
* Change of title alone isn’t enough without a change in duties, responsibility, or pay.
* Harassment can be constructive dismissal if employer does nothing to remedy it: working environment becoming toxic is a fundamental change.

**Just Cause for Dismissal**

* With just cause, employer can terminate without notice.
* Just cause can be defined in the contract.
* It’s whether through his conduct, the employee has repudiated the contract and ruptured the employment relationship.
* McKinley: dishonesty is not automatically just cause – depends on extent of the dishonesty and its impact on the employment relationship. Very high threshold require serious fraud.

**Honda Damages for Manner of Termination**

* Wallace made compensable by damages mental suffering caused by a dismissal carried out in a humiliating manner and/or including unfounded allegations of incompetence and dishonesty. Aggravated or punitive damages on top of this requires independent, actionable wrong.
* Don’t need to prove that manner of dismissal diminished future employment prospects.
* Honda: damages for bad faith/poor treatment in manner of dismissal must reflect the actual damages you suffered. Depends on the reasonable expectations of the parties not being met (after Wallce, this is almost a given – that they expect good faith dismissal and there will be damages for mental suffering if not). Need specific evidence of unfair/high-handed conduct.

**Basic Principles of Unions**

* Princinple of majoritarianism: if the majority of workers support the union and it gets certified, it now represents all the employees in the bargaining unit regardless of whether they voted yes.
* Principle of Exclusivity: once certified, the union is the exclusive bargaining agent for all employees – can’t have multiple unions in one workplace.
* Rand Formula: don’t have to join union to work there, but must pay dues.

**Defining the Employee**

* Only employees can unionize
* Hearst: it’s not how they’re labelled or paid, but rather the economic fact. Who owns the tools, who bears the chance of profit and risk of loss, and where is the control of the relationship resident?
* S.1 includes dependent contractors while excluding managers and confidential employees.
* Most important factor is usually the nature and detail of control over the worker. Financial dependence on the employer is also considered (Winnipeg Free Press).

**Managerial Exclusion**

* S.29: supervisors can be included.
* S.1: anyone who performs function of manager or superintendent is excluded.
* Children’s Aid Society: key consideration is whether the person has power in labour relations input: power to hire/fire, discipline, demote/promote. Something beyond day-today running. Even if that input is purely consultative and requires discussion with higher-ups, it’s enough.
* Non-managerial employees who have confidential info related to labour relations are excluded.

**Certification Process**

* Step one: union must be able to demonstrate support of at least 45% of the employees in the proposed bargaining unit, usually through getting them to sign cards.
* Step two: file an application for certification with the LRB, who then investigate who is eligible to vote and forms the pool of the bargaining unit. Can request employer’s payroll.
* LRB must order a certification vote within 10 days of the filing of the application.
* Step 3: certification vote by secret valid. Union needs a majority of those who vote. If less than 55% of the employees vote, LRB can order another vote.
* It is an unfair labour practice for employer to pad the unit in face of a vote unless it can show they were hired for legitimate business reasons and for their qualifications, not their stance.
* Step 4: hearing at the LRB before ballots are counted where employe can raise objections related to the process (ineligible voters, not an appropriate bargaining unit, fraud). Once dealt with, the ballots are counted.
* S.19: must wait 22 months between certification attempts.

**Unfair Labour Practice: Discriminating Against Union Employee**

* S.6(3): unfair labour practice to dismiss or discriminate against an employee because of their membership in a trade union. Any kind of negative consequence against an employee connected to their union membership.
* Requires a nexus between anti-union animus and the discipline.
* Onus is on the employer to show on balance of probabilities that it did not have anti-union animus when firing or disciplining organizer during organizing campaign.
* S.6(3) does not interfere with employer’s right t to terminate for proper cause. The more evidence there is of employee misconduct, consistent policy, and innocent explanations for the decision, the easier it is for the employer to discharge its onus to show that dismissal was due to proper cause and not anti-union animus. Violation of a strict, long-standing policy will do. Balancing process that balances evidence of motive vs. assertions of cause.

