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Before the Board Gets Involved:

OLRB Applications, OHSA Complaints, Pay Equity, and Employer Risk Management

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Meet Your Presenters

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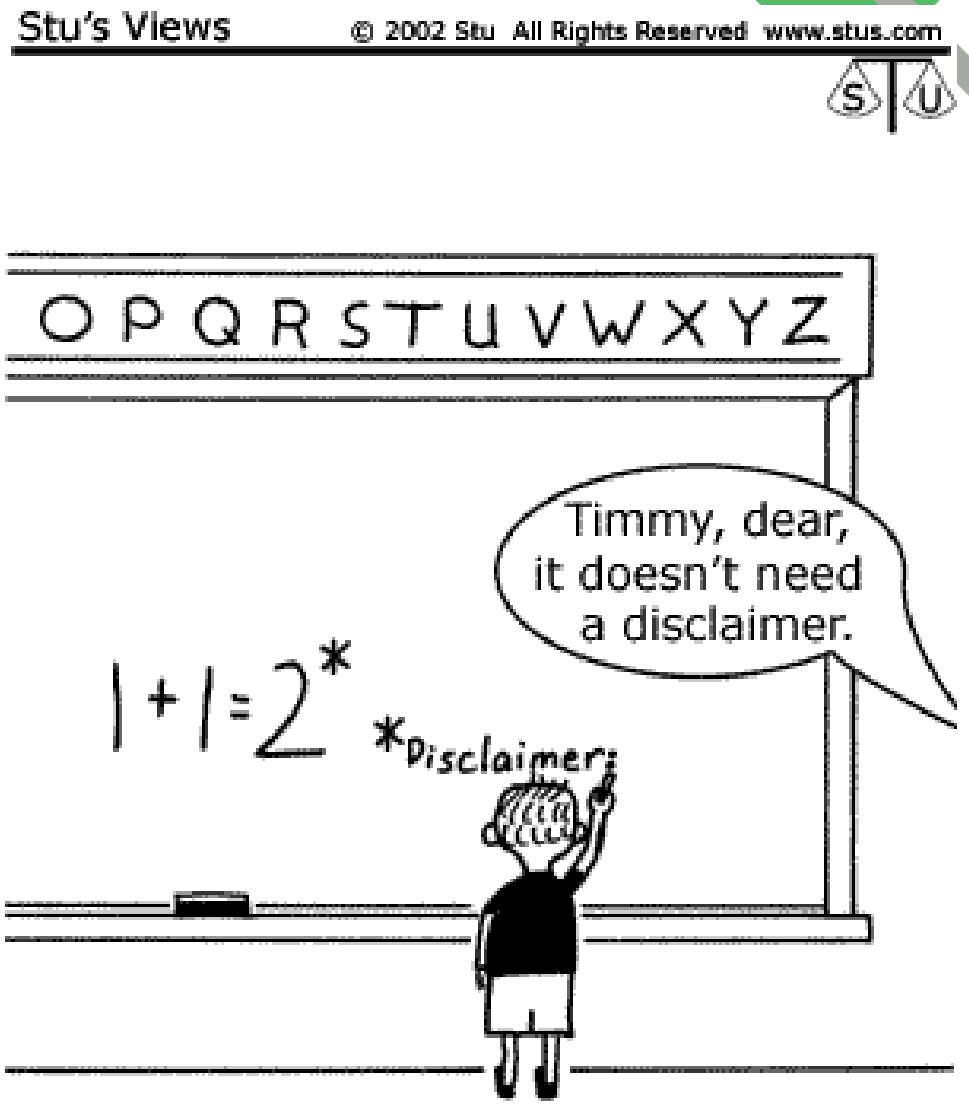
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Presentation Roadmap

- **Part I:** What reaches the OLRB and how employers can reduce risk
- **Part II:** OHSA responsibilities, inspections, reprisals and appeals
- **Part III:** Pay Equity Compliance
- **End:** Questions

What employers should take away

1. Recognize the issues most likely to result in OLRB proceedings under the LRA and the OHSA
2. Understand key OHSA and Pay Equity compliance obligations
3. Manage workplace risk proactively, before issues escalate

Six Foundations for Effective Labour Relations

1. Know the collective agreement and key union contacts
2. Know your duties under the LRA, OHSA and PEA – and follow them!
3. Always document
4. Never alter evidence or obstruct a complainant or witness
5. Hire labour relations counsel who knows how to work with unions, not just oppose them
6. Talk to that counsel early and often

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What reaches the OLRB and how employers can reduce risk



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OLRB: More Than a "Union Board"

- An independent adjudicative tribunal
- Resolves disputes under multiple Ontario workplace statutes
- Hears labour relations matters, employment standards appeals, OHSA proceedings and other statutory claims

What Cases Are Coming Before the OLRB?

