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RSNL1990 CHAPTER L-1 - LABOUR RELATIONS ACT

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Important Information

(Includes details about the availability of printed and electronic versions of the Statutes.)

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Amended:

1991 c21 s1; 1991 c35 s8; 1991c47 ss1-4; 1991 c47 s5 (not in force therefore not included in this consolidation); 1991 c47 ss6&7; 1992 c39 s8; 1993 c58; 1994 c28 s13; 1997 c14; 1997 c44; 2001 c12; 2001 c33 s43; 2001 cN-3.1 s2; 2006 c40 s9; 2006 c46; 2008 c18; 2011 c9; 2012 c30 ss1 to 12 & 14 to 20; 2012 c30 s13 (see 2014 c21 s1); 2013 c3 s41; 2013 c16 s25; 2014 c19; 2014 cP-37.2 s29, 2017 c20 s1; 2017 c21 s1

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Short title

1. This Act may be cited as the *Labour Relations Act*.

1977 c64 s1

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Interpretation

2. (1) In this Act

- (a) "arbitration board" means an arbitration board appointed under this Act or a collective agreement and includes another body selected by the parties to a collective agreement to settle a difference between them;
- (a.1) "arbitration committee" means the Labour Management Arbitration Committee;
- (b) "bargaining agent" means a trade union or a council of trade unions that acts on behalf of employees
 - (i) in collective bargaining, or
 - (ii) as a party to a collective agreement with their employer or an employers' organization;
- (c) "board" means the Labour Relations Board continued under this Act;
- (d) "certified bargaining agent" means a bargaining agent that has been certified under this Act by a valid and existing certificate;
- (e) "chairperson" means chairperson of the board;
- (f) "collective agreement" means a written agreement between an employer or an employers' organization acting on behalf of employers, and a bargaining agent of employees acting on behalf of a unit of employees containing provisions respecting terms and conditions of employment and related matters;
- (g) "collective bargaining" means negotiating with a view to the conclusion of a collective agreement or the renewal or revision of the agreement;
- (h) "conciliation board" means a conciliation board appointed by the minister under this Act;
- (i) "conciliation officer" means a person appointed as such under this Act;
- (j) "council of trade unions" means 2 or more trade unions organized as a council in accordance with this Act;

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- (k) "dependent contractor" means an individual, whether or not he or she is employed by a contract of employment or provides his or her own tools, vehicles, equipment, machinery, material or other thing, who performs work or services for another person for compensation or reward on those terms and conditions that he or she is in a position of economic dependence upon and under an obligation to perform duties for that person more closely resembling the relationship of an employee than that of an independent contractor;
- (k.1) "Director of Labour Standards" means the Director of Labour Standards appointed under the *Labour Standards Act*;
- (l) "dispute" or "industrial dispute" means a dispute or difference or apprehended dispute or difference between an employer and 1 or more of his or her employees, or a bargaining agent acting on behalf of his or her employees, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done by the employees or as to privileges, rights and duties of the employer or the employee;
- (m) "employee" means a person employed to do skilled or unskilled manual, clerical or technical work and includes a professional employee and a dependent contractor but does not include a manager or superintendent or other person who, in the opinion of the board, exercises management functions or is employed in a confidential capacity in matters relating to labour relations;
- (n) "employer" means a person who employs 1 or more employees, and includes a council of a town, community, region or local service district constituted or continued under the *Municipalities Act*, or a city, region or municipality established under an Act;
- (o) "employers' organization" means an organization of employers the purposes of which include regulation of relations between employers and employees;
- (o.1) "licensed operator" means a person who is the holder of an operating licence issued under Part III of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*;
- (p) "lockout" includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of his or her employees, done to compel his or her employees or to help another employer to compel that employer's employees, to agree to terms or conditions of employment;
- (q) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (r) "panel" means a panel of the board established under section 9;
- (s) "party" means a person bound by a collective agreement or involved in a dispute;
- (t) "professional employee" means an employee who
- (i) is in the course of his or her employment engaged in the application of specialized knowledge ordinarily acquired by a course of instruction and study resulting in graduation from a university or a similar institution, and
 - (ii) is, or is eligible to be, a member of a professional organization that is authorized by a statute to establish the qualifications for membership in the organization;
- (u) "special project" means an undertaking for the construction of works designed to develop a natural resource or establish a primary industry that is planned to require a construction period exceeding 2 years, and includes all ancillary work, services and catering relating to the undertaking or project;
- (v) "strike" includes

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- (i) a cessation of work, or refusal to work or to continue to work, by employees, in combination or in concert or in accordance with a common understanding, and
- (ii) a slow-down of work or other concerted activity on the part of employees in relation to their work that is designed to restrict or limit output;

(w) "trade union" or "union" means a local or provincial organization or association of employees, or a local or provincial branch of a national or international organization or association of employees within the province that has as 1 of its purposes the regulation in the province of relations between employers and employees through collective bargaining but does not include an organization or association of employees or a council of trade unions that is dominated or influenced by an employer; and

(x) "unit" means a group of 2 or more employees determined in accordance with this Act for the purposes of collective bargaining.

(2) A person does not stop being an employee within the meaning of this Act by reason only of his or her stopping work as the result of a lockout or strike or by reason only of dismissal contrary to this Act.

(3) Where in this Act the word "appropriate" is used with reference to a unit, that expression shall be taken to refer to a unit that is appropriate for collective bargaining whether it is an employer unit, craft unit, technical unit, plant unit or other unit, and whether or not the employees in the unit are employed by 1 or more employers.

(4) A person is for the purposes of section 14 considered to have an undue interest in a matter

(a) where he or she declares such an interest; or

(b) where a majority of the other members of the board or panel declares that he or she has.

1977 c64 s2; 1979 c33 Sch C; 1983 c60 s1; 1984 c40 Sch B; 1989 c25 Sch B; 1990 c22 s1; 1997 c44 s1; 2001 cN-3.1; 2001 c33 s43; 2008 c18 s1; 2012 c30 s1

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Exceptions to Act

3. This Act does not apply to an employee in respect of whom collective bargaining may be conducted under

- (a) the Royal Newfoundland Constabulary Act;
- (b) the Fishing Industry Collective Bargaining Act;
- (c) the Teachers Collective Bargaining Act;
- (d) the Public Service Collective Bargaining Act; or
- (e) sections 340.1 to 340.24 of *The City of St. John's Act*.

1977 c64 s3; 1991 c35 s8

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Construction

4. Where in the course of an industrial dispute the parties to the dispute decide to terminate the dispute by recourse to arbitration or to the process commonly known as final offer selection or to other means of achieving a collective agreement satisfactory to the parties, nothing in this Act shall be construed to prevent the parties from reaching collective agreement by those means.

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1977 c64 s4; 1983 c60 s2

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5. (1) An employee has the right to be a member of a trade union and to participate in its activities.

(2) An employer has the right to be a member of an employers' organization and to participate in its activities.

1977 c64 s5

**PART I
LABOUR RELATIONS BOARD**[Back to Top](#)**Continuation of board**

6. (1) The Labour Relations Board is continued.

(2) Subject to subsections (3) to (7.2), the board shall be composed of

(a) a chairperson, who holds office for 5 years;

(b) 2 persons representative of employers, who hold office for 2 years; and

(c) 2 persons representative of employees, who hold office for 2 years.

(3) The Lieutenant-Governor in Council shall appoint the chairperson and members of the board.

(4) The Lieutenant-Governor in Council shall appoint 1 or more persons to be vice-chairpersons of the board who, subject to subsection (7.2), hold office for 5 years, and shall, in accordance with the regulations that may be made, act in the place of the chairperson during the absence of the chairperson and the vice-chairperson is a member of the board while he or she is so acting.

(5) The Lieutenant-Governor in Council may appoint as many persons as he or she considers appropriate but in number equally representative of employees and employers in the province to serve as alternate members of the board and as members of a panel of the board and the persons appointed hold office for 2 years.

(6) A person appointed under subsection (5) as a representative of employers may serve on the board in the absence of a person appointed under paragraph (2)(b) or where that person has an undue interest.

(7) A person appointed under subsection (5) as a representative of employees may serve on the board in the absence of a person appointed under paragraph (2)(c) or where that person has an undue interest.

(7.1) The persons appointed under subsection (5) shall be considered to be members of the board only while serving on the board or on a panel of the board.

(7.2) Persons appointed under subsections (3), (4) and (5) hold office during pleasure and are eligible for reappointment.

(8) Where a vacancy occurs on the board, because of the death, illness, resignation or removal of a person or for other reasons, the Lieutenant-Governor in Council may appoint a person

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to fill the vacancy, and a person so appointed may serve for the unexpired portion of the term of the person whom he or she replaces.

(9) Where the term of office of a person appointed under subsection (3) or (4) expires, he or she continues to be a member of the board until he or she is reappointed or replaced.

(10) Where the term of office of a person appointed under subsection (5) expires, he or she continues to be an alternate member of the board until he or she is reappointed or replaced.

1977 c64 s6; 1983 c60 s3; 1991 c47 s1; 2006 c46 s1; 2012 c30 s2; 2017 c21 s1

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Vacancies

7. (1) During the incapacity or absence of the chairperson or during a vacancy in the office of chairperson, the vice-chairperson or another member of the board designated by the Lieutenant-Governor in Council has and may exercise the powers of the chairperson and shall perform his or her duties.

(2) Notwithstanding that it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member of the board, all acts done by the board are as valid as if that defect had not existed.

(3) The board shall have an official seal to be approved by the Lieutenant-Governor in Council.

(4) The affixing of the official seal of the board shall be certified by the chief executive officer of the board or by the person acting as secretary of the board.

(5) A contract or instrument that if entered into or executed by a natural person would not be required to be under seal may be entered into or executed on behalf of the board by a person generally or specially authorized by the board for that purpose.

1977 c64 s7; 1983 c60 s4

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Chief executive officer

8. (1) There shall be a chief executive officer of the board to be appointed by the Lieutenant-Governor in Council to hold office during pleasure.

(2) Subject to the direction of the board, the chief executive officer shall perform the powers and duties conferred or imposed on him or her by this Act.

(3) There may be employed in the manner provided by law a secretary and those officers and employees of the board that are necessary to enable the board to carry out its functions, and the Lieutenant-Governor in Council may fix their remuneration and terms of service.

(4) With the approval of the Minister of Justice, the board may employ or retain those full-time or part-time solicitors that may be necessary to enable the board to carry out its functions, at the remuneration that the Lieutenant-Governor in Council may fix.

1977 c64 s8

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Panels of board

9. (1) The chairperson may establish 1 or more panels of the board and in respect of matters referred to a panel by the chairperson a panel has and shall exercise the power and authority of the

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board, and 2 or more panels may proceed with separate matters at the same time.

(2) The chairperson shall preside at meetings of the panel of which he or she is a member and the vice-chairperson shall preside at meetings of all other panels.

(3) A panel consists of the chairperson, or the vice-chairperson, if appointed by the chairperson, and 1 member representative of employers and 1 member representative of employees selected by the chairperson from among the group of persons appointed under subsection 6(2) or (5).

(4) The chairperson may, subject to making the appointment in accordance with subsection (3), fill a vacancy on a panel however caused.

(5) The chairperson may refer to a panel a matter that is before the board and to the board or another panel a matter that is before a panel.

(6) A panel stops existing when the matter it is considering is, in the opinion of the person acting as its chairperson, completed.

(7) A decision or action of the construction industry panel or other panel of the Board appointed under subsection 9(1) as enacted by chapter 64 of 1977, whether that decision was made before or after the coming into force of this subsection, is not invalid or ineffective by reason only of a defect in the constitution of the panel.

(8) Notwithstanding another provision of this section, the chairperson shall not establish a panel of the board to consider and decide a matter referred to the board under subsection 17(3).

1977 c64 s9; 1991 c21 s1; 1991 c47 s2; 2001 c33 s43

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Jurisdictional umpire

9.1 (1) The Lieutenant-Governor in Council may, after consulting unionized employers and trade unions, appoint as a member of the board, a person to act as a jurisdictional umpire, in this section referred to as the "umpire".

(2) The umpire shall be appointed upon the terms and conditions that the Lieutenant-Governor in Council may establish.

(3) A unionized employer, employers' organization, a trade union or council of trade unions may apply to the board for a determination of a jurisdictional dispute between unions in relation to which an employer for which the union is certified or has voluntarily recognized the union and the umpire shall, after giving all interested parties an opportunity to make submissions, give a decision in the matter.

(4) In giving a decision with respect to a jurisdictional dispute the umpire shall consider existing agreements, decisions of the board and other adjudicative bodies and, in the absence of existing agreements, decisions of the board and other adjudicature bodies, past and area practices.

(5) In this section "jurisdictional dispute" means a dispute in which a trade union alleges that work which would, taking into consideration an existing agreement, decisions in previous disputes or local and area practice, ordinarily have been assigned to its members has been assigned to members of another union and the union to which the work has been assigned contends that the assignment of work is a proper one.

(6) A decision of the umpire has the same effect as a decision of the board and is final and binding and not subject to review.

(7) Where a unionized employer, employers' organization, a trade union or council of trade unions agree or have agreed, either before or after the commencement of this section, as part of a collective agreement, to an individual to act as jurisdictional umpire for jurisdictional disputes, this

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section shall not apply unless the parties to the collective agreement mutually agree on its application.

1991 c47 s3; 1992 c39 s8

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Membership continued

9.2 Where a matter has been referred to the board or a panel or a proceeding before it begun and the appointment of a member, who has been participating in the board's or panel's consideration of the matter referred to it or in the proceeding, expires, or the member resigns, before the board or panel concludes its consideration of the matter or gives a decision, the member, for the purpose of the board's or panel's concluding its consideration of the matter or giving its decision, shall be considered to continue to be a member of the board or panel.

1991 c47 s3

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Role of chairperson and vice-chairperson

9.3 (1) A matter referred to the board under subsection 17(3) and authorized to be dealt with by the board under paragraphs 18(l) and (m) shall be dealt with by the chairperson or, where the matter is referred to him or her by the chairperson, by the vice-chairperson of the board.

(1.1) The chairperson, or the vice-chairperson, when the matter is referred to him or her by the chairperson, may alone determine a matter that comes before the board with respect to

- (a) an uncontested application or question;
- (b) notwithstanding the reference to the board in subsection 47(5) or 51.1(4), a request for an extension of time for taking a vote; and
- (c) preliminary questions of evidence or procedure.

(2) In dealing with a matter under subsection (1) or (1.1) the chairperson and the vice-chairperson have all the powers this Act confers on the board to deal with a matter referred to it.

(3) The rules and regulations made under this Act that apply to the board apply, with the necessary changes, to the chairperson and the vice-chairperson in dealing with a matter under subsection (1) or (1.1).

(4) Notwithstanding subsection (3), the chairperson may make alternative rules to those which would apply to the board if the board were dealing with a matter under subsection (1) or (1.1) and, where the chairperson makes alternative rules, they apply instead of the rules that would apply to the board were the board dealing with the matter.

(5) Subsection 6(4) does not apply to the vice chairperson in dealing with a matter under subsection (1) or (1.1) of this section.

2001 c33 s43; 2006 c46 s2

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Quorum

10. (1) The board or a panel shall not proceed or continue with a matter unless a quorum is present.

(2) A quorum of the board is the chairperson or the vice-chairperson and 2 of the other members referred to in subsection 6(2) equally representative of employees and employers; and a

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quorum of a panel is the chairperson, or the vice-chairperson if appointed chairperson of the panel under subsection 9(3), and all the other members of the panel.

(3) The decision of a majority of the members of the board or of a panel present and constituting a quorum at a proceeding is a decision of the board but where there is a tie vote the person acting as chairperson may cast a 2nd vote.

(4) Where a question arises whether a matter is one referred to a panel, the question shall be determined by the panel in the first instance, subject to final determination by the chairperson of the board.

(5) Where a panel deals with an aspect of a matter referred to it under section 9, all rules and regulations made under this Act and applicable to the board in similar circumstances apply, with the necessary changes, to the panel.

1977 c64 s10

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Decision of panel

11. A decision of a panel on a matter referred to it under section 9 is a decision of the board.

1977 c64 s11

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Written reasons

12. (1) In a matter that comes before it, the board and a panel shall give written reasons for its decision where requested to do so by the parties.

(2) A set of reasons given by the board under subsection (1) shall be filed with the secretary of the board and copies shall be provided to the minister and each of the parties.

1977 c64 s12

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Remuneration and oath of office

13. (1) The members of the board and of a panel shall be paid the remuneration that the Lieutenant-Governor in Council may fix and the actual and reasonable expenses that they incur in the discharge of their duties.

(2) Each member of the board or of a panel shall, before acting as a member, take and sign before a person authorized to administer oaths or affirmations and file with the minister an oath or affirmation in the following form:

"I solemnly swear (affirm) that I will faithfully, truly and impartially to the best of my knowledge, skill and ability execute and perform the office of member (alternate member) of the Labour Relations Board (this panel of the Labour Relations Board) and that I will not, except in the discharge of my duties as a member (alternate member) of the board (panel), disclose to a person evidence or other matters brought before the board (panel)." (Where an oath is taken, add "So help me God".).

1977 c64 s13

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Undue interest

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14. A person shall not sit as a member of the board or of a panel in the hearing of a matter in which he or she has an undue interest.

1977 c64 s14

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Powers

15. (1) A member of the board and of a panel has the powers that are or may be conferred on a commissioner under the *Public Inquiries Act*.

(2) The board or panel may receive or accept evidence and information on oath, affidavit or otherwise that it considers appropriate, whether or not that evidence or information is admissible as evidence in a court of law.

1977 c64 s15

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Protection from liability

15.1 An action or other proceeding does not lie against the board or a member of the board for anything done or omitted to be done in good faith in the course of exercising a power or carrying out a duty under this Act.

2012 c30 s3[Back to Top](#)

Delegation of powers

16. (1) The board or a panel may by order authorize a person or board to exercise or perform its powers or duties under this Act relating to a particular matter and may attach to the order those conditions that the board considers appropriate or necessary.