**Unfair Labour Practice: Interfering with Union**

* S.6(1): unfair labour practice to interfere with the formation or administration of a trade union. No explicit requirement of motive/anti-union animus, nor an individual worker to be targeted.
* International Wallcoverages: no motive at all would mean it’s too broad – if the infringement on the union is incidental, it’s not an unfair labour practice. Establishing a s.6(1) motive element may be done by looking at the foreseeability of the conduct’s effects on the union.
* Automatically unfair practice to fire someone for misconduct they didn’t do.
* Goldhawk test: balance the degree of impact on the union and how foreseeable it was with the justifications of the employer and how valid they are. If the balance is equal, see if there’s evidence of an ant-union motive.

**Statutory Freezes**

* Certification freeze (s.32): once the application for certification is filed and until it is granted or dismissed, employer cannot change the terms or conditions of employment w/o LRB approval.
* Bargaining freeze (s.45): from point union is certified/duty to bargain triggered until union is in lawful strike position, employer is precluded from changing the terms and conditions of employment without LRB approval.
* “Business as Usual”: employer is not precluded from doing the kinds of things that are expected (ie if pay-change occurs every December, can still do it if this year is in a freeze)
* “Reasonable Expectations” (Simpsons): when faced with unexpected events, you can go beyond business as usual and ask what the reasonable expectations of the parties are (eg: big losses = reasonable expectation of lay-offs, regardless of freeze).
* Advance Justification: employers can go to the Board first to clear the change.
* Can still dismiss employees during a freeze if the employer has proper cause – eg employee violation of a strict, longstanding policy.
* Up until a lawful strike or lockout, there is no bargaining freeze: the employer is free to impose whatever terms or conditions it wants.

**Employer Speech**

* S.8: employer has right to communicate and express its views on any matter, including union representation and unions.
* S.9: prohibits coercion or intimidation that could reasonably have the effect of getting a person to become or not become a member of a union (the only limit on s.8)
* Wal-Mart: unfair labour practice due to allowing an anti-union employee to give a speech without distancing themselves or allowing a response and also refusing to answer a question about job security, creating fear. Not a BC case. Is this coercion/intimidation?
* S.14: the most extensive remedy for an employer breaching s.9 is automatic certification: environment is so poisoned to unionization that nothing could counteract the employer’s actions. The support is there, but they’re too intimidated to ever express it in a vote.
* Other lesser remedies: toss out the vote and give union more access to the employees to counteract employer’s actions/speech, requiring employer to post a notice of their breach and reaffirming employee rights.

**Coercion and Intimidation**

* RMH Teleservices: captive audience meetings attract high level of scrutiny. Would an employee of reasonable fortitude been able to leave the meeting, turn away, or ignore the messages? Likely coercion if the meeting is mandatory or mandatory practically speaking (too awkward to leave/employer knows who attends and who doesn’t).
* If the message is not one that can be easily turned away from or ignored or the meeting is mandatory or it’s clear who’s attending, that’s likely a breach of s.9. Forced listening also is: where employee has no chance to respond or make inquiries.
* Peter Ross: where anti-union statements are linked to employee job security or ability to get work, that’s a breach fo s.9 and an unfair labour practice.

**Union Solicitation of Employees**

* S.7: organizers are limited to soliciting workers during non-work hours at non-work locations unless employer gives consent. Exceptions for remote locations.
* Canada Post: that said, without compelling business reasons (eg trade secrets), you can’t impede access to non-work locations during non-working hours (like break areas).
* For outside organizers, these non-work locations must be areas the public can ordinarily access.

**Remedies for Unfair Labour Practices**

* Automatic certification
* S.14(4): reinstatement with back pay, cease and desist order, order that the employer post a notice that they’ve been found in violation and reaffirming employee rights.
* Order entitling union to access a list of employees with contact information.
* Order entitling union to certain amount of meetings with employees on work-time with no loss of pay (usually to make up for captive audience meetings).
* Compensatory damages, usually for fruitless organizing acts thwarted by employer’s unfair labour practice. No punitive damages.
* Relief can be granted on an interim basis, before final adjudication of the complaint.
* Judicial Review of LRB decision where remedial scope is exceeded.
* National Bank: the remedy cannot be punitive and it must be connected to the violation itself – it is designed to respond to the breach and recompense, not punish. For instance, letters only go to employees reasonably effected by the violation.
* S.6(1) remedies go to the union while s.6(3) remedies go to the employee(s) affected. But s.6(3) offers no remedy where the employer straight up closes the workplace/business altogether (Plourde).