Top 10 Types of Applications Received in 2024-2025

3,135 Total Applications Received

RANK	APPLICATION TYPE	NUMBER OF APPLICATIONS	% OF TOTAL
1	Construction Grievance	684	21.8%
2	Certification	623	19.9%
3	Employment Standards (Appeal)	464	14.8%
4	Duty of Fair Representation	329	10.5%
5	Health and Safety - Reprisals	327	10.4%
6	Unfair Labour Practice	286	9.1%
7	Termination	92	2.9%
8	Sale of Business/Related Employer	83	2.6%
9	Jurisdictional Dispute	54	1.7%
10	Health and Safety - Appeals	43	1.4%

Source: Ontario Labour Relations Board, Annual Report 2024-2025, p. 19.

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Construction Industry Grievances

21.8% - Largest application category

- Construction labour relations operate under specialized rules
- Key risks include subcontracting, bargaining-rights scope, collective agreement coverage, hiring and work assignments
- Confirm applicable bargaining rights and collective agreements before making operational decisions

Certification Applications 19.9%

- The process through which a union seeks bargaining rights
- Organizing may begin before management is aware
- Avoid threats, promises, coercion, surveillance or interference
- Control who communicates on the employer's behalf
- Preserve communications and avoid reactive workplace changes

Employment Standards Appeals 14.8%

- Appeals from employment standards officer decisions and orders
- Common issues include wages, overtime, vacation pay, leaves, termination and severance
- Audit compliance and record-keeping before a claim arises

Duty of Fair Representation 10.5%

- Concerns a union's representation of bargaining-unit employees
- Employers may still become involved in the facts or proceedings
- Maintain complete records and communicate through established labour-relations channels

OHSA Reprisal Complaints 10.4%

- Protects workers who exercise OHSA rights or participate in enforcement
- Risk increases when adverse action closely follows protected activity
- Separate legitimate employment decisions from safety-related activity
- Document the chronology, evidence, decision-maker and rationale

Unfair Labour Practice Complaints 9.1%

- Common allegations include interference, intimidation, discrimination, direct dealing and bad-faith bargaining
- Poor timing, communications or documentation can undermine an otherwise legitimate decision
- Centralize employer communications during organizing and bargaining
- Do not negotiate collective terms directly with bargaining-unit employees

Service Employees International Union Local 2 v Steam Whistle Brewery, 2026 CanLII 92948 (ON LRB)

- SEIU commenced an organizing campaign involving production and distribution employees in May 2024; by late July, only 19/60 employees signed cards.
- Employer conduct: Management promoted two organizing leaders, then terminated one, and disciplined and threatened the other.
- **Key evidence:** "Nipping [the campaign] in the bud" texts, recorded conversations, timing and inconsistent treatment.

Service Employees International Union Local 2 v Steam Whistle Brewery, 2026 CanLII 92948 (ON LRB) – cont'd

- OLRB Findings: Violations of LRA ss. 70 and 72 - interference and anti-union discrimination.
- Remedy: SEIU certified without a representation vote because the misconduct chilled employee choice.

Takeaway: During an organizing campaign, HR decisions must be clearly independent of union activity - or the Board may certify the union without a vote.

Lower Volume, Significant Impact

- Termination of bargaining rights: 2.9%
- Sale of business / related employer: 2.6%
- Jurisdictional disputes: 1.7%
- Health and safety appeals (from Inspector): 1.4%
- Lower volume does not mean lower operational risk
- Transactions, restructuring, subcontracting and MoL OHSA orders can have significant consequences

Before an OLRB Application Is Filed

- Know your collective agreement
- Know your bargaining-unit scope
- Train managers on organizing activity and protected rights
- Seek advice before restructuring, subcontracting or major workplace changes
- Document decisions and preserve relevant records
- Do not bypass the union or negotiate directly with employees

Discipline, Investigations and Documentation

- Understand your collective agreement's "just cause" protections
- Investigate allegations promptly, fairly and thoroughly
- Give employee an opportunity to respond before making a decision
- Apply discipline consistently and proportionately
- Clearly document the allegations, evidence, findings and reasons for decision

When an OLRB Application Arrives

- Notify labour relations legal counsel immediately
- We will identify the application, governing statute, deadline and required response
- Preserve relevant documents and communications
- Build a chronology and identify key witnesses
- Avoid reactive workplace communications
- Assess early resolution and hearing strategy

OHSA responsibilities, inspections, reprisals and appeals



OHSA: The Framework

- Prevention, participation and enforcement
- Duties depend on workplace role and applicable regulations
- Employers must provide information, instruction and supervision, and take every precaution reasonable in the circumstances
- Duty to investigate workplace harassment and violence complaints “as appropriate in the circumstances”

Employer's Duty to Investigate

- OLRB finally clarified some elements of "appropriate in the circumstances"
- Gassi v The Corporation of the County of Lambton, 2026 CanLII 64081 (ON LRB)

Internal Responsibility System

- Everyone has a safety role; employers and supervisors retain their statutory duties
- Responsibility increases with authority and control
- Report → assess → control → verify → improve
- Assign an owner, deadline and interim controls; document and verify closure

Three Fundamental Worker Rights

- **Right to know** about workplace hazards, controls and safe work requirements
- **Right to participate** through reporting, inspections, representatives and JHSC
- **Right to refuse** unsafe work, where statutory grounds and procedures apply
- **Respond promptly**, follow required process and document each step
- **Never** treat the exercise of an OHSA right as misconduct