(2) A person or board authorized to exercise or perform powers or functions under subsection (1) has, for the purpose of exercising or performing those powers or functions, the powers that are or may be conferred on a commissioner under the *Public Inquiries Act* and he or she shall exercise or perform those powers or functions subject to the conditions attached to an order issued under subsection (1).

1977 c64 s16

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Reference or application to board

17. (1) The minister may refer to the board for a determination a matter referred to in paragraph 18(k).

(2) A trade union, council of trade unions, employer or employers' organization may apply to the board for a determination of a matter referred to in paragraph 18(k).

(2.1) An employer or provider of services may apply to the board under section 201.60 of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* for a determination as to whether an employee received wages and benefits

(a) under subsection 201.49(3) of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* knowing that no circumstances existed warranting the employer's refusal to perform an activity; or

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(b) under subsection 201.52(3) of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* knowing that no circumstances existed warranting the employee's refusal to be transported.

(3) The Director of Labour Standards or a person aggrieved by a decision of the Director of Labour Standards may apply to the board for the determination of a matter referred to in paragraph 18(l).

(4) An employee may apply to the board, in accordance with section 51 of the *Occupational Health and Safety Act*, for a determination as to whether the actions of his or her employer or trade union were discriminatory.

(4.1) An employee may, either personally or through a representative, apply to the board, in accordance with

(a) paragraph 201.57(1)(a) of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* for a determination as to whether the employer or provider of services has failed to pay wages or grant a benefit to the employee as required; or

(b) paragraph 201.57(1)(b) of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* for a determination as to whether a person or organization has taken or threatened to take reprisal action against the employee.

(5) A person aggrieved by a decision of

(a) the assistant deputy minister under sections 27 to 30 of the *Occupational Health and Safety Act*; or

(b) an occupational health and safety officer and confirmed by the assistant deputy minister under section 32 of the *Occupational Health and Safety Act*

may apply to the board for a variation or revocation of the assistant deputy ministers decision.

(5.1) A person who is, or a union representing an employee who is, aggrieved by a decision or order of

(a) a special officer under section 201.89 or subsections 201.90(1) or (2) of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*; or

(b) the chief safety officer under subsection 201.43(1) or (2), 201.47(10), 201.51(11) or section 201.89 or subsections 201.90(1) or (2) or 201.96(1) of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*

may apply to the board under section 201.97 of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* for a confirmation, variation or revocation of the officer's decision and the board may make an order that a health and safety officer has the power to make under subsection 201.90(1) or (2) of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* where it is related to the subject matter of the decision or order being appealed and the board is satisfied that the danger still exists.

1986 c33 s9; 2001 c33 s43; 2012 c30 s4; 2013 c3 s41

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Referral under Public Interest Disclosure and Whistleblower Protection Act

17.1 (1) An employee or former employee who alleges that a reprisal has been taken against him or her may apply to the board in accordance with section 22 of the *Public Interest Disclosure and*

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Whistleblower Protection Act for a determination of whether a reprisal has been taken contrary to section 21 of that Act.

(2) Notwithstanding subsection (1), where the board determines that another proceeding is capable of appropriately dealing with the substance of a complaint, the board may, at any time before the complaint is considered, defer further consideration of the complaint until the outcome of the other proceeding.

(3) In making a determination under subsection (2), the board shall consider all relevant factors, including the subject matter and nature of the other proceeding and the adequacy of the remedies available in the other proceeding in the circumstances.

(4) Where the board defers consideration of a complaint, the board shall serve the parties to the complaint with a written notice of and the reasons for the deferral.

(5) The board may dismiss all or part of a complaint where the board is satisfied that

- (a) this Act provides no jurisdiction to deal with the complaint or that part of the complaint;
- (b) the complaint or that part of the complaint is trivial, frivolous, vexatious or made in bad faith; or
- (c) the substance of the complaint or that part of the complaint has been appropriately dealt with in another proceeding.

(6) Where the board dismisses all or part of a complaint, the board shall serve the parties to the complaint with a written notice of and the reasons for the dismissal.

2014 cP-37.2 s29

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Powers of board

18. In relation to a proceeding before it, or to determine a matter referred to it by the minister or under an application made to it, the board may

- (a) examine the evidence that is submitted to it respecting the membership of employees in a trade union seeking certification;
 - (a.1) order pre-hearing procedures, including pre-hearing conferences;
 - (a.2) compel, at any stage of a proceeding, a person to provide information or produce the documents or things that may be relevant to a matter before it, after providing the parties an opportunity to make representations;
 - (a.3) limit the scope of a hearing;
- (b) examine documents forming or relating to the constitution or articles of association of
 - (i) a trade union or council of trade unions that is seeking certification, or
 - (ii) a trade union forming part of a council of trade unions that is seeking certification;
- (c) make those investigations, inquiries and examination of records that it considers necessary;
- (d) require an employer to post and keep posted in appropriate places a notice that the board considers necessary to bring to the attention of an employee a matter relating to a proceeding;

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- (e) enter the premises of an employer where work is being or has been done by employees and inspect and view the work, material, machinery, appliances or articles there and interrogate persons respecting a matter that is before the board in a proceeding;
- (f) enter upon an employers' premises for the purpose of conducting representation votes during working hours;
- (g) authorize a person to do anything that the board may do under paragraphs (c), (e) and (f) and to report to the board on them;
- (h) adjourn or postpone a proceeding;
- (i) shorten or extend the time for instituting a proceeding or for doing an act, filing a document or presenting evidence in connection with the proceeding;
- (j) amend or permit the amendment of a document filed in connection with a proceeding by either party to a proceeding at any stage of the proceeding;
- (k) decide a question that may arise in a proceeding, or under an application made to it, or referred to it by the minister, including a question as to whether
 - (i) a person is an employer or employee,
 - (ii) a person performs management functions or is employed in a confidential capacity in matters relating to labour relations,
 - (iii) a person is a member in good standing of a trade union,
 - (iv) an organization or association is an employers' organization, a trade union or a council of trade unions,
 - (v) a group of employees is a unit appropriate for collective bargaining,
 - (vi) a collective agreement has been entered into,
 - (vii) a person or organization is a party to or bound by a collective agreement,
 - (viii) a collective agreement is in operation,
 - (ix) a party to collective bargaining has failed to comply with paragraph 74(a) or paragraph 75(a), or
 - (x) an unlawful strike or lockout has occurred or been declared, authorized or threatened;
- (k.1) make orders upon employers and trade unions in accordance with section 52 of the *Occupational Health and Safety Act*;
- (k.2) confirm, revoke or vary a decision of the assistant deputy minister made under sections 27 to 30 of the *Occupational Health and Safety Act* or confirmed or varied under section 32 of the *Occupational Health and Safety Act*;
- (k.3) make a determination of whether a reprisal has been taken contrary to section 21 of the *Public Interest Disclosure and Whistleblower Protection Act* ;
- (l) consider and decide upon those matters referred to it which fall within the scope and intent of the *Labour Standards Act* ;
- (m) make orders upon employers, employees and directors of corporations respecting a matter referred to it under the *Labour Standards Act* , including orders as to the payment of wages, tips, gratuities or surcharges instead of tips or gratuities, payable to employees

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and orders requiring compliance with an obligation imposed upon employers, employees or directors of corporations under the *Labour Standards Act* ;

- (n) make orders upon employers, providers of services, a person or an organization respecting a matter referred to it under the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* ; and
- (o) confirm, vary or revoke an order or decision of a health and safety officer under section 201.89 or subsections 201.90(1) or (2) of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* or the chief safety officer under subsections 201.43(1) or (2), 201.47(10), 201.51(11) or section 201.89 or subsections 201.90(1) or (2) or 201.96(1) of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*.

1977 c64 s17; 1983 c60 s5; 2001 c12 s1; 2001 c33 s43; 2006 c46 s3; 2012 c30 s5;
2014 cP-37.2 s29; 2013 c3 s41

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Unlawful strikes and lockouts

18.1 (1) Where, on the complaint of a trade union, council of trade unions, employer or employers organization, the board is satisfied that

- (a) a trade union or council of trade unions declared or authorized or threatened to declare or authorize an unlawful strike;
- (b) an officer, official or agent of a trade union or council of trade unions counselled or procured or supported or encouraged an unlawful strike or threatened an unlawful strike;
- (c) an employee has engaged in or threatened to engage in an unlawful strike; or
- (d) a person has done or is threatening to do an act that the person knows or ought to know that, as a probable and reasonable consequence of the act, another person or persons will engage in an unlawful strike,

the board may declare that an action referred to in paragraphs (a) to (d) has occurred and may direct the action a person, employee, employer, employers organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or the threat of an unlawful strike.

(2) Where, on the complaint of a trade union, council of trade unions, employer or employers organization, the board is satisfied that

- (a) an employer or employers organization declared or authorized or threatened to declare or authorize an unlawful lockout or locked out or threatened to lock out employees; or
- (b) an officer, official or agent of an employer or employers organization counselled or procured or supported or encouraged an unlawful lockout or threatened an unlawful lockout,

the board may declare that the action referred to in paragraph (a) or (b) has occurred and may direct the action a person, employee, employer, employers organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful lockout or the threat of an unlawful lockout.

(3) A directive issued under subsection (1) or (2) is binding upon the person, employee, employer, employers organization, trade union, council of trade unions and their officers, officials or agents to whom it is directed with respect to a strike or lockout referred to in that directive and a future strike or lockout that occurs for the same or substantially the same reason.

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2001 c12 s2[Back to Top](#)**Effect of decision**

19. (1) A decision, order, direction, declaration or ruling of the board shall not be questioned or reviewed in a court, and an order shall not be made or process entered or proceedings taken in a court, whether by way of injunction, declaratory judgment, *certiorari*, *mandamus*, prohibition, *quo warranto*, or otherwise, to question, review, prohibit or restrain the board or its proceedings.

(2) The board may review, rescind, amend, alter or vary an order or decision made by it or by a panel and may rehear an application before making an order in respect of it.

(3) An application to the board for the review, rescission, amendment, alteration or variation of an order or decision of the board or a panel under subsection (2) shall be made within 6 months of the making of the original order or decision or the longer period the board considers appropriate in the circumstances.

1977 c64 s18; 1983 c60 s6; 2006 c46 s4[Back to Top](#)**Review of bargaining unit**

19.1 (1) On application by an employer or a bargaining agent, the board may review the structure or composition of a bargaining unit to determine whether the bargaining unit continues to be appropriate for collective bargaining or whether it is appropriate to include or exclude positions from the bargaining unit.

(2) For the purpose of subsection (1) the board may

- (a) determine which trade union shall be the bargaining agent for the employees in each bargaining unit that results from the review;
- (b) amend a certification order or description of a bargaining unit contained in a collective agreement;
- (c) where more than one collective agreement applies to employees in a bargaining unit, decide which collective agreement is in force;
- (d) amend, to the extent that the board considers necessary, the provisions of collective agreements;
- (e) where the conditions of section 116 have been met with respect to some of the employees in a bargaining unit, decide which terms and conditions of employment apply to those employees until the time that a collective agreement becomes applicable to the unit or the conditions of section 116 are met with respect to that unit; and
- (f) authorize a party to a collective agreement to give notice to bargain collectively.

(3) Subsection 19(3) does not apply to an application under this section.

2006 c46 s5; 2014 c19 s1[Back to Top](#)**Application of orders**

20. Where, under this Act, the board may make or issue an order or decision, prescribe a term or condition or do other things in relation to a person or organization, the board may do so, either generally or in a particular case or class of cases.

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1977 c64 s20

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21. (1) Where a person, employer, employers' organization, trade union, council of trade unions or employee has failed to comply with an order or decision of the board, or a panel, a person or organization affected may, after 14 days from the date on which the order or decision was made or the date provided in it for compliance, whichever date is the later, file a copy of the order or decision, exclusive of the reasons, with the Trial Division.

(2) Once an order or decision of the board or a panel is filed with the Trial Division under subsection (1), that order or decision is enforceable as a judgment or order of that court.

(3) Notwithstanding subsection (1), where a directive made by the board under section 18.1 or section 123 is not complied with, a person, employee, employer, employers' organization, trade union, council of trade unions and their officers, officials or agents affected by that directive may file a copy of the directive, exclusive of reasons, with the Trial Division and, once filed, that directive is enforceable as a judgment or order of that court.

2013 c16 s25

[Back to Top](#)**Rules of general application**

22. (1) Subject to the approval of the Lieutenant-Governor in Council, the board may make rules of general application governing its procedure and that of panels, and in particular, may make rules

- (a) providing for the procedure of hearings;
- (b) providing for methods for determining appropriate units;
- (c) providing for the certification of trade unions as bargaining agents for units;
- (d) providing for the conduct of representation votes;
- (e) providing for the hearing or determination of an application, complaint, question, dispute or difference that may be made or referred to the board or a panel;
- (f) prescribing the forms to be used in respect of a proceeding that may come before the board or a panel;
- (g) prescribing the form in which and the time as of which evidence and information may be presented to the board or a panel in connection with a proceeding that may come before it;
- (h) prescribing the time within which and the other parties or persons to whom notice and other documents are to be sent and the circumstances in which notices shall be considered to have been given or received by the board or a party or person;
- (i) prescribing the form in which and time as of which evidence as to
 - (i) the membership of employees in a trade union,
 - (ii) an objection by employees to the certification of a trade union, or
 - (iii) a signification by employees that they no longer wish to be represented by a trade union

are to be presented to the board or a panel upon an application made to it under this Act;

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- (j) authorizing a person to act on behalf of the board, and prescribing the matters and things to be done and the action to be taken by that person;
- (k) providing for the delegation to the chief executive officer of the board or other person designated by the minister of the exercise or discharge of the powers and duties of the board or a panel, subject to the conditions that the powers and duties shall be exercised or discharged under the direction and control of the board or the panel;
- (l) prescribing, where an application for certification in respect of a unit has been refused or the rights of a bargaining agent have been terminated, the time when a further application may be made by that applicant in respect of the same unit; and
- (m) making provision for other matters and things that may be incidental or conducive to the proper performance of the duties of the board or a panel under this Act.

(2) Subject to a provision of this Act requiring the board to hold a hearing, the board may hold those hearings that it considers advisable and may dispose of an application without a hearing notwithstanding the filing of a request for a hearing under this Act or rules made under subsection (1).

1977 c64 s22; 1985 c5 s1

PART II LABOUR RIGHTS AND PRACTICES

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Unfair labour practices

23. (1) An employer or employers' organization, and a person acting on behalf of an employer or employers' organization, shall not

- (a) participate in or interfere with the selection, formation or administration of a trade union; or
- (b) contribute financial or other support to a trade union.

(2) An employer shall not be held to contravene subsection (1) by reason only that the employer

- (a) in respect of a trade union or a council of trade unions that is the bargaining agent for a unit comprising or including employees of the employer,
 - (i) permits an employee or representative of that bargaining agent to confer with him or her during working hours or to attend to the business of the bargaining agent during working hours, without deduction of time so occupied, in the calculation of the time worked for the employer and without deduction of wages in respect of the time so occupied,
 - (ii) provides free transportation to representatives of the bargaining agent for purposes of collective bargaining, the administration of a collective agreement and related matters, or
 - (iii) permits the bargaining agent to use his or her premises for the purposes of the bargaining agent; or
- (b) contributes financial support to a pension, health or other welfare trust fund, the sole purpose of which is to provide pension, health or other welfare rights or benefits to employees.

1977 c64 s23

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[Back to Top](#)**Discrimination and restraints**

24. (1) An employer and a person acting on behalf of an employer shall not

- (a) refuse to employ or to continue to employ a person, or otherwise discriminate against a person in regard to employment because that person is a member of a trade union; or
- (b) impose conditions in a contract of employment seeking to restrain an employee from exercising his or her rights under this Act.

(2) An employer and a person acting on behalf of an employer shall not deny pension rights or benefits to which he or she would otherwise be entitled to an employee by reason only of his or her stopping work

- (a) as the result of a lockout, whether or not that lockout is prohibited under this Act;
- (b) while taking part in a legal strike as a result of an industrial dispute after all steps provided or contemplated by law have been taken through collective bargaining and conciliation to settle the dispute; or
- (c) by reason only of dismissal contrary to this Act.

1977 c64 s24

[Back to Top](#)**Prohibitions relating to employers**

25. (1) An employer and a person acting on behalf of an employer shall not seek by intimidation, threat of dismissal or other kind of threat, or by the imposition of a monetary or other penalty or by other means to compel a person to refrain from becoming or to stop being a member, officer or representative of a trade union or to refrain from

- (a) testifying or otherwise participating in a proceeding under this Act or other law;
- (b) making a disclosure that he or she may be required to make in a proceeding under this Act or other law;
- (c) making an application or filing a complaint under this Act or other law; or
- (d) exercising another right under this Act or other law.

(2) An employer shall not

- (a) discriminate against a person in regard to employment or conditions of employment; or
- (b) suspend, discharge or impose a financial or other penalty on a person employed by him or her or take other disciplinary action against that person,

because of that person having become a member, officer or representative of a trade union or his or her having done any of the things referred to in paragraphs (1)(a) to (d).

(3) A person, whether or not he or she is an employer, shall not seek by intimidation or coercion to compel an employee to become or refrain from becoming or stop being a member of a trade union.

(4) Nothing in this section prevents an employer from expressing his or her views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

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1977 c64 s25; 2012 c30 s6[Back to Top](#)**Threats**

26. An employer and a person acting on behalf of an employer shall not in the course of a labour dispute threaten to shut down or move a plant or a part of a plant.

1977 c64 s26

[Back to Top](#)**Right to suspend**

27. Except as otherwise expressly provided, nothing in this Act affects the right of an employer to suspend, transfer, lay off or discharge an employee for proper and sufficient cause.

1977 c64 s27

[Back to Top](#)**Coercion and persuasion**

28. (1) An employee, or person acting on behalf of a trade union, shall not use coercion or intimidation with a view to encourage or discourage membership in or activity in or for a trade union, but nothing in this Act precludes a person acting on behalf of a trade union from attempting to persuade an employer to make an agreement with that trade union requiring, as a condition of employment with that employer, membership or maintenance of membership in that union or other condition with regard to employment, where the union has been designated or selected by a majority of employees in the unit concerned as their bargaining agent.