**Defining the Appropriate Bargaining Unit**

* Metro Land: there must be a sufficient “community of interest” amongst the workers in the proposed bargaining unit – they care and benefit from the same kinds of things.
* Second: will this unit cause serious labour relations problems for the employer?
* Part-time workers, since working in the same place, are no longer presumed not to share a community of interest with full-time workers.
* The subjective wishes of employees not to be in the unit does not affect whether they are or not.
* Hospital for Sick Children (community factors): similarity in skills/work performed/duties/working conditions, employees’ administrative structure, geographic circumstances, and employee’s functional coherence.
* Sidhu and Sons: nature of the work being performed can’t be focused on to the exclusion of all other factors: it’s possible to have different terms and conditions of employment and different job status despite having the same duty.
* Big units are likelier not to cause serious labour relations problems for the employer than multiple small units.

**Decertification**

* S.32: union cannot be decertified or raided within first 10 months after certification
* S.19: 7th and 8th month of the collective agreement is open season.
* S.33: application for decert must be signed by 45% of the bargaining unit
* Kelly’s Ambulance: must be the actual workers who apply, not replacements.
* Courtesy Chrysler: employer’s position must be one of strict neutrality during the decertification campaign. Test: how would the reasonable observer understand the employer’s actions? If it is spearheading the campaigning or funding or supporting the guy who is, that’s unfair practice.
* Wescor: s.8 free speech right is of no protection: employer support of or participation in a decertification campaign is prohibited. Cannot even voice an opinion.

**Successor Employers**

* When business is sold, the new employer inherits the old one’s collective agreement with its employees, as well as any pending grievances.
* Ajax: for succession to occur, there must be something relinquished by the predecessor and obtained by the successor. This asset I s a “primary part” of the business, often its most valuable asset.
* Target: a transfer of leaseholds may not mean the transfer of a business, particularly where the new employer isn’t operating quite the same business as the old one.

**Common Employers**

* Application to the Board for a declaration that two employers are related and so employees of both should be treated as having the same employer for collective bargaining pu rposes.
* S.38 (White Spot Test): are the two entities under common control or direction. If Y has a different employer on t heir paycheques from X, but X’s employer has substantial control over the working conditions at Y’s workplace, X and Y have common employers and Y can demand to negotiate with X’s employer

**Bargaining Procedure**

* Step One: notice to bargain is served by either side immediately after certification or, if it’s a renewal of an agreement, in the final month of the agreement. This triggers the bargaining freeze and the s.11 obligation to bargain in good faith and use all reasonable efforts.
* If no agreement is reached, either side can apply to board for conciliation: mediation to assist the parties to reach an agreement through the help of a conciliation officer.
* If it still fails, the parties are at an impasse –exhausted all efforts to bargain in good faith.
* Impasse = can take a strike vote.
* A strike can be ended by back to work legislation which can either detail the terms of the agreement or compel the parties to attend interest arbitration where an arbitrator hears submissions from both sides and fashions a binding collective agreement for them.
* S.55: First Contact Arbitration: parties who have never bargained before and who reach an impasse and there’s successful strike vote can instead apply for interest arbitration to avoid the strike altogether.

