

CANADA

1. GENERAL INTRODUCTION

A. BASIC LABOR POLICY

All labor relations regimes in Canada share fundamental features protecting the right to organize, to bargain collectively, and to strike. Each jurisdiction has a labor relations board or, in Quebec, the Office of the Labour Commissioner General and the Labour Court, to administer, adjudicate and enforce laws on the rights to organize, to bargain collectively, and to strike. (For brevity, in this text the term “labor relations board” will include Quebec’s Office of the Labour Commissioner General and the Labour Commissioners working under the direction of the Commissioner General, except where the context indicates otherwise.) Canada’s various labor relations acts or codes recognize free association and collective bargaining as the basis for effective industrial relations and generally guarantee the right to strike to obtain or renew a collective agreement, once detailed procedural requirements are met. All jurisdictions require that a union have the support of a majority of any group of employees that it seeks to represent in collective bargaining (such a group is referred to as a “bargaining unit”). Majority support is certified by the labor relations board, where an employer does not voluntarily recognize the majority status of a union.¹

¹ In Quebec a union may acquire bargaining rights on behalf of a bargaining unit only through certification by the Office of the Labour Commissioner General.

Within this common framework of labor principles, Canadian jurisdictions (the 10 provinces and the federal jurisdiction) vary significantly in procedures for certification of union majority support and in the regulation of strikes. Certain jurisdictions require elections to establish majority status. The majority rely on signed cards authorizing union representation. Most jurisdictions require conciliation or mediation by government authorities prior to any strike. Most also create conditions for binding arbitration in disputes over the first collective bargaining agreement of a newly organized union. While all jurisdictions prohibit permanent replacement of striking workers, temporary replacements are permitted in most jurisdictions.

In all Canadian jurisdictions, unfair labor practices are defined and prohibited in order to protect the exercise of labor rights from interference. While definitions vary in some respects, all jurisdictions prohibit any form of reprisal against workers for union organizing activity, as well as prohibiting bad-faith bargaining tactics.

B. LABOR LAW JURISDICTION

The structure of labor legislation and enforcement in Canada is fundamentally different from that in the United States and Mexico. Federal labor law does not prevail over provincial labor law in Canada. Instead of being hierarchical, federal and provincial labor relations statutes apply in parallel across the different jurisdictions. Federal and provincial labor authorities have equal capacity to decide matters within their respective jurisdictions. As a result of the structure of Canadian federalism, Canada has 11 distinct labor relations regimes: one in each of the 10 provinces, and that of the federal jurisdiction (which also extends to the three territories, Yukon, Northwest Territories and Nunavut).

The power to enact labor laws in Canada is derived from the *Constitution Act, 1867*, Section 91 (federal powers) and Section 92 (provincial powers, except s. 92(10)), which set out the division of legislative powers. The Canadian Parliament has the authority to regulate labor rights for federal government employees and for employees in specific activities which are of national, international, or interprovincial importance, identified in Section 91. These include: broadcasting; banks; postal serv-

ice; airports and air transportation; shipping, navigation and cargo handling; interprovincial road, rail, ferry and pipeline transport; telecommunications; and key national industries such as grain handling and uranium mining. Approximately 10 percent of the nation's workforce is covered by the federal jurisdiction.

Provincial authority to regulate labor matters is derived from the power of the provinces to legislate on "property and civil rights" and on "local works and undertakings" provided in Section 92 of the Constitution. Labor rights are seen as regulating the civil right of freedom of contract, thereby falling within provincial jurisdiction. The provinces enjoy nearly complete sovereignty in labor law matters within their jurisdiction, constrained only by constitutional and criminal law considerations (criminal law is within federal jurisdiction). Approximately 90 percent of the Canadian workforce is covered by provincial labor laws.

Early attempts by the federal government to regulate labor relations on a national scale were frustrated by this constitutional division of powers underpinning the Canadian federation. In a landmark case in 1925, the Judicial Committee of the Privy Council in the United Kingdom (Canada's highest court of appeal at that time) held that provincial legislatures possessed primary legislative authority over labor relations.² This case remains the legal basis for the Canadian courts' restrictive interpretation of federal labor law jurisdiction.

The United States generally maintains a single federal system of labor relations law and enforcement applying throughout the country with preemptive effect over state laws. Mexico has a single *Federal Labor Law* (FLL), which was enacted under authority granted to the federal government by the states of the Mexican Federation. Enforcement of the FLL is divided between federal and state authorities generally on the basis of the type of industry or service in question.

² *Toronto Electric Commissioners v. Snider*, [1925] A.C. 396.

Box 2.1**Private Sector Federal Labor Law Jurisdiction in Canada**

Excerpt from the *Canada Labour Code*.

Section 2: In this Act,

“federal work, undertaking or business” means any work, undertaking or business that is within the legislative authority of Parliament, including, without restricting the generality of the foregoing,

- a) a work, undertaking or business operated or carried on for or in connection with navigation, shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada,
- b) a railway, canal, telegraph or other work or undertaking connecting any province with any other province, or extending beyond the limits of a province,
- c) a line of ships connecting a province with any other province, or extending beyond the limits of a province,
- d) a ferry between any province and any other province or between any province and any country other than Canada,
- e) aerodromes, aircraft, or a line of air transportation,
- f) a radio broadcasting station,
- g) a bank,
- h) a work or undertaking that, although wholly situated within a province, is before or after its execution declared by Parliament to be for the general advantage of Canada or for the advantage of two or more of the provinces,
- i) a work, undertaking or business outside the legislative authority of the legislatures of the provinces, and
- j) a work, undertaking or activity in respect of which federal laws within the meaning of the *Canadian Laws Offshore Application Act* apply pursuant to that Act and any regulations made under that Act.

C. LEGAL SOURCES OF LABOR RIGHTS

Within Canada there are two types of legal system. The province of Quebec has a civil law system that applies to matters, like contracts and labor and employment relations, which fall within its provincial jurisdiction. In other Canadian jurisdictions, the legal system is based on the English common law tradition.

Within the common law tradition, legislative enactments such as constitutions, statutes, and regulations coexist with judge-made common law. Legislative enactments can also displace the common law. In the absence of such enactments, the common law continues to govern such matters as contractual relations and civil liability for torts such as negligence, nuisance and trespass. By contrast, Quebec's civil law system provides a legislated Civil Code which governs such matters. In both systems, legislative enactments form a hierarchy, with the Constitution taking precedence over statutes, and statutes taking precedence over regulations.

In Canada, the most important aspects of workers' rights to organize, associate freely, bargain collectively, and strike are recognized and made effective through labor relations statutes. In many key areas of labor law, these statutes do not set out detailed standards. Instead, the law in these areas develops through case decisions, where administrative tribunals and courts interpret the law as they apply it to specific cases that come before them. Case law establishes precedents to guide parties, tribunals and courts. Decisions of higher courts are considered binding by lower courts and administrative tribunals within the same jurisdiction. A decision of the Supreme Court of Canada is treated as a definitive interpretation of the law. Since every case contains different facts and circumstances, there is often a shift of nuance and interpretation of the law. From time to time, as well, tribunals may undertake a basic shift in policy that reverses the precedent of earlier cases. Similarly, courts may occasionally adopt a different interpretation of the law, reversing their own earlier decisions or the decisions of lower courts. In the Quebec civil law tradition, there is greater emphasis on detailed legal prescription. Nonetheless, many areas of labor law in that province have been left to develop through case law as well.

In the United States, labor relations boards and courts also operate largely by deciding cases that establish precedents to guide future conduct. On the other hand, tribunals and courts in Mexico, coming from a civil law tradition where conduct is guided by detailed legal prescription, place more emphasis on codes than on judicial or administrative tribunal precedents.

1) Constitutional Sources

Canada's first constitutional instrument, the *Constitution Act, 1867*, did not contain express language guaranteeing workers' collective rights. After the patriation of the Canadian Constitution in 1982, freedom of association was specifically enshrined as a constitutional guarantee. The Canadian *Charter of Rights and Freedoms*, incorporated into the amended Constitution of 1982, contains language explicitly guaranteeing freedom of association, freedom of expression and the right of peaceful assembly in Canada. The right to freedom of association for workers in the trade union context was later interpreted by the Supreme Court of Canada as "the freedom to work for the establishment of an association, to belong to an association, to maintain it, and to participate in its lawful activity without penalty or reprisal."³

The Supreme Court declined to interpret the freedom of association clause of the Charter as including the derivative right of engaging in activities essential to the purpose of an association. Moreover, the court has ruled that the Charter applies only to government action, and thus does not offer direct protection against the actions of private parties. The rights of workers to organize, to bargain collectively and to strike rely mainly on statutory enactments.

The United States Constitution, like that of Canada, does not specifically address labor rights or labor standards and does not govern the actions of private parties. In contrast, the Mexican Constitution, particularly its Article 123, provides extensive, detailed guarantees on the right

³ *Reference re Public Service Relations Act (Alta.)* (1987), 87 C.L.L.C. 14,021 (S.C.C.).

to organize and the right to strike, as well as a wide range of other rights and obligations which are intended to protect workers and which are directly binding upon public and private employers.

2) *Statutory Sources*

Protection of the right to organize, to bargain collectively and to strike was secured throughout Canada in the mid-1940s, when the federal government and most of the provinces adopted laws defining and prohibiting unfair labor practices and providing a legal framework for collective bargaining and the enforcement of collective agreements. The federal government first adopted collective bargaining legislation during the Second World War, when it exercised emergency powers to prevent labor unrest. When the federal emergency legislation was repealed after the war, the provinces themselves moved to adopt labor relations laws protecting the right to organize and bargain collectively and regulating strike activity.

The federal government maintains the *Canada Labour Code* and the Canada Industrial Relations Board (CIRB) for employees in federally regulated industries such as banking and interprovincial transportation and telecommunication services. Each province has enacted a labor relations statute and created an agency to administer it. The titles of each statute and corresponding agency are as follows:

Alberta: *Labour Relations Code*... Alberta Labour Relations Board

British Columbia: *Labour Relations Code*... British Columbia Labour Relations Board

Manitoba: *Labour Relations Act*... Manitoba Labour Board

New Brunswick: *Industrial Relations Act*... New Brunswick Labour and Employment Board

Newfoundland: *Labour Relations Act*... Newfoundland Labour Relations Board

Nova Scotia: *Trade Union Act*... Nova Scotia Labour Relations Board

Ontario: *Labour Relations Act, 1995*... Ontario Labour Relations Board

Prince Edward Island: *Labour Act*... Prince Edward Island Labour Relations Board

Quebec: *Labour Code*... Office of the Commissioner General of Labour (Labour Ministry) and, on appeal and in penal matters, the Labour Court

Saskatchewan: *Trade Union Act*... Saskatchewan Labour Relations Board

The United States maintains a single National Labor Relations Board (NLRB) to enforce U.S. law on the rights to organize, bargain collectively and strike. The U.S. NLRB operates through 33 regional offices around the country. Mexico maintains a Federal Conciliation and Arbitration Board (CAB), along with dozens of Federal Special Conciliation Boards located throughout the country to cover industries within the federal jurisdictions. In addition many local (state and Federal District) CABs operate within their local jurisdictions. In total over 100 CABs operate to enforce the *Federal Labor Law* within their respective jurisdictions.

3) Regulations and Rules

Canada's labor relations boards generally have jurisdiction to interpret the relevant labor relations statute and to make their own rules of procedure. In exercising rule-making authority, the boards consult with employer and employee groups and their representatives. Labor board regulations, which set out among other things the forms and information requirements for making applications or bringing complaints, are published in official provincial gazettes.

D. THE INDIVIDUAL EMPLOYMENT RELATIONSHIP

The legal relationship between an employer and an individual employee is established by explicit or implicit contract. Where an employee is represented by a union and that union holds or is negotiating to renew a collective agreement with his or her employer, the collective agreement legally supersedes and replaces his or her individual employment contract. However, in other circumstances the individual employee's contract of employment governs the employment relationship. Outside of Quebec, the law of employment contracts is inherited from the English common law. In Quebec, the general rules of contract established by the Civil Code apply to contracts of employment.

Under a doctrine developed by Canadian courts, employers in Canada must give "reasonable notice" of termination of employment, unless

the employment relationship is terminated for “just cause.” The just cause doctrine permits employers to terminate the employment relationship in cases of sufficiently serious misconduct. Without either just cause or such notice, employers must provide pay in lieu of notice, usually equal to about one month’s salary for each year of employment. Courts treat failure to give notice or to provide pay in lieu of notice as wrongful dismissal, and in response may award damages equal to pay in lieu of notice to an affected employee. This implied obligation on the part of the employer to provide reasonable notice can in some situations be limited by contract.

In addition to the reasonable notice doctrines developed by Canadian courts, in each jurisdiction employment standards legislation provides certain basic protections of employee interests, such as a mandatory minimum wage, minimum notice of termination of employment and the right to vacation time. Various statutes also provide protection against discrimination in employment by reason of trade union activity, race, sex, age, religion, disability, and other human rights grounds. Legislation in the federal jurisdiction, in Quebec and in Nova Scotia protects all employees with a specified minimum length of service (one, three and 10 years, respectively) and not covered by a collective agreement against wrongful dismissal, providing reinstatement as a possible remedy.

