



Annual Meeting

FREDERICTON

2026

June 11-13

*Deep roots.
Renewed growth.*



Member
Education Forum

Co-op boards & direct hires: understanding your duties as
the “employer”

Michael Hackl, Iler Campbell LLP mhackl@ilercampbell.com

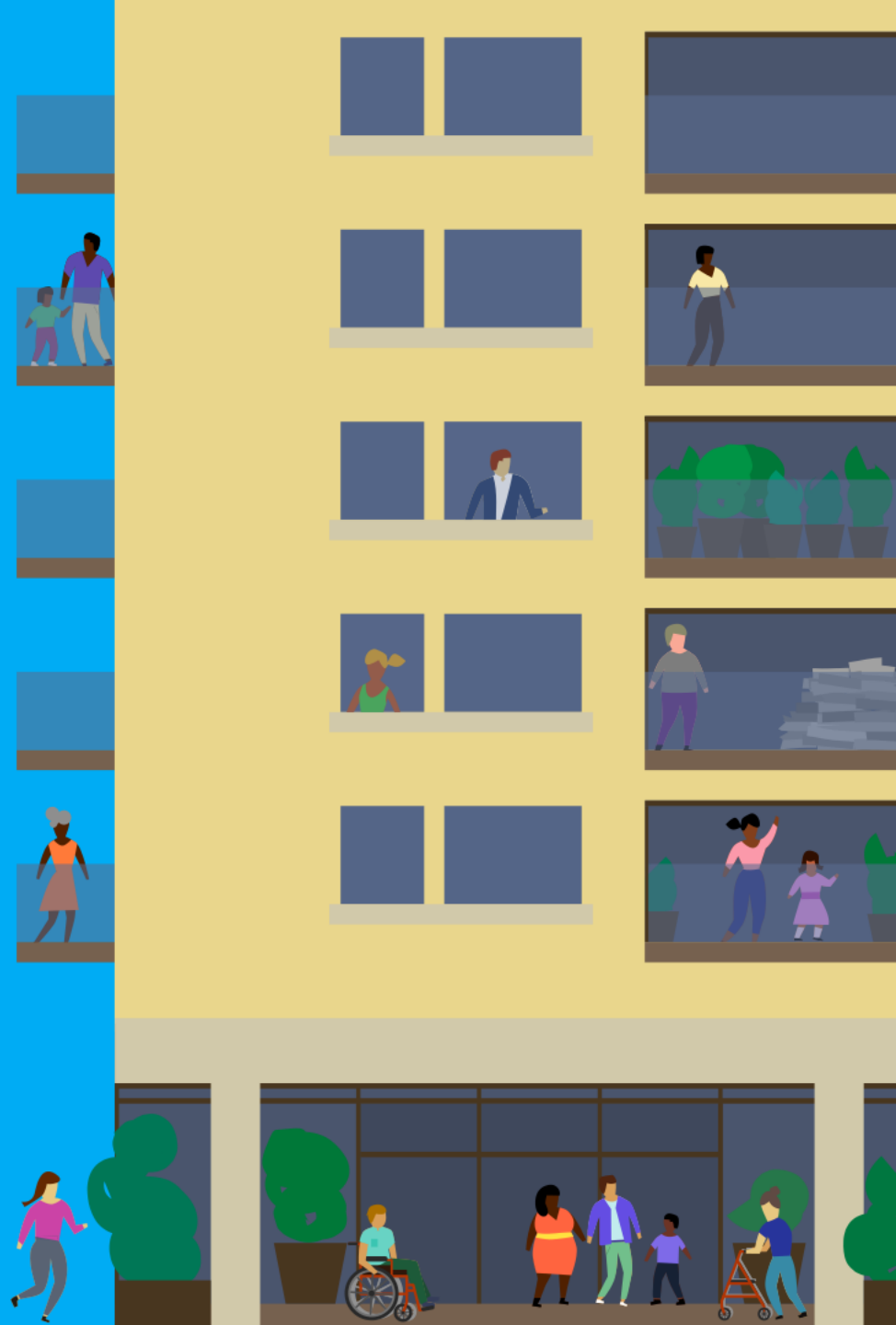
Land Acknowledgement

We respectfully acknowledge that New Brunswick is situated on the unceded and unsurrendered territories of the Wolastoqey, Mi'gmaq, and Peskotomuhkati peoples. We seek to repair and rebuild meaningful relationships with Indigenous peoples and honour these lands which hold the hopes of future generations.