JHSCs and Health and Safety Representatives

- Confirm whether the workplace needs a JHSC or health and safety representative
  - **General Rule: 6-19 workers = representative; 20+ workers = JHSC**
- Apply the correct rules for worker thresholds, construction, designated workplaces and multi-site operations
- Ensure proper worker selection, employer representation and certification
- Hold required meetings and workplace inspections
- Respond in writing to recommendations and verify corrective action

When the Ministry Attends

Be prepared before the inspector arrives:

- Entry may follow an initiative, complaint, work refusal, occurrence or follow-up; an inspector may enter at any time without warrant or notice as authorized by OHSA
- Designate an inspection lead, verify credentials and provide lawful access
- Preserve records and track requests, interviews, orders and compliance deadlines
- Control hazards promptly while assessing reporting, compliance and response obligations

Working with an Inspector

- Cooperate and communicate clearly
- Answer only from personal knowledge
- Avoid speculation
- Respect the inspector's lawful authority
- Facilitate required JHSC, health and safety representative, worker and/or union participation without delaying the inspection
- Engage counsel where charges, cautioned interviews, privilege or significant orders may arise

Work Refusals: Process Matters

- Take the concern seriously, apply interim controls and keep the worker in a safe place as near as reasonably possible, subject to OHSA directions
- Investigate forthwith in the worker's presence and with the required worker representative
- Notify the Ministry if the worker continues to refuse on reasonable grounds after the first-stage investigation
- Advise any replacement worker of the refusal and reasons, as required
- Again: Do not threaten, pressure or reprise against a worker for exercising or seeking enforcement of OHSA rights

Section 50 Reprisals

- Protected activity includes acting in compliance with OHSA or its regulations, seeking enforcement, and giving evidence in a proceeding or inquest
- Prohibited conduct includes dismissal, discipline, suspension, threats, penalties, intimidation and coercion
- In a s. 50 reprisal proceeding, the employer or person acting on its behalf bears the statutory burden of proving no contravention
- Before adverse action, review decision-maker knowledge, timing, consistent treatment, documented reasons and supporting records

Section 50 Reprisals

Braganza v. Randstad Canada

- Case arising from non-unionized employee but very timely
- Randstad terminated Ms. Braganza because she filed a workplace harassment complaint and participated in the investigation
- The OLRB awarded approximately $196,000 in damages compensation for lost wages, loss of the reasonable expectation of continued employment, and injury to dignity and mental distress

Employer Action Plan

- Clarify responsibilities and identify hazards
- Train and support supervisors
- Prepare inspection, reporting and work-refusal protocols
- Assess discipline for reprisal risk
- Track orders, deadlines and corrective action

Section 61 Appeals and Order Management

- Appeal an inspector's order or decision, or a refusal to make an order
- File with the OLRB within 30 days after the order or decision is made, and follow current service requirements
- An appeal does not automatically suspend the order; seek a suspension where appropriate
- Continue to control the hazard and comply unless the order is suspended; preserve the complete appeal record

Pay Equity Compliance



Pay Equity: Does the Act Apply to Your Organization?

- Intended to address systemic gender discrimination in compensation
- Applies to all Ontario public sector employers and provincially regulated employers with 10+ employees
- Requires employers to achieve and maintain pay equity
- “Equal pay for work of comparable value” – broader than just “equal pay for equal work”
- Applies to newer employers, despite historical implementation deadlines

Achieving Pay Equity: What Employers Must Examine

- Review compensation practices proactively, not only when a complaint arises
- Identify female and male job classes
- Assess job value using gender-neutral criteria: e.g. skill, effort, responsibility and working conditions
- Compare female job classes to the appropriate male job classes
- Identify and correct compensation gaps
- Maintain supporting job evaluation and compensation records
- Consider unionized and non-unionized groups separately, where required

Maintaining Pay Equity Is an Ongoing Obligation

- Pay equity is not a one-time exercise
- Employers must achieve and maintain pay equity
- Review pay equity as jobs, compensation and organizational structures change
- Pay particular attention to new job classes, restructuring, wage changes and collective bargaining
- Identify and address new or widening compensation gaps
- Document ongoing pay equity reviews and decisions
- Consult experienced pay equity counsel

The Employer Prevention Framework

- Know your obligations under the law, collective agreement and workplace policies
- Maintain effective relationships with key union contacts
- Train managers, supervisors and HR to recognize issues and respond appropriately
- Document carefully: decisions, concerns, complaints, investigations and responses

The Employer Prevention Framework – cont'd

- Protect integrity of the process: preserve evidence and never interfere with complainants or witnesses
- Review compliance proactively, before issues arise
- Use experienced labour counsel who understand how to work constructively with unions
- Seek advice early, while there are still options to manage the issue

Know When to Call Counsel

- Strong labour relations are built before the grievance, complaint, investigation or application begins.

The earlier counsel is involved, the more options the employer is likely to have.

Questions



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