

1. A trial is initiated when two or more members in good standing file signed charges with the Secretary of the Local of which the accused is a member. This same process will apply when Officers of the Union are charged. The charge must state the acts or actions alleged to have occurred and how these acts or actions contravene **Article XVIII, Section A of the TWU Constitution – Offences, Charges, Trials, Penalties and Appeals**. This section stipulates that violation of the provisions of the Constitution or Local Bylaws or of the Policies of the Union or actions detrimental to the welfare of the Union or crossing or working behind a picket line without authorization from the Executive Council shall constitute grounds for a trial.
[TWU Constitution, Article XVIII, Section B, subsection 2, paragraphs (a) and (c)]

2. The Local Secretary shall promptly arrange to have a copy of the charges served upon the accused either personally or by registered mail, return receipt requested. Copies must be forwarded to the Local's standing Trial Board Panel as well.
[Article XVIII, Section B.2, (d)]

3. A standing Local Trial Board Panel shall consist of nine members, appointed by the Local President, with the advice and consent of the Local Executive and subject to the approval of the Local membership.
[Article XVIII, B.2, (e)]

4. The Local Secretary shall furnish the accusers and the accused with the names of the nine members of the Local Trial Board Panel. Each side shall be instructed to eliminate two names from the panel of nine, the goal being to come up with the actual Trial Board of five members. If the process is not successful and more than five names remain on the list at the end of 10 days' time, the Local Executive shall determine which of the remaining names will be stricken.
[XVIII, B.2, (e)]

5. Trial Boards have the mandate to hear both sides of the issues, to determine the merits of the charges, to find the accused either guilty or not guilty and to determine proper penalties according to the terms of the Constitution. The Trial Board must elect a Chair. Upon receipt of the filed charges, they must meet and set a date within 30 days for the hearing to be held. The Trial Board must give the accused and at least one of the accusers 10 days' written notice of the time and place of the hearings either personally

or by registered mail, return receipt requested. Copies shall be given to the remaining accusers.
[XVIII, B.2, (f)]

6. A majority vote of the Trial Board shall be required for a decision.
[XVIII, B.2, (h)]

7. A record of the trial proceedings shall be kept by the Local Secretary.
[XVIII, b.2 (h)]

8. The decision of the Trial Board may in writing and may include the reasons for each decision.

9. The accuser and the accused may be represented by a member of the Union as counsel.
[XVIII, B.2, (h)]

The Conduct of the Trial

The Trial Board must consist of members who are unbiased and who are not involved in the laying of the charges, i.e. a witness or an accuser is not eligible to be a member of the Trial Board. Local Union Executive members should not be appointed as Trial Board members. Neither the merits nor the specific charges against the member should be discussed at Local meetings or among members prior to the conclusion of the trial process.

The process must strictly adhere to the provisions of the Constitution. The accusers must be given the opportunity to state their case, to introduce evidence, to examine and to cross-examine witnesses and to make their cases through the use of evidence and argument.

The accused must be confronted with the charges, the evidence and the witness(es) against them. They must be given the opportunity to introduce evidence, to examine and to cross-examine witnesses and be afforded the fair opportunity to meet the cases of their accusers by evidence and argument.

Expenses will not be paid by the Union except for the Convention Trial Board when they are required to travel to conduct hearings.

Standard Procedure at a Trial Board should include:

- The opening statement by the accusers or their appointee.
- The opening statement by the accused or their appointee.
- The presentation of the accusers' case through the introduction of witnesses and evidence, subject to cross-examination by the accused.

- The presentation of the case of the accused through the introduction of witnesses and evidence, subject to cross-examination by the accusers.

- The accusers' presentation of a final argument on the merits of their case.

- The presentation of the accused of a final argument on the merits of their case.

- If new issues are raised that were not addressed in the argument of the accusers, the accusers will be allowed rebuttal on those new issues only.

The Trial Board may ask questions for clarification.

Standard Issues and Legal Responsibilities to Consider

1. The trial must be conducted in good faith and without bias. The proceedings cannot be motivated by personal motive or bias towards the member. The focus of the proceedings must be on the welfare of the Union. The Trial Board cannot tolerate wilful procedural or substantive improprieties in the course of arriving at a decision.

2. Each party must be given adequate notice of the other side's case and adequate time to prepare a response. If new documents or issues are introduced, the other party must be given adequate time to research and address them.

3. It is not an offence for Officers of the Union to carry out the mandate of their office (performing their duties and making decisions on behalf of the Union), except if their decisions are found to be in bad faith, malicious, grossly negligent or discriminatory.

4. If the member is convicted, the penalty must be fair and reasonable.

5. A member's failure to participate in unlawful industrial action does not constitute fair and reasonable grounds for conviction.

6. The verdict must be based on the evidence adduced.

7. Justice must be timely. Justice delayed is justice denied.

8. The process must be balanced, giving equal opportunity for the accused and the accuser to participate.

9. Any penalty must be in relation to an "offence known to the laws of the Union."

10. Every member is entitled to a separately conducted trial, even when there are multiple charges and members charged in the same instance.
[Article XVIII, B.2, (g)]

11. Evidence should be given under oath (sworn in or affirmed).

12. Hearsay must not be allowed to establish the essential ingredients of the case at the hearing.

13. If requested, certain witnesses should be excluded from the hearing room prior to giving evidence if it is felt that their testimony may be influenced by hearing previous testimony.