Overview

1. Applicable Legislation
2. Director's Liability
3. Best Practices





Legal information



Legal advice

Legislation

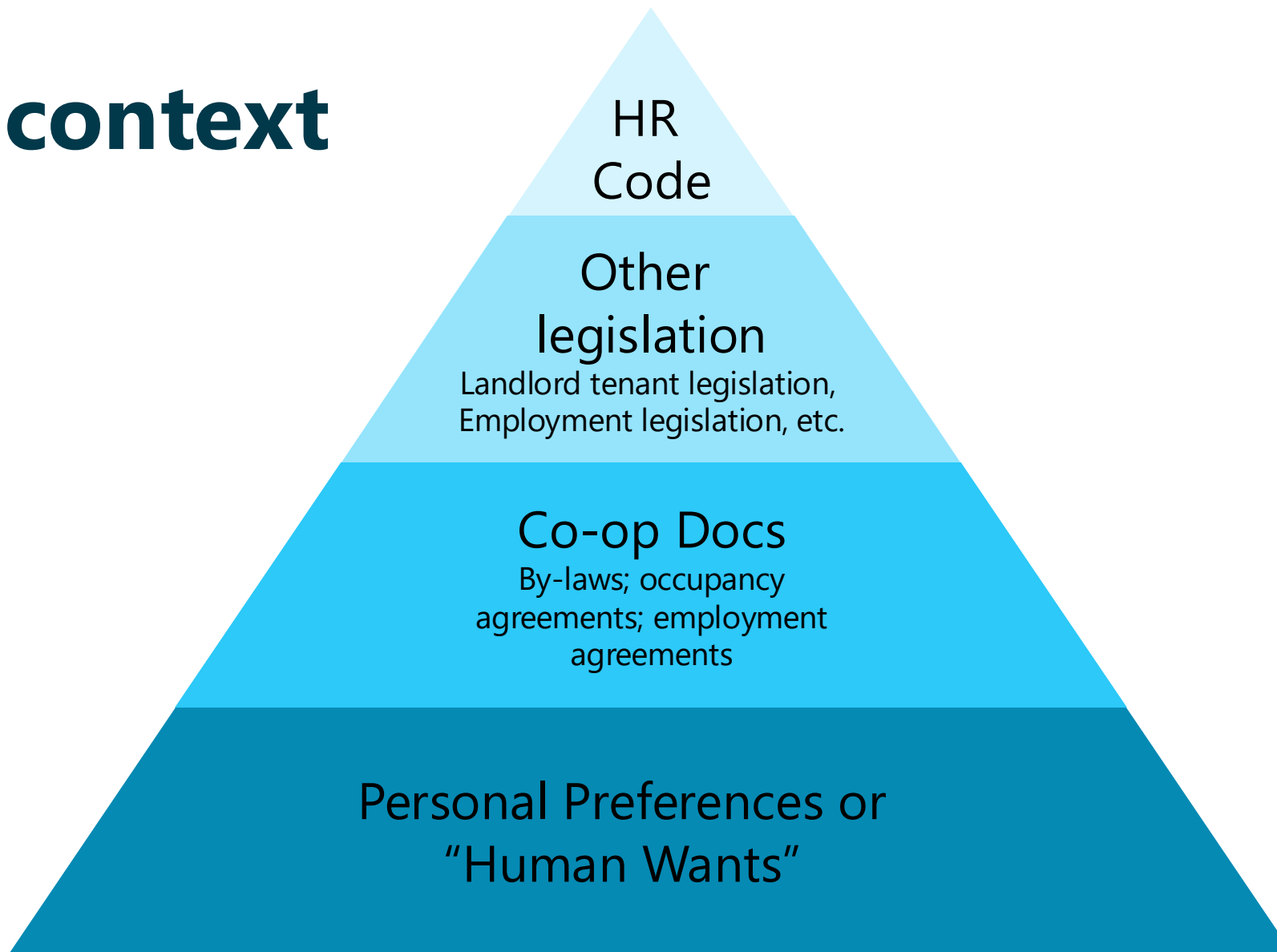
Legislation

- Going to focus on three sorts of legislation:
 - Human Rights legislation
 - Employment Standards legislation
 - Occupational Health and Safety legislation

