Legal framework for collective bargaining of a renewal agreement under Federal statutes[1]

Labour relations between Federal employers and unionised employees are governed by Part 1 of the *Canada Labour Code (CLC)*. Collective agreements must also comply with other parts of the *CLC* that prescribe minimum employment and occupational health and safety standards. They must also comply with other legislation, such as the *Canadian Human Rights Act*.

The most important provisions of the *CLC* governing collective bargaining include:

1. Establishment of bargaining rights by certification

A certified trade union is the bargaining agent for the bargaining unit that the Labour Relations Board determined was appropriate for collective bargaining. The unit's scope should be included in the recognition clause of your collective agreement.

A collective agreement applies to everyone in the bargaining unit even if some members of the bargaining unit are not members of the union [s. 56].

2. Notice to bargain

Either party may give written notice of its desire to bargain a renewal agreement **within 4 months preceding expiry of a collective agreement**. The parties can negotiate a longer notice period within the collective agreement [s. 49(1)]. Once written notice is given, the parties must **commence collective bargaining within 20 days after the notice was given** unless the parties agree otherwise [s. 50(a)].

3. Obligation to bargain in good faith

Under the *CLC*, the parties must meet and bargain in good faith and make every reasonable effort to conclude a collective agreement [s. 50(a)].

4. Duty of fair representation

In representing members of the bargaining unit, the Union cannot act in a manner that is arbitrary, discriminatory, or in bad faith [s. 37]. This principle applies in bargaining as well as grievances.

5. Freeze on working conditions

After notice has been given, neither the employer nor the union can make any unilateral changes to wages or terms and conditions of work. The freeze on changes is lifted only when the parties are in strike or lockout position [s. 50(b)].

[1] Current as of Sept. 2023.

6. Conciliation

In the Federal sector, an application for conciliation is **mandatory** before a union can strike or an employer can lock out [ss. 89(1)(c)-(d)].

Either party may notify the Minister that the parties have been unable to reach a collective agreement, copying the other party on the notice [ss. 71(1)-(2)]. Within 15 days of receiving the notice, the Minister must a) appoint a conciliation officer, b) appoint a conciliation commissioner, c) establish a conciliation board, or d) communicate her/his intention not to appoint/establish any of the above [s. 72(1)]. The Minister can also take the actions above on her/his own initiative [s. 72(2)].

Within 14 days of appointment, or longer as agreed between the parties or allowed by the Minister, one of the above bodies issues a report to the Minister [s. 73(2)(b)]. Unless the parties agree, the Minister cannot extend the reporting time limit beyond 60 days from notice of appointment [s. 75(1)]. The conciliation officer/commissioner/board is deemed to have reported and the Minister is deemed to have received the report after these 60 days [ss. 75(2)-(3)].

7. Provisions governing strikes & lockouts

In order for a union to go on a legal strike (including "work to rule") or for an employer to lock out employees, the following conditions must be met:

a. The collective agreement must have expired [s. 88.1].

b. The parties must have bargained collectively or failed to bargain collectively within twenty days of the notice [ss. 89(1)(b)(i)-(ii)].

c. Either party has applied for conciliation and a report has been issued or is deemed to have been issued (see section 6 above).

d. A 21-day cooling off period must have passed since a report has been filed or is deemed to have been filed [s. 89(1)(d)].

e. An essential services agreement is in place where required [s. 87.4].

f. In the case of a strike:

g. A strike vote must occur by secret ballot within 60 days of the strike, unless the parties agree to a longer period [s. 87.3(1)];

   i. All employees of the bargaining unit must be given ample opportunity to vote [s. 87.3(3)]; and

   ii. A majority of Employees who have voted must have voted in favour of the strike [s. 87.3(1)].

h. The party declaring a strike or lockout must provide:

   i. The other party with 72 hours' notice of the date that the strike will occur, copying the Minister [ss. 87.2(1) and (2)].

i. If a strike or lockout does not occur on the time and date of the notice, the party declaring a strike or lockout must give 72 hours' notice of a new time, date, and place, unless the

parties agree to an amendment of an earlier notice [s. 87.2(3)].

If the Union and the Employer agree to re-open specific provisions of the collective agreement before expiry, the provisions governing strikes and lockouts apply [ss. 49(2), 88.1]. Put more simply, federal unions can strike and federal employers can lockout employees on reopeners. Should your Employer propose a reopener, consult with your CAUT Senior Labour Relations Officer.

The *CLC* provides for last offer votes if the Minister deems it in the public interest that employees have the opportunity to vote on the employer's last offer [s. 108.1(1)].

The *CLC* limits strikes and lockouts during the period between parliaments when in the opinion of the Governor in Council such a strike would adversely affect the national interest [s. 90(1)]. During a strike or lockout, the union must maintain the provision of services, operation of facilities, or production of goods to the extent necessary to prevent an immediate and serious danger to the safety or health of the public. [s. 87.4]

The *CLC* does not address the issue of picketing. There is, however, case law guiding what conduct can and cannot be restricted. Consult with CAUT staff immediately if your employer threatens legal action against pickets.

There is no legal right to refuse to cross the picket line of another union (except to refuse unsafe work). Unlike most provincial jurisdictions, there is protection against discipline or financial penalty for refusing to be a replacement worker ("scab") in whole or in part [S. 94(3)(c)].

The *CLC* prohibits the use of replacement workers "for the demonstrated purpose of undermining a trade union's representational capacity rather than the pursuit of legitimate bargaining objectives." [s. 94(2.1)]. In other words, replacement workers ("scabs") can be hired to perform the work of an employee who is on strike or locked out, but such workers cannot be used to, for example, attempt to sway the outcome of a strike or decertification vote.

The *CLC* prohibits the employer from denying any pension or benefit an employee would be entitled to but for a legal strike or lockout and from cancelling or threatening to cancel any medical, dental, or insurance plan where the union has paid or attempted to pay to the employer an amount sufficient to continue the benefit plans [s. 94(3)(d.1)-(d.2)].

Employees cannot be disciplined or fired just for participating in a legal strike or exercising other rights under the *CLC*. However, they can be disciplined or fired for just cause after a strike for some kinds of strike-related conduct (picket line violence, etc.).

8. Interest arbitration

CAUT does not recommend that you agree to interest arbitration. Contact your CAUT Senior Labour Relations Officer for information about this recommendation.

9. Ratification

Ratification of a collective agreement is not legally required. Nevertheless, all tentative agreements reached through collective bargaining should be ratified by a vote in which more than 50% of those voting vote in favour of ratification. The vote should be by secret ballot and should give ample opportunity for all members of the bargaining unit to vote.