These statutory minimum protections generally cannot be removed by contract between the employer and employee. Outside of such statutory protections, the parties to an employment contract are free to agree to any terms and conditions of employment which do not violate public policies or laws which apply more generally outside of the specific context of employment.

Under Mexican law, most employees are covered by the *Federal Labor Law*, which establishes limited and specific just causes for terminating any individual’s employment, whether or not the individual is covered by a collective contract. In the United States, most nonunionized employees are employed “at will,” which means that, subject to statutory exceptions such as antidiscrimination law and other limited “public policy” exceptions, their contract of employment can be terminated without notice or severance pay, at any time, for any reason.

E. EXCLUSIONS FROM COVERAGE

All Canadian labor relations laws exclude from their coverage managers and those employed in a confidential capacity in matters relating to labor relations. Some labor relations statutes also exclude specific occupations such as domestic servants, agricultural workers, or members of such professions as law or medicine. In much of Canada, low-level supervisors and subcontractors who are in a situation of economic dependence on the party contracted with (often referred to as “dependent contractors”) are covered.

In addition to managers, agricultural workers and domestic employees, U.S. labor law generally excludes all supervisors and independent contractors. (U.S. law does not recognize a “dependent contractor” category — most dependent contractors covered under Canadian law would be excluded “independent contractors” under U.S. law.) Mexican labor relations law covers all workers who personally perform subordinate work for another individual or legal person in return for remuneration, except family members employed in a family business. Confidential workers (mainly managers, general supervisors and workers in a position of trust) may not join the same union as other workers, and in practice they seldom form unions.

2. LEVELS OF PROTECTION – SUBSTANTIVE LABOR LAWS

A. LABOR PRINCIPLE 1 – FREEDOM OF ASSOCIATION AND THE RIGHT TO ORGANIZE

1) Legal Foundations

As discussed above (see Legal Sources of Labour Rights, section 1C), Section 2(d) of the Canadian *Charter of Rights and Freedoms* provides that “everyone has ... freedom of association,” and that freedom was defined by the Supreme Court of Canada as “the freedom to work for the establishment of an association, to belong to an association, to maintain

it, and to participate in its lawful activity without penalty or reprisal.”⁴ This includes the right to establish, belong to, and maintain a union.

The Charter protects this right of individuals to organize collectively against any interference by government — federal, provincial, or municipal — regardless of whether the interference takes the form of legislation, regulation or public actions. Government actions that restrict the exercise of freedom of association are unconstitutional unless, as with all limits to constitutional rights, under Section 1 of the Charter they can be shown to be “such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” Quebec enacted its own human rights code in 1975, the *Charter of Human Rights and Freedoms*. Although it is not a constitutional document, it prevails over any other Quebec legislation. This instrument guarantees freedom of association and the right to exercise this freedom without discrimination, and it applies to the private sector as well as the public sector.

As noted above, however, in Canada constitutional rights protect only against government action. Practically speaking, the most important protections of workers’ freedom of association and rights to organize are found in labor relations statutes that regulate the conduct of private entities. Modeled largely on the U.S. Wagner Act of 1935, Canadian labor law statutes were crafted in the 1940s. Most have been extensively revised since then. These statutes recognize the freedom of workers to associate and their right to organize unions to defend their interests. They protect those rights against interference, most significantly by defining and prohibiting a set of unfair labor practices. Canadian labor laws also provide a legal framework within which workers can define and act upon common objectives, by enabling unions to act as self-financing and self-governing organizations. The key statutes are listed in section 1C, above.

2) The Formation and Dissolution of Unions

Canadian labor relations statutes protect the right of employees to form unions. No prior authorization, registration or other official act is required to form a union. Labor relations boards will generally treat an or-

⁴ *Reference re Public Service Relations Act (Alta.)* (1987), 87 C.L.L.C 14,021 (S.C.C.).

ganization as having trade union status, giving it legal standing under labor relations legislation, provided that its purposes include the regulation of relations between employers and employees, and provided that it has a constitution adopted in accordance with any procedural requirements established by law. Most labor relations statutes have been interpreted as requiring that a union demonstrate that it is a viable entity for the purposes of collective bargaining, by democratically adopting a working organizational structure, in order to be treated as a union for the purposes of labor law. Some jurisdictions require that a union have a written constitution, rules or bylaws. Others require that an organization be local or provincial. In some jurisdictions an organization that is influenced or dominated by an employer cannot be a trade union. In others it can be; but in all jurisdictions such an organization is barred from being certified as exclusive collective bargaining representative for a group of employees (referred to as a “bargaining unit,” see below). An organization that ceases to meet the requirements for trade union status may be treated by labor relations boards as without that status and thus without the rights which labor relations statutes grant to trade unions.

Once a union is formed, it may hold meetings, publicize its views and exercise many legal rights (see *Legal Status of Unions*, below). However, another step is required if a union is to achieve its main purpose — to bargain collectively on behalf of its members. In order to do this, a union must acquire bargaining rights (see *Acquisition of Bargaining Rights*, section 2B.2, below).

A trade union can be dissolved if: (1) an event occurs which the union constitution states will result in dissolution; (2) its members agree in a constitutionally valid vote that it can be dissolved; or (3) the foundation upon which the organization was based is lost or has been fundamentally altered.⁵

3) Legal Status of Unions

Historically, the common law treated unions as voluntary associations,

⁵ In Quebec a union may be dissolved if it is found by the Labour Court to have participated in an employer’s interference with an employee’s association (Article 149 of the Quebec Labour Code).

which do not have legal personality. Legal personality enables individuals or organizations to act legally, that is, to exercise legal rights including owning property, entering into contracts, or suing to enforce rights. Canadian labor legislation now grants unions the legal capacity to exercise, defend and enforce the rights granted under labor law, which include freedom of association and the rights to bargain collectively and to strike. Unions may also be called upon to respond to complaints under labor law. The question of whether unions in Canada have acquired more complete legal personality, including rights to sue and be sued, to own property, and to enter into contracts in their own name, is a subject of debate among Canadian jurists and would be answered somewhat differently in each jurisdiction. In Quebec the Code of Civil Procedure allows unions to institute legal proceedings in their own name. Many unions effectively acquire and sell property and carry out commercial transactions by designating union officers as trustees, who contract in their own names, or by establishing a not-for-profit holding company to buy and sell assets on behalf of the union.

Legal personality is not the same thing as bargaining rights, which enable a union to meet its main objective by requiring an employer to recognize and deal with it as the exclusive collective bargaining representative of a group of employees (see *Acquisition of Bargaining Rights*, section 2B.2, below).

4) Union Self-Governance

Unions in Canada are governed by the terms of their own constitutions, which they have the power to create and amend. Provided that they comply with their own constitutions, laws which seek to ensure basic union democracy (see *Freedom of Association within Unions*, section 2A.7, and *Protections against Interference*, section 2D, below), and general laws governing economic and political activity, unions are free to elect officers, hold meetings, set their union dues levels, and generally determine their own course of legal, political and strategic action.⁶

⁶ Manitoba imposes some important restrictions on union political spending decisions. See *Union Membership and Dues*, below.

5) Political and Legislative Activities of Unions

Trade union political and legislative action is an exercise of freedom of association for Canadian workers. Canadian unions support political parties and candidates for office through financial contributions and campaign assistance such as telephoning, handbilling and canvassing. Some unions actively endorse a political party.

Unions participate in the legislative process by seeking to convince sympathetic legislators to introduce pro-labor bills, meeting with legislators to persuade them to support such bills, and testifying and submitting briefs to legislative committees. They also mobilize members for rallies, marches, demonstrations and other forms of assembly guaranteed by the Canadian *Charter of Rights and Freedoms*.

6) Union Membership and Dues

The majority of Canadian labor laws require that, at the request of the union, the employer deduct and remit to the union the amount of regular union dues from the wages of each worker who is a member of a bargaining unit that it represents, whether or not the worker is a union member. This arrangement is often referred to as the Rand Formula (see box 2.2). In provinces where compulsory dues payment is a matter for negotiation between the parties, most unions and employers reach similar union security arrangements. Canadian labor laws also permit unions and employers to agree to collective agreement clauses requiring membership in the union as a condition of employment. These clauses are often referred to as “union shop” clauses.

In Mexico the FLL requires employers to deduct from union members’ pay and remit to the union ordinary union dues payments. A worker who is not a member of a union may not be required to pay union dues. However, employers and unions may also agree to clauses requiring membership in the union as a condition of employment and requiring employers to dismiss workers who lose their membership (“exclusion clauses”). In the United States, matters of union security, union membership or compulsory dues or fee payment are left to the bargaining parties except in 21 “right-to-work” states. These states have exercised

an option under federal labor law to prohibit negotiation of a union security clause requiring either membership in a union or the payment of an amount equal to union dues by those workers in a union's bargaining unit who choose not to become union members.

Box 2.2

The Rand Formula and Union Political Activities

Named after former Supreme Court of Canada Justice I.C. Rand for his award in the Ford Motor arbitration case of 1946, the Rand Formula requires all employees in unionized workplaces to pay union dues, but does not require employees to become members of the trade union. Justice Rand observed that all employees in a bargaining unit, whether union members or not, share in improved wages, working conditions and benefits achieved by the collective action of the employees. He noted that it would be unfair for employees to benefit from the gains brought by union representation without contributing to the costs of maintaining the union.

The Rand Formula was upheld recently by the Supreme Court of Canada in *Lavigne v. Ontario Public Service Employees' Union*.⁷ Lavigne was not a union member but was covered by the collective agreement. He argued that his right to freedom of association, protected by the Canadian *Charter of Rights and Freedoms*, was violated because he was forced to pay dues to a union to which he did not belong and which he did not support. Lavigne also objected to the union's contributions to a nuclear disarmament campaign and a political party. He maintained that his freedom of association included as well the freedom from association.

The Court denied Lavigne's claim and unanimously upheld the Rand Formula. Three of the seven justices concluded that freedom of association does not include freedom from compelled association, and that as a result, Section 2(d) of the Charter was not infringed. In a separate concurring judgment, three justices found that Section 2(d) did include freedom from association. However, they ruled that legally required dues contributions towards collective bargaining were a form of compelled association towards a common end, required to further collective social welfare, which fell within the class of required associations that are a necessary and inevitable part of membership in a democratic community.

⁷ [1991] 2 S.C.R. 211.

The justices held that Section 2(d) did not protect against such legally required association. They also ruled that, for two reasons, permitting unions to spend such funds on political causes could be justified under Section 1 of the Charter as a reasonable limit on the Section 2(d) freedom of association. First, it allows unions to play a role in shaping the social, political and economic context within which collective agreements and labor relations disputes are negotiated and resolved. Second, it fosters union democracy by allowing unions to decide democratically, free of government interference, which causes to support. The seventh justice assumed without deciding that Section 2(d) protected freedom from compelled association. However, she found no violation of that section in this case, ruling that simply requiring an individual to pay dues to a union which later spends a portion of those dues on political causes does not associate that individual with the ideas and values of the union.

Recent amendments to Manitoba's *Labour Relations Act* require unions to inquire of each bargaining unit member whether he or she wishes his or her dues to be used for political purposes. If the member indicates that he or she does not want his or her dues to be spent in this way, the union must forward the portion of dues proposed to be used for political purposes to a registered charity designated by the employee. Manitoba is the only Canadian jurisdiction which imposes such restrictions on union spending decisions.

Mexican labor law permits unions to collect dues and make political spending decisions in accordance with internal union constitutional rules. In the United States, when a bargaining unit member who pays a representation fee but is not a member of the union objects to expenditures for purposes other than collective bargaining and contract enforcement, the union must reduce his or her fee payment by that portion of dues which is devoted to such expenditures.

7) Freedom of Association within Unions

Labor relations statutes generally limit the effects of union shop clauses in certain cases, in order to protect workers' rights to participate in the union of their choice or to exercise other rights under the statute. An

employee generally cannot be dismissed, notwithstanding that he or she has been expelled from a union which is party to a union shop agreement, where his or her expulsion is related to: (1) participation in the affairs of another union; (2) refusal to pay unreasonable dues assessments; (3) participation in a labor law proceeding; (4) the exercise of other rights granted to employees under the labor relations statute. (See Protections against Interference, section 2D, below.)

Unions are required to conduct their elections in accordance with the rules established under their constitutions. A failure to abide by union constitutional rules can be remedied by a court on application by an affected party. A court may, among other things, declare an election to be null and void and stipulate conditions under which a new election must be held.

Canadian administrative law requires that, where a union member is subject to expulsion from the union, the expulsion must be authorized by the rules of the union, the proceedings must take place in accordance with procedural rules of natural justice, and the tribunal hearing the case must act in good faith.