(2) Except with the consent of the employer, but subject to an order made by the board under section 34, a trade union and a person acting on behalf of a trade union shall not attempt, at an employer's place of employment during the working hours of an employee of the employer, to persuade the employee to become or refrain from becoming or continuing to be a member of a trade union.

1977 c64 s28

[Back to Top](#)**Organized slow-down**

29. Except in respect of a dispute that is subject to subsection 117(2), during the term of a collective agreement a trade union and a person acting on behalf of a trade union and an employee who is bound by a collective agreement or on whose behalf a collective agreement has been entered into shall not support, encourage, condone or engage in an organized slow-down intended to restrict or limit production.

1983 c60 s7; 2014 c19 s2[Back to Top](#)**Right to membership hearing**

30. (1) A trade union acting as a bargaining agent shall make membership in that union available to all employees in the unit the union represents.

(2) A trade union referred to in subsection (1) may prescribe, as a preliminary to the admission of a person into that union, compliance with those qualifications for membership that are reasonable and non-discriminatory.

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(3) Where an employee claims that he or she has been unfairly denied admission to or expelled from a trade union referred to in subsection (1), the employee may make a written complaint to the board signed by him or her and setting out simply and clearly the grounds on which his or her complaint is based.

(4) The board shall investigate complaints made to it under subsection (3), and may give to the trade union and the employee concerned an opportunity to be heard and to cross-examine all witnesses not called by him or her.

(5) Where a matter referred to in subsection (4) has been heard by the board, it may, as in its opinion the evidence warrants, dismiss the complaint or order that the employee be admitted to or reinstated in the union and may order further that the complainant be reinstated in his or her employment, where in the opinion of the board the further order is desirable in the interest of justice.

(6) Where an order made by the board under subsection (5) is not complied with, the board may, on the request of the employee affected by the order and notwithstanding section 21, file a copy of the order with the Trial Division and the order is enforceable as a judgment or order of that court.

1977 c64 s30; 2006 c46 s7; 2013 c16 s25

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Closed shop

31. Nothing in this Act prohibits the parties to a collective agreement from inserting in the collective agreement a provision requiring, as a condition of employment, membership in a specified trade union, or granting a preference of employment to members of a specified trade union.

1977 c64 s31

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Invalid provision

32. A provision in a collective agreement that requires an employer to discharge an employee because the employee is or continues to be a member of or engages in activities on behalf of a union other than a specified trade union is not valid.

1977 c64 s32

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Non-union employees' seniority

33. (1) Notwithstanding another Act or a collective agreement that is otherwise binding on an employer or other law, an employer who is a party to a collective agreement may employ a person who is not a member of the union that is a party to the collective agreement where he or she is otherwise qualified for employment and applies for membership in the union, whether or not the union accepts that person into its membership.

(2) Nothing contained in subsection (1) excuses an employee from complying with the constitution, rules and by-laws of a union of which the employee becomes a member.

(3) Notwithstanding another Act, a provision in the constitution, rules or by-laws of a union that is designed or that operates to exclude a person referred to in subsection (1) from membership in the union is void.

(4) Nothing in this Act invalidates a provision in respect of seniority of employees that is contained in a collective agreement.

1977 c64 s33

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Access order**34. (1) Where the board**

- (a) receives from a trade union or council of trade unions an application for an order granting an authorized representative or representatives of the trade union or council of trade unions access to employees living in an isolated location on premises owned or controlled by their employer; and
- (b) determines that access to the employees
 - (i) would be impracticable unless permitted on premises owned or controlled by their employer, and
 - (ii) is reasonably required for purposes relating to soliciting union membership, the negotiation or administration of a collective agreement, the processing of a grievance or the provision to employees of a union service,

the board may make an order granting the authorized representative or representatives of the trade union or council of trade unions designated in the order access to the employees on the premises.

(2) The board may, in an order made under subsection (1),

- (a) specify the method of access to the employees, the number of authorized representatives permitted, the times at which access is permitted and the periods of its duration; and
- (b) where transportation, food and lodging or any of those things are not available to the public, prescribe that any of them not so available are to be provided by the employer at the same costs as to other employees.

1977 c64 s34; 1997 c44 s2[Back to Top](#)**Assignment of wages, etc.****35. (1) An employer shall honour a written assignment of wages to a bargaining agent.****(2) An assignment under subsection (1) shall be made substantially in the following form:**

To (name of employer) I request you to deduct from my wages and pay to (name of trade union) fees in the amounts following: (1) Initiation fee in the amount of \$ (2) Dues of \$ per.

(3) Unless the assignment is revoked in writing delivered to the employer, the employer shall remit the dues deducted to the trade union named in the assignment at least once each month together with a written statement of the names of the employees for whom the deductions were made and the amount of each deduction.

(4) Where an assignment is revoked, the employer shall give notice of the revocation to the assignee.

(5) An employer has no financial responsibility for fees or dues of an employee unless there are sufficient unpaid wages of that employee in the employer's hands.

1977 c64 s35

**PART III
ORGANIZATION OF PARTIES FOR COLLECTIVE BARGAINING****Division I - Bargaining Agents and Units**

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36. (1) A trade union claiming to have as members in good standing a majority of employees of 1 or more employers in a unit may, subject to the rules of the board and in accordance with this section, make application to the board to be certified as bargaining agent of that unit.

(2) Where a collective agreement is not in force and a bargaining agent has not been certified under this Act for the unit, the application may be made at any time.

(3) Where a bargaining agent has been certified under this Act for the unit but a collective agreement is not in force or collective bargaining has not started, the application may not be made before the expiry of 12 months from the date of certification of the bargaining agent except with the consent of the board.

(4) Where a collective agreement is in force an application for certification may be made

(a) where the collective agreement is for a term of 2 years or less in the 2 months before the end of the term of the collective agreement; or

(b) where the collective agreement is for a term of more than 2 years

(i) in the 11th or 12th month of the 2nd or subsequent year of the term, or

(ii) in the 2 months before the end of the term.

(5) Two or more trade unions claiming to have as members in good standing of the unions a majority of employees in a unit that is appropriate for collective bargaining may join in an application under this section and the provisions of this Act relating to an application by 1 union and all matters or things arising from them apply in respect of an application by the unions as if it were an application by 1 union.

(6) Where 2 or more trade unions have formed a council of trade unions, the council so formed may apply to the board for certification as a bargaining agent for a unit in the same manner as a trade union.

1977 c64 s36; 1983 c60 s8

[Back to Top](#)**Union membership**

37. Where the board is satisfied that a union has an established practice of admitting persons to membership without regard to the eligibility requirement of its charter, constitution or by-laws, the board, in determining whether a person is a member of the union, shall not consider those eligibility requirements.

1983 c60 s9

[Back to Top](#)**Certification of bargaining agent**

38. (1) Where a trade union makes application for certification under this Act as a bargaining agent of employees in a unit, the board shall determine whether the unit in respect of which the application is made is appropriate for collective bargaining and the board may, before certification, where it considers it appropriate to do so, include additional employees in, or exclude employees from, the unit, and shall take those steps that it considers desirable to determine the wishes of the employees in the unit as to the selection of a bargaining agent to act on their behalf.

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(2) Where as a result of an application for certification under this Act by a trade union, the board has determined that a unit of employees is appropriate for collective bargaining,

- (a) where the board is satisfied that the majority of the employees in the unit are members in good standing of the trade union; or
- (b) where, as a result of a vote of the employees in the unit, the board is satisfied that a majority of them have selected the trade union to be a bargaining agent on their behalf; or
- (c) where, as a result of a vote of the employees in the unit, the board is satisfied that at least 70% of the employees in the unit have voted and a majority of those voting have selected the trade union to be a bargaining agent on their behalf,

the board may certify the trade union as the bargaining agent of the employees in the unit.

1977 c64 s37; 1985 c5 s2

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Bargaining unit for offshore platform

38.1 (1) Where the board receives an application with respect to employees employed on an offshore petroleum production platform, the unit appropriate for collective bargaining is the unit comprising all the employees employed on the platform except those employees the board determines are employed in construction and start up on the platform.

(2) Where the board receives an application for certification with respect to employees employed on an offshore petroleum production platform in relation to construction and start up on the platform, the board shall deal with the application in accordance with section 38.

(3) For the purposes of an application for certification with respect to employees employed on an offshore petroleum production platform, the licensed operator of the platform shall be considered to be the employer of the employees for the purpose of the board's consideration of the application.

1997 c44 s3

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Certification of a group of employees

39. Where application is made for certification of a unit of employees that is a subgroup of an existing unit, the board has no power to find the subgroup appropriate unless

- (a) the subgroup meets the standards of appropriateness that the board normally applies;
- (b) the applicant for certification has established a clear basis for mutuality in the subgroup distinct from the group as a whole;
- (c) the residual part of the existing unit would itself make an appropriate unit; and
- (d) the employees in the proposed unit, in a vote by secret ballot conducted by the board, in which they expressed their preference for the subgroup or the larger existing unit, have favoured the subgroup by a 2/3 majority of those entitled to vote.

1977 c64 s38

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Unit based on professions

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40. (1) The board may find appropriate a unit of professional employees of 1 or more professions and may include in the unit employees who do work that in the opinion of the board is closely related to the work of the professional employees in the unit.

(2) Where the board considers it desirable to do so, professional employees may, on the request of the majority of them, be formed into a unit restricted to members of 1 profession and employees who do work closely related to the work of those professional employees.

1977 c64 s39

[Back to Top](#)**Requirements relating to council**

41. A council of trade unions that applies for certification as a bargaining agent shall before the certification is granted satisfy the board that the council has a constitution that was adopted with the concurrence of each of the trade unions forming the council, and that the constitution contains

- (a) provisions authorizing the council to apply for certification, to negotiate and to enter into collective agreements;
- (b) provision for administration of collective agreements either by the council or its constituents;
- (c) provision for the election or appointment of officers of the council; and
- (d) a formula for reaching council decisions either by a simple majority vote or by weighing votes according to the number of employees represented or by some other means so that there is assurance that there will not be a deadlock in the council.

1977 c64 s41

[Back to Top](#)**Board to determine appropriateness of council**

41.1 (1) Notwithstanding section 41, where a council of trade unions applies for certification with respect to employees, other than construction and start up employees, employed on an offshore petroleum production platform, the council shall, as a condition for obtaining certification, satisfy the board that the council has a constitution that was adopted with the concurrence of each of the trade unions forming the council and that the constitution includes

- (a) provisions vesting the council with the exclusive authority to apply for certification;
- (b) provisions for the election of officers of the council;
- (c) provisions vesting the council with the exclusive authority to negotiate, enter into and administer a collective agreement;
- (d) a formula for reaching council decisions that assures that a deadlock cannot occur;
- (e) a formula for ratification by bargaining unit employees of a collective agreement reached by the council and an employers' organization and a time limit within which ratification shall take place; and
- (f) a provision stating that the council and not the trade unions comprising the council shall be responsible for conducting a ratification vote, by bargaining unit employees, of a collective agreement reached between the council and an employers' organization.

(2) The board may certify a council of trade unions as the bargaining agent in respect of employees employed on an offshore petroleum production platform where the board is satisfied that

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- (a) the council has a constitution that satisfies the requirements of subsection (1); and
- (b) the certification would not impede
 - (i) workplace productivity and stability, or
 - (ii) the flexibility of the employer to assign work

to any greater extent than if a single union were certified.

(3) Notwithstanding subsection 36(5), where 2 or more trade unions apply under that provision for certification with respect to employees, other than construction and start up employees, employed on an offshore petroleum production platform, the application shall be considered to be the application of a council of trade unions and the provisions of this section shall apply to that application.

(4) Notwithstanding subsection 49(2), membership in good standing in the council for the purpose of an application for certification and a vote on certification under sections 38 and 47 shall be membership in good standing in the council and not only the trade unions comprising the council.

1997 c44 s4

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Deferment of application of council

42. The board may defer the disposition of an application for certification by a council of trade unions until the conditions prescribed in section 41 or 41.1 have been fulfilled.

1977 c64 s42; 1997 c44 s5

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Unit in terms of geographic area

43. (1) When a trade union or a council of trade unions that, according to an established trade union practice, represents employees in the construction industry applies for certification for a unit of employees of an employer, by reference to a geographic area, the board shall define the unit in terms of a geographic area.

(2) Where the board does not find the proposed unit appropriate, it shall issue to the applicant its reasons for rejection and in those reasons the board shall indicate what unit it is prepared to find appropriate and in that event the applicant is, notwithstanding anything to the contrary in this Act, eligible to make a further application without delay.

1977 c64 s43

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No certification in certain cases

44. Where, in the opinion of the board, the administration, management, or policy of a trade union or a council of trade unions is

- (a) influenced by an employer so that its appropriateness to represent employees for the purpose of collective bargaining is impaired; or
- (b) dominated by an employer,

the trade union or council of trade unions shall not be certified as a bargaining agent, and an agreement entered into between it and the employer shall be held not to be a collective agreement for the purpose of this Act.

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1977 c64 s44

[Back to Top](#)**Alteration of wages**

45. Where an employer has received written notice from the board that a trade union has made application for certification under this Act as a bargaining agent of his or her employees, the employer shall not, afterward,

- (a) without the consent of the board; or
- (b) unless a collective agreement has been made that is binding on employees in the unit in respect of which the application is made,

alter rates of wages or another term or condition of employment of the employees, until the application has been granted, refused or withdrawn.

1977 c64 s45

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46. For the purposes of determining whether the majority of the employees in a unit consist of members in good standing of a trade union or whether a majority of them have selected a trade union to be their bargaining agent, the board may make the examination of records or other inquiries that it considers necessary, including the holding of the hearings or the taking of the vote, that it considers expedient, and the board may prescribe the nature of the evidence to be provided to the board.

1977 c64 s46

[Back to Top](#)**Taking of votes and ballot**

47. (1) Where an application for certification is supported by not less than 40% of the employees in the unit to which the application relates, the board shall take a vote of the employees in the unit to determine their wishes with respect to the certification of the applicant trade union as their bargaining agent.

(2) Notwithstanding subsection (1), the board is not required to take a vote where the trade union and the employer in the unit to which the application relates jointly request that the board not take a vote.

(3) A vote taken as required by this section shall be taken at the time and place, or by mail, as the board determines.

(4) Where a vote is taken it shall be taken no more than 5 days, excluding holidays and weekends, after receipt by the board of the application for certification.

(5) Notwithstanding subsection (4), the board may in exceptional circumstances extend the time for the taking of the vote by the number of days which it considers appropriate.

(6) Where a vote is taken under subsection (1), the board shall remove and destroy, without counting, the ballots cast by persons who are not employees in the unit to which the application relates.

(7) The board may order costs with respect to the vote under this section against the appropriate person, where, in the opinion of the board, the application was frivolous or vexatious.

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(8) The board is bound by the outcome of a vote taken under this section except where the board determines that the procedure under this section has been influenced by intimidation, threat of dismissal or other kind of threat or coercion.

(9) With respect to an application for certification as a bargaining agent, the board shall adhere to the date of the application as the operative date for determining support on the basis of membership records.

2014 c19 s3

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Rep. by 2014 c19 s3

47.1 [Rep. by 2014 c19 s3]

2014 c19 s3

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Condition precedent

48. Where a trade union or a council of trade unions, claiming to have as members in good standing a majority of the employees of 2 or more employers in an appropriate unit, applies for certification as the bargaining agent of the employees in that unit, the board shall not certify that union or council as the bargaining agent for the employees, unless

- (a) a majority of the employers of those employees consent to the certification; and
- (b) the board is satisfied that the applicant might be certified by it under this Act as the bargaining agent of the employees of each employer who are in the unit if separate applications for the purpose were made by the applicant.

1977 c64 s48

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Certification of council

49. (1) The board may certify a council of trade unions as the bargaining agent for a unit where the board is satisfied that

- (a) the requirements for certification prescribed under this Act have been met; and
- (b) each of the trade unions forming the council of trade unions has granted appropriate authority to the council of trade unions to enable it to discharge the duties and responsibilities of a bargaining agent under this Act.

(2) Membership in a trade union that forms part of a council of trade unions is considered to be membership in the council of trade unions.

(3) Where a council of trade unions is certified by the board as the bargaining agent for a unit,

- (a) the council of trade unions and each trade union, forming the council of trade unions, is bound by a collective agreement entered into by the council of trade unions and the employer concerned; and
- (b) this Act applies, except as otherwise provided, as if the council of trade unions were a trade union.

1977 c64 s49

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[Back to Top](#)**Exclusive authority**

50. Where a trade union or a council of trade unions is certified, under this Act, as the bargaining agent of a unit,

- (a) the bargaining agent so certified immediately replaces another bargaining agent of the unit and has exclusive authority to conduct collective bargaining on behalf of employees in the unit and to bind them by a collective agreement until its certification in respect of employees in the unit is revoked;
- (b) where another bargaining agent has been previously certified in respect of the unit, the certification of that bargaining agent is revoked immediately;
- (c) where, at the time of certification, a collective agreement binding on or entered into on behalf of the unit is in force, then that trade union or council is substituted as a party to the agreement in place of the bargaining agent that was a party to that collective agreement on behalf of employees in the unit immediately before that certification, and the trade union or council may, notwithstanding anything to the contrary contained in the collective agreement, terminate that collective agreement where it applies to those employees by giving 2 months' notice to the employer or employers' organization that is a party to the agreement; and
- (d) [Rep. by 2012 c30 s8]

1977 c64 s50; 2012 c30 s8[Back to Top](#)**Revocation of certification**

51. (1) Where, following investigation, and after a hearing where one is considered necessary by the board, it is determined by the board that a bargaining agent no longer represents a majority of employees in the unit for which it was certified or for which it acts as bargaining agent, the board of its own motion or on application may

- (a) revoke the certification of the bargaining agent, where it was certified; or
- (b) where the bargaining agent was not certified, terminate the bargaining rights of the bargaining agent by a written declaration,

and, then, notwithstanding anything to the contrary in this Act, an employer shall not be required to bargain collectively with the bargaining agent.