Human Rights Legislation

- Applies to protect rights only in certain “social contexts” – one of those is employment
- In those “social contexts”, protects those rights only on protected grounds
- Where it does apply, it takes precedence over almost all other legislation

HR in context



Human Rights Legislation

- Protected grounds are similar in many respects from jurisdiction to jurisdiction, but there are some differences
- However, there are some key categories that are protected in every jurisdiction, such as race, religion, sex or gender, sexual orientation, disability, ethnicity or place of origin, and age

Human Rights Legislation

- Where it applies, it protects against discrimination broadly, including direct discrimination, and indirect or constructive discrimination
- Not an answer to treat everybody the same if that results in indirect or constructive discrimination – may need to treat people differently in their employment to account for differences based on protected grounds

Human Rights Legislation

- Imposing a requirement or qualification for a position that has the effect of discriminating on a protected ground is prohibited unless it is a bona fide occupational requirement or qualification because of the nature of the employment
- Also prohibits reprisal or retaliation for someone claiming their rights or taking steps to enforce their rights under the Code

Human Rights Legislation

- If there is constructive discrimination, or an alleged occupational requirement or qualification, or where discrimination arises on the basis of disability, there is an obligation to accommodate the person
- The way the standard is worded varies – some jurisdictions require reasonable accommodation, some require accommodation to the point of undue hardship, but ultimately, a high standard

Employment Standards legislation

- Sets **minimum** standards for various employment benefits, including vacation, minimum wage, public holidays, notice or pay in lieu of notice on termination, leaves of absence, hours of work etc.
- You can enter a contract with an employee that provides for greater benefits, but you cannot contract for a lesser standard

Employment Standards legislation

- If a contract between an employer and employee enter a contract with a less generous benefit than required by the legislation, that part of the contract will be unenforceable –this is interpreted in favour of the employee
- In Ontario, this issue comes up often in the context of termination clauses, so they have to be drafted very carefully, and the principle is being applied in other jurisdictions to varying extents – you will not go wrong by drafting them sufficiently carefully to meet the standard required in Ontario

Employment Standards legislation

- Again, this legislation prohibits reprisal against or discipline of an employee because the employee tried to exercise their rights under the legislation

Occupational Health and Safety legislation

- Deals with issues regarding workplace safety
- Also prohibits reprisal or punishment against an employee who has acted in compliance with the legislation or tried to enforce their rights under the legislation

Occupational Health and Safety legislation

- Each jurisdiction's legislation provides workers with the right to refuse to work in an unsafe workplace
- Each jurisdiction's legislation also addresses an employer's obligations where there is workplace violence or harassment – with some kind of requirement to investigate such incidents

Occupational Health and Safety legislation

- For example, in Ontario, a worker has the right to refuse to work where they have reason to believe that any equipment or the physical condition of the workplace is unsafe, or there may be workplace violence
- Where a worker exercises this right, there is a procedure for reporting and addressing the situation

Occupational Health and Safety legislation

- Again, using Ontario as an example, if there is a complaint of workplace harassment or you become aware of an incident of workplace harassment, you need to ensure that an investigation is conducted that is “appropriate in the circumstances,” and report the “results” of the investigation to the person who was allegedly harassed (and possibly the alleged harasser if they work for you)

Director's Liability

Director's Liability

- Obviously, as directors, you will want to make sure that the co-op abides by its legal obligations, because that is what is best for the co-op and you all have to act in the best interests of the co-op
- However, in addition, you should want to ensure that the co-op abides by its legal obligations because in certain circumstances, directors can be personally liable for breaches by the co-op

Director's Liability

- Directors can be found personally liable where the co-op has breached some obligation that the co-op owes as an employer
- Two primary sources of such liability:
 - in some instances, it is imposed by the legislation;
 - in other instances, it arises because of what the director has done or failed to do

Director's Liability

- The Human Rights, Employment Standards, and Occupational Health and Safety legislation in some jurisdictions expressly provides that directors are liable for breaches by the co-op
- In most cases, a director is only liable if they participated in, authorized, assented to, or acquiesced in the co-op's breach
- In addition, a director who has formally dissented from a decision or who had a reasonable belief that the co-op was meeting its obligations will typically be able to avoid liability