Unions are generally required to file with the labor minister or the labor relations board a copy of the union's constitution and the names and addresses of the union's officers. In most jurisdictions unions are also required to file with the minister a copy of any collective agreement to which they are a party. These documents are often made available to the public. Most jurisdictions also require that unions file with the minister and/or the labor relations board and provide to their members a copy of the union's audited financial statements, either automatically at yearly intervals or on request.

In the United States, the *Labor Management Reporting and Disclosure Act* includes a comprehensive union member's "bill of rights" regulating internal union democracy. The LMRDA protects free speech rights in union affairs, the right to vote on union dues, the right to run for union office, the right to obtain the union's charter, bylaws and a copy of the collective bargaining agreement, the right to obtain an accounting of union finances, and the right to union elections free of intimidation or fraud.

In Mexico a union member may be expelled from a union only by a two-thirds majority vote of the total union membership, following pro-

cedures set out in the FLL and any procedures established by the union's constitution. The Mexican Constitution protects workers against dismissal for joining or attempting to form a union. Workers dismissed pursuant to an "exclusion clause" (see Union Membership and Dues, above) for joining or supporting another union during its formation or registration may seek reinstatement or severance pay by filing a claim with the relevant CAB. In addition, Mexican labor law provides a mechanism by which the membership can convoke a general meeting of the union if the board of directors fails to do so and requires that the board of directors provide members every six months with accounts of the administration of the union's assets.

B. LABOR PRINCIPLE 2 – THE RIGHT TO BARGAIN COLLECTIVELY

1) Legal Foundations

As noted above (see Legal Sources of Labor Rights, section 1C), Canadian law does not provide constitutional protection of the right to bargain collectively.

Neither Canadian common law nor Quebec's civil code imposes a duty on an employer to bargain collectively with a union representing employees. Before the enactment of statutes protecting the right to bargain collectively, a Canadian employer could legally refuse to recognize and bargain with a union. Workers had to strike to compel recognition and bargaining. When the government or the courts intervened, it was usually to protect employers' property rights. In most of Canada, with the exception of Quebec, even a union that achieved a collective bargaining agreement could not have it enforced in the courts, because a union had no legal status. Employers could break an agreement, and workers would have to strike anew.

In contrast, Quebec law, influenced by European labor jurisprudence that concerned itself more with the product of negotiation than with the process, granted legal status to unions in 1924 and made their collective agreements enforceable in court. Quebec law did not at that time, however, compel employers to bargain with unions if employers resisted bargaining.

When workers in most Winnipeg industries went on strike for union recognition in 1919, the federal government used its immigration and

criminal powers to deport or imprison strike leaders and used the Mounted Police and federal troops to force workers back on the job without recognition of their unions. In 1934, a two-month strike for recognition and a contract by 4,000 women workers against garment manufacturers in Montreal ended with various “understandings,” but employers still refused to recognize and bargain with the union. In 1937, after the U.S. *National Labor Relations Act* was already in force, the Premier of Ontario threatened to use the provincial police to break a recognition strike by workers at the large General Motors plant in Oshawa. The strike ended without recognition of the autoworkers’ union as the bargaining agent.

The modern right to bargain collectively was created by statute during World War II. The federal government and the provinces generally adopted laws modeled on the *National Labor Relations Act* to facilitate collective bargaining between employers and trade unions freely designated by a majority of employees as their bargaining representative. A process of certification of the bargaining agent was established as the basic mechanism for establishing bargaining rights, and unions were given the power to enter into legally binding collective agreements.

These new acts or codes created a legal duty to bargain in good faith and make every reasonable effort to reach a collective agreement. The employer is obligated to bargain exclusively with the union representing the employees and is prohibited from negotiating with another union or directly with employees in the bargaining unit.

The *Canada Labour Code* and the provincial acts or codes generally contain the following key elements:

- * certification of unions as bargaining representatives of one or more defined bargaining units, in a majority of jurisdictions by checking membership authorization cards;
- * exclusive representation of employees in the bargaining unit by the certified bargaining agent;
- * the duty of employers to bargain in good faith with a certified union and make every reasonable effort to reach a collective agreement;
- * the inclusion of certain mandatory clauses in a collective agreement;
- * mandatory mechanisms for the resolution of disputes, ranging from government mediation and conciliation to, in some instances, compulsory arbitration.

United States collective bargaining laws are similar in many respects. However, under the *National Labor Relations Act* there is no certification by “card-check”; elections are required in every case where there is not a voluntary recognition agreement between the parties. U.S. labor law generally provides for fewer direct interventions in the collective bargaining process. It does not stipulate mandatory collective bargaining clauses. Under the *National Labor Relations Act* neither mediation nor conciliation is required.

Mexican labor law contains the principles of majority status and exclusive representation, but it does not create a duty to bargain collectively. Instead, it creates a context to stimulate bargaining by guaranteeing the right to organize and the right to strike. Voting to determine majority status may take place if one union challenges another for title to a collective contract. In deciding such challenges, a CAB may supervise a vote of the workers, known as a *recuento*, in order to obtain evidence of union majority support. A *recuento* will not necessarily be conducted if other evidence is sufficient to prove majority support. Mexican law establishes requirements for the content of a collective contract and makes conciliation mandatory once a union has delivered notice of its intention to strike.

2) Acquisition of Bargaining Rights

Bargaining rights enable a union to legally require an employer to recognize and deal with it as the exclusive representative of a group of employees for the purposes of negotiating a collective agreement. Such a group of employees is referred to as a “bargaining unit.” A union wishing to exercise bargaining rights must have been chosen by a majority of employees within the bargaining unit.

A union may acquire bargaining rights either through voluntary recognition by the employer or, more commonly, by a process of certification administered by the labor relations board of the relevant jurisdiction upon an application for certification by the union. In Quebec, a union may acquire bargaining rights only through certification, and certification procedures are administered by the Office of the Labour Commissioner General.

Generally speaking, there are two aspects to obtaining certification: (1) the union must demonstrate to the labor relations board that it has

sufficient support among the employees in a bargaining unit, and (2) the labor relations board must find that bargaining unit to be appropriate for the purposes of collective bargaining.

In a majority of Canadian jurisdictions, a union can prove sufficient support through either of two procedures. First, it can file with the labor relations board a set of authorization cards signed by employees within an appropriate bargaining unit. If the union presents valid cards signed by more than half of the employees within such a unit (a 55 percent super-majority is required in British Columbia), the union will be automatically certified. Second, the union can apply for a labor relations board supervised vote. Such an application usually requires that the union file with the board a statutory minimum number of signed authorization cards, which generally ranges between 35 and 45 percent of employees within the bargaining unit proposed by the union. Only employees within that unit are eligible to vote. If more than half of the employees who vote in the election choose the union as their bargaining representative, the union will be certified. In all procedures, names of employees who support the union are not revealed to the employer. Where votes on certification are held, they are conducted by secret ballot.

In Alberta, Nova Scotia, Ontario, Newfoundland and Manitoba a union seeking certification does not have the option of seeking certification by presenting the signed authorization cards of bargaining unit members. Rather, a representation vote must be held. In Newfoundland, a vote is mandatory unless the employer and the union agree otherwise. Where a vote must be held, legislation typically requires that it be held very soon after an application for certification is filed. In Ontario the vote must be held within five days of receipt of the application for certification, unless the Labour Relations Board directs otherwise. Nova Scotia's *Trade Union Act* contains a similar provision: normally a vote must be held within five working days of receipt of the application by the board and three working days after the employer receives notice of the application. In Alberta, the vote must be held "as soon as possible." In Manitoba, the time limit is set at seven days, except in exceptional circumstances.

In all jurisdictions, labor relations boards (in Quebec, certification agents and labor commissioners) are given a broad mandate to ensure that any bargaining unit which a union is certified to represent is appro-

appropriate for collective bargaining. In making this determination, labor relations boards typically look to whether a community of interest exists among the workers in the bargaining unit. They consider such factors as: collective bargaining history with the employer or in the industry in question; similarities in skills, interests, duties and working conditions; the nature of the employer's organization; and the wishes of the parties. The bargaining unit need not be the most appropriate one for collective bargaining; it need only be an appropriate one. Unions are given reasonable latitude in proposing bargaining units for certification. Labor relations boards generally try to make determinations on this matter with as little delay as possible to the certification process. For example, where a union can demonstrate sufficient membership support within either of two possible bargaining unit configurations, the labor relations boards will certify the union prior to hearings on the final configuration of the bargaining unit.

In several jurisdictions, where the labor relations board finds an employer to have committed unfair labor practices which render it unlikely that the true wishes of the employees can be determined by a vote, the board may certify the union without one. Such an order can be made whether or not the union was able at any time to prove that it had the support of a majority of bargaining unit employees.

Canadian labor law generally provides that when a union's application for certification is unsuccessful, that union may be temporarily barred from making another application for certification for substantially the same bargaining unit. The length of the bar varies by jurisdiction but is most often less than one year. In some jurisdictions a bar is imposed automatically, while in most jurisdictions the labor relations board has some discretion not to impose one or to abridge the duration of the bar.

U.S. labor law provides that no union representation election may take place within one year of an earlier election in the same bargaining unit. In Mexico, a registered union can at any time seek support from members of another union that holds title to a collective contract and make an application to the relevant CAB to obtain title to the collective contract.

A union may not be certified where it is dominated or influenced by an employer (see Protections against Interference, section 2D, below). In addition, in most jurisdictions a union may not be certified where its constitution discriminates on the basis of grounds such as race, creed, color, nationality, ancestry, sex, or place of origin.

Under the U.S. *National Labor Relations Act*, an election is ordinarily required to serve as the basis for certification of majority support and the resulting acquisition of bargaining rights. However, the National Labor Relations Board may order an employer to bargain with a union without an election if the employer's unfair labor practices have made a fair election impossible.

In Mexico a union requires a minimum of 20 members in active employment in order to obtain registration. "Registration" in Mexico is not the same as "certification" in the United States and Canada. Registration gives a union the legal capacity to enter into contracts and act as a party to legal proceedings. It is obtained through an administrative procedure which does not require proof that the union represents a majority of any group of workers. Once registered, a union can demand a collective contract from an employer, and if the employer refuses to execute the contract, give a strike notice to induce bargaining and obtain conciliation by government authorities.

3) The Collective Bargaining Process

Collective bargaining can be initiated by the union or by the employer to conclude a first collective agreement or to renew, modify or terminate an existing agreement. Generally speaking, nothing prevents the parties from agreeing to bargain collectively over any matter at any time. However, for legal and practical reasons collective bargaining is normally limited to the time around the expiry of an existing collective agreement or following the certification of a union as a new bargaining agent.

(i) Obligation to Bargain

Collective bargaining is normally initiated by one party delivering to the other a "notice to bargain." Canada's labor relations statutes each speci-

fy a period of time during which notice to bargain can be given if a collective agreement is currently in force. That period is limited to a number of days (generally between 90 and 30) prior to the expiry of the collective agreement.

Once the union has acquired bargaining rights and given the employer notice to bargain for a collective agreement, labor relations statutes in each jurisdiction compel the employer and union to meet, bargain in good faith, and make every reasonable effort to reach a collective agreement. The requirements of good faith and reasonable efforts are procedural ones designed to ensure that (1) the employer recognizes the union as exclusive bargaining agent, and (2) the parties engage in a “full, free, honest and rational” discussion of their differences. Within these requirements the parties remain free to bargain hard and to steadfastly disagree.

In a majority of jurisdictions, there is generally no continuing duty to bargain during the term of a collective agreement. In the federal jurisdiction, British Columbia, Manitoba, New Brunswick, and Saskatchewan, however, various forms of significant mid-contract changes can give rise to a duty to bargain. The definition of the types of change giving rise to the duty varies with each jurisdiction.

Labor relations boards have in their decisions identified a number of patterns of action which will lead them to find a breach of the duty to bargain. For example, boards have distinguished between “hard” bargaining, which is permissible, and “surface” bargaining, which is unlawful, when evaluating whether employers have met their duty to bargain in good faith. The Ontario Labour Relations Board, in its decision in the *Daily Times* case, characterized “surface bargaining” as “going through the motions, or a preserving of the surface indications of bargaining without the intent of concluding a collective agreement. It constitutes a subtle but effective refusal to recognize the trade union.”⁸

Similarly, an employer may not in general deal directly with bargaining unit employees with respect to matters that are subject to collective bargaining, nor convey the message that employees will suffer economically as long as they are represented by a union. Employers may not attempt to dictate or negotiate the composition of a union’s bargaining

⁸ [1978] 2 O.L.R.B. Rep. July 446.

committee, fail to disclose relevant information requested by a union, refuse to provide a full justification of a bargaining position when asked to do so, refuse to consider or hear the union's objections to its bargaining position, refuse to attend or be persistently unavailable for negotiation meetings, or send a negotiator to the table who has no real authority to negotiate.