(2) Notwithstanding subsection (1), where on the direction of the board a vote is taken or where a vote is held under section 51.1 to determine the wishes of the employees in a bargaining unit and

- (a) a majority of the employees in the unit vote in favour of the revocation of certification or termination of bargaining rights of a bargaining agent; or
- (b) at least 70% of the employees in the bargaining unit vote and a majority of those voting vote in favour of the revocation of certification or termination of bargaining rights of a bargaining agent,

the board may revoke the certification or terminate the bargaining rights of the bargaining agent.

(3) Nothing in subsection (1) prevents the bargaining agent from making an application under section 36 in accordance with this Act and rules made under section 22.

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(4) Where a certification has been revoked or the bargaining rights of a bargaining agent have been terminated under subsection (1), an agreement entered into on or before and in force at the date of the revocation or termination between the bargaining agent and the employer shall from that date be held not to be a collective agreement for the purpose of this Act.

(5) [Rep. by 2012 c30 s9]

1977 c64 s51; 1985 c5 s3; 1988 c49 s3; 1993 c58 s2; 2012 c30 s9

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Revocation vote

51.1 (1) Where an application

- (a) to revoke the certificate of a bargaining agent under paragraph 51(1)(a); or
- (a) to terminate the bargaining rights of the bargaining agent under paragraph 51(1)(b)

is supported by not less than 40% of the employees in the unit to which the application relates, the board shall take a vote to determine the wishes of the employees in the unit.

(1.1) Notwithstanding subsection (1), the board is not required to take a vote where the applicant, trade union and the employer in the unit to which the application relates jointly request that the board not take a vote.

(2) A vote taken as required by this section shall be taken at the time and place, or by mail, as the board determines.

(3) A vote taken under this section shall be taken no more than 5 days, excluding holidays and weekends after receipt by the board of the application for revocation of certification.

(4) Notwithstanding subsection (3), the board may in exceptional circumstances extend the time for the taking of the vote by the number of days which it considers appropriate.

(5) Where a vote is taken under subsection (1), the board shall remove and destroy, without counting, the ballots cast by persons who are not employees in the unit to which the application relates.

(6) The board may order costs with respect to a vote under this section against the appropriate person, where, in the opinion of the board, the application was frivolous or vexatious.

(7) The board is bound by the outcome of a vote taken under this section except where the board determines that the procedure under this section has been influenced by intimidation, threat of dismissal or other kind of threat or coercion.

1993 c58 s3; 1994 c28 s13; 2006 c46 s8

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Time for dealing with revocation

52. The board is not required to accept or deal with an application to revoke the certification of a bargaining agent under section 51

- (a) within the period of 12 months immediately following the date of the certification of that bargaining agent;
- (b) within the period of 6 months immediately following the date when a previous application to revoke certification of that bargaining agent was refused, where a previous application was made; or

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- (c) within the period of 12 months immediately following the date when that bargaining agent by notice required an employer to start collective bargaining, if the notice was given.

1977 c64 s52

[Back to Top](#)**Dissolution of council**

53. (1) Where a council of trade unions has been certified or voluntarily recognized, no resolution, by-law or other action by the constituent unions of the council of trade unions to dissolve the council or by a constituent union of the council to withdraw from the council has effect unless a copy of the resolution, by-law or other action is delivered to the employer or employers' organization, and, in the case of a withdrawal, to the other constituent members and to the council.

(2) Where a certified council of trade unions is dissolved or a constituent trade union withdraws from a council of trade unions in accordance with subsection (1) and that council is a party to or is bound by a collective agreement, then, the constituent unions in the case of dissolution or the constituent union in the case of withdrawal from the council is bound by the collective agreement for its duration.

1977 c64 s53

Division II - Employers' Organization[Back to Top](#)**Interpretation**

54. (1) In this Division,

- (a) "accredited employers' organization" means an organization of employers that is accredited under this Act as the bargaining agent for a unit of employers in the construction industry;
- (b) "construction industry" means the on-site constructing, erecting, altering, decorating, repairing or demolishing of buildings, structures, roads, sewers, water mains, pipe lines, tunnels, shafts, bridges, wharves, piers, canals or other works;
- (c) "sector" means the following divisions of the construction industry, namely:
- (i) the industrial and commercial division,
 - (ii) the house building division,
 - (iii) the sewers, tunnels and water mains division, or
 - (iv) the road building division,
- and includes other divisions of that industry that may be determined by the board;
- (d) "unionized employee" means an employee on behalf of whom a trade union or council of trade unions has been certified as bargaining agent under this Act or voluntarily recognized by an employer, where the certification has not been revoked or the bargaining rights have not been terminated; and
- (e) "unionized employer" means an employer of unionized employees in the geographic area and sector concerned.

(2) For the purposes of this Division, an employee is, in respect of a sector and area applied for, a person who was on the payroll of an employer in that sector and area for the weekly payroll

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period immediately preceding the date of the application, or, where, in the opinion of the board, the payroll period is unsatisfactory for 1 or more of the unionized employers in the sector and area applied for, then, the other weekly payroll period of 1 or more of the employers that the board considers advisable.

1977 c64 s54

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Membership

55. An employers' organization shall not

- (a) refuse membership in the employers' organization to an employer;
- (b) terminate an employer's membership in the employers' organization except for a cause that, in the opinion of the board, is fair and reasonable; or
- (c) charge, levy or prescribe initiation fees, dues or assessments that, in the opinion of the board, are unreasonable or discriminatory.

1977 c64 s55

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Delivery of lists of employers

56. (1) Where an employers' organization starts to bargain collectively with a bargaining agent it shall deliver to the minister and to the bargaining agent

- (a) a list of the names and addresses of the employers on whose behalf it is authorized to bargain collectively;
- (b) a copy of each authorization given by an employer; and
- (c) a list of the names and addresses of the persons designated as its bargaining committee,

and upon receipt by the minister and the bargaining agent of the lists and authorizations, the employers' organization shall be considered to be bargaining collectively, for all of the employers who gave their authorization.

(2) An authorization referred to in subsection (1) may be given by a director or other senior official of the employer, and that authorization shall be considered to be the authorization of the employer.

(3) Unless the employer gave notice to the minister and the bargaining agent that an employers' organization no longer represents him or her and a period of 30 days after the giving of the notice has expired, each employer on the list provided to the minister is bound by a collective agreement entered into by the organization on his or her behalf.

1977 c64 s56

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Mandatory employers' organization

56.1 (1) Where the board certifies a trade union or a council of trade unions as the bargaining agent for employees employed on an offshore petroleum production platform, the licensed operator of the platform shall form immediately an organization of all employers of employees affected by the application.

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(2) All employers referred to in subsection (1) shall become members of the employers' organization.

(3) The employers' organization shall adopt a constitution including

- (a) provisions authorizing the employers' organization to negotiate, enter into and administer a collective agreement;
- (b) provisions for the election or appointment of officers of the employers' organization;
- (c) a formula for reaching decisions of the employers' organization that assures that a deadlock cannot occur; and
- (d) a formula for the ratification by the employers represented by the employers' organization of a collective agreement reached between the organization and the bargaining agent of employees employed by the employers who are members of the organization and a time limit within which ratification shall take place.

1997 c44 s6

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Application of sections

57. Sections 58 to 68 apply only to the construction industry.

1977 c64 s57; 1980 c24 s10

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Accreditation as sole agent

58. Subject to the rules of the board, an employers' organization that claims to represent the unionized employers in a geographic area engaged in a particular sector of the construction industry may make application in a form approved by the board to be accredited as the sole collective agent for all unionized employers in the section of the construction industry in that geographic area.

1977 c64 s58

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Representation vote of employers

59. (1) Where an employers' organization referred to in section 58 makes application under that section, the board shall ascertain the number of unionized employers in the geographic area and sector applied for and the number of them who were members of the employers' organization at the time the application was made, and where it considers it desirable to do so, the board may hold a representation vote of employers in that sector.

(2) Where an application is made under section 58, the board

- (a) shall determine the geographic area and sector that is appropriate for accreditation;
- (b) may designate the whole or a part of the province as an appropriate geographic area; and
- (c) may, before accreditation, where it considers it appropriate to do so, include additional employers in or exclude employers from the unit.

(3) An employers' organization that discriminates against a person because of race, religion, creed, sex, marital status, political opinion, colour, or ethnic, national or social origin may not be accredited.

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(4) An accredited employers' organization, and a person acting on behalf of an accredited employers' organization, shall not deny membership to an employer for whom it is the bargaining agent for a reason other than refusal or failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the employers' organization as a condition of acquiring or retaining membership in the organization.

1977 c64 s59

[Back to Top](#)**Prerequisites of accreditation, etc.**

60. (1) Before the board accredits an employers' organization, the board shall satisfy itself that

- (a) the employers' organization is a properly constituted organization controlled by its members; and
- (b) each of its members has vested appropriate authority in the organization to enable it to discharge the responsibilities of an accredited bargaining agent.

(2) Where the board is of the opinion that appropriate authority has not been vested in the employers' organization, the board may dismiss or postpone disposition of the application to enable employers who are members of the employers' organization to vest in the organization whatever additional or other authority the board considers necessary.

1977 c64 s60

[Back to Top](#)**Accreditation**

61. (1) Where an application is made under section 58 and the board is satisfied that the employers' organization has met all of the requirements prescribed under this Act and

- (a) has as members a majority of the unionized employers in the geographic area and sector applied for; or
- (b) has as members
 - (i) no less than 35% of the unionized employers in the geographic area and sector applied for, and
 - (ii) those employers who employ a majority of the employees employed by unionized employers in the geographic area and section applied for,

the board may accredit the employers' organization as the sole collective bargaining agent to bargain on behalf of all unionized employers with all trade unions or councils of trade unions in the area and sector determined by the board as an appropriate unit.

(2) Notwithstanding subsection (1), the board shall not accredit an employers' organization to bargain on behalf of an unionized employer engaged in a special project.

1977 c64 s61

[Back to Top](#)**Results of accreditation**

62. (1) Upon accreditation, all rights, duties and obligations under this Act of employers for whom the accredited employers' organization is or becomes the bargaining agent apply to the accredited employers' organization, and a collective agreement between an employer and a trade union or council of trade unions that is in force at the date of accreditation of an employers'

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organization does not bar a trade union or council of trade unions from giving notice to the accredited employers' organization to start collective bargaining nor does it bar the accredited employers' organization from giving notice to a trade union or council of trade unions to start collective bargaining.

(2) Notwithstanding subsection 64(1), when, at the time an employers' organization is accredited, a collective agreement between an employer referred to in subsection (1) of this section and a trade union or council of trade unions is in force, that collective agreement terminates and is no longer in force,

- (a) where a collective agreement is concluded between the accredited employers' organization and the trade union or council of trade unions, on the date of signing or the date on which the collective agreement comes into force, whichever is later; or
- (b) where a collective agreement is not concluded between the accredited employers' organization and the trade union or council of trade unions, on the date on which a strike or lockout is permitted in accordance with this Act.

1977 c64 s62

[Back to Top](#)**Addition of employers**

63. (1) Where an employers' organization has been accredited and after the date of the accreditation order, a trade union or a council of trade unions is certified for or voluntarily recognized by another employer in the sector and area covered by the accreditation order, the bargaining rights, duties and obligations of that employer, whether he or she becomes a member of the accredited organization or not, are vested in or imposed on the employers' organization and the employer is bound by a collective agreement in effect or subsequently negotiated between the accredited employers' organization and a trade union or council of trade unions in that sector.

(2) Notwithstanding that an employer's membership in an accredited employers' organization is terminated, the accredited employers' organization may exercise all rights and shall discharge all duties and obligations acquired by or imposed on it under this Act on behalf of the employer until the accreditation has been revoked.

1977 c64 s63; 1983 c60 s11

[Back to Top](#)**Collective agreements**

64. (1) A collective agreement entered into between an employers' organization and a trade union, or council of trade unions, is binding upon the employers' organization, employers whose bargaining rights have been acquired by the employers' organization engaged in the construction industry in the sector and area covered by the accreditation order, the trade union, council of trade unions and employees within the scope of the collective agreement.

(2) A collective agreement shall not be individually negotiated between an employer in the sector and geographic area in respect of which an employers' organization has been accredited and a trade union or council of trade unions, and, where a collective agreement is entered into, it is void.

1977 c64 s64

[Back to Top](#)**Application for revocation**

65. An employer in the unit of employers determined in an accreditation order made under section 61 may,

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- (a) where the accreditation order has been in effect for not less than 12 months and the accredited employers' organization is not party to a collective agreement;
- (b) after the beginning of the 46th month of the operation of the accreditation order and before the beginning of the 49th month of its operation; or
- (c) during the 3 month period immediately preceding the end of every 3rd year after the determination,

apply to the board for a declaration that the accreditation is revoked.

1977 c64 s65

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Revocation

66. (1) Where an application is made under section 65, the board shall ascertain

- (a) the number of employees in the unit of employers on the date of the making of the application;
- (b) the number of employers in the unit of employers who, within a 2 month period immediately preceding the date of the making of the application, have voluntarily signified in writing that they no longer wish to be represented by the accredited employers' organization; and
- (c) the number of unionized employees affected by the application who are on the payroll of each employer in the unit during the weekly payroll period immediately preceding the date of the making of the application or where, in the opinion of the board, the payroll period is unsatisfactory for 1 or more of the employers, during the other weekly payroll period for 1 or more of the employers as the board considers advisable.

(2) Where the board is satisfied

- (a) that a majority of the employers ascertained in accordance with paragraph (1)(b) have voluntarily signified in writing that they no longer wish to be represented by the accredited employers' organization; and
- (b) that the majority of employers employed a majority of the employees ascertained in accordance with paragraph (1)(c),

the board may declare the accreditation of the employers' organization revoked.

(3) When an application is made under section 65 and the employers' organization informs the board that it does not wish to continue to represent the employers in the unit of employers, the board may declare the accreditation of the employers' organization revoked.

1977 c64 s66

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Result of revocation

67. Upon the board making a declaration under subsection 66(2) or (3), all rights, duties and obligations of the employers' organization under this Act and under an unexpired collective agreement revert to the individual employers represented by the employers' organization.

1977 c64 s67

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Certain agreements void

68. A trade union or council of trade unions that has bargaining rights for employees of employers represented by an accredited employers' organization and an employer or person acting on behalf of the employer, trade union or council of trade unions shall not, as long as the accredited employers' organization continues to be entitled to represent the employers in a unit of employers, enter into an agreement or understanding, oral or written, that provides for the supply of employees during a legal strike or lockout, and where the agreement or understanding is entered into, it is void and a trade union or council of trade unions or person shall not supply the employees to the employers.

1977 c64 s68

Division III - Special Projects[Back to Top](#)**Rep. by 2012 c30 s10**

69. [Rep. by 2012 c30 s10]

[2012 c30 s10](#)[Back to Top](#)**Declaration of special projects**

70. (1) The Lieutenant-Governor in Council may by order

- (a) declare an undertaking that is a special project within the meaning of paragraph 2(1)(u) to be a special project under this Act, and the project so declared is a special project for all the purposes of this Act; or
- (b) notwithstanding paragraph 2(1)(u), declare an undertaking for the construction or fabrication of works at the Bull Arm site, including all ancillary work, services and catering to be a special project and the project so declared is a special project for all the purposes of this Act.

(2) The Lieutenant-Governor in Council may, with respect to an order made under subsection (1), prescribe

- (a) the geographic site or scope of work to which the declaration relates;
- (b) that a geographic site or scope of work be excluded from a special project order;
- (c) the employers, employers' organizations, trade unions and councils of trade unions that may be involved in collective bargaining relating to employment on the special project;
- (d) the bargaining unit for the purpose of the special project;
- (e) that a collective agreement is the collective agreement for the purpose of the special project; and
- (f) those conditions and qualifications with respect to any aspect of the special project that the Lieutenant-Governor in Council considers necessary or desirable.

(3) Notwithstanding subsection 64(2), a collective agreement that is prescribed by the Lieutenant-Governor in Council under paragraph (2)(e) is valid.

(4) A special project order is not invalid because it overlaps temporally and geographically with another special project order.

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(5) Where an undertaking is declared a special project, employees who work under the provisions of a collective agreement in relation to the work at the special project site may not be included as members in good standing of the trade union or employees in a unit for the purpose of a vote under section 38 and the board may not consider those employees in determining whether or not a trade union may be certified.

(6) Subsection (5) applies in relation to all declarations made under subsection (1) and applies in relation to all applications before the board, whether made before or after the commencement of subsection (5).

(7) Where the Lieutenant-Governor in Council has made an order with respect to a special project under paragraph (1)(b),

(a) a collective agreement proposed or entered into with respect to that special project shall not contain a provision that authorizes an employee to; and

(b) an employee with respect to that special project shall not,

refuse to perform work for his or her employer because other work was or will be performed or was not performed by a person or class of persons who were not or are not members of a trade union or a particular trade union.

(8) A provision of a collective agreement with respect to an undertaking to which paragraph (1)(b) applies that authorizes an employee to refuse to perform work for his or her employer because other work was or will be performed or was not performed by a person or class of persons who were not or are not members of a trade union or a particular trade union, is void.

(9) An employers' organization that may be prescribed under paragraph (2)(c) shall have a constitution that includes all of the following:

(a) the exclusive authority to negotiate, enter into, and administer collective agreements;

(b) provisions that provide for the election or appointment of its officers;

(c) a formula for reaching decisions that assures that a deadlock cannot occur; and

(d) a formula for the ratification by the employers represented by the employers' organization, of collective agreements reached between the organization and a trade union or council of trade unions prescribed as a party to collective bargaining on a special project and a time limit within which ratification shall take place.

(10) A council of trade unions that may be prescribed under paragraph (2)(c) shall have a constitution adopted with the agreement of each of the trade unions that are members of that council and that constitution shall include all of the following:

(a) provisions that vest the council with the exclusive authority to negotiate, enter into and administer collective agreements;

(b) provisions for the election of officers to the council;

(c) a formula for reaching council decisions that assures that a deadlock cannot occur;

(d) provisions for final, binding and expeditious resolution of jurisdictional disputes without a stoppage of work;

(e) provisions requiring bargaining unit employees to be members in good standing of the council; and

(f) a formula for the ratification by a majority of the members of the trade unions that comprise the council, of collective agreements reached between the council and an

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employer or employers' organization prescribed as a party to collective bargaining on a special project and a time limit within which the ratification must occur.