**Duty to Bargain (s.11)**

* Parties have a duty to bargain in good faith and make all reasonable efforts to reach an agreement.
* Also means an employer must reveal info to the union that’s necessary for it to engage in meaningful bargaining.
* Surface bargaining is always forbidden: where one party just goes through th emotions in an effort to bargain forever with no intention of ever reaching an agreement, in the hopes of just exhausting the union (Wal-Mart). This violates s.11 and is an unfair labour practice.
* Canada Trust Co: hard bargaining is allowed – you can bargain rationally in your own self-interest. If an employer is powerful enough, it can assist on an agreement that’s totally unacceptable to the union – that still shows it wants to reach an agreement, even if it’s a bad one for the union.
* Radio Shack: that said, the employer’s proposal, harsh it can be, must have a business justification. For instance, making demands about union dues or things that don’t financially impact the employer, but undermine the union, violates s.11.
* Royal Oak Mines: the softer version of Canada Trust: s.11 has a subjective element to bargain in good faith (have an intention to conclude an agreement) and an objective elemtn (make every reasonable effort to conclude an agreement).
* Under Royal Oak, Board can inquire into the substance of the bargaining proposals and then look at the comparable standards and practices across the relevant industry to see if what the union wanted and employer wouldn’t budge on is standard stuff. If it is so standard that no union could possibly agree to something without it, s.11 is violated by the employer.
* Whether the court goes with Canada Trust Co and Royal Oak largely depends upon the facts of the case and the history between the parties.
* Bueler Versatile: a receding horizon can be found to be bad faith bargaining.

**Duty to Disclose Upcoming Changes**

* Westinghouse: absent a request by the union, there is no duty to disclose unless the decision is final. It also must be a substantial matter within the sole knowledge of the employer.
* Consolidated Bathurst: the more fundamental the decision, the less final it needs to be to trigger the duty to disclose. “Highly probable” is enough for major decisions, while “final” is needed for less significant decisions. A workplace closure would be a major decision.

**Remedies for Bad Faith Bargaining**

* Cease and desist orders to stop the bad faith bargaining practices.
* Require decision to be published or the wrongful party to send around a notice of its violation.
* Successful party gets the costs of the application and the costs of bargaining.
* Royal Oaks: while the Board can’t impose an entire agreement, if the facts/history is bloody enough, they can demand an earlier offer be put back on the table or demand that a particular clause be inserted into the offer/agreement.
* Royal Oak: remedial orders can’t be punitive, can’t violate the charter or be inconsistent with the objective of the LRC, and must have a rational connection to the breach.

**Strike Position**

* PSERA: Alberta trilogy still stands for striking – there is no right to strike protected by s.2(d) of the Charter.
* S.59: Bargain collectively in good faith, making all reasonable efforts to reach an agreement, until reaching the point of impasse and conciliation fails.
* Can’t get into lawful strike position if a collective agreement is still in force (s.57). Essential services also cannot strike.
* S.60: once at point of impasse, hold a strike vote with the majority of employees who vote voting in favour of striking.
* Serve written notice to the employer of the vote and file the notice with the Board. Must then wait at least 72 hours and no more than 3 months before going on strike.
* S.74: upon an application by the Board, Board can appoint a mediator if it thinks this will help to resolve the dispute.
* S.78: last offer vote – employer can apply to the Board arguing that the last offer it made was fair and reasonable despite the bargaining committee’s rejecting of it and believes that the employees would except it – Board can allow the last offer to be voted on directly by the employees, bypassing the bargaining committee.

**Defining AStrike**

* Important: if what you’re doing counts as a strike, you can’t do it while collective agreement is in force. Also, if you’re in a lawful position to strike, you can’t be disciplined for doing things that amount to a strike, only for things that fall short of that.
* Graham Cable: employee must be acting in some collected fashion or concerted action and it must be done with the intention or effect of disrupting the employer’s operations/output.
* Saskatchewan Wheat Pool: if done in a concerted, group fashion (not individual), refusing work that you h ave the right to refuse can amount to a strike.
* If done in a concerted fashion, refusing to cross the picket line of ANOTHER union can be considered a strike UNLESS there is a “no-cross clause” in your collective agreement. Such clauses are invalid in other provinces as contracting out of the LRC (Nelson Crushed Stone) but permitted by BC through a s.70 Declaratory Opinion.
* Victoria Times Colonist: refusing to handle or deal with any goods or services supplied by a struck employer – a hot edict. Where done collectively, this counts as a strike.
* S.70 declaratory opinion: not considered a strike if there’s a “hot cargo” clause in agreement.

