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Mapping Fundamental Labour Relations Laws in Canada — 2011/2012

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Introduction

While most labour activists and practitioners have an excellent understanding of labour relations laws in their jurisdiction, mapping fundamental labour laws between jurisdictions in Canada is essential to evaluate the state of Canadian labour laws. It can also be used to appreciate similarities and variations between jurisdictions, and help identify targets for improvement.

The purpose of this paper is to compare the fundamental set of labour relations laws across Canada. Fundamental labour laws are defined here as a set of rights that implements our guaranteed Freedom of Association as laid out in S.2(d) of the *Canadian Charter of Rights and Freedoms,* in a *Wagner Act*[1] tradition.

Often referred to as labour codes, these laws govern our labour relations system in Canada, and provide rights and rules around access to unionization, the collective bargaining process, the dispute resolution mechanisms, and finally, union security.

This mapping of fundamental labour laws in Canada focuses on the definition of employees and coverage of these labour laws, the recognition/certification process of unions, first contract arbitration, the right to strike and essential services, and union security.

These topics could be analyzed in depth, looking at their history, their application by arbitrators, boards and tribunals, statistical trends, and international comparisons. However, our goal here is to provide a

1 By *Wagner Act* tradition, we refer to a labour relations system enhanced about 75 years ago, after the implementation of the *Wagner Act* in the U.S., based on workplace-by-workplace access to unionization and collective bargaining.

quick overview of each of these rights, and to outline basic similarities and differences between them.

Part 1. Exclusions and Definition of "Employees"

The main purpose of labour relations laws across Canada is to guarantee workers' access to their fundamental rights to unionize and collectively bargain. Unfortunately, some groups of workers are excluded from these legislations, meaning that they do not share the same freedom of association as those who are covered by the Acts.

Exclusions can happen in one of two ways. First, many labour relations laws explicitly exclude groups of workers from being covered by the legislation. Second, the definition of "employee" excludes employees who have exclusive managerial responsibilities, employees who are considered to be more similar to an employer than to an employee, and in few cases, employees in specific professions.

Exclusions

As shown in Table 1 below, and detailed in Appendix A, most labour relations legislation excludes groups of workers from the core labour relations laws.

Table 1 – Exclusions from Core Labour Codes

	Teachers and School Employees	Heath Sector Employees	Domestic Workers	Agricultural Workers	Fisheries Industry	Police	Construction Workers	Firefighters
Federal		x			x	x		
British Columbia	x	x				x		x
Alberta			x	x		x		
Saskatchewan		x					x	
Manitoba	x					x		x
Ontario	x		x	x		x		x
Québec	x	x					x	
New Brunswick			x	x	x			
Nova Scotia	x	x						
Prince Edward Island	x					x		
Newfoundland and Labrador	x				x			x

For instance, teachers and school employees are excluded in seven jurisdictions (British Columbia, Manitoba, Ontario, Québec, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador); health sector workers in five jurisdictions (British Columbia, Alberta, Saskatchewan, Québec, and Nova Scotia); domestic and agricultural workers in three

jurisdictions (Alberta, Ontario, and New Brunswick); those in the fisheries industry in three jurisdictions (British Columbia, New Brunswick, and Newfoundland); police in six jurisdictions (Federal Sector, British Columbia, Alberta, Manitoba, Ontario, and Prince Edward Island); construction workers in two jurisdictions (explicitly excluding this group: Saskatchewan, Québec — and six jurisdictions which include different rules for construction in the main labour relations codes: Alberta, Ontario, New Brunswick, Nova Scotia, PEI, and Newfoundland); and firefighters in four jurisdictions (British Columbia, Manitoba, Ontario, and Newfoundland).

In addition, all jurisdictions have separate legislation regulating labour relations for workers in the public administration, such as Saskatchewan's *Public Service Essential Services Act,* and the federal jurisdiction's *Public Service Labour Relations Act*.

In most cases, when labour relations laws exclude a group, a separate labour relations law regulates their particular right to unionize and collectively bargain. For example, while British Columbia's education employees are excluded from B.C.'s *Labour Relations Code*, they are regulated by B.C.'s *Public Education Labour Relations Act*. A lot of these Acts are provided in Appendix A. Unfortunately, in many cases, these separate labour relations laws limit the right to collectively bargain, with restriction on the right to strike and the imposition of an essential or minimal services requirement, an issue that we will examine later.