(11) Where an undertaking has been declared by order to be a special project under subsection (1), an employer, employers' organization, trade union or council of trade unions may apply to the board for a determination as to whether

- (a) a person is an employer or an employee;
- (b) an organization or association is an employers' organization and if so, whether that employers' organization is in compliance with subsection (9);
- (c) an organization or association is a trade union or a council of trade unions and if it is a council of trade unions, whether that council is in compliance with subsection (10); and
- (d) a collective agreement has been entered into.

(12) The minister may apply to the board for determination under subsection (11) before and after an undertaking has been declared by order to be a special project.

(13) The board may, with respect to an undertaking declared by order to be a special project under subsection (1), hear and decide upon complaints made to it with respect to or under sections 18.1, 30 and 130.

(14) This section does not apply to a special project order declared before this section comes into force.

2012 c30 s11

PART IV COLLECTIVE BARGAINING AND COLLECTIVE AGREEMENTS

Division I - Collective Bargaining

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Good faith

71. A trade union, council of trade unions, employer, employers' organization and a representative of them who conducts collective bargaining under this Act shall bargain collectively in good faith.

1977 c64 s71

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Notice to begin collective bargaining

72. Where the board has under this Act certified a trade union as a bargaining agent of employees in a unit and no collective agreement with their employer binding on, or entered into on behalf of, employees in the unit, is in force

- (a) the bargaining agent may, on behalf of the employees in the unit, by notice, require their employer to begin collective bargaining with a view to the conclusion of a collective agreement; or
- (b) the employers or an employers' organization representing the employer may, by notice, require the bargaining agent to begin collective bargaining with a view to the conclusion of a collective agreement.

1977 c64 s72

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73. (1) Not more than 60 days and not less than 30 days immediately before the date of expiration or of the termination of a collective agreement a party to the collective agreement may by written notice require the other party to the agreement to begin collective bargaining with a view to the renewal or revision of the agreement or the conclusion of a new collective agreement.

(2) Where a collective agreement provides for a period of notice to begin collective bargaining that is different from the period prescribed in subsection (1), the provisions of the collective agreement prevail.

1977 c64 s73

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74. Where notice to begin collective bargaining has been given under section 72,

- (a) the certified bargaining agent and the employer or an employers' organization representing the employer or their authorized representatives shall, without delay, and no later than 20 clear days after the notice was given or a further time that the parties may agree to, meet and begin to bargain collectively in good faith with one another and shall make reasonable efforts to conclude a collective agreement; and
- (b) except with the prior written approval of the board, the employer shall not alter rates of wages or other terms or conditions of employment of employees in the unit without the prior consent of the bargaining agent that was certified in respect of that unit, until
 - (i) a collective agreement has been concluded,
 - (ii) a conciliation officer has been appointed to try to bring about an agreement between the parties, and 15 days have elapsed from the date on which the report of the conciliation officer was received by the minister and a conciliation board has not been appointed, or
 - (iii) a conciliation board has been appointed to try to bring about agreement between the parties and 7 days have elapsed from the date on which the report of the conciliation board was received by the minister,

whichever first occurs.

1977 c64 s74; 2014 c19 s4

[Back to Top](#)**Time limit**

75. Where a party to a collective agreement has given notice under section 73 to the other party to the agreement

- (a) the parties or their authorized representatives shall, without delay, and no later than 20 clear days after the notice was given or a further time that the parties may agree upon, meet and begin to bargain collectively in good faith and make a reasonable effort to conclude a renewal or revision of the agreement or a new collective agreement; and
- (b) where a renewal or revision of the agreement or a new collective agreement has not been concluded before expiry of the term or termination of the collective agreement, then, unless he or she receives the prior written approval of the board, the employer shall not, without the written consent of the bargaining agent certified or recognized in respect of

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the appropriate unit, decrease rates of wages or alter other terms or conditions of employment in effect immediately before the expiry or termination provided for in the agreement, until

- (i) a renewal or revision of the agreement on a new collective agreement has been concluded,
- (ii) a conciliation officer has been appointed to try to bring about an agreement between the parties, and 15 days have elapsed from the date on which the report of the conciliation officer was received by the minister and a conciliation board has not been appointed, or
- (iii) a conciliation board has been appointed to try to bring about an agreement between the parties and 7 days have elapsed from the date in which the report of the conciliation board was received by the minister,

whichever first occurs.

1977 c64 s75; 2014 c19 s5

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Composition

76. (1) A bargaining agent shall be represented by a bargaining committee consisting of employees of the employer who are members of the bargaining agent.

(2) A bargaining committee referred to in subsection (1) may include 1 or more officers or other representatives of the trade union that is the bargaining agent of the employees in the collective bargaining and

- (a) in the case of collective bargaining between a bargaining agent and an employers' organization, shall include members of the bargaining agent who are employees of 1 or more members of the employers' organization;
- (b) in the case of collective bargaining between a bargaining agent and a group of employers bargaining jointly or through representatives of those employers, shall include members of the bargaining agent who are employees of 1 or more of the employers in the group; or
- (c) in the case of collective bargaining between a group of trade unions and an employer, an employers' organization or a group of employers bargaining jointly, shall include members of the trade union who are employees of the employer, or 1 or more members of the employers' organization or of 1 or more of the employers in the group of employers.

(3) A bargaining committee shall, in respect of a bargaining unit,

- (a) include at least 1 employee from that unit where the unit consists of not more than 15 employees; and
- (b) include at least 2 employees from that unit where that unit consists of more than 15 employees.

1977 c64 s76

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Representation

77. An employer shall, during collective bargaining, be personally present or be represented by a person authorized by him or her to bargain collectively with his or her employees and where 1 of the parties to the collective bargaining is an employers' organization that comprises 3 or more

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employers, the organization shall be represented by at least 3 of the employers, or representatives of those employers whose employees are concerned in the collective bargaining, and those employers or their representatives have authority to bargain collectively on behalf of the organization and to conclude a collective agreement.

1977 c64 s77

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78. Where an employer is a company incorporated outside the province whose board of directors does not meet in the province

- (a) the company shall appoint a person resident in the province with authority to bargain collectively and to conclude a collective agreement and to sign the agreement on behalf of the company; and
- (b) the collective agreement when signed by that person is binding on the company.

1977 c64 s78

[Back to Top](#)**Rep. by 2014 c19 s6**

79. [Rep. by 2014 c19 s6]

[2014 c19 s6](#)[Back to Top](#)**Rep. by 2014 c19 s6**

80. [Rep. by 2014 c19 s6]

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81. (1) Where a trade union certified as a bargaining agent and an employer have been engaged in collective bargaining to conclude a first collective agreement and have failed to do so within 60 days after the date notice to bargain was served in accordance with section 72, the minister shall appoint a first collective agreement mediator to assist the parties in concluding a first collective agreement.

(2) With the agreement of the parties, the period referenced in subsection (1) may be extended to 75 days.

(3) Where the parties have failed to conclude a first collective agreement within 30 days after the appointment of the first collective agreement mediator or after the conditions prescribed in section 116 have been satisfied, either party may make application to the board to inquire into the dispute and where the board considers it advisable, to settle the terms and conditions for the first collective agreement.

(4) The board shall consider and make its decision on an application under subsection (3) within 30 days of receiving the application.

(5) Where the board decides to settle the terms and conditions of a first collective agreement the board shall

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- (a) appoint a date for and commence a hearing within 21 days of the decision being made;
- (b) determine all matters in dispute; and
- (c) release its decision within 45 days of the commencement of the hearing.

(6) Where the board settles the terms and conditions of a first collective agreement, those terms and conditions shall be considered to constitute the collective agreement between the trade union and the employer and to be binding on them and the employees, except to the extent that the trade union and employer agree in writing to vary those terms and conditions.

(7) Where an application is made under subsection (3), and upon the date the board advises the parties that it will impose a first collective agreement, an employee shall not strike or continue to strike, and the employer shall not lock out or continue to lock out the employees.

(8) Notwithstanding subsection (1), the parties may agree in writing, and upon notice to the minister and the board, to make application to the board to settle a first collective agreement and the board shall settle the first collective agreement.

(9) Notwithstanding subsection (1), the parties may agree to settle a first collective agreement through private interest arbitration.

(10) The appointment of a first collective agreement mediator terminates on the appointment of a conciliation officer, mediator or conciliation board.

(11) Nothing in this section limits the ability of a trade union or employer from fulfilling the conditions precedent under section 116 of this Act.

(12) Except with the consent of the minister and notwithstanding a law to the contrary, a first collective agreement mediator shall not be required to give in evidence before a court, tribunal, board, commission or conciliation board, or before another body or person, information that he or she has received in the course of his or her duty as a first collective agreement mediator.

2012 c30 s12; 2014 c19 s7

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Arbitration of agreement

81.1 (1) Where a trade union or a council of trade unions and an employers' organization have been engaged in collective bargaining to conclude a first collective agreement applicable to employees employed on an offshore petroleum production platform and either party is satisfied that an agreement cannot be reached, that party may by written notice to the other party require matters in dispute to be referred to an arbitration board and those matters shall be settled by arbitration.

(2) The notice given under subsection (1) shall contain the name of the person appointed to be arbitrator by the party giving the notice.

(3) The party to whom the notice is given shall within 10 days after receiving the notice name the person who it appoints to be arbitrator and advise the party who gave the notice of the name of its appointee.

(4) The 2 arbitrators named in accordance with this provision shall within 10 days after the appointment of the second of them name a third arbitrator and he or she shall be the chairperson of the arbitration board.

(5) Where the party to whom notice is given fails to name an arbitrator within the period of 10 days after receiving the notice or where the 2 arbitrators named by the parties fail to agree upon the naming of the chairperson within 10 days after the naming of the second arbitrator, the minister shall, on the request of either party, name an arbitrator on behalf of the party who failed to name an

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arbitrator, or shall name the chairperson and, where the case so requires, the minister shall name the second arbitrator and the chairperson.

(6) The decision of the majority of the members of the board of arbitrators is the decision of the board and, where there is no majority decision, the decision of the chairperson shall be the decision of the board.

(7) Each party shall assume its own costs of the arbitration proceedings and shall share the cost of the third arbitrator equally.

(8) Where a trade union or a council of trade unions and an employers' organization referred to in this section so agree, a single arbitrator satisfactory to the parties may be appointed instead of an arbitration board, and where a single arbitrator is appointed under this subsection, the arbitrator has the powers and duties conferred and imposed on an arbitration board formed in accordance with this section, and reference to a board of arbitration in these provisions shall be considered reference to a single arbitrator appointed in accordance with this subsection.

1997 c44 s7

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Beginning and termination

81.2 The board of arbitrators shall begin the arbitration proceedings within 30 days after it is constituted and shall deliver the decision or award within 60 days after the beginning of the arbitration proceedings, but this latter period may be extended by written agreement of the parties concerned or by the Labour Relations Board on the application of one of the parties, in which event the decision or award shall be delivered within that extended period which extended period in the case of an application to the Labour Relations Board shall not be greater than 60 days.

1997 c44 s7

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Term of agreement

81.3 Notwithstanding section 83, a collective agreement arrived at under sections 81.1 and 81.2 shall be effective for a period of 3 years or the longer period that the parties may agree to.

1997 c44 s7

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Presentation of evidence

82. In settling terms and conditions under section 81, the board may give the parties an opportunity to present evidence and make representations, and may take into account

- (a) the extent to which the parties have, or have not, bargained in good faith in an effort to conclude a first collective agreement;
- (b) terms and conditions of employment negotiated through collective bargaining for comparable employees performing the same or similar functions in the same or related circumstances; and
- (c) other matters that the board considers will help it in arriving at terms and conditions that are fair and reasonable in the circumstances.

2006 c46 s9

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Term of first collective agreement

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83. Where the terms and conditions of a first collective agreement are settled by the board under section 81, the agreement shall be effective for a minimum period of 18 months up to a maximum period of 36 months, as determined by the board, from the date on which the board advises the parties that it has determined that it is advisable to impose the terms and conditions of the collective agreement, or the date the employees returned to work, whichever is earlier.

2011 c9 s2

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Binding effect

84. (1) A collective agreement is binding upon

- (a) the bargaining agent and the employees in the unit of employees that the bargaining agent represents; and
- (b) an employers' organization and employer who has entered into the agreement or on whose behalf the agreement has been entered into.

(2) A collective agreement, where it is for a term of less than a year, shall be considered to be for a term of 1 year from the date upon which it came into operation or, where it is for an indeterminate term, shall be considered to be for a term of at least 1 year from the date it came into operation and shall not, except as provided in section 50 or with the consent of the board, be terminated by the parties within a period of 1 year from that date.

(3) The parties to a collective agreement may, by written consent while the agreement is in force, vary, cancel or substitute other provisions for a provision in the agreement other than the provision relating to the term of the agreement.

1977 c64 s81

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Voluntary agreement

85. In the case of an undertaking declared under this Act to be a special project, an existing or future written agreement between an employer or employers' organization, on the one hand, and a trade union or a council of trade unions, on the other hand, shall be considered to be a collective agreement in force for the purpose of this Act, notwithstanding that the composition of the bargaining committee was not in accordance with section 76 or that there were no employees in the bargaining unit represented by the bargaining agent at the time of the negotiation or execution of the agreement.

2012 c30 s14[Back to Top](#)

Labour management committee

85.1 (1) Where a party to a collective agreement makes a written request to the other party that the collective agreement contain a provision requiring a labour management committee to be established, the parties shall include such a provision in the collective agreement within 6 months of the date of the request.

(2) Where a provision establishing a labour management committee has not been included in the collective agreement within 6 months of the date of the request, the collective agreement shall be considered to contain the following provision:

At the request of either party the parties shall meet at least once every 2 months for the purpose of discussing issues relating to the workplace in order to promote effective

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communication between the parties bound by this agreement.

2012 c30 s14

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Arbitration provision

86. (1) A collective agreement shall contain a provision for final settlement without stoppage of work, by arbitration or otherwise, of all differences between the parties to or persons bound by the agreement or on whose behalf it was entered into, where those differences arise out of the interpretation, application, administration or alleged violation of the agreement or a question as to whether a matter is arbitrable.

(2) Where a collective agreement does not contain the provision required by subsection (1) the agreement shall be considered to contain the following provision:

- (a) where a difference arises between the parties to or persons bound by this agreement or on whose behalf it has been entered into and that difference arises out of the interpretation, application, administration or alleged violation of this agreement or out of a question as to whether a matter is arbitrable, 1 of the parties may, after exhausting a grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration and the notice shall contain the name of the person appointed to be arbitrator by the party giving the notice;
- (b) the party to whom the notice is given shall within 5 days after receiving the notice name the person whom it appoints to be arbitrator and advise the party who gave the notice of the name of its appointee;
- (c) 2 arbitrators named in accordance with this provision shall within 5 days after the appointment of the 2nd of them name a 3rd arbitrator and he or she shall be the chairperson of the arbitration board;
- (d) where the party to whom notice is given fails to name an arbitrator within the period of 5 days after receiving the notice or where the 2 arbitrators named by the parties fail to agree upon the naming of the chairperson within 5 days after the naming of the 2nd arbitrator, the minister shall, on the request of either party, name an arbitrator on behalf of the party who failed to name an arbitrator, or shall name the chairperson and, where the case so requires, the minister shall name the 2nd arbitrator and the chairperson;
- (e) the arbitration board named under this provision shall hear relevant evidence and argument relating to the difference or allegation by the parties or counsel on behalf of either or both of them and make a decision on the difference or allegation and the decision is final and binding upon the parties and upon a person on whose behalf this agreement was made;
- (f) the decision of the majority of the members of an arbitration board named under this provision shall be the decision of that board and where there is no majority decision the decision of the chairperson shall be the decision of the board;
- (g) each party who is required to name a member of the arbitration board shall pay the remuneration and expenses of that member and the parties shall pay equally the remuneration and expenses of the chairperson.

(3) Where, in the opinion of the board, a part of the provisions for final settlement in a collective agreement, including the provisions for the method of appointment of an arbitrator or arbitration board, is inadequate the board may, on the written request of a party to the agreement, rule on the adequacy of those provisions, and where the board rules that those provisions are inadequate for the purposes of subsection (1), the provisions for final settlement set out in subsection (2) apply and shall be substituted for the provisions for final settlement contained in the agreement.

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(4) A party to and a person bound by a collective agreement and a person on whose behalf the agreement was entered into shall comply with the provision for final settlement contained in the agreement or in subsection (2) and shall comply with a decision of an arbitrator or board of arbitrators appointed in accordance with that provision and do or abstain from doing anything required by that decision.

1977 c64 s83; 1984 c40 Sch B

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86.1 (1) The parties to a collective agreement may, after exhausting the grievance procedure established by the collective agreement, agree to refer all differences between the parties to or persons bound by the agreement or on whose behalf it was entered into, where those differences arise out of the interpretation, application, administration or alleged violation of the agreement, or a question as to whether a matter is arbitrable, to the minister for resolution by expedited arbitration.

(2) Where a difference is referred to the minister under this section, the minister

(a) shall appoint an arbitrator to hear and determine the matter arising out of the difference;

(b) shall fix the time period, not later than 28 days after the day on which the difference is referred to the minister, within which the hearing by the arbitrator will commence; and

(c) where one party so requests and the other party agrees, may appoint a grievance mediator to assist the parties in settling the grievance before the hearing.

(3) Parties to a grievance under this section shall comply with a decision of an arbitrator issued under subsection (5) or (6) and shall do or abstain from doing anything as required by that decision.

(4) Where a grievance mediator is appointed under paragraph (2)(c), the grievance mediator shall, within 10 days after the appointment or within a further time that the minister may allow,

(a) inquire into the difference; and

(b) endeavour to assist the parties in settling the difference.