U.S. labor laws contain a “good faith bargaining” obligation and create an equivalent unfair labor practice of “refusal to bargain.” Many of the indicators of such a refusal are similar to those in Canada. In contrast, Mexican labor law does not contain the unfair labor practice concept. It does not declare the right to bargain collectively or impose a duty to bargain. Instead, by protecting workers’ right to strike, the law seeks to induce bargaining by giving workers the right to strike if the employer refuses to conclude a collective contract with their union.

(ii) Disclosure of Information

The duty to bargain includes a duty on both the employer and the union to disclose information necessary to the other to reach informed decisions in bargaining. Generally speaking, there is no duty to disclose information in the absence of a request for it. However, in many jurisdictions, labor relations boards have ruled that an employer must disclose information regarding a decision which it has already made, and which the union could not have anticipated, which will have a significant impact on terms and conditions of employment, such as a plant closing.

(iii) Changes to Working Conditions during Negotiations

In all Canadian jurisdictions, the labor relations statutes freeze the terms and conditions of employment of all members of the bargaining unit once the union gives notice to the employer to bargain for a collective agreement. It is an unfair labor practice for an employer to violate this statutory freeze. The freeze does not require that all conditions of work remain static, but rather that the employer carry on business as before, without changing terms and conditions of work that would not normally have been subject to change. The main purpose of the freeze is to pro-

vide a period of stability during which collective bargaining can take place. Generally the statutory freeze lasts until the union and the employer acquire the right to strike or lock out (or exercise it, in Quebec), or until the union loses the right to represent the employees in the bargaining unit.

Under U.S. labor law an employer is not permitted to change any aspect of workers' wages, hours and working conditions without first bargaining in good faith to the point of impasse with the union. This rule continues to apply even when a collective bargaining agreement has expired, except that an employer may at that point refuse to deduct union dues and participate in the arbitration of grievances.

Under Mexican law an employer may not unilaterally change the terms of a collective contract or an individual employment contract. Once filed with the relevant CAB, a collective contract that meets basic legal requirements for minimum contents is treated as a judicial order of the CAB itself and is enforceable as such. Collective contracts generally have an unlimited duration. A union may strike in response to unilateral changes to a collective contract. In cases of economic necessity a collective contract may be suspended or terminated, subject to CAB approval, if the employer can prove the existence of one of the legally recognized grounds for such measures.

(iv) Scope of Bargaining and Contents of Agreement

All Canadian jurisdictions require that certain clauses be included in all collective agreements. Legally mandatory collective agreement clauses generally include: clauses forbidding strikes and lockouts during the term of the agreement, clauses providing for access to binding arbitration of all differences relating to the interpretation, application or alleged violation of the collective agreement,⁹ and a minimum collective agreement duration of one year. In a majority of jurisdictions, Rand Formula union dues check-off clauses (see Union Membership and Dues, section 2A.6, above) are effectively mandatory.

Except for those provisions that the law deems to be included in every collective agreement, all other terms and conditions of employment may

⁹ Such a clause is legally required in all Canadian jurisdictions except Saskatchewan.

be negotiated and are subject to the legal duty to bargain. Unlike the U.S. system of collective bargaining, there is no distinction in Canadian labor law between mandatory and “permissive” subjects of bargaining. However, a limited set of issues may not be pressed to the point of impasse, and thus may not be the subject of a strike or lockout. These issues include: demands that the scope of a union’s bargaining unit be narrowed or expanded; a demand for recognition by an uncertified union; and demands related to a dispute between one union and another over their respective jurisdictions.

U.S. labor law distinguishes between “mandatory” subjects of collective bargaining, to which a duty to bargain applies, and “permissive” subjects, to which no duty applies. Mexican labor law, like Canadian labor law, has no doctrine equivalent to U.S. labor law’s concept of “permissive” subjects of bargaining.

Mexican law stipulates a number of subjects that a collective contract must address, such as wage rates, hours of work, rest days and vacation leave. U.S. labor law does not specify any clauses or types of clause that must be included in a collective bargaining agreement.

(v) Conciliation, Mediation and Arbitration of Bargaining Disputes

Compulsory First-Contract Resolution

First-contract arbitration is made available in most jurisdictions. Generally speaking, a key purpose of first-contract arbitration is to prevent an employer from “stonewalling” a new bargaining agent. The underlying rationale of first-contract arbitration is the facilitation of collective bargaining. A new union runs a risk of being decertified by a membership that has not yet determined the union’s ability to represent its interests before the employer.

In deciding whether to grant an application for first-contract arbitration, labor relations boards generally consider such factors as: the presence of bad faith or surface bargaining; conduct of an employer which demonstrates a refusal to recognize the union; a party adopting an uncompromising position without reasonable justification; a party failing to make reasonable or expeditious efforts to conclude a collective agreement; unrealistic demands or expectations arising from the intentional

conduct or inexperience of a party; or the existence of bitter and protracted negotiations in which it is unlikely that the parties will be able to reach a settlement by themselves. Some labor boards place much greater emphasis on the presence or absence of actual bad faith bargaining. Others are more likely to grant an application in cases similar to an ordinary impasse in negotiations. In Quebec, the Minister of Labour may assign a first-contract dispute to arbitration upon the request of either party to the dispute. Only Alberta, New Brunswick, Nova Scotia, and Prince Edward Island¹⁰ provide no access to board-imposed settlements in first-contract disputes.

U.S. and Mexican labor laws make no distinction between first-contract disputes and other contract disputes. Under U.S. law the issue of “good faith” in bargaining, raised in a case concerning unfair labor practices, may be more closely scrutinized by the NLRB and the courts in a first-contract negotiation where the employer strongly resists unionization than in negotiations between a union and an employer with a longstanding bargaining relationship. However, the main remedy available to the NLRB is an order to resume bargaining. Mexican law applies the same rules in a first-contract negotiation as in the revision of an already existing contract. However, a first collective contract may not contain terms less favorable to workers than those contained in their individual employment contracts.

Conciliation and Mediation

Canadian labor legislation has traditionally been distinguished by a commitment to government-provided conciliation and mediation services. Conciliation is mandatory as a precondition to striking in Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, and the federal jurisdiction. In Alberta no strike may take place until the formal appointment of a mediator. In the other provinces a conciliator or mediator may be appointed at the request of either party or at the discretion of the minister or other competent authority.

¹⁰ Amendments adding first-contract arbitration provisions to the P.E.I. *Labour Act* were assented to on May 19, 1994, but have not yet been proclaimed in force. See Statutes of P.E.I. 1994, c.32 s. 10.

The various Canadian jurisdictions provide a range of conciliation models. Conciliators, special mediators, labor boards, conciliation commissioners, special boards, individual fact-finders, and other actors undertake investigations, inquiries and hearings as part of a mediation or conciliation effort. They normally issue a report and recommendations, usually followed by acceptance, rejection or a vote on such report or recommendations. In turn, these are often followed by “cooling-off” periods and other opportunities for reconsidering each side’s position. These steps are all designed to avoid the ultimate conflict of a strike or lockout.

In the United States, unions may proceed to a strike upon the expiration of a collective bargaining agreement without mandatory mediation or conciliation. The U.S. *National Labor Relations Act* generally limits government intervention to mediation at the request of both parties. The U.S. Federal Mediation and Conciliation Service may enter a dispute only if both parties request it, and the FMCS has no procedural requirements for fact-finding, reporting, recommending, or the like. Only a genuine “national emergency” can provoke stronger government intervention. The *Railway Labor Act*, however, requires mediation before any strike in railroad and airline labor disputes. It also provides for farther-reaching government intervention, even by the President or the Congress of the United States, in these industries.

In Mexico, the parties together may at any time voluntarily request conciliation by the labor authorities, or arbitration by a third party. Conciliation by the relevant CAB is mandatory once a union delivers notice of its intention to strike. In addition, once a union has filed a strike notice with the CAB, it has the choice of submitting the dispute to the CAB for settlement or going forward with the strike.

(vi) Extension of Agreement Coverage

In Quebec, the terms and conditions of a collective bargaining agreement between the major union and the major employers in specified industrial sectors or occupations are extended by government decree to all employers and employees in that sector, whether or not they are unionized and whether or not they participated in bargaining.¹¹ Extension of collective agreements does not occur in Canada outside of Quebec.

¹¹ As of May 1999, 27 decrees were in force.

Extension of collective bargaining agreements does not occur in the United States. Law-contracts which extend negotiated terms of employment to cover an entire sector or region are an important feature of Mexican labor law.

4) Enforcement of Collective Agreements

(i) Binding Effect of Collective Agreements

A collective agreement is legally enforceable by either party (the union or the employer). Its terms govern relations between the parties unless they are waived or amended by mutual agreement.

(ii) Enforcement Procedures

The primary means of enforcing collective agreements in Canada is through private arbitration. Labor relations boards will in some cases have jurisdiction to enforce collective agreements. In limited circumstances, collective agreements may be enforced in court by prosecution or by injunction.

Arbitration

Collective agreements typically contain a grievance procedure to resolve disputes arising out of the application and operation of the agreement. These grievance procedures usually include a multiple-stage process of discussion between union and employer representatives. The vast majority of grievances are settled privately by the parties through this process. If the parties fail to settle a grievance, however, Canadian laws generally mandate that it be settled through binding arbitration by a neutral third party. Parties typically agree upon an arbitrator, but relevant acts or codes may enable the labor minister, at the request of either party, to appoint an arbitrator or an arbitration board.

The individual employee usually has no standing to personally bring to arbitration a complaint arising out of the collective agreement. Only the union has status to enforce the terms of a collective agreement, unless the agreement specifically grants to individual employees the power to directly seek enforcement of collective agreement rights.

If necessary, arbitral awards can generally be enforced through summary court procedures. The Supreme Court of Canada has held that courts should generally defer to arbitral decisions and set them aside only upon such grounds as bias, fraud, breach of fair procedure, or patent unreasonableness of the decision.

Labor Relations Boards

Unions or employers will sometimes deal with alleged breaches of a collective agreement which also involve a breach of the labor relations statute by filing a complaint with the labor relations board. Labor relations boards will often postpone taking action on such complaints until the alleged collective agreement breach has been addressed by an arbitrator. In such cases, the arbitrator's decision generally disposes of the matter. Boards in each jurisdiction have developed their own criteria for deciding when to defer to arbitration. In general, they will not defer a matter where the substance of the complaint goes to the heart of the public policy values embodied in the labor relations statute (e.g., where the case alleges blatant reprisals against employees who supported a newly certified union).

In a minority of jurisdictions, the labor relations board also has a more general power to interpret and enforce collective agreements in certain circumstances, which vary by jurisdiction. For example, in Saskatchewan the Labour Relations Board must hear and determine any dispute referred to it pursuant to an agreement between an employer and a union representing a majority of employees in a bargaining unit.

Courts

From a legal standpoint, a breach of a collective agreement is a violation of the labor relations statute, which may be prosecuted in provincial courts as an offence. However, such prosecutions may be undertaken only with the consent of the proper authority (generally the labor relations board or the relevant government minister). Consent to prosecute is seldom granted except in cases of persistent and knowing disregard of the collective agreement.

The Supreme Court of Canada has ruled that courts have the power to issue injunctions to restrain breaches of a collective agreement, except where there is legislation which prevents court actions on a collective

agreement. Injunctions will generally not be granted, however, where an equally effective remedy is available through the arbitration process.

5) Successor Employers

Canadian labor law seeks to balance an employer's right to rearrange its business affairs with the need to protect employees from sudden changes in their bargaining rights. When a business or enterprise is sold or transferred, collective bargaining rights flow through changes in ownership so long as there is continuation of the same business. This means among other things that, following the sale or transfer of a business, the employer taking over the business must honor the terms of any collective agreement between a union and the predecessor employer. Where no collective agreement was in force at the time of the sale, the successor employer is required to bargain in good faith with a view to reaching a collective agreement with any union representing employees of the predecessor employer. Generally, a successor employer is also bound by all labor relations law proceedings (such as certification applications) to which its predecessor was bound.

In determining whether a "business" has been transferred, labor relations boards look beyond the legal form of business transactions. Each board has developed its own jurisprudence and legal tests. Generally labor relations boards will consider such matters as whether substantially the same work is being performed in relation to substantially the same goods or services, and whether what was transferred is a functioning organization rather than simply a collection of assets. The test generally does not turn on whether the employees of the predecessor enterprise were hired by the successor employer, though that may be a factor in the determination.

The laws of Mexico likewise require that the terms and conditions of a collective bargaining agreement carry over to an employer continuing the business of a previous employer. In the U.S. a successor employer has only a duty to bargain with the union, and must do so only if the successor employer hires a majority of the former company's union-represented workers. Otherwise there is no duty to bargain. The collective agreement does not carry over to a successor employer.

6) Obligations of Unions towards Represented Workers

Most Canadian labor statutes impose a duty of fair representation on the union. The duty requires unions to represent all bargaining unit members fairly and not engage in arbitrary, discriminatory or bad faith conduct. The acts in Nova Scotia, New Brunswick and Prince Edward Island do not. However, in those jurisdictions a common law duty of fair representation can be enforced through the courts. If a union unfairly refuses to process a grievance, an individual employee may file a complaint or bring a court action against the union (depending on which jurisdiction the employee is in) for an alleged violation of the duty of fair representation.