**Lockouts**

* S.1: ceasing or disrupting your operations in some way or refusing to continue employing people for the purpose of compelling those workers to terms/conditions of employment. Unlike striking then, there IS a purpose elemnt.
* Westroc: as long as employer isn’t acting in bad faith, it doesn’t need to wait for employees to strike before locking them out. Employer also has right to try and operate during this period.

**Picketing Jurisdiction**

* Board regulates the timing and location of picketing – the why, where, and when (Canex Placer), but BCSC still has jurisdiction to enforce crim and tort, which means that it still has jurisdiction over the “how” of picketing.

**Picketing and Trespass**

* S.66: overrules Harrison – you can bring no action for trespass to land, interference with contractual relations, or economic torts for conduct arising out of a lawful strike, lock-out, or picketing.
* Primary picketing on private property is thus permitted provided that said private property is ordinarily accessible by the public.

**Secondary Picketing**

* S.65: overrules Hersees’ total ban on secondary picketing. Lawful strikers can picket the allies of a primary employer. Allies are third parties not in the dispute who assist the employer in resisting a lawful strike. They can be picketed.
* K-Mart: informational picketing, the handing out of leaflets, is protected under s.2(b) of the Charter and can be carried out in any secondary picketing, not just of allies.
* Signal Effect Picketing: a real, formal picket line with a coercive effect. This requires being in lawful strike position and being against primary employer or allies. No s.2(b) protection.
* Pepsi-Cola: all secondary picketing is allowed, not just against allies – this is not in BC.
* Canfor: BC law after Pepsi: without a constitutional challenge to s.66 ally doctrine, we only permit primary picketing of the employer as part of a lawful strike and secondary picketing of an ally as part of a lawful strike. We also permit informational leafleting on a broad basis, as long as it doesn’t amount to tortious or criminal conduct.
* Signal-effect picketing is limited to primary picketing and secondary picketing of allies.
* Prince Rupert Grain: if it’s a federally regulated employer in BC, Pepsi Cola applies – can be secondary picketed regardless of whether it’s an ally, not just informational.

**Common Site Picketing and Perimeter Picketing**

* S.65: Board has jurisdiction to place restrictions on this to reduce unfair impact on third parties – picketing at a location where there are multiple employers.
* Vancouver Island University (test): is the location of the picketing one where a substantial and integral part of the employer’s operations take place in relation to the striking workers? Doesn’t require a LOT of the striking workers to work at that location for their work to be substantial and integral to the struck employer’s operations.
* Perimeter picketing: it’s restricted (UBC) where the area has private homes, public services, and hospitals needing access. In VIU, a few galleries weren’t enough. Perimeter picketing still cannot block access physically and can only be informational.

**Remedies for Unlawful Picketing (Overlapping Jurisdictions)**

* Board can issue cease and desist orders for violations of the LRC.
* Court can issue injunctions to enforce a clause in the collective agreement (like the one saying you can’t strike while it’s in force). (St. Anne)
* Arbitrator can give damages for breach of the collective agreement.
* S.136: Board has exclusive jurisdiction to hear and determine applications and complaints under the LRC and dealing with refusals to work, picketing, lockouts, and communication related to labour disputes.
* S.136(2): court has exclusive jurisdiction for situations where there is immediate or serious danger to an individual, situations that cause actual obstructions or physical damage to property. Courts also have soul jurisdiction over criminal and civil law.
* It is not within the Board’s jurisdiction if it’s essential character isn’t about the interpretation, application, or violation of the LRC or the collective agreement (ICBC).

**Disciplining Employees for Conduct During a Strike**

* Rogers Cable: what you do during a strike can be subject of discipline: even though the contractual relationship has expired, the employment relationship is still in place.
* Board will scrutinize to ensure that it’s for disciplinary reasons and not punitive reasons as retaliation for the employee exercising his LRC rights to strike or out of anti-union animus.

**Rights to Job Retention**

* Striking workers can’t be replaced, but if the employer can show legitimate business reasons and no anti-union animus, it can terminate returning striking workers (after notice or pay in lieu) due to, say, negative business repercussions caused by the strike.