(5) Where a grievance mediator is not appointed under paragraph (2)(c), or where the parties are unable to settle the difference with the assistance of a grievance mediator appointed under paragraph (2)(c), the arbitrator appointed under paragraph (2)(a) shall

(a) proceed to hear and determine the matter arising out of the difference; and

(b) issue a written decision and written reasons for that decision within 21 days after the conclusion of the hearing.

(6) Notwithstanding paragraph (5)(b), where jointly requested to do so by the parties to the difference, the arbitrator shall, where possible, issue an oral decision within one day after the conclusion of the hearing and shall issue written reasons within 21 days after the conclusion of the hearing.

(7) In addition to the powers conferred on arbitrators by this Act, an arbitrator appointed under paragraph (2)(a) has all the powers and jurisdiction conferred by the collective agreement between the parties to the difference.

(8) Notwithstanding subsection (7), subsections 88(3) and (4) do not apply to an arbitrator appointed under paragraph (2)(a).

2011 c9 s3

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[Back to Top](#)**Grievance mediation**

86.2 (1) Notwithstanding sections 86 and 88 and a provision in a collective agreement, the parties to the collective agreement may agree to refer one or more grievances under the collective agreement to a grievance mediator for the purpose of resolving the grievances in an expeditious and informal manner.

(2) The parties shall not refer a grievance to a grievance mediator unless they have agreed on the nature of the issues in dispute.

(3) On a joint request by the parties, the minister shall appoint a grievance mediator.

(4) Where the parties jointly request the appointment of a grievance mediator under this section, a time limit with respect to the reference of a grievance to arbitration in the collective agreement is suspended until the date that the grievance mediator advises the parties that the grievance mediation is concluded.

(5) The grievance mediator shall attempt to assist the parties to settle the grievance by mediation.

2011 c9 s3

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87. (1) Except in the construction industry, where a trade union that is the bargaining agent for employees in a bargaining unit so requests, there shall be included in the collective agreement between the trade union and the employer of the employees a provision requiring the employer to deduct from the wages of each employee in the unit affected by the collective agreement, whether or not the employee is a member of the union, the amount of the regular union dues and to remit the amount to the trade union immediately.

(2) In subsection (1) "regular union dues" means

(a) in the case of an employee who is a member for the trade union, the dues uniformly and regularly paid by a member of the trade union in accordance with the constitution and by-laws of the trade union; and

(b) in the case of an employee who is not a member of the trade union, the dues referred to in paragraph (a), excluding an amount in respect of pension, superannuation, sickness insurance or other benefit available only to members of the trade union.

1985 c5 s5

[Back to Top](#)**Powers of arbitration board**

88. (1) An arbitration board appointed under a collective agreement or in accordance with this Act

(a) may determine its own procedure, but shall give full opportunity to the parties to the proceeding to present evidence and make submissions to it;

(b) has in relation to a proceeding before it, power to

(i) summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath or affirmation and to produce those documents and things

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that the arbitration board considers necessary to the full investigation and consideration of a matter that is within its jurisdiction and before it in the proceeding,

- (ii) administer oaths and affirmations,
 - (iii) receive and accept the evidence and information on oath, affidavit or otherwise that the arbitration board considers desirable, whether admissible in a court of law or not, and
 - (iv) enter the premises of an employer where work is being done by an employee and inspect and view work, materials, machinery, appliances or articles there and interrogate persons respecting a matter that is before the arbitration board in the proceeding; and
- (c) has power to determine a question as to whether a matter referred to the arbitration board is arbitrable.

(2) Where an arbitration board determines that an employee has been discharged or disciplined by an employer for cause, it may, except when the penalty is prescribed in the collective agreement that is binding upon the employees and employer, review and modify the penalty imposed by the employer and, in the case of the discharge of the employee, substitute another penalty that to it seems just and reasonable in the circumstances.

(3) An arbitration board appointed under this Act or under a collective agreement shall begin arbitration proceedings within 7 days after it is constituted and shall deliver its decision or award within 35 days after the beginning of the arbitration proceedings, but these limits may be extended by agreement of the parties concerned, and in that event the decision or award shall be delivered within that extended period.

(4) An arbitration board shall give its decision and award in writing and shall provide a copy of it to the minister within 3 days after it is made.

(5) An arbitration board appointed under this Act or under a collective agreement has the powers that are or may be conferred on commissioners under the *Public Inquiries Act*.

1977 c64 s84; 1978 c35 s12; 1983 c60 s12

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Where businesses under common control

88.1 (1) Where, in the opinion of the board, associated or related activities or businesses are carried on, whether or not simultaneously, by or through more than 1 corporation, partnership, person, syndicate or association of persons, under common control or direction, the board may, upon the application of a person, trade union or council of trade unions and where, in the opinion of the board, there is a labour relations purpose for the application, declare the corporations, partnerships, persons, syndicates or associations of persons to be 1 employer for the purposes of this Act.

(2) Where, in an application or order under subsection (1), it is alleged that more than 1 corporation, partnership, person, syndicate or association of persons is under common control or direction, a respondent to the application shall, when ordered to do so by the board, adduce all facts within his or her knowledge that are material to the allegation.

(3) Where a corporation, partnership, person, syndicate or association of persons is the subject of a declaration under subsection (1), the declaration shall not apply to the corporation, partnership, person, syndicate or association of persons in relation to obligations under a contract entered into prior to the coming into force of this section.

(4) The board shall not declare more than 1 corporation, partnership, person, syndicate or association of persons to be 1 employer unless, in the opinion of the board it is necessary

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- (a) to preserve from infringement bargaining rights held by a trade union; or
 - (b) to prevent an employer from avoiding the provisions of this Act.
- (5) This section applies only to the construction industry as defined in paragraph 54(1)(b).

1991 c47 s6

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Questions referred to board

89. (1) Where a question arises in connection with a matter that has been referred to an arbitration board relating to the existence of a collective agreement, or the identification of the parties or employees bound by a collective agreement, the arbitration board may refer the question to the board for a hearing and determination and the board may hold a hearing.

(2) The referral of a question to the board under subsection (1) does not operate to suspend a proceeding before the arbitration board, unless the arbitration board decides that the nature of the question warrants a suspension of the proceeding or the board directs a suspension of the proceeding.

1977 c64 s85; 2006 c46 s10

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Enforcement of arbitration

90. Where a trade union, council of trade unions, employee, employer, employers' organization or other person has failed to comply with the terms of the decision of an arbitration board or of a single arbitrator made under a collective agreement or this Act, a person affected by the decision may, after the expiration of 14 days from the date of the release of the decision or the date provided in the decision for compliance, whichever is later, file with the Trial Division a copy of the decision, exclusive of the reasons for it, in the form prescribed in rules made under section 22, and the decision shall be entered in the same way as a judgment of or order of that court and is enforceable as such.

2013 c16 s25

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Single arbitrator

91. Where the parties to a collective agreement so agree, a single arbitrator may be appointed instead of an arbitration board, and, where a single arbitrator is appointed under this section, the arbitrator has the powers and duties conferred and imposed on an arbitration board under this Act.

2011 c9 s4

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Arbitration committee

91.1 (1) There shall be established a committee to be known as the Labour Management Arbitration Committee.

(2) The arbitration committee shall promote the establishment and the maintenance of a high quality and effective arbitration process for arbitrations conducted under collective agreements and under this Act and the *Public Service Collective Bargaining Act*.

(3) Organizations prescribed in the regulations representing labour and employers and representatives of arbitrators, or where one is formed, an organization representing arbitrators prescribed in the regulations, shall choose those persons as prescribed in subsection (4) to constitute the arbitration committee.

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- (4) The arbitration committee shall be composed of 9 members, of whom
- (a) 3 persons shall represent labour;
 - (b) 3 persons shall represent employers, including one person appointed by the minister who shall represent government as an employer;
 - (c) 2 persons shall represent arbitrators; and
 - (d) one person appointed by the minister who shall represent government in an unofficial capacity.

2008 c18 s2; 2012 c30 s15

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Term of members and operation of committee

91.2 (1) A member of the arbitration committee referred to in paragraphs 91.1(4)(a) to (c) shall serve for a term of up to 3 years.

(1.1) The member of the arbitration committee referred to in paragraph 91.1(4)(d) shall serve until the minister appoints a person to replace him or her.

(2) Notwithstanding subsection (1), a member of the arbitration committee shall continue to serve on the arbitration committee following the expiration of the member's term until a successor has been chosen, and following the expiration of a member's term he or she may serve for one additional term of up to 3 years.

(3) The arbitration committee shall be led by 2 co-chairpersons who shall be elected by internal vote of the arbitration committee, but at all times there shall be a co-chairperson who represents labour and a co-chairperson who represents employers.

(4) Meetings of the arbitration committee shall be scheduled at the call of the co-chairpersons, but there shall be no fewer than 4 meetings in a calendar year.

(5) A quorum of the arbitration committee shall be 5 members, with at least one representative each of labour, employers, and arbitrators.

(6) Where a vote is required to be taken in respect of a decision of the arbitration committee, the decision shall be made on the basis of a majority vote of the members of the committee in attendance, but where there is a tie vote, that vote shall be considered to be defeated.

(7) The member of the arbitration committee referred to in paragraph 91.1(4)(d) shall be a non-voting member of the committee and shall not be counted for a quorum of the committee.

2008 c18 s2; 2017 c20 s1

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Powers and duties of the committee

91.3 (1) The arbitration committee shall

- (a) establish educational and experience standards for arbitrators;
- (b) oversee qualification and training processes for arbitrators who conduct arbitrations under this Act and the *Public Service Collective Bargaining Act*, including ongoing qualification assessment and training processes;
- (c) establish and maintain a roster of persons who, in the opinion of the arbitration committee, are qualified to conduct arbitrations under collective agreements and this Act

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and the *Public Service Collective Bargaining Act* ; and

- (d) undertake those other actions which, in the opinion of the arbitration committee, promote the effectiveness and quality of arbitrations.

(2) The arbitration committee may develop policies and procedures relating to its operations and to carry out its duties under subsection (1).

2008 c18 s2; 2012 c30 s16

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Roster

91.4 The roster of arbitrators referred to in paragraph 91.3(1)(c) shall be provided by the arbitration committee to the minister for the purpose of ministerial appointments under this Act or a collective agreement, and shall remain on file with the minister and be available to the public for viewing at all reasonable times.

2008 c18 s2

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Action barred

91.5 An action or other proceeding does not lie against the arbitration committee or a member of the arbitration committee for anything done or omitted to be done in good faith in the course of exercising a power or carrying out a duty under this Act or the *Public Service Collective Bargaining Act*.

2012 c30 s17

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Regulations

91.6 The Lieutenant-Governor in Council may make regulations prescribing the employer, labour and arbitrator organizations from which the arbitration committee may be constituted.

2008 c18 s2

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Settlement by arbitration

92. (1) This section applies only to the construction industry.

(2) Where an employer or employers' organization has entered into a collective agreement, then, notwithstanding anything to the contrary in this Act or in the collective agreement, a dispute or difference between the parties to the collective agreement, including persons bound by the collective agreement, relating to or involving

- (a) the interpretation, meaning, application or administration of the collective agreement or a provision of the collective agreement;
- (b) a violation or an allegation of a violation of the collective agreement;
- (c) working conditions; or
- (d) a question whether a matter is arbitrable,

shall be submitted for final settlement to arbitration in accordance with this section in substitution for an arbitration or arbitration procedure provided for in the collective agreement.

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(3) Where a dispute or difference arises between the parties to a collective agreement to which this section applies, during the period from the date of its termination to the date the requirements of section 116 have been met, this section applies to the settlement of the dispute or difference.

(4) Where a dispute or difference arises that the parties are unable to resolve on the day on which the dispute or difference arises, the parties to the dispute or difference shall agree by midnight of that day upon the appointment of a single arbitrator to arbitrate the dispute or difference.

(5) Where 1 of the parties advises the minister that a dispute or difference has arisen and that the parties to the dispute or difference have failed to comply with subsection (4) or (12), the minister shall, as soon as possible, appoint an arbitrator.

(6) The minister may, with the written consent of the employer or employers' organization and the bargaining agent representing the employees, appoint a person to be the arbitrator for the purposes of this section for the term of the collective agreement or for a term prescribed in the appointment, and where an appointment is made under this subsection, subsections (4) and (5) do not apply.

(7) The arbitrator appointed under subsection (4), (5) or (6), has the powers conferred on an arbitration board by this Act and, without restricting his or her power and authority, the arbitrator's decision is an order and may require

- (a) compliance with the collective agreement in the manner stipulated; and
- (b) reinstatement of an employee in the case of a dismissal or suspension instead of dismissal with or without compensation.

(8) The decision of the arbitrator shall be made within 48 hours of the time of appointment unless an extension is agreed upon by the parties.

(9) The parties to the dispute or difference are bound by the decision of the arbitrator from the time the decision is made and shall abide by and carry out a requirement contained in the decision.

(10) An arbitrator appointed under this section who makes a decision in respect of a dispute or difference shall make a report on it and transmit it to the minister and to the parties.

(11) The provisions of this Act relating to an arbitration board apply, with the necessary changes, to and in respect of an arbitrator appointed under subsection (4), (5) or (6).

(12) Where the parties to a dispute or difference agree before midnight of the day on which the dispute or difference arises to invoke a grievance procedure contained in the collective agreement instead of proceeding as required by subsection (4), the parties may so settle the dispute or difference and failing settlement by those means the parties may, notwithstanding anything in this section, proceed to settlement by arbitration under section 86.

(13) For the purposes of this section, "construction industry" means the on-site constructing, erecting, altering, decorating, repairing or demolishing of buildings, structures, roads, sewers, water mains, pipe lines, tunnels, shafts, bridges, wharves, piers, canals or other works.

1977 c64 s88; 2014 c19 s8

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Where business transferred

93. (1) Where an employer sells, leases or transfers or otherwise disposes of or agrees to sell, lease, transfer or otherwise dispose of his or her business or the operations of the business or a part of either of them and

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- (a) the employer or the purchaser, lessee, transferee or person otherwise acquiring the business is a party to or is bound by a collective agreement with a bargaining agent on behalf of employees affected by the sale, lease, transfer, disposition by other means or contract;
- (b) 1 or more bargaining agents have been certified as bargaining agent for the employees;
- (c) 1 or more trade unions or a council of trade unions has applied to be certified as bargaining agent for the employees; or
- (d) 1 or more bargaining agents have given or are entitled to give notice under either section 72 or section 73 with respect to the employees,

then, unless the board otherwise directs, the collective agreement, certification, application, notice or entitlement to give notice continues in force and is binding upon the purchaser, lessee, trustee or a person otherwise acquiring the business.

(2) An employer, purchaser, lessee, transferee or a bargaining agent, trade union or council of trade unions or other person referred to in subsection (1) may apply to the board for the resolution of a question or problem that as a result of the sale, lease, transfer or disposition has arisen or may arise with respect to a collective agreement, certification, application notice or entitlement to give notice.

(3) Where an application is made under subsection (2), the board shall, by order, make whatever award, give whatever direction, or take other action that in its discretion the board considers appropriate, to resolve a relevant question or problem, and in particular may in that or a later order

- (a) modify or rescind to the extent that the board considers necessary or appropriate a collective agreement;
- (b) amend or revoke a certification or amend an application for certification;
- (c) modify or restrict the operation of a notice or entitlement to give notice;
- (d) determine whether employees affected constitute 1 or more appropriate bargaining units;
- (e) where more than 1 collective agreement is to continue in force, designate the employees that are to be covered by each agreement;
- (f) modify or restrict the operation or effect of a provision of a collective agreement and define the rights with respect to the agreement of employees affected by the sale, lease, transfer or disposition by other means;
- (g) declare which trade union or council of trade unions shall be the bargaining agent for the employees; and
- (h) interpret a provision of a collective agreement.

(4) Notwithstanding anything to the contrary in this Act, a purchaser, lessee or transferee shall not be required to bargain with a bargaining agent with respect to employees to whom an application made under subsection (2) relates, until the board has disposed of that application.

(5) Where an application is made under subsection (2), the board may make an examination of records or other inquiries, and may hold hearings and take representation votes, that it considers necessary and prescribe the nature of evidence to be provided to the board.

(6) Where, as a result of an application to the board under subsection (2), it is alleged that a sale, lease, transfer or other disposition of a business or the operations of a business, or a part of either of them has occurred, an employer, a purchaser, lessee or transferee shall, when ordered to do so by the board, adduce all facts within his or her knowledge that are material to the allegation.

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1983 c60 s13; 1991 c47 s7[Back to Top](#)**Claim to successor rights**

94. (1) Where a trade union or a council of trade unions claim that because of a merger or amalgamation or a transfer of jurisdiction it is a successor of a bargaining agent that at the time of the merger, amalgamation or transfer was the bargaining agent of a unit of employees of an employer and a question arises in respect of its rights to act as the successor, the board, in a proceeding before it or on the application of a person, trade union or council of trade unions affected, may, by order, declare that the successor has or has not acquired the rights, privileges and duties under this Act of its predecessor.

(2) Before issuing an order under subsection (1), the board may make an examination of records or other inquiries, and may hold the hearings or representation votes, that it considers necessary and prescribe the nature of evidence to be provided to the board.

(3) Where the board makes an affirmative declaration under subsection (1), the successor for the purpose of this Act acquires the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise.

1977 c64 s90

[Back to Top](#)**Change of name**

95. When a trade union or a council of trade unions that is a bargaining agent changes its name or its affiliation, then, upon the presentation by that bargaining agent to the chief executive officer of the board of a statutory declaration of the president or secretary of the union or council certifying the change of name or affiliation and specifying the new name or affiliation, the board shall order the change of name or affiliation to be shown in a certification order issued in respect of that bargaining agent.

1977 c64 s91

[Back to Top](#)**Copy of collective agreement**

96. Each of the parties to a collective agreement shall immediately upon its execution and upon the execution of a revision of or amendment to the agreement file with the minister a copy of the agreement and of the revision or amendment.

1977 c64 s92

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97. The board may direct a trade union, council of trade unions or employers' organization, that is a party to an application for certification or accreditation or that is a party to an existing collective agreement, to file with the board

- (a) a statutory declaration signed by its president or secretary stating the names and addresses of its officers; and
- (b) a copy of its constitution and by-laws,

and the trade union, council of trade unions or employers' organization shall comply with the direction within the time prescribed by the board.