In a number of jurisdictions the statutory duty of fair representation applies to the union's role in negotiating as well as in administering the collective agreement. However, unions are given wide latitude in collective agreement negotiations and may reach agreements which are more advantageous to some bargaining unit members than to others. At the federal level and in Alberta, Manitoba, Newfoundland and Saskatchewan, the duty applies only to the union's role in administering the collective agreement, that is, its role in deciding how employee complaints that the collective agreement has been violated will be pursued or settled. These five jurisdictions appear to share a concern that labor relations board supervision of collective bargaining for a new agreement would give rise to the danger of the board second-guessing the substantive fairness of the union's demands.

U.S. law provides for a similar duty of fair representation. The duty requires unions to represent all bargaining unit members without arbitrariness, bad faith, or discrimination. It applies to the union's administration of rights under the collective bargaining agreement and also applies to the negotiation of that agreement. In Mexico, Article 375 of the *Federal Labor Law* requires unions to represent their members in defending their individual rights, unless the individual chooses to act directly and without the assistance of the union.

7) Termination of Bargaining Rights

Canada's labor laws create periodic opportunities during which employees are allowed to change their union representation or to terminate the bargaining rights of their union if it no longer enjoys the support of a majority of bargaining unit members. In the interests of labor relations stability, most jurisdictions have limited the periods within which such termination can take place. Labor legislation typically gives unions a secure period of one year within which to negotiate a first collective agreement. Where a collective agreement is in place, a union may in general be decertified only during specified open periods, typically within two months of the expiry of the collective agreement. Labor relations boards will take steps to ensure that, if workers signify that they no longer wish to be represented by a union, they have done so voluntarily and without employer interference.

The U.S. *National Labor Relations Act* provides for similar methods of decertifying or changing the bargaining representative. Under Mexican labor law any duly registered union may challenge another union's title to a collective contract at any time by filing a claim to that title with the relevant CAB. If an incumbent union does not prove its majority support during such proceeding, it will lose title to the collective contract and thus lose the right to administer and negotiate revisions to it.

C. LABOR PRINCIPLE 3 – THE RIGHT TO STRIKE

1) Legal Foundations

As noted above (see Legal Sources of Labor Rights, section 1C), the right to strike, although necessary to the pursuit of the objectives of a labor organization, is not constitutionally protected in Canada.

No express right to strike exists at common law in Canada. In general, Canadian law followed British rulings, and strikes were outlawed well into the 19th century as an illegal restraint of trade. Worker protests and shifts in public sentiment gradually led to laws legalizing trade union activity. Following a bitter strike by Toronto typographical workers in

1872, the federal government passed the *Act to Amend the Criminal Law* that decriminalized strikes and peaceful picketing.

Throughout the late 19th and early 20th centuries, the federal government and the provinces continued to develop new laws to channel industrial conflict toward peaceful solutions, most notably the 1907 federal *Industrial Disputes Investigation Act*. These laws shaped the first governmental conciliation and mediation machinery and created a general premise of legitimacy for workers' right to strike.

With a confluence of pressures that included the need for wartime production, continued worker mobilizations for trade union rights, and the example of the U.S. Wagner Act, Canada and its provinces moved on new legislation in the 1940s that adopted collective bargaining as national policy and recognized the right to strike as an essential element of this policy.

Strikes are treated as "lawful union activities" and are thus protected by provincial and federal labor laws when undertaken in compliance with procedural requirements. Discrimination against workers for exercising the right to strike is an unfair labor practice.

Canadian labor law seeks to balance the rights of workers against efficiency concerns and the rights of employers to manage their business. Though the core right of workers to strike for a new collective agreement after a previous agreement has expired is generally protected for private sector workers under Canadian labor laws, the right to strike is nonetheless restricted by various legal provisions designed to limit the disruptive effects of work stoppages.

2) Protected Strike Activity

Canadian labor laws employ a broad definition of the term "strike," which typically includes most concerted refusals, cessations or slow-downs of work and other concerted activities designed to restrict or limit output. Since lawful strike activity is restricted to certain times in the collective bargaining cycle, disputes over whether specific actions constitute a strike generally arise when a labor board (the Labour Court in Quebec) is asked to determine whether those actions constitute a strike during the term of a collective agreement and are therefore unlawful (see

Regulation of the Right to Strike, below). However, if undertaken at times when strikes are legally permitted, work slowdowns, work-to-rule campaigns, and similar measures are fully protected as lawful strike activity (except in Quebec).

The U.S. *National Labor Relations Act* does not include partial or intermittent strikes or work slowdowns within the concerted activities that it protects. Mexican labor law defines protected strike activity as “the mere act of suspending work,” and thus would not protect work slowdowns. However, both U.S. and Mexican labor laws allow workers and unions to strike for purposes other than the settlement of collective agreement bargaining disputes, in contrast to Canadian labor laws.

3) Regulation of the Right to Strike

(i) No-Strike Clauses

A statutory prohibition on strikes during the term of a collective agreement, which prevails in all Canadian jurisdictions, cannot be altered by negotiations between the parties. No strike or lockout is permitted while a collective agreement is in effect. All disputes that arise during the term of an agreement are subject to the dispute resolution procedures of the agreement. Labor relations statutes provide for mandatory independent arbitration of such disputes, which is normally seen as the *quid pro quo* for removing the right to strike during the life of the collective agreement (see Scope of Bargaining and Contents of Agreement, in section 2B.3, above).

While no-strike clauses are contained in most collective bargaining agreements in the United States, they are a matter for negotiation and are not required by law. Some unions and employers retain the right to strike or lockout over unresolved grievances during the term of an agreement. Under Mexican law, there is no prohibition on strikes during the term of a collective contract, though by custom Mexican unions generally restrict industrial action to the time each year when their wage terms are up for renewal, or every two years when nonwage contract issues are negotiated.

(ii) Compulsory Conciliation

As discussed above (see Conciliation, Mediation and Arbitration of Bargaining Disputes, section 2B.3), conciliation or mediation is a mandatory precondition to striking in the majority of Canadian jurisdictions.

(iii) Unlawful Strikes

A strike may be lawful or unlawful. Strikes are lawful only for the purpose of seeking to conclude a collective agreement and only after statutory procedural requirements have been met. Workers are prohibited under Canadian federal and provincial labor laws from striking for union recognition. Secondary strikes (see Picketing and Other Supportive Action, section 2C.4, below) are generally treated as unlawful by the Canadian labor boards and courts.

Canadian law generally prohibits a union from calling, counseling, supporting, or encouraging an unlawful strike or threatening any of those. Labor relations boards can issue a variety of remedial orders against unions and employees participating in an unlawful strike. Many labor boards in Canada have been given the power to issue cease and desist orders which can have the same effect as an injunction if they are registered in the appropriate superior court.

Employers may also proceed against employees engaging in an unlawful strike in the common law courts and by arbitration. Common law courts have retained power to issue an injunction against unlawful strikes and strikers, ordering an end to the unlawful activity in question. But courts will generally not award damages in the case of an unlawful strike, requiring the employer to pursue damages before an arbitrator. Such claims for damages may be based on the no-strike clause of the collective agreement.

Unions may also be liable for damages for breach of the collective agreement or of the labor relations statute. Workers do not cease to be employees by participating in an unlawful strike. Nonetheless, they may be subject to discipline, up to and including dismissal, in accordance with the terms of a collective agreement.

Canada's no-strike policy contrasts with U.S. and Mexican law. In the United States, workers may strike for union recognition, but the union must petition for a certification election within 30 days. In Mexico, union recognition does not assume the same importance. Workers have the right to form a union and to strike to obtain a collective bargaining agreement. As long as the union formation and the strike are carried out in accordance with legal requirements, there is no need for recognition of majority support in the U.S. or Canadian sense.

(iv) Essential Services

Some Canadian jurisdictions make special provision for advance notice of a strike and maintenance of essential services where a strike affects the public interest. Generally, “essential services” exceptions to the right to strike are limited to work the interruption of which poses a danger to public safety and health. For example, in the federal sector, striking workers must continue work to the extent necessary to prevent an “immediate and serious danger” to the safety or health of the public.

Mexican labor law requires longer advance notice of strikes in public service sectors and requires that transportation workers and health care workers complete certain tasks before joining a strike. U.S. law makes no provision for essential services or equipment maintenance during a strike, except for a 10-day notice of any strike in a health care facility. U.S. unions and companies may negotiate over equipment maintenance or other safeguards during a strike, but have no statutory obligation to do so.

(v) Back-to-Work Legislation

On occasion, Canadian governments have enacted *ad hoc* back-to-work legislation in order to bring an end to otherwise lawful strikes, generally in economically important enterprises. For example, the government of Canada passed back-to-work legislation in the federal jurisdiction 30 times between 1950 and 1999 in order to end work stoppages such as railway, postal service, port operations, shipping and grain handling

strikes.¹² Back-to-work legislation typically threatens workers who continue to strike with substantial fines and often requires mandatory arbitration of outstanding contract negotiation disputes.

(vi) Strike Votes

All Canadian labor relations statutes require a secret ballot strike vote (usually by all workers represented in the bargaining unit, whether or not they are union members) before a strike may occur. In some cases, a majority of the bargaining unit must vote in favor of the strike; in most cases a majority of those voting is required.

Most Canadian jurisdictions also empower the labor relations board or the labor minister to require that the employer's last contract offer be put to a vote of the union's members before a strike may begin or, in some cases, after a strike has begun. An employer in Alberta, British Columbia, New Brunswick, Manitoba or Ontario may apply to the relevant public authority for a vote on its last offer.

In some cases, the union is allowed to conduct these votes through its own internal procedures, subject to challenge by union members if the vote is conducted in violation of secret ballot, eligibility and other requirements. In other cases, the relevant labor board oversees the voting process.

Canada's mandatory strike votes or last-offer votes contrast with U.S. labor law regarding strikes. No U.S. law requires a strike vote or a last-offer vote by workers before taking strike action or after a strike has begun. As a matter of democratic practice, however, most U.S. unions' constitutions and bylaws require a strike vote, sometimes with a two-thirds majority needed to launch a strike. The government has no role in overseeing such a vote. In Mexico, once a strike has started, employers, workers, or interested third parties may request that the CAB certify the legal existence of the strike. This requires the CAB to determine, among other things, whether a majority of workers support the strike, for which purpose a strike vote of workers (called a *recuento*) may be held in order to determine whether the strike enjoys majority support. If the strike does not enjoy majority support it will be declared "nonexistent," and work must be resumed.

¹² Source: Workplace Information Directorate, Human Resources Development Canada.

4) *Picketing and Other Supportive Action*

(i) Picketing

The Supreme Court of Canada has ruled that peaceful picketing designed to communicate information is lawful¹³ and that, as a means of free expression, it also carries a measure of constitutional protection.¹⁴ In most jurisdictions, picketing is not directly regulated by the labor relations act or code. It may, however, give rise to civil law suits for trespass, nuisance (generally defined as “substantial and unreasonable interference with an occupier’s interest in the beneficial use of his or her land”), or wrongful interference with economic relations. Such lawsuits are brought in court rather than before the labor relations board. The party bringing the action will usually seek an injunction restraining further picketing, along with compensation for economic losses suffered as a result of the picketing. Claims for such compensation are seldom pursued once an injunction has been issued. Many commentators have noted that in such cases courts have often avoided both the spirit and the letter of the Supreme Court’s ruling declaring peaceful informational picketing to be legal.

In addition to regulating picketing of an employer whose employees are on strike, the courts have generally held that secondary picketing, which is directed at a neutral third party to the labor dispute, is not legal. The labor relations statutes of Alberta, New Brunswick and British Columbia specifically prohibit secondary picketing. In Ontario, the Labour Relations Board may issue a cease and desist order against such secondary picketing where it finds that such picketing causes or is intended to cause an unlawful strike or lockout. In British Columbia, the Labour Relations Board has exclusive jurisdiction to regulate primary and secondary picketing, except in cases of immediate danger of serious physical injury or actual obstruction or physical damage to property.

In some jurisdictions the prohibition on secondary picketing covers not only picketing *per se*, but also distributing leaflets or handbills to workers or customers at secondary locations. In other jurisdictions

¹³ *Williams v. Aristocratic Restaurants(1947) Ltd.*, [1951] 3 D.L.R. 769 (S.C.C.).

¹⁴ *RWDSU Local 580 v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573.

leafletting at the site of a secondary employer for the purposes of persuading customers not to purchase the products of the primary employer may be permissible so long as it does not prevent the employees of the secondary employer from working or interfere with other contractual relations of the secondary employer. The dividing line between prohibited secondary picketing and expressive activity protected by the *Charter of Rights and Freedoms* has not been fully clarified through case law. However, at least one provincial court has stated that expressive activities such as press releases, letters to affected third parties, television or newspaper advertisements, or leaflets distributed at support rallies or left on cars in mall parking lots would not be prohibited as secondary picketing.¹⁵

Canadian laws regarding picketing are generally similar to those of the United States. The picketing issue does not arise in the same way in Mexico, where companies are required to totally close operations during a lawful strike, except for necessary equipment maintenance or conservation of raw materials, which are the responsibility of the striking union.