Director's Liability

- A reasonable belief that the co-op was meeting its obligations requires that the director be informed – you cannot be wilfully blind to the circumstances and claim a reasonable belief
- If you want to argue that you, personally, did not participate in, authorize, assent to, or acquiesce in the co-op's breach, you need to **formally** dissent – it is not enough to say you were not present, or you abstained – you need to have your dissent documented and recorded in the minutes of the meeting or deliver a written dissent to the co-op's office by a deadline set by corporate legislation
- This is the case even if you were absent from the meeting where the board made the decision in question

Director's Liability

- Directors can also be found personally liable on the basis that their personal acts were in breach of an obligation owed to an employee
- The argument that you were acting in your capacity as a director is not a defence against repercussions for anything you have done, with very limited exceptions
- If the employee can make a case that your acts were independently actionable, you can be found liable even if you were "acting only as a director"

Best Practices

Best Practices

- Be aware of the co-op's obligations as an employer and ensure that it complies with those obligations
- This requires that you be an active director who reviews the information that is part of your packages, and asks appropriate questions to get additional information you believe you need
- The co-op should obtain legal advice from your professional advisors when needed

Best Practices

- Where you do not agree with the decision being taken by the board, you need to say so, and to ensure that your dissent is formally registered in the minutes or deliver a written dissent
- If you do not, you may be found to have agreed with the decision of the board

Best Practices

- Make sure the co-op has robust policies on dealing with complaints of discrimination or harassment in the workplace – and it is not enough to have a good policy, you also need to follow the policy!
- Ensure that staff (in particular, management) has training on issues like harassment and discrimination in the workplace, accommodation of human rights issues, and workplace health and safety

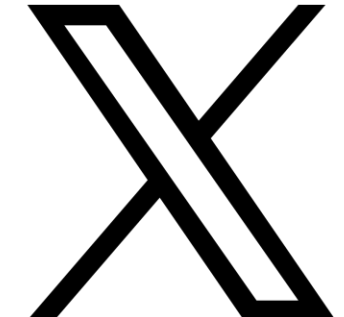
Best Practices

- Ensure that steps to deal with such matters are thoroughly documented by the co-op and where your position differs from the decision of the board or the actions of the co-op, ensure that you personally document what you have said or done to establish your dissent
- Ensure that the co-op has Director's and Officers insurance coverage, because no matter how careful you are, there is always a risk of a claim – and even if it is not meritorious, there will be costs of responding and stress of a claim hanging over you

**ANY
QUESTIONS?**

Share what you've learned on social media!

- Post photos, favourite moments, or key learnings from today's workshops on social media
- Tag us @chfcanada
- Use the hashtag #CHFCanada2026



The National Education Committee presents

ONLINE LEARNING

Self-Paced

Move through the content when it suits you.



Courses

Fulfilling your legal duties as a board director

Taking effective meeting minutes

Chair like a champion

Personal information protection

Identity affirming language

Maintenance 101

Financial statements 101

- ✔ For board directors, co-op members, and staff
- ✔ \$30 per course
- ✔ Many courses to choose from
- ✔ 30 minutes per course
- ✔ Requires internet connection
- ✔ Develop practical skills and gain knowledge



TAKE ACTION TODAY!

Youholdthekey.ca



**YOU HOLD
THE KEY**

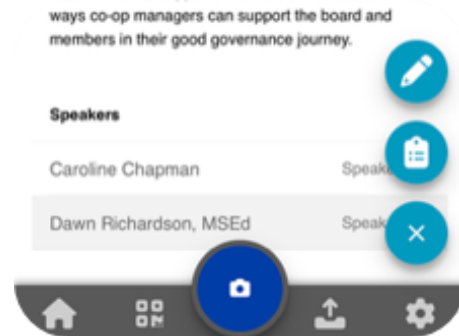
Protect affordable homes
Renew rental assistance now



Before you go

We need your help to do better!
Fill out a paper evaluation, fold in half and leave it in the room.
Or fill out a digital evaluation using our conference app.

Thanks!



When you get home

Find today's workshop materials in the resources section on our website:

chfcanada.coop/education/resources



Reminders

- **Voting in CHF Canada National Business meeting happens on Saturday.** Your co-op's delegate must be there in order to vote. The delegate can pick up a voting device at conference services.
- **All coffee breaks will be held in the tradeshow area!** Make sure you visit all the tradeshow exhibitors so that you can complete the bingo card (found in your bag) and have a chance to win prizes.