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1977 c64 s93

**PART V
CONCILIATION PROCEEDINGS**

2014 c19 s9[Back to Top](#)**Appointment of conciliation officer**

98. (1) Where notice to begin collective bargaining has been given under this Act and

- (a) collective bargaining has not begun within the time prescribed by this Act; or
- (b) collective bargaining has begun,

and either party requests the minister in writing to instruct a conciliation officer to confer with the parties to help them in concluding a collective agreement or a renewal or revision of it and the request is accompanied by a statement of the difficulties that have been encountered before the beginning or in the course of the collective bargaining, or where, in another case, the minister considers it desirable to do so, the minister may instruct one or more conciliation officers to confer with the parties engaged in collective bargaining.

(2) Except with the consent of the minister and notwithstanding a law to the contrary, a conciliation officer or a member of the staff of the board shall not be required to give in evidence before a court, tribunal, board, commission or conciliation board, or before another body or person, information that he or she has received in the course of his or her duty as a conciliation officer or as a member of the staff of the board.

2014 c19 s9[Back to Top](#)**Conciliation officers report to minister**

99. Where a conciliation officer has, under this Act, been instructed to confer with parties engaged in collective bargaining or parties to a dispute, he or she shall, within 14 days after being so instructed or within the period that the minister may allow, make a report to the minister setting out

- (a) the matters upon which the parties have agreed;
- (b) the matters upon which the parties cannot agree; and
- (c) a statement as to the advisability of appointing a conciliation board with a view to effecting an agreement.

2014 c19 s9[Back to Top](#)**Appointment of conciliation board**

100. (1) The minister may appoint a conciliation board for the purpose of trying to bring about an agreement between the parties where

- (a) a conciliation officer fails to bring about an agreement between the parties engaged in collective bargaining; or
- (b) before or after the commencement of a legal strike or lockout, the minister considers it desirable to do so.

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(2) Following the commencement of a legal strike or lockout, either party may request the appointment of a conciliation board and the minister may appoint a conciliation board in accordance with this Act.

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Rep. by 2014 c19 s9

100.1 [Rep. by 2014 c19 s9]

2014 c19 s9

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100.2 [Rep. by 2014 c19 s9]

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Conciliation board appointment

101. (1) A conciliation board appointed under this Act shall consist of a chairperson and 2 members appointed in the manner provided in this section.

(2) Where the minister decides to appoint a conciliation board, he or she shall, immediately by written notice, require each of the parties to nominate, within 7 days after receipt of notice, one person to be a member of the board, and, upon receipt of the nominations within 7 days, the minister shall appoint those persons members of the board.

(3) Where either of the parties to whom notice is given under this section fails or neglects to nominate a person within 7 days after receipt of notice, the minister shall appoint as a member of the conciliation board a person he or she considers appropriate for the purpose and the person shall be considered to have been appointed on the recommendation of the party who did not respond to the notice.

(4) The 2 members appointed under subsections (2) and (3) shall, within 5 days after the day on which the second of them is appointed, nominate a third person who is willing and ready to act to be a member and chairperson of the conciliation board and the minister shall appoint him or her a member and chairperson of the conciliation board.

(5) Where the 2 members appointed under subsection (2) or (3) fail or neglect to make a nomination within 5 days after the appointment of the second member, the minister shall immediately appoint, as the third member and chairperson of the conciliation board, a person who in his or her opinion is qualified and who has consented to so act.

(6) A person who has a monetary interest in the matters referred to the conciliation board or who is acting, or has within a period of 6 months preceding the date of his or her appointment acted, in the capacity of solicitor, legal adviser, counsel or paid agent of either of the parties shall not be appointed to or act as a member of a conciliation board.

(7) The members of a conciliation board shall be paid the remuneration that may be fixed by the Lieutenant-Governor in Council and those actual and reasonable expenses that are incurred by them in the discharge of their duties.

(8) When a conciliation board has been appointed, the minister shall immediately notify the parties of the names of the members of the board.

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(9) Where the minister has given notice to the parties that a conciliation board has been appointed under this Act, it shall be presumed that the board described in the notice has been established in accordance with this Act, and no order may be made or process entered or proceeding taken in a court to question the granting or refusal of that board or to review, prohibit or restrain its establishment or its proceedings.

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Removal and replacement of members

102. Where, in the opinion of the minister, a conciliation board or a member of it is unduly or unnecessarily deferring or delaying or attempting to defer or delay the hearing or determination of a matter pending before that board, the minister

- (a) may remove the board or a member of the board; and
- (b) shall serve notice on the party who appointed a member who has been removed or, where the chairperson has been removed, on the remaining members of the board who have not been removed requiring the nomination in accordance with section 101 of a person to be a member of the board to replace the member who has been removed,

and the provisions of that section apply, with the necessary changes, to the appointment of members of a conciliation board required by a notice served under this section.

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Oath of office

103. Each member of a conciliation board shall before so acting take and sign before a person authorized to administer an oath or affirmation, and file with the minister an oath or affirmation in the following form:

"I, A.B., make oath and say (affirm) that I will faithfully, truly and impartially to the best of my knowledge, skill, and ability, execute and perform the office of member of the conciliation board appointed to and will not, except in the discharge of my duties, disclose to a person the evidence or other matter brought before the board." (Where an oath is taken, add "So help me God".)

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Terms of reference

104. (1) Where the minister has appointed a conciliation board, he or she shall immediately deliver to it a statement of the matters referred to it, and may either before or after the board makes its report amend or add to the statement.

(2) After a conciliation board has made its report, the minister may direct it to reconsider and clarify or amplify the report or a part of it or to consider and report on a new matter added to the statement of matters referred to it.

(3) Where the minister has requested the reconsideration, clarification or amplification of a report or a part of it or the consideration of and report on a new matter under subsection (1) or (2), the report of the conciliation board concerned shall, for the purpose of this Act, be considered not to have been received by the minister until he or she receives the supplementary or additional report requested by him or her under either of those subsections.

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2014 c19 s9[Back to Top](#)**Conciliation**

105. (1) A conciliation board shall, immediately after the appointment of the chairperson, try to bring about agreement between the parties in relation to the matters referred to it.

(2) Except as otherwise provided in this Act, a conciliation board may determine its own procedure but shall give full opportunity to all parties to present evidence and to make representations.

(3) The chairperson may, after consultation with the other members of the board, fix the time and place of sittings of a conciliation board and shall notify the parties as to the time and place so fixed.

(4) The chairperson and one other member of a conciliation board constitute a quorum, but in the absence of a member, the other members shall not proceed unless the absent member has been given reasonable notice of the sitting.

(5) The decision of a majority of the members present at a sitting of a conciliation board is the decision of that board, and in the event that the votes are equal the chairperson has a second or casting vote.

(6) The chairperson shall forward to the minister a detailed certified statement of the sittings of the conciliation board, and of the members and witnesses present at each sitting.

(7) The report of the majority of its members is the report of the conciliation board.

2014 c19 s9[Back to Top](#)**Witnesses and documents**

106. (1) A conciliation board has the power of summoning before it witnesses and of requiring them to give evidence on oath or affirmation orally or in writing, and to produce those documents and things that the board considers necessary to the full investigation and consideration of the matters referred to it, but the information so obtained from the documents shall not, except as the board considers expedient, be made public.

(2) A member of a conciliation board has the powers that are or may be conferred on a commissioner under the *Public Inquiries Act, 2006*.

2014 c19 s9[Back to Top](#)**Entry and inspection**

107. A member of a conciliation board or a person who has been authorized for that purpose in writing by the board may, without authority other than this section, enter a building, ship, vessel, factory, workshop, place or premises in the province where work is being or has been done or started by employees or in which an employer carries on business or a matter or thing is taking place or has taken place, concerning the matters referred to that board, and may inspect and view work, material, machinery, appliance or articles there and interrogate persons in or upon the place, matter or thing and a person shall not hinder or obstruct the board or a person, so authorized by it, in the exercise of a power conferred by this section or refuse to answer an interrogation made under this section.

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Report to minister

108. A conciliation board shall, within 14 days after the appointment of the chairperson or within a longer period that may be agreed upon by the parties or that may be allowed by the minister, report its findings and recommendations to the minister.

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Copy and publication

109. On receipt of the report of a conciliation board, the minister shall immediately send a copy to each party and he or she may publish the report in the manner that he or she thinks appropriate.

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Parties to acknowledge receipt

110. Each party to whom a copy of a report is sent in accordance with section 109 shall, within 7 days after the date on which that party receives a copy of the report, notify the minister in writing

- (a) whether the recommendations contained in the report have been accepted or rejected wholly or partly; and
- (b) which recommendations have been rejected.

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Filing of evidence with minister

111. (1) A conciliation board shall, when reporting its findings and recommendations to the minister under section 108, file with the minister in a sealed package the record of proceedings before the board and documents and exhibits received by the board in evidence or filed with the board during the proceedings, other than documents or exhibits that are returned to a person who filed them with the board for the purpose of the proceedings.

(2) A person shall not break the seal affixed to a package filed with the minister in accordance with subsection (1), except under a written order of the minister for the purpose of obtaining documents or exhibits that are returnable to a person who filed them with the board for the purpose of its proceedings.

(3) Notwithstanding anything to the contrary contained in the *Management of Information Act*, the contents of a package filed with the minister in accordance with subsection (1) may be destroyed after the expiration of 3 years from the date it was filed under that subsection.

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Evidential value of report

112. A report of a conciliation board and testimony or proceedings before a board is not receivable in evidence in a court in the province except in the case of a prosecution for perjury.

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Parties bound

113. Where a conciliation board has been appointed, the parties may before or after the board makes its report, by a written agreement, bind themselves to adopt the recommendations of the board, and where an agreement is made, the parties to it shall give effect to the recommendations.

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Failure to report

114. Failure of a conciliation officer or conciliation board to report to the minister within the time provided in this Act does not invalidate the proceedings of the officer or the board nor does it terminate the authority of the board or officer under this Act.

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Appointment of mediator

115. (1) The minister may, instead of appointing a conciliation board, appoint a person from within or outside the public service as a mediator to endeavour to bring about an agreement between the parties.

(2) The minister may, after notice to begin collective bargaining has been given under this Act, appoint a person, whether or not he or she is an employee in the public service, as a mediator to confer with the parties to the collective bargaining, where the minister is of the opinion that the appointment is likely to contribute to more harmonious industrial relationships between the parties.

(3) Where the minister has appointed a mediator after a conciliation officer has been appointed, the appointment of the conciliation officer is terminated.

(4) Sections 102 to 108 and 111 to 114 apply, with the necessary changes, to and in respect of a mediator appointed under this section as if he or she were a conciliation board.

(5) When in respect of a dispute the conditions prescribed in sections 116 and 117 have been fulfilled and the dispute has not been settled, or where the minister considers it necessary, he or she may appoint as a conciliator or mediator a person, whether or not he or she is an employee in the public service, designated by him or her who shall attempt to secure a settlement of a difference between the parties to the dispute and make a report within the time that the minister may indicate and prescribe in the appointment.

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**PART VI
STRIKES AND LOCKOUTS**

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Conditions precedent

116. Where a trade union or a council of trade unions, on behalf of a unit of employees, is entitled by notice under this Act to require an employer or an employers' organization to begin collective bargaining, with a view to the conclusion or renewal or revision of a collective agreement, the bargaining agent shall not take a strike vote or authorize or participate in the taking of a strike vote of employees in the unit or declare or authorize a strike of the employees in the unit, and no employee in the unit shall strike, and the employer or the employers' organization shall not declare or cause a lockout of the employees in the unit, until the bargaining agent and the employer or

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employers' organization or representatives, authorized by them in that behalf, have bargained collectively in good faith and have failed to conclude a collective agreement, and

- (a) a conciliation officer has been appointed to try to bring about an agreement between the parties, and 15 days have elapsed from the date on which the report of the conciliation officer was received by the minister and a conciliation board has not been appointed; or
- (b) a conciliation board has been appointed to try to bring about an agreement between the parties and 7 days have elapsed from the date on which the report of the conciliation board was received by the minister.

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No strikes while agreement in force

117. (1) Except in respect of a dispute that is subject to subsection (2),

- (a) an employer or employers' organization that is bound by or that is a party to a collective agreement shall not declare or cause a lockout with respect to an employee bound by the collective agreement or on whose behalf the collective agreement was entered into; and
- (b) during the term of the collective agreement, an employee, who is bound by a collective agreement or on whose behalf a collective agreement has been entered into, shall not go on strike and a bargaining agent that is a party to the agreement shall not declare or authorize a strike of that employee.

(2) Where a collective agreement is in force and a dispute arises between the parties to it with reference to the revision of a provision of the agreement that by virtue of the agreement is subject to revision during the term of the agreement, the employer who is bound by it or who is a party to it shall not declare or cause a lockout with respect to an employee bound by it or on whose behalf the collective agreement has been entered into, and no employee shall strike and no bargaining agent that is a party to the agreement shall declare or authorize a strike of the employee until the bargaining agent of the employees and the employer or representatives authorized by them on their behalf have bargained collectively and have failed to conclude an agreement on the matters in dispute, and

- (a) a conciliation officer has been appointed to try to bring about an agreement between the parties, and 15 days have elapsed from the date on which the report of the conciliation officer was received by the minister and a conciliation board has not been appointed; or
- (b) a conciliation board has been appointed to try to bring about an agreement between the parties and 7 days have elapsed from the date on which the report of the conciliation board was received by the minister.

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Conditions precedent to strikes and lockouts

118. (1) An employee in a unit shall not strike and an employer or employers' organization shall not declare or cause a lockout of employees, until a bargaining agent has become entitled on behalf of the unit of employees to require their employer by notice under this Act to begin collective bargaining with a view to the conclusion or renewal or revision of a collective agreement and the provisions of section 116 or 117 have been complied with.

(2) A trade union that is not entitled to bargain collectively under this Act on behalf of a unit of employees shall not declare or authorize a strike of employees in that unit.

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[Back to Top](#)**Strike vote mandatory**

119. (1) Notwithstanding another provision of this Part, a trade union or person shall not declare or authorize a strike and an employee shall not strike until after a vote has been taken by secret ballot of the employees in the unit affected as to whether to strike and a majority of the employees voting have voted in favour of a strike.

(2) Notwithstanding another provision of this Part, a council of trade unions formed under section 70.8 shall not declare or authorize a strike and an employee shall not strike until each trade union forming the council of trade unions has taken a vote under subsection (1) and a majority of those trade unions have been given a mandate by the employees who they represent to declare or authorize a strike.

(3) The strike vote required by subsection (1) or (2) is in addition to the other conditions precedent to a strike contained in this Part.

(4) A strike vote taken as required by this section shall be conducted in such a manner, whether by mail or otherwise, that those employees entitled to vote have ample opportunity to cast their ballots.

2014 c19 s9[Back to Top](#)**Condition precedent to strike on platform**

120. (1) Notwithstanding another provision of this Part, a trade union, or a council of trade unions, or person shall not declare or authorize a strike and an employee shall not strike, and an employer shall not lockout its employees, until the parties to a collective agreement in relation to an offshore petroleum production platform have entered into an agreement setting out work force requirements and procedures necessary to ensure the orderly and safe shutdown and maintenance of the platform in the event of a strike or lockout of employees employed on the platform.

(2) Where the parties to which subsection (1) applies have not reached an agreement required under subsection (1) 90 days prior to the expiry of a collective agreement between the parties, either party may apply to the board and after the examination that the board considers necessary the board may settle the terms and conditions of the agreement.

(3) An agreement entered into under subsection (1) or settled by the board under subsection (2) is binding on the parties to it or affected by it, notwithstanding the expiry of the collective agreement between the parties.

(4) In this section

(a) "employees" means employees employed on an offshore petroleum production platform other than construction and start up employees; and

(b) "employer" means an employer who is a member of the employers' organization formed under section 56.1.

2014 c19 s9[Back to Top](#)**Liability of employees**

121. Where an employee is on a strike that is not contrary to this Act, no action lies against that employee or against a bargaining agent acting on behalf of that employee in respect of damages in contract for which the employer has become liable to another person as a result of the strike, but

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nothing contained in this section exempts an employee or bargaining agent from liability for a tortious act.

2014 c19 s9

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Suspension or discontinuance of operations

121.1 Nothing in this Act prohibits the suspension or discontinuance of operation in an employer's establishment, in whole or in part, not constituting a lockout or strike.

2014 c19 s9

PART VII ENFORCEMENT

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Making complaints

122. (1) A trade union, council of trade unions, employee or other person may make a complaint to the board

- (a) that an employer, employers' organization or a person acting on behalf of either is contravening or has contravened subsection 23(1);
- (b) that an employer or a person acting on behalf of an employer is contravening or has contravened
 - (i) paragraph 24(1)(a),
 - (ii) paragraph 24(1)(b), or
 - (iii) subsection 24(2);
- (c) that an employer or a person acting on behalf of an employer is contravening or has contravened subsection 25(1);
- (d) that an employer is contravening or has contravened subsection 25(2);
- (e) that a person is contravening or has contravened subsection 25(3);
- (f) that an employer or a person acting on behalf of an employer is contravening or has contravened section 26; or
- (g) that an employer is contravening or has contravened section 45.

(2) An employer, an employers' organization or other person may make a complaint to the board

- (a) that an employee or a person acting on behalf of a trade union is contravening or has contravened subsection 28(1);
- (b) that a trade union or a person acting on behalf of a trade union is contravening or has contravened subsection 28(2); or
- (c) that a trade union or a person acting on behalf of a trade union is contravening or has contravened section 29.

(3) A trade union, council of trade unions, employer, employers' organization or other person may make a complaint to the board

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- (a) that an employer or employers' organization or a certified bargaining agent is in contravention of section 74; or
- (b) that a party to collective bargaining is in contravention of section 75.

1977 c64 s118; 2006 c46 s11[Back to Top](#)**Directive of board re complaints**

123. (1) Where a complaint is made to the board under section 122 the chief executive officer of the board may serve a notice of the complaint on the person against whom the complaint is made, and the chairperson may appoint an officer to inquire into the complaint and try to effect a settlement.

