



SECTION 37 DUTY OF FAIR REPRESENTATION COMPLAINT CANADA LABOUR CODE

NOTE: If you have any questions concerning this form, please contact a Board officer at 1-800-575-9696.

The personal information provided on this form and any documents submitted with it are collected solely for the purpose of administering the *Canada Labour Code* and will be used to deal with and adjudicate matters that come before the Board. Parties that engage the Board's services should be aware that it involves a public process. The Board provides public access to case files and posts key decisions electronically on its website. Board decisions may identify parties and witnesses by name and may set out information about them that is relevant and necessary to the determination of the dispute.

READ THESE INSTRUCTIONS BEFORE YOU BEGIN

This form is intended to assist you in providing the information required for making a duty of fair representation complaint pursuant to section 37 of the [Canada Labour Code](#) (the *Code*).

Please refer to the Board's [Information Circular No. 11](#) and its decision in [McRaeJackson, 2004 CIRB 290](#), which explain the principles the Board will consider. This reference material can also be obtained from the Board's regional offices.

Please note that a duty of fair representation complaint is not an action against your employer.

A complaint under section 37 of the *Code* is made against the union, or any one of its representatives. Section 37 prohibits a union or any of its representatives from acting in a manner that is arbitrary, discriminatory or in bad faith with respect to your rights under the collective agreement. The union has a right to decide whether to take a grievance to arbitration or to settle it, even if you are not in agreement. However, the union must not make this decision in a way that is arbitrary, discriminatory or in bad faith.

The Board will review your complaint having regard to the *Code* and the Board's extensive case law on section 37 complaints. It will consider all of the material on file, including submissions and supporting documentation. It is your responsibility to provide the Board with all of the information that is necessary for it to decide the complaint. Missing information or documents could lead to dismissal of the complaint or delays in its processing.

The information you provide the Board must be sufficient to satisfy the Board that there has been an apparent violation by the union of its duty of fair representation. In other words, you must present evidence that is sufficient for the Board to conclude that, if it accepts your allegations as being true, the union may have failed to meet its duty of fair representation. This is to help the Board assess if there are sufficient grounds for the complaint to proceed. The Board may dismiss the complaint if it is not satisfied that there is an apparent violation.

The Board has Industrial Relations Officers (IROs) involved in the processing of various cases throughout Canada. These IROs mediate cases, where appropriate. If a settlement is not reached during mediation, the officer may continue to assist the parties to achieve a voluntary settlement before the Board decides the matter. An IRO may contact you regarding mediation of your complaint.

Complainant

NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____ FAX: _____

EMAIL ADDRESS: _____

NAME OF REPRESENTATIVE OR COUNSEL, if applicable: _____

ADDRESS: _____

TELEPHONE NUMBER: _____ FAX: _____

EMAIL ADDRESS: _____

It is your responsibility to advise the Board of any changes to your contact information.

Union

NAME OF UNION: _____

ADDRESS: _____

TELEPHONE NUMBER: _____ FAX: _____

EMAIL ADDRESS: _____

NAME AND POSITION OF UNION REPRESENTATIVE: _____

Employer

NAME OF COMPANY: _____

ADDRESS: _____

TELEPHONE NUMBER: _____ FAX: _____

EMAIL ADDRESS: _____

NAME AND POSITION OF EMPLOYER REPRESENTATIVE: _____

I–General Information Concerning the Complaint**Employee Status:**

DATE OF HIRE: _____

TITLE OF LAST POSITION HELD: _____

Rights Under the Collective Agreement:

- What sections of the collective agreement apply to your situation?

- Please attach a copy of the sections cited.

Attached

Not attached – Reason: _____

- Please indicate the nature of the incidents or issues respecting your rights under the collective agreement regarding which you believe the union was supposed to provide you with representation:

Termination of employment – date of termination: _____

Seniority rights

Disciplinary action

Discrimination

Collective agreement interpretation issue

- Collective bargaining issue
- Workplace accommodation
- Insurance–Pension–Benefits – Please specify: _____
- Other _____

• Did you ask your union to file a grievance?

- Yes – When did you ask the union to file a grievance? _____
- No – Reason: _____

• Did the union file a grievance?

- Yes
- No – Reason: _____
- Do not know

• On what date was the grievance filed? _____

• Have you attached a copy of the grievance?

- Yes
- No – Reason: _____

• Did the union tell you its decision regarding the grievance filed?

- Yes – On what date? _____
- No – Reason: _____

• Have you attached a copy of the decision from the union?

- Yes
- No – Reason: _____

• Is there an arbitration award, settlement agreement or court decision regarding your grievance?

- Yes
- No

- Have you attached a copy of the arbitration award, settlement agreement or court decision?

Yes

No – Reason: _____

II–Duty of Fair Representation

What is the nature of your complaint against the union? The following are examples only:

- Refusal to file a grievance
- Grievance not referred to the grievance procedure
- Grievance not referred to arbitration
- Grievance dropped or withdrawn
- Grievance settled without your consent
- Handling of grievance at arbitration
- Failure of union to convey to you its decision concerning the grievance
- Other (specify): _____

How did the union fail to fairly represent you?

Please describe, if applicable, how each conduct applies to your complaint against the union:

- Arbitrary Conduct**

Arbitrary conduct by a union generally means that the union has failed to investigate a grievance or an issue or has handled the case in a superficial manner. However, this does not mean that the union cannot make mistakes or that it must always be correct in every assessment it makes.

Please describe why you believe that your union acted in a manner that was arbitrary with respect to your rights under the collective agreement:

V–Timeliness

Section 97(2) of the *Code* requires that you file your complaint 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. On what date did you know of the union’s action or the circumstances giving rise to your complaint?

Although section 16(m.1) of the *Code* allows the Board to extend the 90-day time limit set out in section 97(2), the Board will only do so in exceptional circumstances. If you want the Board to consider extending the 90-day time limit, you must explain the exceptional circumstances that you feel the Board should consider in deciding whether or not to exercise its discretion. Provide supporting documentation, if necessary.

VI–Oral Hearing

There is no requirement for the Board to hold a hearing even if one is requested, and most complaints are decided without a hearing on the basis of the submissions on file. Is a hearing necessary?

- Yes
 No

If yes, why do you believe that a hearing is necessary?

Where would you want the hearing to take place?

VII–Remedies

What remedies are you seeking against the union?

In general, subsection 99(1) of the *Code* allows the Board to order the union to exercise, on behalf of the employee, the right and remedies which, according to the Board, the union should have exercised, or assisted the employee to exercise.

VIII–Filing Your Complaint

The Board has an e-filing Web Portal (Portal) service, which allows you to file your Portable Document Format (PDF) documents in the Board's centralized document filing system. You can access the Portal [here](#).

If you choose to file your document electronically using the Portal, do not forward a hard copy of the same document to the Board. The electronic version will be considered the original copy.

Signature

Date