(ii) Secondary Strike Action

Canadian labor laws do not specifically prohibit (as in the United States) or permit (as in Mexico) a secondary strike by a union at a supplier or customer of a company whose workers are engaged in a primary strike. However, since only a strike by a certified union seeking a new collective bargaining agreement is lawful, secondary strikes are generally found to be unlawful by Canadian labor boards and courts.

5) *Limits on Striker Replacement*

The issue of striker replacement is debated in Canada as passionately as in the United States, but the locus of the debate is different. No Canadian jurisdiction allows the permanent replacement of strikers, as is per-

¹⁵ *United Food and Commercial Workers, local 1518 v. K Mart Canada Ltd.* (1995), 96 C.L.L.C. 210-007 (British Columbia Supreme Court).

mitted in the United States. In some provinces and in the federal jurisdiction, there is a specific statutory prohibition on permanent replacement or a specific guarantee of the right of a striking worker to return to his or her job at the conclusion of a strike if the job still exists. In other provinces, and in the federal sector, the labor boards have found permanent replacement to be a reprisal against workers for the exercise of a lawful right and thus an unfair labor practice. Moreover, the use of replacements for the purpose of destroying the union's representative capacity is in general considered an unfair labor practice and is specifically prohibited in the federal jurisdiction.

In 1977 Quebec became the first Canadian jurisdiction to adopt an "anti-scab" law prohibiting even temporary replacement workers in a strike. The prohibition reaches not only new employees, but also the use of employees from the striking bargaining unit who would be willing to cross the picket line to return to work and other employees, managers or supervisors from other plants of the same employer. Only managers and supervisors employed at the struck facility before the outset of negotiations may be used to perform the work of striking employees.

Quebec has established additional specialized institutional measures to deal with strikes. The Minister of Labour may name an examiner to verify whether the employer complies with the prohibitions on use of replacement workers. The special examiner has wide powers of investigation, including the ability to inspect the workplace accompanied by union and management representatives. At the end of the strike, the failure to recall an employee may be the subject of mandatory arbitration.

British Columbia is another Canadian province that sharply curtails the use of replacement workers during a strike. Its policy differs from that of Quebec only to the extent that it permits members of the bargaining unit to cross picket lines to perform work. As in Quebec, however, the employer is prohibited from engaging temporary replacement workers.

Ontario had a similar anti-scab law from 1993-1995, but it was repealed after a change of provincial government, which reverted to the previous law permitting the employment of new (but temporary) hires and use of other company managers or supervisors to perform the work of striking employees.

Box 2.3**Canada's Federal Task Force Addresses Striker Replacement**

The federal government's 1996 special task force to review the *Canada Labour Code* devoted much of its work to the question of striker replacements. It concluded its review with a recommendation that there should be no general prohibition on the use of temporary replacement workers, but that where the use of replacement workers in a dispute is demonstrated to be for the purpose of undermining the union's representative capacity rather than the pursuit of legitimate bargaining objectives, this should be declared an unfair labor practice and the CIRB should be given the specific remedial power to prohibit the further use of replacement workers in the dispute. A minority report argued that the use of replacements inherently undermines the union and should be prohibited outright. The majority report formed the basis for recent amendments to the *Canada Labour Code*.¹⁶ The amendments reaffirm the right of employees who are on strike or locked out to resume employment in preference to replacement workers.

Mexican law requires a company to cease operations during a strike, except as necessary to maintain equipment and preserve raw materials, tasks which are performed by the members of the unions on strike, which is responsible for the installations of the company during the strike. By contrast, U.S. labor law permits the permanent replacement of striking employees, except where the strike is undertaken in protest against employer unfair labor practices.

D. PROTECTIONS AGAINST INTERFERENCE

1) Prohibition of Employer Unfair Labor Practices

The various federal and provincial labor relations statutes protect the right of private sector employees in Canada to associate, organize a

¹⁶ Bill C-19, *An Act to Amend the Canada Labour Code (Part 1) and the Corporations and Labor Unions Returns Act and to Make Consequential Amendments to other Acts*, First Session 36th Parl., 1997-1998 (assented to June 18, 1998).

union of their choice, bargain collectively and strike by defining and prohibiting various unfair labor practices. While the wording of these prohibitions varies from jurisdiction to jurisdiction, each statute includes general prohibitions of the following:

- (1) Intimidation, coercion, threats, promises or other forms of interference with workers' exercise of labor rights.

Employer actions found to have breached these prohibitions include: payment by the employer of the legal costs incurred by employees in petitioning for decertification; interrogation of employees about their voting intentions in a certification election; surveillance of union activities by spies; prevention of employees from distributing pronoun literature and soliciting support for a union on the employer's premises during nonworking hours and outside of work areas; attempting to influence or dictate who may act as a union official.

All Canadian jurisdictions prohibit employer coercion or intimidation in communications related to union organization or activities. Labor relations boards have applied this prohibition relatively stringently. While factual statements or comments about an employer's ability to remain competitive or about the issue of job security may not in themselves constitute illegal communications, Canadian labor relations boards have tended to view employer references to job security in the context of a certification campaign with suspicion. In one important case, the Ontario board stated its concerns as follows:

Views which equate membership or nonmembership in a union to continued job security, cease to be mere personal views and may become intimidatory or coercive if the person expressing them is perceived to be seized of special knowledge, or position, such that raises the statement from a matter of opinion to one of probable fact.¹⁷

¹⁷ *Somerville Belkin Industries Ltd.*, [1981] 1 Can. L.R.B.R. 100, at p. 109.

Box 2.4**Balancing Employee Freedom
of Association and Employer Free Speech:
A Decision of the British Columbia Labour Relations Board**

In October 1996 the British Columbia Labour Relations Board issued an important decision clarifying the scope of lawful communication by employers to employees during union organizing drives.¹⁸ The decision reconsidered two cases, one arising out of an organizing drive at a bus transportation company, the other out of a unionization drive at an automobile dealership. The board reconsidered the two cases because the initial decisions in those cases had arrived at different interpretations of then-recent amendments to the B.C. *Labour Relations Code*.

In the bus company case, a supervisor had made a series of statements to workers, including the following: the attempt to organize was silly because the employer could easily close its operations and move them to another location; the owner of the company would not let unionization happen. The owner himself issued a bulletin to all employees, which included the following statement: “Will Union Membership Guarantee Me Job Security? No. No one can guarantee you job security. Security depends solely upon how well you do your job and how successful our business is.”

In the car dealership case the employer convened a series of mandatory meetings of employees. (Such meetings are commonly referred to as “captive audience” meetings.) Over the course of these meetings the owner made a number of statements that directly or indirectly pointed out the economic dependence of his employees and subtly suggested that supporting a union would be disloyal to him. In particular, he said that he was wealthy at a young age and could have retired but instead chose to start the car dealership; in the first year and a half of the dealership he had lost a significant amount of money but had never bounced a pay check; now that he was making money some employees may hold his wealthy lifestyle against him. He reviewed the terms of a collective agreement at a competitor dealership, asked all employees to vote, and said that they should vote their conscience. At one of the meetings a labor relations consultant hired by the employer also spoke. The consultant stated that the employer wanted to “keep its relationship with its employees” and

¹⁸ *Re Cardinal Transportation B.C. Inc.* (1996), 34 C.L.R.B.R. (2d) 1.

ensure that “walls did not develop between employees and management.” During the course of the union’s membership drive a manager also told an employee that a union would not make a difference in wage rates and that union dues would take up any difference in pay.

The B.C. Labour Relations Board ruled that employer free speech, including speech expressly protected by the *Labour Relations Code*, must be understood as limited by the prohibitions on coercion set out in the Code’s unfair labor practice sections. The board examined the nature of employer coercion in the context of union organizing campaigns. It reviewed its own experience, the law in other Canadian jurisdictions, the legislative history of the current B.C. provisions, and some evidence concerning experience with union certification votes in the United States. The board said the following about its general approach to the balance between employee freedom of association and employer free speech:

Underlying the public policy of protecting employees at the initial stage of the collective bargaining process, is the recognition of the economic dependence and vulnerability of employees to their employer. . .

Captive audience meetings will continue to be given a strict level of scrutiny. Statements that would otherwise be permissible may, in the context of a captive audience meeting, be impermissible. This is especially true in the areas of the economic dependence of employees and union membership requirements.

The longstanding policy of this board and other labour boards in Canada is that an employer is not entitled to engage in an antiunion political-style campaign in an effort to prevent the union from certifying. The greatest point of resistance by employers to trade unions is at the initial point of employees attempting to exercise their statutory choice in favour of collective bargaining. A statutory choice has been made to restrict employer speech at this point in favour of ensuring employees’ freedom of association. An employer’s vigorous presentation of its antiunion views may be reasonably perceived by most employees as one that it is not “safe to thwart.” The [United States] experience seems to verify this.¹⁹

¹⁹ *Ibid.*, at pp. 43 and 57.

In the bus company case the board decided that the supervisor's statements constituted an unfair labor practice and that in the context of those statements the references in the owner's bulletin to job security also constituted an unfair labor practice.

In the car dealership case the board found that the statements by the labor relations consultant and the manager were unfair labor practices. The board also said that in the context of those statements and of the captive audience meetings the owner's statements provided a basis for additional unfair labor practice findings.

Canadian labor law regulates employer conduct in union organizing campaigns in a much stricter fashion than U.S. law covering most private sector employers. Under the employer "free speech" provision of the U.S. Taft-Hartley amendments to the *National Labor Relations Act*, employers have been allowed to aggressively campaign against union organization. In one U.S. case, for example, the employer guaranteed that if the union came in he would be out of business within a year and said, "The cancer will eat us up and we will fall by the wayside ... I only know from my mind, from my pocketbook how I stand on this." This statement was found unlawful by the National Labor Relations Board, but the NLRB was overruled by the U.S. Court of Appeals, which held that the statement was "consistent with respectable economic theory."²⁰ In contrast, under the *Railway Labor Act*, covering the rail and airline industries, the National Mediation Board constrains employers to a more limited role in election campaigns than that of unions and more closely regulates employer behavior and statements during such campaigns (see Appendix 4A).

- (2) Any form of discrimination or reprisal against workers for exercising their right to organize, or for pursuing legal recourse to enforce this right.

Canadian labor relations boards generally prohibit employers from acting, even in part, on the basis of antiunion motives, regardless of the presence of valid business justifications for their actions. Examples of

²⁰ See *NLRB v. Village IX, Inc.*, 723 F.2d. 1360 (7th Cir.1983), at 1367.

employer actions found to violate the prohibition on antiunion discrimination include: disciplining union officials who criticize the employer during the course of a labor dispute (this does not protect malicious or knowingly false statements); relocating, transferring or closing operations, in whole or in part, for reasons which include a desire to avoid a union or unionization; and changing terms and conditions of employment or otherwise threatening or penalizing employees for union activity.

Under the U.S. *National Labor Relations Act*, an employer's antiunion motivation must be a substantial or motivating factor behind an action before that action will be found to be discriminatory.

(3) Any employer support for or domination of a trade union.

Canadian labor law seeks to ensure the independence of unions. It is an unfair labor practice for an employer to support a union financially, to favor one union over another, or to exert control over the internal operations of a union. Organizations which receive the overt or tacit support or approval of an employer cannot be certified (see Acquisition of Bargaining Rights, section 2B.2, above). Nor can they become party to a collective agreement.

(4) Changes to terms and conditions of employment during the period following an application for certification or delivery to the employer of notice to bargain.

In all Canadian jurisdictions, the labor relations statute provides additional protection at these two critical junctures by imposing a temporary “statutory freeze” on terms and conditions of employment. The freeze does not require that all conditions of work remain frozen, but rather that the employer carry on business as before, that is, without changing terms and conditions of work that would not have been subject to change in the normal course of business. The main purpose of the freeze is to provide stability during the sensitive period while the union is seeking certification or to negotiate or renegotiate a collective agreement. In the case of a certification application, the statutory freeze lasts until the

union is certified as exclusive bargaining agent or its application for certification is dismissed. In the case of collective bargaining, the freeze lasts in general until the parties either reach a collective agreement or reach a legal strike or lockout position following good faith bargaining. Finally, the duty to bargain includes implied prohibitions against certain actions by employers which interfere with the ability of a union to represent bargaining unit members (see *Obligation to Bargain*, in section 2B.3, above).