**Essential Services**

* Workers may be unable to strike where they are required to protect public safety or to prevent the employer’s property from being destroyed.
* Problem is determining how MANY workers are required to stay on the job. Some industries will be hit by legislation just saying that the entire profession can’t strike.

**Interest Arbitration**

* An alternative to striking: both parties agree to a neutral arbitrator h earing their dispute and crafting a binding solution after each party makes a proposal as to what they think the collective agreement should be.
* Concerns over whether this doesn’t provide enough of an incentive for the parties to really bargain or to adopt extreme positions expecting the arbitrator to go with the middle ground.

**Contract Law in Collective Agreements**

* McGavin Toastmaster: common law doctrines of repudiation and fundamental breach have no application in collective bargaining context. Collective Agreement is contract between union and employer, not a bundle of individual contracts with employees.
* Allen: court lacks jurisdiction to determine severance pay entitlements and collective agreement validity – that’s for arbitration and if the union is in on the deal, too bad.

**Employees Challenging Union Deals**

* Allen: I f the union cuts a deal with the employer or a private company that may lead to a contracting out of the collective agreement, the court has no jurisdiction. It’s for the arbitrator…which requires the union to bring it there. So no remedy for employees.

**Duty of Fair Representation (s.12) (Rejecting Grievances, etc).**

* In both negotiation of the collective agreement and its administration (taking things to grievance), unions owe a duty of fair representation to its members: m ust act equally and without discrimination in ways that are not arbitrary or in bad faith to its members.
* S.12 is the only way employees can get before the board.
* Steele: union can’t discriminate against some members of the bargaining unit for irrelevant considerations (eg: not being members of the union).
* Bukvich: s.12 is meant to protect against invidious favouritism: if the union has a clear economic justification or explanation for its policy, s.12 won’t work. For instance, union can decline any grievance for any reason that doesn’t amount to bad faith or arbitrariness provided it gives the merits of the grievance reasonable consideration according to proper procedure in good faith and doesn’t reject it for irrational, improper, or irrelevant reasons.
* Atkinson: where there is no real rationale for a policy or decision by the union that favours some bargaining unit members over others, sl.12 can succeed. If there is no rational basis for it.
* Rayonier: where a union is in the middle of a conflict between groups of employees with competing interests, its only duty is not to be actuated by bad faith (ie personal hostility, political revenge, or dishonesty, simple favouritism). Can’t be arbitrary In disregarding one group’s interests. But if it takes a reasonable view of the problem and a thoughtful approach to it after considering it thoroughly, it’s fine that it reaches a decision that favours one group and disfavours another.
* Rayonier factors to consider in whether to take on a grievance and not be hit with s.12: how critical is the subject matter of the grievance to the interests of the employee? Hwo valid is his claim? How carefully has it invested this? Previous practice for this kind of case? What kinds of expectations can the employee reasonably have from treatment of other cases

**Union Security Clauses**

* Voluntary check-off: required in BC by s.16 upon union request. Where the employer will automatically take union dues owing by an employee out of his paycheque and give it directly to the union upon that employee’s request or consent.
* Rand Formula: next level – this deduction is mandatory, regardless of whether or not the employee is a union member. At federal level, this is the required minimum.
* Lavigne: s.2(b) is not violated by the political causes the union supports through expenditure of union dues, so long as there’s a fair process in deciding what cuases/how those dues are spent.
* Union shop: once hired, you have to join the union to stay working ther.
* Closed shop: must already be a member of the union to be hired.
* Advance Cutting: closed shops and union shops do not violate the s.2(d) right not to associate since it only requires a bare obligation to belong without any enforcement of ideological conformity.

**Union Discipline**

* Union can discipline its members in accordance with union’s constitution, provided its in line with the LRC and collective agreement. Fines or suspensions or expulsion (in closed shops, latter two can mean dismissal).
* Typical reasons: crossing picket-lines or not paying dues.