Definition of "Employee"

In addition to specified exclusions, the definition of "employee" in all Canadian jurisdictions, as outlined in Appendix A, provides limitation for those who perform a managerial or supervisory role (or whose "primary responsibility" is the "actual exercise" of authority, in the case of Saskatchewan), and for other specific professions. For instance, all labour relations laws in Canada exclude those who are employed in a confidential capacity with regard to labour relations — again, excluding

any representatives of the employer from negatively affecting the union's operation from the inside.

The definition of “employee” in Alberta and Ontario also excludes professional occupations from being covered by their respective labour relations laws (medical, dental, architectural, engineering, or legal), presumably since they are self-governed by professional bodies. In New Brunswick, the definition of “employee” also excludes domestic service workers in private homes. Prince Edward Island's definition of “employees” excludes school employees, and Alberta's definition excludes nurse practitioners.

A Note on Agricultural and Migrant Workers

While migrant workers are technically considered as employees with the right to organize and collectively bargain, the precarious situation that they are placed into, with the temporary nature of their situation and an ongoing threat to be sent back home, reduces significantly the feasibility of joining a union and enjoying the long-term benefits of a collective agreement.

As for agricultural workers, they are excluded from Ontario, Alberta, and New Brunswick labour relations legislation. Most importantly, in the case of Alberta, this group has no corresponding protective legislation. Even the province's *Employment Standards Code* does not protect them with regard to minimum wage, hours of work, child labour limits, and other basic protections at work. As such, they are left without the protected right to unionize, and without even general protections in terms of labour standards.

Unfortunately, the Supreme Court's decision in the *Fraser* case (Ontario (AG) v Fraser, 2011 SCC 20) recently addressed this vulnerable and marginalized group's exclusion from labour relations legislation in Ontario, and found that the exclusion was permissible.

Definition of "Employee" Evasion

Along with restrictions and exclusions, another approach developed by employers to restrict unionization is to avoid the workforce from becoming "employees" as defined by the legislation. Creating new work relationships, using independent contractors, temporary work, and placement agencies, allows employers to access a workforce without having to hire "employees," preventing them access to unionization and collective bargaining.

Inclusiveness of Labour Codes: the Champions are...

In terms of inclusiveness in labour relations code coverage, the Federal Sector has more worker-friendly legislation than the other Canadian jurisdictions. With the exception of the exclusion of the RCMP from the *Public Service Labour Relations Act*, Federal Sector workers are mostly covered by the *Canada Labour Code,* Part I. The federal code also covers dependant contractors.

Both Alberta and Ontario have restrictive legislation that leaves vulnerable groups without protection. Both exclude domestic workers and agricultural employees, two groups who most need protective legislation. However, Alberta goes further in its overly broad and basic definition of "employee" (as a person employed to do work who is in receipt of or entitled to wages), which is too broad to guarantee protections for employees who are striking or locked out or dependant contractors.

Ontario, along with many other jurisdictions (Federal Sector, British Columbia, Saskatchewan, New Brunswick, and Newfoundland), explicitly include one or both of those parties in some way in their definition of "employee," guaranteeing their rights to unionize and collectively bargain are not being infringed.

Fundamental Labour Rights

To implement the fundamental freedom of association for all workers, a clear definition of employee which crosses all sectors should be included in labour relations legislation. This definition should clearly lay out the signs of a management representative versus an employee, and be as inclusive as is possible.

Exclusions from labour relations laws should be kept to an absolute minimum. Exclusion of a group of workers from labour relations legislation must only occur if the process of labour relations in that sector differs to such a considerable extent that there must be other legislation drafted to regulate it. Exclusions should not limit the right to unionize and collectively bargain.

No category of workers should be left without any protective legislation, especially vulnerable groups like agricultural workers.

Part 2. Recognition/Certification Process

When a worker is covered by a labour relations law, access to unionization becomes the second requirement to be able to enjoy the benefits of collective bargaining. Collective bargaining in Canada, and protections that come with it, are granted only when a group of workers are recognized as part of a collective, a union.

This recognition process, also named the certification process, is the means by which a group of workers gets an official bargaining certificate by the relevant government agency to negotiate on behalf of the represented workers and enjoy the protections provided by the labour relations legislation.

Automatic Card Check versus Mandatory Vote

Union certification rules vary from province to province. However, there are two main routes to certification in Canada: by automatic card check or by mandatory vote.

The automatic card check system consists of a process where an automatic recognition of a group of workers representing a bargaining unit has been demonstrated to the relevant government agency with the signature of a union card, and often by paying a mandatory minimum fee (the highest being $5 for those workers under federal jurisdiction) by a significant percentage of employees in a selected workplace, and/or for a selected group of employees.