2) Prohibition of Union Unfair Labor Practices

Unions, like employers, are prohibited from using coercion or intimidation to influence the decision of an employee to become or not to become a union member, to become a member of another union, or to exercise other rights of free association. While all jurisdictions permit clauses in collective bargaining agreements which require union membership as a condition of employment (see *Union Membership and Dues*, section 2A.6, above), labor relations acts and codes generally prohibit unfair use of such clauses by providing that an employee who is expelled from a union may not be dismissed in certain circumstances. While the wording of each statute varies, in general an employee cannot be dismissed, notwithstanding that he or she has been expelled from a union which is party to a union shop agreement, if his or her expulsion is related to: (1) participation in the affairs of another union; (2) a refusal to pay unreasonable dues assessments; (3) participation in a labor law proceeding; or (4) the exercise of other rights granted to employees under the labor relations statute. This protection is generally not extended to employees who are expelled for strikebreaking by returning to work over the objection of fellow workers and the union. Labor relations statutes generally require that a disciplinary decision to expel a member not be discriminatory.

3) Civil Rights and Protection

Without civil and political rights there can be no normal exercise of

trade union rights. The Canadian *Charter of Rights and Freedoms* provides certain fundamental guarantees to Canadians. Like other Canadian residents, unions and union members enjoy constitutional protection of their freedom of assembly, provided that the exercise of this freedom does not pose a significant danger of substantial harm to property or physical safety. Unionists have the freedom to travel within and outside the country that is granted to all residents and have the right to attend national and international trade union meetings with full freedom and independence. Similarly, unions and employees have the constitutional right to express their views and opinions publicly and to receive and impart information through any media, like other Canadian residents.

Unions and employees engaged in union activity, like all Canadian residents, have in general a constitutional right to be free from search and seizure of their property without a judicial warrant issued following a determination that reasonable and probable cause exists to believe that evidence for criminal proceedings will be found on the premises. Similarly, unionists enjoy constitutional freedom from arbitrary arrest or detention without a warrant and without charges being brought. Unions and their members are entitled to full protection of the criminal laws which prohibit physical assaults and damage to property and to the same police protection from such harms as other Canadian residents.

3. GOVERNMENT ENFORCEMENT

A. STRUCTURE AND FUNCTIONING OF CANADIAN LABOR RELATIONS BOARDS

Canada's labor relations statutes each establish a labor relations tribunal, generally referred to as a Labour Relations Board (in Quebec, the Office of the Labour Commissioner General) to interpret and administer the law (see Legal Sources of Labor Rights, section 1C, above, for a list of the relevant tribunals). Some provinces maintain separate labor boards for private and public employees; however, most maintain a single board

for both private and public sector labor relations in order to minimize administrative costs.

Enforcement is generally complaint-driven. Upon an alleged breach of a labor relations statute, the aggrieved party may file a complaint with the board. Most boards have labor relations officers or investigation officers who investigate and attempt to settle cases prior to hearings. If settlement efforts are unsuccessful, the board holds a single set of hearings and issues a final decision. The board's decision is generally not appealable to the courts. Most boards will reconsider such decisions only in unusual cases. Board orders can be enforced through government police powers upon their being filed in the appropriate superior court. Property may be seized to satisfy court orders, and refusal to comply with a court order can be sanctioned through prosecution for contempt of court, an offence punishable by fine or even imprisonment.

Labor relations statutes can also be enforced through prosecution and the imposition of penal sanctions, though such procedures are generally reserved for cases of apparently flagrant and deliberate violations of the law and generally require the prior consent of either the labor relations board or the minister of labor. The boards do not prosecute; rather, charges must be laid by interested parties, or in some cases by the minister of labor or an inspector appointed by the minister.

The U.S. National Labor Relations Board's procedures are less streamlined than those of Canadian labor relations tribunals. The U.S. NLRB's enforcement procedures can involve several steps: the filing and investigation of a complaint; the issuance of charges or dismissal of the complaint; hearings before an administrative law judge; appeal to the National Labor Relations Board; and court proceedings for enforcement or appeal of the NLRB's order. Like Canada's labor relations tribunals, Mexico's Conciliation and Arbitration Boards are structured to process cases in a single administrative proceeding. The orders of Mexico's CABs are judicial orders which are immediately enforceable without further proceedings.

B. EXAMPLES OF CANADIAN LABOR RELATIONS BOARDS

1) *The Alberta Labour Relations Board*

The Alberta Labour Relations Board is an independent, tripartite agency established to oversee three labor relations statutes, including the *Alberta Labour Relations Code*. The board adjudicates disputes under the Code and processes applications for certification, supervising representation votes and determining bargaining units appropriate for certification. An order of the board may be filed with the Alberta courts and enforced as a court order.

The board comprises a chair, four vice-chairs, and 25 part-time board members. Board members are appointed by the Alberta government for their experience and knowledge of labor relations, giving equal representation to labor and management. The board has a staff of 26 employees, including the chair and vice-chairs. The staff includes labor relations officers who investigate and assist the parties in reaching voluntary settlements of disputes brought to the board. In addition, the board uses the services of 25 deputy returning officers located throughout the province, each assisted by several polling clerks, in an effort to expeditiously conduct votes in response to applications for certification anywhere in the province.

In addition to making legal determinations, the board makes available a number of publications under its statutory mandate to educate the labor relations community and the public of their statutory rights and obligations. These include information bulletins outlining the board's policies and procedures and its *Guide to the Labour Relations Code*. The board also has a site on the World Wide Web, which contains board member and staff profiles, rules, information bulletins, recent decisions and other publications.

2) *The Manitoba Labour Board*

The Manitoba Labour Board is an independent and autonomous quasi-judicial body responsible for adjudicating and administering applications made to it under the *Labour Relations Act* and other legislation.

The board conducts hearings throughout the province and often travels to rural centers for that purpose. An order of the board can be filed with the Manitoba courts and enforced directly as a court order. The board also provides information to the labor relations community to assist it with the collective bargaining process and in making applications to the board.

The board comprises a full-time chairperson, three part-time vice-chairpersons, and 24 board members. There is equal representation of labor and management views. The board employs a staff to provide field services and administrative support services. The field services section includes labor relations officers who investigate the factual basis of applications to the board by gathering documents and other evidence relevant to the case and endeavoring to identify all of the major issues involved. In addition, labor relations officers often assist the parties to reach a settlement of disputes.

The board maintains a small library of texts and journals dealing with industrial relations and labor law. Since 1985, all arbitration awards and collective agreements must be filed with the board. Copies of these may be viewed at the board's office. The board also produces a number of publications including a summary of all arbitration awards rendered in the province and filed with the board during the calendar year, a *Guide to the Labour Relations Act*, an index of written reasons for decisions issued by the board, and information bulletins dealing with the board's practice and procedure.

3) The Ontario Labour Relations Board

The Ontario Labour Relations Board is the primary provincial agency for enforcement of rights to organize, to bargain collectively and to strike in Canada's most populous province. The board mediates and adjudicates a wide variety of labor relations disputes under a number of employment statutes.

Statutorily independent of the Labour Ministry, the OLRB is composed of a chairperson, an alternate chairperson, 15 vice-chairs, and 10 board members – five each of employer and employee representatives. Many serve part-time, maintaining separate employment. The chair, al-

ternate chair, and vice-chairs have usually been experienced lawyers respected by both management and labor.

The board employs 20 labor relations officers as its full-time staff. Upon receipt of a complaint of an alleged contravention of the *Ontario Labour Relations Act*, the board will appoint a staff officer to investigate the complaint and report to the board. In practice, officers are trained to encourage the parties to settle the matter and avoid further legal proceedings. More than three-quarters of cases are resolved without the need for a hearing. For cases that do not settle, a three-member *ad hoc* panel hears the case following the investigation. Where a three-member panel is established, the chair appoints one representative each from employer and employee members of the board, as well as a vice-chair to preside over the panel.

If the board finds that there has been a contravention of the Act and the infringing party fails to comply with the board's remedial order, the order may be filed in the Ontario Court (General Division), whereupon it is immediately enforceable as an order of the court. Failure to comply is then treated as contempt of court, and the public authority may incarcerate the violator and seize assets to satisfy a judgment.

4) The Quebec Commissioners and the Labour Court

While the *Quebec Labour Code* is like other Canadian labor relations laws in the way it defines and prohibits unfair labor practices, labor law enforcement is structured differently. Quebec does not have a labor relations board with comprehensive jurisdiction over labor relations matters. Rather, Quebec's enforcement is carried out through two separate agencies: the Office of the Labour Commissioner General, which makes determinations and issues restorative remedies, and the Quebec Labour Court, where appeals and penal remedies are sought.

(i) The Office of the Labour Commissioner General

The Office of the Labour Commissioner General is a bureau of the Quebec Ministry of Labour. The office is composed of the Labour Commissioner General, an Assistant Labour Commissioner General,

labor commissioners, and certification agents who variously determine appropriate bargaining units and investigate allegations of unfair labor practices. It is the task of the individual labor commissioner, vested with all the powers and privileges of investigation accorded public inquiry commissions, to receive evidence and rule on the conformity of the employer's conduct with the *Labour Code*. A commissioner is empowered to order an employer to cease and desist from unlawful conduct and to reinstate with full back pay an employee who has been discharged on the basis, in whole or in part, of anti-union motives. The decisions of labor commissioners may be appealed to the Labour Court.

(ii) The Labour Court

The Labour Court is composed of judges chosen from the Court of Quebec after consultation with the General Counsel of the Quebec Bar and the Consultative Labour and Employment Council, a labor-management advisory body created by law.

As part of the judiciary, the court hears appeals from final decisions of a labor commissioner and can affirm, amend, or substitute its own decision for any commissioner's decision. The court's decision is final. The Labour Court also has exclusive competence to decide whether to impose penal sanctions for violation of the *Labour Code*. Except in a case where the procedures of the Labour Court offend the rules of natural justice or jurisdictional limits, its decisions are final and binding, with the same obligatory effect as a decision of the Superior Court. As with any such decision, noncompliance can be addressed through contempt of court proceedings.

4. RIGHTS OF PRIVATE ACTION

A. ACCESS TO ADMINISTRATIVE TRIBUNALS

Private parties have access to administrative, quasi-judicial or labor tribunals by filing unfair labor practice charges, applications for certifica-

tion to obtain collective bargaining rights, or other legal orders with the relevant labor boards or, in Quebec, with the Office of the Labour Commissioner General. Individual workers, trade unions or employers who claim that their rights have been infringed may file charges directly. For example, an individual worker may bring charges against a union under the law's duty of fair representation provision. The labor boards and commissioners are empowered to investigate complaints, to hear the parties with respect to the dispute, and to direct a remedy. The parties are responsible for their legal representation and costs.

In the United States, following a preliminary investigation of charges a complaint may be issued, and at that point the Office of the General Counsel of the NLRB prosecutes the case on behalf of the charging party (worker, union or employer). The board attorney effectively serves as the charging party's counsel in proceedings before an administrative law judge and in any appeal to the full board or the courts. Mexico maintains an Office of the Labor Public Defender, which provides free legal representation and advice to workers bringing complaints before a CAB.

B. ACCESS TO COURTS

The various Canadian labor authorities normally have exclusive jurisdiction to exercise the powers conferred by the appropriate labor acts or codes and to determine all questions of fact or law in labor relations cases. Disputes arising out of the rights and privileges stipulated in labor relations statutes are almost completely barred from adjudication by the general divisions of the courts. Decisions by Canada's labor boards are generally final and may not be appealed to the courts. However, they may be subject to judicial review on constitutional or administrative law grounds (see Appeals and Judicial Review, section 5B, below). In cases of flagrant and deliberate violation of the law, private parties may seek to initiate a prosecution to impose penal sanctions (see Structure and Functioning of Canadian Labor Relations Boards, section 3A, above).

5. PROCEDURAL GUARANTEES AND REMEDIES TO ENSURE ENFORCEMENT

A. DUE PROCESS

Constitutional and administrative law and statutory rules of due process apply in labor law proceedings in all Canadian jurisdictions.

Canadian administrative law is a body of law which, among other things, provides a set of procedural due process protections that apply to actions by administrative tribunals, such as labor relations boards, which affect a party's legal rights or interests. Those due process protections are generally referred to as rules of procedural fairness or natural justice. The rules of natural justice or fairness are divided into two parts. The first is the duty to give a person affected by a decision a reasonable opportunity to present his or her case. The second is the duty to listen fairly to both sides and reach a decision free of bias.

1) Procedural Protections

Notice of legal proceedings must be afforded to a party with interests affected by the proceedings. Parties have a right to present evidence and arguments in support of their positions, either orally or in writing. Parties also have the right to know and respond to the evidence and arguments of other parties. Parties to disputes are typically represented by counsel.

Labor relations boards are empowered to use subpoenas to secure evidence and testimony in a case. In most unfair labor practice cases and many certification cases, parties have the right to a full hearing of evidence with examination and cross-examination of witnesses, particularly where they do not agree on the facts giving rise to the case and the tribunal must determine whose evidence is more credible.

Hearings are open to the public. Board, commissioner or tribunal decisions are issued in writing and made public. Decisions generally set out the reasons for conclusions reached, citing relevant facts and analysis of the relevant law and its application to the facts. One provincial court

of appeals has ruled that the failure of a labor relations board to give reasons for its decision when that decision resolves “substantial issues” is a breach of natural justice.²¹

In all Canadian jurisdictions, witnesses in any hearing under labor relations acts or codes are protected from dismissal, threat of dismissal, discrimination, intimidation, coercion, or any other form of reprisal by the employer and from discrimination, intimidation or coercion by the union for giving evidence at such hearing.