(2) Where the chairperson does not appoint an officer under subsection (1) or where the officer is unable to effect a settlement within the period that the chairperson thinks reasonable in the circumstances, the board may inquire into the complaint.

(3) The board may refuse to inquire into a complaint in respect of a matter that, in the opinion of the board, could be referred by the complainant to an arbitrator, arbitration board or other body under a collective agreement.

(4) Where, in the opinion of the board, a complaint is without merit, the board may reject the complaint.

(5) Where the board is satisfied after an inquiry that an employer, employers' organization, trade union, council of trade unions, employee or other person has failed to comply with subsections 122(1) and (2), the board

- (a) shall issue a directive to the employer, employers organization, trade union, council of trade unions, employee or other person concerned to do or stop doing the act in respect of which the complaint was made; and
- (b) may, in the same or a later directive, require the employer, employers' organization, trade union, council of trade unions, employee or other person concerned, as the circumstances may require,
 - (i) to reinstate an employee suspended or discharged contrary to those provisions,
 - (ii) to pay to an employee or former employee suspended or discharged contrary to those provisions compensation not exceeding the amount that, in the opinion of the board, would have been paid by the employer to the employee,
 - (iii) to rescind a disciplinary action or monetary or other penalty taken or imposed contrary to those provisions,
 - (iv) to pay a person compensation not exceeding the amount that, in the opinion of the board is equivalent to the monetary or other penalty imposed on a person contrary to those provisions, or
 - (v) to pay to an employee in respect of a failure to comply with the provisions referred to in subsection 122(1) compensation not exceeding the amount that, in the opinion of the board, is equivalent to the remuneration that would have been paid to the employee by the employer if the employer had complied with the provision referred to in subsection (1) of that section.

(5.1) Where the board is satisfied after an inquiry that an employer, employers' organization, trade union, council of trade unions, employee or other person has failed to comply with subsection 122(3), the board

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- (a) shall issue a directive to the employer, employers organization, trade union, council of trade unions, employee or other person concerned to do or stop doing the act in respect of which the complaint was made; and
- (b) may, in the same or a later directive, require the employer, employers' organization, trade union, council of trade unions, employee or other person concerned, as the circumstances may require, to do any act or thing which the board considers necessary and which is appropriate in the circumstances.

(6) [Rep. by 2006 c46 s12]

1977 c64 s119; 2006 c46 s12; 2012 c30 s19[Back to Top](#)**Failure to comply with directives**

124. A person, employee, employer, employers organization, trade union or council of trade unions who fails to comply with an order of the board made under section 30 or a directive of the board made under section 18.1 or 123 is guilty of an offence and liable on summary conviction

- (a) in the case of a corporation, trade union, council of trade unions or employers organization, to a fine not exceeding \$5,000; or
- (b) in the case of an individual, to a fine not exceeding \$500.

2001 c12 s6[Back to Top](#)**Illegal lockout**

125. (1) An employer or employers organization that declares or causes a lockout contrary to this Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000 for each day that the lockout exists.

(2) A person acting on behalf of an employer who declares or causes a lockout contrary to this Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000.

2001 c12 s6[Back to Top](#)**Illegal strike**

126. (1) A trade union or council of trade unions that declares or causes a strike contrary to this Act, is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000 for each day that the strike exists.

(2) An officer or representative of a trade union who authorizes or participates in the taking of a strike vote of employees or declares or authorizes a strike contrary to this Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000.

(3) An employee of an employer who participates in or goes on strike contrary to this Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000.

2001 c12 s6[Back to Top](#)**General offence and penalty**

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127. A person, trade union or employers' organization who does anything prohibited by this Act or the regulations, or who refuses or neglects to do anything required by this Act or the regulations to be done by him or her, is guilty of an offence and where no penalty has been specifically prescribed elsewhere in this Act for the act, refusal or neglect

- (a) an individual is liable to a fine not exceeding \$100; or
- (b) a corporation, trade union or employers' organization is liable to a fine not exceeding \$500,

on summary conviction.

1977 c64 s123

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Certain acts permitted

128. (1) Where there is a strike or a lockout that is not illegal under this Act, members of a trade union, who are on strike or locked out, and anyone authorized by the trade union may, at the employer's place of business, operations or employment, peacefully persuade or try to persuade anyone not to

- (a) enter the employer's place of business, operations or employment;
- (b) deal in or handle the products of the employer; or
- (c) do business with the employer.

(2) Except as provided in subsection (1), no trade union or other person shall persuade or try to persuade anyone not to

- (a) enter an employer's place of business, operations or employment;
- (b) deal in or handle the products of a person; or
- (c) do business with a person.

(3) Expressions of sympathy or support, otherwise than by picketing, on the part of trade unions or others not directly concerned in the strike or lockout and persuasion and efforts to persuade by the use of circular, press, radio or television do not constitute a breach of subsection (2).

(4) Where a trade union or a corporation is convicted of a breach of subsection (2), it is liable on summary conviction to a fine not exceeding \$1,000.

(5) Where a natural person is convicted of a breach of subsection (2), he or she is liable on summary conviction to a fine not exceeding \$500 and in default of payment to imprisonment for a term not exceeding 3 months.

1977 c64 s124

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Investigation and report of alleged contravention

129. (1) A person, claiming to be aggrieved because of an alleged contravention of this Act, other than one referred to in section 122, may make a written complaint to the minister and the minister upon receipt of the complaint may require an Industrial Inquiry Commission, appointed by him or her under section 140, or a conciliation officer, to investigate and make a report to him or her in respect of the alleged contravention.

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(2) Upon receipt of a report made to the minister under subsection (1), the minister shall provide a copy to each of the parties affected and shall, where he or she considers it desirable to do so, publish the report in the manner that he or she thinks appropriate.

(3) The minister shall take into account a report made under this section or an action taken by the board upon a complaint referred to it under this Act in granting or refusing to grant consent to prosecute under section 133.

1977 c64 s125

[Back to Top](#)**Complaints of employees to board**

130. (1) An employee in a bargaining unit, who claims to be aggrieved because his or her bargaining agent has acted in a manner that is arbitrary or discriminatory or in bad faith in the handling of a grievance that he or she has filed or attempted to file with that bargaining agent in accordance with a procedure that has been established by the bargaining agent may make a written complaint to the board.

(2) A complaint made under subsection (1) shall be made within 90 days from the date on which the complainant knew or, in the opinion of the board, ought to have known, of the action or circumstances, giving rise to the complaint.

(3) The board shall investigate a complaint made to it under subsection (1) and determine whether the bargaining agent acted in a manner that was arbitrary or discriminatory or in bad faith.

(4) A provision in this Act or a collective agreement that limits the time in which a grievance or arbitration proceeding shall begin or a decision made does not apply where a matter is referred to the board under this section.

(5) Where, on investigation of a complaint in accordance with subsection (3), the board finds that the bargaining agent acted in a manner that was arbitrary or discriminatory or in bad faith, the board shall direct that bargaining agent to take those steps that the board thinks appropriate in the circumstances.

(6) Where a collective agreement expires before a complaint is made to the board under subsection (1), or where a collective agreement expires before the board completes its investigation, the board may order the bargaining agent to compensate the employee to a reasonable extent that the board may prescribe.

2006 c46 s13

[Back to Top](#)**Prosecution of employees' organization**

131. (1) A prosecution, for an offence under this Act, may be brought against an employers' organization, a trade union or a council of trade unions and in the name of the organization, union or council of trade unions, whichever is appropriate, and for the purpose of the prosecution a trade union, a council of trade unions or an employers' organization shall be considered to be a person, and an act or thing done or omitted by an officer or agent of an employers' organization, trade union or council of trade unions within the scope of his or her authority to act on behalf of the organization, union or council of trade unions shall be considered to be an act or thing done or omitted by the employers' organization, trade union or council of trade unions.

(2) Information or a complaint in respect of a contravention of this Act may be for 2 or more offences and no information, complaint, warrant, conviction or other proceeding in a prosecution is objectionable or insufficient because of the fact that it relates to 2 or more offences.

1977 c64 s127

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[Back to Top](#)**Bargaining agent may make complaint**

132. A bargaining agent may, on behalf of an employee in the bargaining unit represented by that agent, make a complaint or lay an information against an employer, an employers' organization or other person in respect of a prosecution for an offence under this Act that affects the rights of that employee.

1977 c64 s128

[Back to Top](#)**Consent of minister to prosecute**

133. (1) A prosecution for an offence under this Act may not be instituted except with the written consent of the minister.

(2) A written statement, signed by the minister, indicating that he or she has consented to the prosecution of a person named in the statement for an offence under this Act that is alleged to have started on a date set out in the statement is a sufficient consent for the purposes of this section to the prosecution of a person for an offence under this Act on or starting on the date.

1977 c64 s129

[Back to Top](#)**Interim injunction and contempt**

134. (1) Notwithstanding the *Judicature Act* or another Act or law, where a lawful strike or lockout exists in a dispute,

- (a) an injunction before trial may not be granted to
 - (i) a party to the dispute, or
 - (ii) another person or party to restrain a party to the dispute from doing an act in connection with the strike or lockout

unless the parties to the dispute have been given notice of the application and have been given an opportunity to appear;

- (b) an affidavit intended to be used in support of an application for an interim injunction to restrain a person from doing an act in connection with the strike or lockout shall be confined to the facts that the person who swears or affirms the affidavit is able of his or her own knowledge to prove, and a copy shall be served with the notice of motion; and
- (c) the notice of motion shall be served in sufficient time before the time fixed for the hearing, not being less than 24 hours, to enable the person to attend at the hearing of the motion.

(2) The deliberate misrepresentation of a fact or the deliberate withholding of a qualifying relevant matter, directly or indirectly made or done by or on behalf of an applicant, for an injunction referred to in this section constitutes a contempt of court.

1977 c64 s130

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PROCEEDINGS AND INQUIRIES**[Back to Top](#)

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Execution of documents

135. An application to the board or a notice or a collective agreement may be signed,

- (a) where it is made, given or entered into by an employer who is a natural person, by the employer personally;
- (b) where it is made, given or entered into by several natural persons who are jointly employers, by a majority of the natural persons;
- (c) where it is made, given or entered into by a corporation, by 1 of its authorized managers, or by 1 or more of its principal executive officers;
- (d) where it is made, given or entered into by a trade union or employers' organization, by the president and secretary or by 2 officers, or by a person authorized for the purpose by resolution passed at a meeting of the trade union or employers' organization.

1977 c64 s131

[Back to Top](#)**Notice**

136. (1) For the purpose of this Act and of proceedings taken under this Act, a notice or other communication sent by registered mail shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of the mail.

(2) A document may be served or delivered for the purpose of this Act or a proceeding under the Act in the manner that may be prescribed by the regulations.

1977 c64 s132

[Back to Top](#)**Documents as evidence**

137. A document purporting to contain or to be a copy of a rule, decision, direction, or order of the board, and purporting to be signed by a member of the board, or the chief executive officer of the board, shall be accepted by a court as, in the absence of evidence to the contrary, proof of the rule, decision, direction, order or other matter there contained and of which it purports to be a copy.

1977 c64 s133

[Back to Top](#)**Proof of certificate**

138. A certificate purporting to be signed by the minister or his or her deputy or by an official in his or her department, specially or generally designated for the purpose by the minister, stating that a report, request or notice was or was not received or given by the minister under this Act, and where so received or given, and the date upon which it was so received or given, is, in the absence of evidence to the contrary, proof of the facts stated there without proof of the signature or of the official character of the person appearing to have signed it.

1977 c64 s134

[Back to Top](#)**Technical irregularity**

139. A proceeding under this Act is not invalid because of a defect in form or a technical irregularity.

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1977 c64 s135

[Back to Top](#)**Industrial inquiries**

140. (1) The minister may, upon the application of a person or of his or her own volition, make inquiries he or she thinks appropriate regarding industrial matters and may do those things that seem calculated to maintain or secure industrial peace and to promote conditions favourable to settlement of disputes.

(2) For the purposes of subsection (1) or where in an industry a dispute or difference between employers and employees exists or is apprehended, the minister may refer the matters involved to a commission, to be designated as an Industrial Inquiry Commission, for investigation, as the minister considers expedient, and for report on them, and shall provide the commission with a statement of the matters that are to be inquired into, but where an inquiry involves particular persons, the minister shall advise those persons of the appointment.

(3) An Industrial Inquiry Commission shall consist of 1 or more members appointed by the minister.

(4) The chairperson and the members of an Industrial Inquiry Commission shall be paid the remuneration that may be fixed by the Lieutenant-Governor in Council and the actual and reasonable expenses that are incurred by them in the discharge of their duties.

(5) Immediately following its appointment an Industrial Inquiry Commission shall inquire into the matters referred to it by the minister and try to carry out its terms of reference and in the case of a dispute or difference in which a settlement has not been effected in the meantime, a report of the result of its inquires, including its recommendations, shall be made to the minister within 14 days of its appointment or the extension of time that the minister may grant.

(6) An Industrial Inquiry Commission has and may exercise, in the discharge of the terms of reference assigned to it, the powers of a conciliation board under this Act.

(7) Upon receipt of a report of an Industrial Inquiry Commission relating to a dispute or difference between employers and employees, the minister shall provide a copy to each of the parties affected and shall publish the report in the manner that he or she thinks appropriate.

1977 c64 s136

**PART IX
TRADE UNIONS GENERALLY**[Back to Top](#)**Status of union**

141. (1) Each trade union and each council of trade unions is a legal entity for the purposes of prosecuting and being prosecuted and for the purpose of suing and being sued.

(2) A trade union shall maintain an address in the province to which correspondence may be addressed and at which notices may be served.

(3) A trade union shall in writing inform the minister of the address it maintains in the province and shall immediately give the minister written notice of a change in that address.

(4) A summons, notice or other document may be served on a trade union by leaving it or sending it through the mail in a prepaid registered letter addressed to the union at its latest address in the province.

(5) Documents to be served by mail on a trade union shall be posted in such time as to admit of its being delivered in the course of delivery within the period prescribed for service and in

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proving service of the document, it is sufficient to prove that the document was properly directed and that it was put as a prepaid registered letter in the post office.

1977 c64 s137

[Back to Top](#)**Constitution to be filed**

142. (1) A trade union shall file with the minister

(a) a copy, certified by its proper officers to be correct, of the constitution, rules and by-laws of the trade union and a branch or local within the province; and

(b) a list of the names and addresses of its president, secretary, organizers and other officers.

(2) The copy of the constitution, rules and by-laws mentioned in subsection (1) shall contain a complete statement of the objects and purposes of the trade union and a branch or local within the province.

(3) All amendments made to the constitution, rules or by-laws of a trade union shall likewise be certified and filed with the minister and a list mentioned in paragraph (1)(b) shall be filed within 30 days of the date of appointment or election of an officer referred to in that paragraph.

1977 c64 s138

[Back to Top](#)**Financial statements**

143. (1) Upon being so requested by a member, a trade union shall, without delay, provide him or her, without charge, a copy of the audited financial statement of the union

(a) for the year preceding the year in which the request is made;

(b) verified by the auditor of the union; and

(c) in the form and setting out the particulars and further information that may be required by the regulations.

(2) Where a member of a trade union complains to the minister that the union has failed to comply with a request by him or her, under subsection (1), the minister may request the trade union to provide the minister with the financial statement described in subsection (1) and the trade union shall comply immediately with the request of the minister.

1977 c64 s139

**PART X
ADMINISTRATION**[Back to Top](#)**Administration by Canada**

144. (1) Where the legislation enacted by the Parliament of Canada in respect of labour relations is in substantial uniformity with this Act, then, with the approval of the Lieutenant-Governor in Council, the minister may, on behalf of the government of the province, enter into an agreement with the Government of Canada for the administration of this Act by the officers and employees of the Government of Canada.

(2) An agreement made under subsection (1) may provide

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- (a) for the administration by Canada of this Act with respect to a particular undertaking or business;
- (b) that the appropriate minister for Canada may, on behalf of the province, exercise or perform powers or duties conferred on the minister by this Act;
- (c) that the Canada Labour Relations Board or other officers or employees of the Government of Canada may exercise or perform the powers or duties conferred or imposed upon the board or officers or employees of the Crown under this Act; and
- (d) for payment by the government of the province to the Government of Canada of expenses incurred by the Government of Canada in the administration of this Act.

(3) Where an agreement has been entered into under subsection (1) and the agreement so provides, the Minister of Labour for Canada, or other appropriate minister for Canada, the Canada Labour Relations Board and other officers and employees of the Government of Canada have and may exercise the powers and perform the duties prescribed in the agreement.

1977 c64 s140

[Back to Top](#)**Witness fees**

145. A person, who is summoned by the board, a conciliation board, an arbitration board or an Industrial Inquiry Commission and attends as a witness, is entitled to an allowance for expenses, which shall be determined in accordance with the scale in force with respect to witnesses in the Supreme Court, and the person is entitled to not less than \$5 a day.

1977 c64 s141

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146. The minister may provide a conciliation board or Industrial Inquiry Commission with a secretary, and the staff that the minister considers necessary for the performance of its duties and may fix their remuneration.

1977 c64 s142

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147. The Lieutenant-Governor in Council may make regulations

- (a) prescribing the time within which anything authorized by this Act shall be done;
 - (a.1) in response to the recommendations of an industrial inquiry commission;
- (b) excluding an employer or employee or a class of employers or employees from this Act; and
- (c) generally, to give effect to the purpose of this Act.

1977 c64 s143; 2012 c30 s20[Back to Top](#)**Rep. by 2006 c40 s9**

148. [Rep. by 2006 c40 s9]

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2006 c40 s9[Back to Top](#)**Appointment of officers**

149. Those officers, clerks and employees that are necessary for the administration of this Act may be seconded, appointed or employed in the manner provided by law.

1977 c64 s145

[Back to Top](#)**Expenses of administration**

150. The expenses of the administration of this Act shall be paid out of the money provided by the Legislature.

1977 c64 s146

[Back to Top](#)**Fines and penalties**

151. Fines and penalties imposed under this Act are payable to the Minister of Finance for the Crown.

1977 c64 s147

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