14. To ensure a fair trial, neither the merits nor the specific charges against a member should be discussed at Local meetings or among members, and no documentation, evidence or opinions on the matter can be circulated prior to the conclusion of the trial process.

15. Where either the accused or those filing the charges believe that a fair trial is impossible in the accused member's Local because of partiality, hostility or fear of reprisals, that person may apply to the President of the Union for an order that the trial take place before a Trial Board composed of members from one or more nearby Locals. The expense for such trial shall be borne by the accused member's Local.
[XVIII, B.2, (i)]

16. If a member has moved to another Local but has not transferred to the new Local, charges may be filed in his former Local or the Local in whose territory he is located. The member charged may also request that the charges be filed in his former Local or the Local in whose territory he is located.
[XVIII, B.2, (b)]

17. All parties to the trial should maintain accurate records of dates of critical events, correspondence, notes of statements by the parties, arguments, etc., from the initial stages to the conclusion.

18. It is an offence for two or more members to combine for the purpose of injuring another. If damage results to that member, they may file an action and seek damages.

19. Any breach of the above principles and rules could result in the Court setting aside the decision or referring the matter back to the CLC Ombudsperson with direction.

Penalties

1. Upon a verdict of guilty of any charge the Trial Board may impose a penalty of expulsion, suspension, fine (not to exceed \$1,000.00), public reprimand or admonishment by the President, special remedial action appropriate to cure the offence or other penalty appropriate to the offence or any combination thereof, and the Trial Board shall determine when any such penalty has been satisfied. Pending satisfaction of a penalty, except expulsion, a penalized member shall be denied the right to attend meetings and any benefits he may receive as a member in good standing.
2. Any imposed fines shall be collected from the member by the Secretary of the Local concerned and shall be paid into Local funds within 30 days. Failure to pay the fine within 30 days from the date such fine was imposed shall invoke automatic suspension.
3. Expulsion shall mean expulsion from the Union with loss of all benefits.

Appeals

1. The decision of a Local Trial Board may be appealed by the accusers or the accused or anyone directly affected by the decision by filing notice in writing with the Secretary-Treasurer of the Union within 30 days of the final decision of the Local Trial Board. When a fine not exceeding \$100.00 has been assessed, payment of the fine shall be made at the time of the appeal. When the penalty is over \$100.00, a payment of not more than \$100.00 is required in order to hear such an appeal. If the decision is modified or reversed the payment shall be returned.
[Article XVIII, Section D, sub-section 1]
2. The appeal notice must state the grounds for appeal and reasons why the Local Trial board decision should be reversed, varied, amended, or set aside.
[XVIII, D.2]
3. The Secretary-Treasurer of the Union will then notify and provide copies of the appeal documents to the Local Secretary, the Local Trial Board and parties directly affected by the decision. **[XVIII, D.3]**

4. The Local Trial Board and any party affected by such decision shall have the right, within 15 days of receiving notice, to state reasons in writing why the decision should be upheld, reversed, varied, amended or set aside.
[XVIII, D.3]
5. The Secretary-Treasurer of the Union will notify and provide the Convention Trial Board with a copy of all the appeal documents.
6. The Convention Trial Board consists of five Convention Delegates appointed by the Convention Chairperson.
7. The Convention Trial Board will meet and determine whether to decide the appeal upon the record and documents before it, or allow a new hearing.
[XVIII, D.5]
8. The Secretary-Treasurer of the Union will coordinate with the Convention Trial Board and notify all parties to the appeal of the time and place for the appeal.
[XVIII, D.4]
9. If a new hearing is allowed, the accusers and the accused shall be afforded the opportunity to make a written or oral submission to the Convention Board.
[XVIII, D.5]
10. The Convention Trial Board will conduct the hearing and base its decisions on the same principles as Local Trial Boards and shall have the authority to affirm, set aside, or vary the decision of the Local Trial Board in any manner considered reasonable and proper.
[XVIII, D.6]
11. A member found guilty of any offence shall have the status of a member suspended pending the appeal and decision by the Convention Trial Board.
[XVIII, D.7]

Appeal to Ombudsperson

1. Parties affected may appeal the Convention Trial Board decision to an Ombudsperson appointed by the Canadian Labour Congress by filing a Notice of Appeal with the President of the Union within thirty days of notification.
[XVIII, D.8]
2. The President shall request in writing to the Canadian Labour Congress the appointment of an Ombudsperson. The parties shall conduct the appeal to the Ombudsperson by written submission.
3. The process will be:
 - (a) The Secretary-Treasurer will confirm that all due notice was given to the process. They shall also provide copies of the written decision of the Convention Trial Board and the written submission of the appellants.
 - (b) The appellants will be advised in writing of the decision of the Ombudsperson.
4. The decision of the Ombudsperson shall be final and binding.

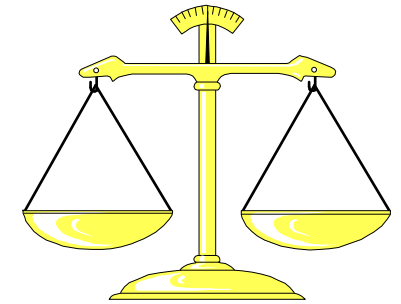


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CONDUCTING A FAIR TRIAL



*Notes to assist members and Trial Boards
when conducting a trial.
For more detailed information, please consult
the TWU Constitution*

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