The federal government and British Columbia, Manitoba, Ontario, Quebec, and Prince Edward Island have adopted legislation placing the onus of proof on the employer to disprove some or all types of allegation of unfair labor practice. In Nova Scotia the employer bears the burden of proof in cases where the complainant establishes that it is reasonable to believe that there may have been a failure by the employer to comply with the prohibition on antiunion discrimination. The other Canadian jurisdictions retain the common law principle of placing the burden of proof on the party alleging an unfair labor practice.

In the United States, the burden is upon the charging party and the NLRB’s general counsel to make a *prima facie* case of an unfair labor practice, whereupon the burden shifts to the employer. Under Mexican labor law, the burden of proof in cases involving freedom of association and the right to organize rests with the employer. That is, the employer must prove that any discharge or other adverse action against an employee meets one of the statutorily defined “just cause” definitions.

2) Independence and Impartiality of Decision Makers

The rules of natural justice in Canadian administrative law require that tribunals be and appear to be independent at the institutional level. In

²¹ *Future Inns Canada Inc. v. Nova Scotia (Labour Relations Board)*, 97 C.L.L.C. 220-089 (N.S.C.A). Leave to appeal to the Supreme Court of Canada was refused on September 25, 1997. However, since the Supreme Court has not ruled definitively on this issue, earlier contrary rulings may arguably continue to apply in jurisdictions outside of Nova Scotia.

particular, tribunal members must have a combination of security of tenure, security of remuneration, and administrative control sufficient to ensure the independence of their decision making.²² Lack of independence can void the decision of a tribunal. Members of Canadian labor relations tribunals are generally appointed for terms fixed in the relevant labor relations statute or established in government practice. One court of appeals has ruled that a government order arbitrarily terminating a labor relations board member's appointment prior to the expiry of its term is null and void at its inception.²³

Canadian administrative law requires that tribunal members be free from compulsion or pressure which could compromise their ability to decide cases according to their own conscience and opinions. A decision of a tribunal that has been subject to pressure from persons outside the tribunal, be they government officials, private organizations or individuals, can be declared void on judicial review. Procedures for consultation within a tribunal must be carefully designed to ensure that the tribunal members who hear a particular case remain free to decide that case without pressure or compulsion to follow the views of other tribunal members.²⁴

A tribunal member can be disqualified from serving in the event that there is a reasonable apprehension of bias on that person's part. Actual bias need not be proven. Any pecuniary interest in the subject matter of proceedings results in a presumption of bias. On tripartite hearing panels, the union or employer representatives may not have a close relationship to the litigants. For example, an employee of one of the litigants would generally be disqualified from serving on the hearing panel. The neutral chair presiding over the hearings should not have had any recent

²² *Matsqui Indian Band v. Canadian Pacific Ltd.* [1995] 1 S.C.R. 3.

²³ *Hewat v. The Queen in Right of Ontario* (1998), 98 C.L.L.C. 220-37 (Ont. C.A.). In this case the appointments of three board members were terminated prior to their expiry and without showing just cause. The terminations were very controversial within the Ontario labor relations community. The court did not reinstate the board members in question because little or no time remained in their term appointments when the judgment was rendered. However, the court's ruling implies that, in future, injunctive reinstatement may be available against similar terminations. This decision may be persuasive but is not binding in other jurisdictions, since decisions of provincial courts of appeal have persuasive but not binding authority in other provinces.

²⁴ *Consolidated Bathurst Packaging Ltd. v. International Woodworkers of America Local 2-69*, [1990] 1 S.C.R. 282.

professional relationship with either litigant. Tribunal members must decide cases on the basis of evidence presented and the relevant law, without unreasonable hostility towards a party or case being presented.

B. APPEALS AND JUDICIAL REVIEW

Canada's federal and provincial labor boards have the power to reconsider a decision. Their initial rulings are usually final and binding, however, as grounds for reconsideration are quite restricted. Those grounds are generally limited to matters such as the submission of important new evidence that was not presented earlier for good and sufficient reasons or argument that the original decision turned upon an incorrect conclusion of law or policy.

In Quebec, an application for leave to appeal a commissioner's decision can be brought, within 10 days of the decision, to the Labour Court. A worker who obtains a commissioner's reinstatement order following the determination of a discriminatory dismissal must immediately be reinstated, notwithstanding the appeal. The Labour Court is empowered to summarily reject appeals that it finds abusive or dilatory. It must render its decision within 90 days of taking the case under consideration, normally after receipt of post-hearing briefs.

Except in Quebec, there is no right of appeal to a court. There is in all Canadian jurisdictions, however, a limited access to judicial review. Grounds for judicial review include: breach of administrative fairness or natural justice; constitutional grounds; exceeding of the powers granted to the board by the legislature; error of law in interpreting a law beyond the scope of the board's expected area of expertise; and patent unreasonableness of a decision made within the scope of the board's expected area of expertise. Courts have exercised restraint in reviewing board decisions and normally defer to the specialized expertise of labor board officials in balancing the competing interests in labor-management matters.

In the United States, parties may appeal an administrative law judge's decision to the National Labor Relations Board, which reviews the record and may affirm or reverse, in whole or in part, the administrative law judge's ruling. Decisions of the NLRB are appealable to feder-

al appeals courts and may be appealed from there to the U.S. Supreme Court, by what is known as a writ for *certiorari*. However, decisions by a regional director refusing to issue a complaint or to settle a case with the charged party may be appealed only to the general counsel, who infrequently overrules a regional director. In Mexico, CAB decisions are final and subject to judicial review only through an action for *amparo*. Such actions may be based only upon certain limited grounds, the most important of which are error of law, breach of due process, and exceeding legally authorized powers.

C. SANCTIONS AND REMEDIES

Canada's labor boards are granted broad powers to remedy unfair labor practices. Those powers typically include but are not limited to the ability to issue cease and desist orders, orders to rectify the acts complained of, and orders to reinstate or hire the employee concerned, with or without compensation for lost earnings. Labor boards can order remedies for legal violations by employers or unions.

In practice, Canada's labor relations boards and commissioners have used their remedial powers flexibly in response to a wide variety of situations. Some labor boards have ordered employers to post notices or board decisions in the workplace advising employees of unfair labor practice findings. In more serious cases of interference with the right to organize, boards have ordered employers to provide unions with access to updated lists of names and addresses of all bargaining unit employees, and/or direct access to employees on the employer's time and premises, and have awarded money compensation to unions and employees for many forms of economic loss, including wasted organizing and negotiating costs and associated legal fees, prospective losses incurred in organizing employees at new locations where a plant had been unlawfully moved to escape union organizing activity, and lost union dues. In severe cases of antiunion discrimination, individual workers have been awarded damages for antiunion harassment suffered at the hands of their employers. In the federal jurisdiction, British Columbia, Manitoba, New Brunswick and Nova Scotia, the board has the power to certify a union without a representation vote, if the true wishes of the employees

are no longer likely to be ascertained by that vote, generally as a result of employer unfair labor practices.²⁵

The duty to bargain in good faith has been enforced through orders that contract proposals put forward in bad faith be struck from the bargaining table and orders that a party that has refused to bargain prepare and present a collective agreement which it is willing to sign.

Labor relations boards can also provide a range of remedies to safeguard the rights of workers in their relationship with a union. Where a union denies membership to a worker on discriminatory grounds or in a manner otherwise contrary to the labor relations act, the board may order the union to change its admission procedures or, in some cases, may require it to accept the worker as a member. Similarly, labor relations boards can order unions to comply with statutory requirements to furnish independently certified union financial statements at the request of a union member. To remedy a situation in which a union has disciplined or expelled a member for reasons that are discriminatory, unreasonable or unfair, labor relations boards may order such measures as reinstatement of the worker as a union member or that the union pay compensation to the affected worker. Labor relations boards may also take a wide range of steps to remedy union breaches of the duty of fair representation. For example, a board can award compensation for losses incurred by the complainant or require that a worker's case be taken to arbitration by a union that had unfairly dropped it.

Union members may also apply to court for a remedy in cases where they believe that their union has violated its own constitution. Courts can issue awards for monetary compensation, injunctions preventing certain actions, or declarations that actions are illegal; they may also require an accounting of funds. Where the conduct of a union election has been found to be in breach of a union's constitution, a court may issue a declaration or an injunction, award damages for lost election expenses, or order a union to organize new elections in accordance with its constitution.

Though sometimes designed with deterrence in mind, labor board

²⁵ Recent amendments to Ontario's *Labor Relations Act*, 1995, have removed the Ontario Labour Relation's Board's long-standing power to grant this remedy. See Bill 31, *Economic Development and Workplace Democracy Act*, 1998, 2nd Session, 36th Legislature, 1998 (assented to June 26, 1998).

remedies in Canada are compensatory and not punitive in nature. Nonetheless, certain provisions of the labor relations acts in Canada can be enforced by prosecution. Similarly, a failure to comply with a labor relations board order can also be enforced by prosecution. Generally speaking, however, it is necessary to obtain the consent of the labor relations board or the minister of labor in order to initiate such prosecutions, and they are seldom used. Fines are the most common form of sanction. For example, a violation of the *Ontario Labour Relations Act* may be punished by fines of up to \$2,000 against an individual and \$25,000 against a union or corporation.

Labor relations board orders are generally enforceable as court orders upon their being filed in the appropriate superior court. Property may be seized to satisfy court orders, and refusal to comply with a court order can be sanctioned through prosecution for contempt of court, an offence punishable by fine or even imprisonment.

6. PUBLICATION MEASURES

A. PUBLICATION OF LAWS, REGULATIONS, PROCEDURES AND ADMINISTRATIVE RULINGS

Laws and regulations of the federal government and the provinces are published in their respective statute books and related official government registers and gazettes. All are generally available in public libraries and law libraries and from the government offices themselves. They are also available online in commercial databases. Many are available on government Internet sites.

Canada's labor relations boards publish periodical reports containing the full text or summaries of labor board and labor court decisions. The Quebec Society for Juridical Information publishes court decisions, as well as a specialized publication containing decisions of the labor commissioners and the Labour Court.²⁶ Commercial houses also publish la-

²⁶ *Décisions du commissaire du travail, du Tribunal du Travail et de la Commission de la reconnaissance des associations d'artistes* (CT/TT/CRAA).

bor law decisions from around the country, notably the *Can. L.R.B.R.* (*Canadian Labour Relations Boards Report*) and the *C.L.L.C.* (*Canadian Labour Law Cases*, CCH Publications). Decisions are also available on-line through commercial services.

B. NOTICE AND OPPORTUNITY FOR COMMENT

Proposed changes in laws are generally published in advance and subject to public comment through hearings, briefs presented to and meetings with legislators, and appearances by witnesses before legislative committees. Trade unions and employer groups maintain offices and staffs to make their views known to public officials on proposed legislation.

7. PUBLIC INFORMATION AND AWARENESS

A. AVAILABILITY OF PUBLIC INFORMATION

Canada's several labor boards and authorities publish various guides, booklets and bulletins explaining in lay persons' terms the provisions of the labor relations acts or codes and the practices of the relevant boards or ministry and judicial branches. For example, the Alberta Labour Relations Board has published 20 *Information Bulletins* covering all major aspects of its activities. Other provinces provide similar information. Concerned workers, employers or individuals may visit offices of the labor relations boards and commissioners to obtain advice and assistance from staff employees.

The labor boards and labor ministries also publish annual reports. These typically explain the organization of the board and its legal mandate. They also provide an overview of the board's operations, short biographies of tribunal members, a summary of revenues and expenditures, and summaries of significant labor law decisions for the year. The reports generally contain statistical tables. These typically show the numbers of each type of case processed by the board during the year.

The reports of the Ontario, Alberta and British Columbia boards also include statistics on the length of time required for different types of proceeding.

B. PUBLIC EDUCATION

Labor relations officials and staff in all Canadian jurisdictions sponsor or participate in conferences, workshops, seminars and other public events to inform the labor relations community of their policies, rules and procedures. Each office maintains a public information official to respond to inquiries from the press and the public.

C. PRIVATE INFORMATION SOURCES

Trade unions and employer organizations regularly publish reports and newsletters for their members on labor relations matters. Canadian labor lawyers representing unions, employers and individual workers, along with labor law professors, produce the quarterly *Canadian Labour and Employment Law Journal* with articles analyzing labor law developments. Law schools and industrial relations schools and programs publish academic and policy journals dealing with labor issues including the right to organize, the right to bargain collectively, and the right to strike.

D. NAALC COOPERATIVE ACTIVITIES

The Canadian National Administrative Office, in collaboration with the NAOs of Mexico and the United States, has undertaken an extensive program of cooperative activities relating to the industrial relations principles of the NAALC. Members and staff of various Canadian federal and provincial labor agencies have participated in these activities. Information on such programs can be obtained from the NAO of Canada.