**s.10 Defence to Union Discipline**

* S.10: unions must follow the rules of natural justice when carrying out their internal disciplinary procedures. This means procedural fairness: right to be heard, to have reasons for the decision, and to have an impartial and unbiased decisionmaker. This deals purely with the procedure followed in the discipline and not the substance of the penalty

**s.12 Defence to Union Discipline**

* Speckling: Board can’t decide whether the penalty itself is valid, since that’s a matter of interpreting the union’s constitution, which is a contract between unions and their members, a matter of contract law for the courts.
* Board’s sole jurisdiction is to see if the union acted arbitrarily or in bad faith or, under s.10, whether the procedure was fair.
* That said, where the discipline winds up with employee’s dismissal, a s.12 complaint off of that will be given greater scrutiny for fairness and to ensure it isn’t retaliatory, arbitrary, or out of bad faith.
* If the union can show a cogent rationale for preferring the collective interest over the individual interest, there will be no violation.

**Unconscionability Defence to Union Discipline**

* Birch: union constitution is a contract of adhesion. This means that if unconscionability in the discipline can be shown, it might get tossed.
* Unconscionability = an inequality of bargaining power (the contract of adhesion) and indication that the stronger party took advantage of that or used that inequality to create an unfair bargain. Fines may be unconscionable where they are well over the actual loss to the union or go well beyond what the employee made for crossing the picket-line.

**Freedom to Strike under s.2(d)**

* Rest of labour trilogy has been overturned, but it still stands for there being no Charter protected right to strike: it’s not a fundamental freedom and s.2(d) is only meant to protect the right to do in groups what it is legal to do as an individual. Striking, as an inherently collective activity, is thus not protected.
* Dissent: we should offer equal level of protection as ILO, and ILO says this is protected along with right to bargain and organize.

**s.2(d) Right to Unionize (Dunmore)**

* Bastarche expands s.2(d)’s scope to cover some actions that are inherently collective: unionization. That it’s inherently collective is not enough to keep it out of s.2(d).
* Must show that the governmen’t saction would cause or permit a substantial interference with a protected activity. For right to unionize, this means something more significant than just making it harder to form a union.
* Must find that either the govn’t’s purpose or the effect of its action was to prevent association.
* Govn’t cannot substantially interfere with a trade union’s ability to organize workers and attract members.

S.2(d) Right to Collective Bargaining

* BC Health Services: govn’t simply legislates to change the collective agreement and agreements can’t be (re)negotiated while agreements are still in force.
* Court finds that s.2(d) protects collective bargaining but doesn’t give a right to every aspect of the LRC statutory bargaining regime, only some of the basics. It prevents employer from simply refusing to talk to the union.
* S.2(d) guarantees a right to be consulted and to have the union’s proposals considered in good faith. Making unilateral changes without consultation, giving no chance for proposals, and banning all further negotiation is a breach.
* Fraser: interprets BC Health Services as merely requiring a “good faith process of consideration of the proposals by the employer and discussion with employee representatives.” It does not create a constitutional right to bargaining in good faith, exclusivity, majoritarianism, dispute resolution mechanisms, etc, as this would constitutionalize a particular KIND of bargaining.
* That said, you can’t just make a piece of unconstitutional piece of legislation constitutional by re-enacting it with a consultation clause (BCTF).
* CUPE: s.2(d) applies to casual workers.

**Discrimination Claims Under the HRC (Meiorin)**

* First: employee makes out a prima facie case of discrimination that’s either direct or adverse effect. Employer must then either show there was no nexus between the characteristic and the treatment, that the adverse treatment didn’t happen or…..
* Second: employer must show that it adopted the standard for a purpose rationally connected to job performance.
* Third: employer must show it held an honest, good faith belief that the standard was necessary.
* Fourth: employer must show that the standard is reasonably necessary to accomplish a legitimate, job-related purpose. At this point, accommodation is considered: can the individual be accommodated without the employer suffering undue hardship?
* Hydro Quebec: undue hardship isn’t only established when it’s impossible to accommodate but rather whether it’s past the point of reasonable accommodation.
* Shuswap Lake: demanding perfect or zero hardship at all does not dispose of the duty to accommodate and the fourth step is not passed. Undue hardship would require the employer to establish that the accommodated situation is unacceptable.
* Janzen: sexual harassment is always sex discrimination.