A mandatory voting system consists of an additional step to the card check, forcing employees to participate in a mandatory secret ballot vote to demonstrate their willingness to form a union, even if 100% of workers have demonstrated support for the union by signing a card.

In some jurisdictions, the two processes overlap, with card check requiring a mandatory vote when the percentages of union support is lower than required.

Studies suggest that mandatory voting systems reduce unionization success rates anywhere from nine to 21% in Canadian jurisdictions.

Card Check Across Canada

As shown in Table 2 and Appendix B, the federal labour code (including Yukon, Northwest Territories, and Nunavut), Manitoba, Québec, New Brunswick, and Prince Edward Island all allow for card check automatic certification.

Table 2 – Card Check in Canada

	Card Check	Automatic Certification	Access to Vote after Card Check
Federal	x	50%+*	35-50%
British Columbia			
Alberta			
Saskatchewan			
Manitoba	x	65%+	40-65%
Ontario			
Québec	x	50%+	35-50%
New Brunswick	x	60%+	40-60%
Nova Scotia			
Prince Edward Island	x	50%+	0.1-50%
Newfoundland and Labrador			

For federally regulated employees, if 50% of workers support unionization, the workplace will be certified, though the labour board may still request that a vote be conducted. In Manitoba, the percentage of employees who have demonstrated support for the union must be 65% for automatic certification.

In Prince Edward Island and Québec, if over 50% support the union, the workplace will be certified. In New Brunswick, card check certification requires 60% of the employees to show support. In all of these jurisdictions, if some percentage of support lower than this automatic certification percentage is demonstrated, the board will conduct a secret ballot vote.

Mandatory Vote

As shown in Table 3, British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, and Newfoundland and Labrador all require a mandatory vote in order to certify a workplace, regardless of the demonstrated desire of the workers to unionize. In Newfoundland, however, there is no need for a vote if both the employer and the union agree to forgo it and the majority of employees supported the certification application.

Table 3 – Mandatory Vote in Canada

	Mandatory Vote	% Required for Vote	Employer's View
Federal			x
British Columbia	x	45%+	x
Alberta	x	40%+	x
Saskatchewan	x	45%+	x
Manitoba			x
Ontario	x	40%+	x
Québec			
New Brunswick			x
Nova Scotia	x	40%+	x
Prince Edward Island			x
Newfoundland and Labrador	x*	40%+	

Threats to the Card Check System

Originally, 10 of the 11 jurisdictions in Canada supported a card check certification system (only Nova Scotia always required a mandatory vote). As discussed above, six provinces now require a vote before certification.

Alberta adopted the vote procedure in 1988, Ontario in 1995, and Newfoundland in 1994. In British Columbia, the card check system was rejected for mandatory vote in 1984, re-integrated in 1992, and then again rejected in favour of mandatory vote in 2002.

The switch to mandatory vote certification is a threat to workers' rights. Prior to 2008, Saskatchewan was a card check jurisdiction, allowing certification for workers who clearly supported joining a union by majority. However, the Saskatchewan party passed Bill 6 (*Trade Union Amendment Act*) requiring the mandatory vote certification process, as well as passing Bill 5 (*Public Service Essential Services Act*), and Bill 80

(*Construction Industry Labour Relations Act*), all severely limiting and attacking workers' rights in the province.

The fact that some provinces vacillate between card check and mandatory vote over time demonstrates that jurisdictions can recover from these kinds of legislative attacks. For example, Manitoba briefly adopted a mandatory vote process in 1997, but quickly returned to card check in 2000.

Employer's Right to Express Opinions

While the level of success of the certification process varies between automatic card check and mandatory voting systems, another component of labour legislation that seems to have an impact on unionization is the employer's right to express opinions during the certification process.

In an environment where employers have control over who works and/or for how long, when employers have the right to suggest negative implications of unionization such as the level of staffing, the inherent imbalance of power between an employer and employees can negatively affect an employee's willingness to form a union.

When this right is considered in conjunction with a requirement for a secret ballot vote, employers can influence employees' willingness to vote for a union, especially when there is a lot of time between the application for unionization and the voting day.

In fact, this second hurdle that employees must take in order to certify gives the employer an added chance to stop the unionization, and it has been shown that employers' tactics to stop certification are twice as effective under mandatory vote regimes than in card check jurisdictions.

As shown in Table 3 above, all but two of the labour relations codes (Québec and Newfoundland) expressly state that the employer has

the right to express their opinion about unionization, with some vague limitations.

As detailed in Appendix B, in Saskatchewan for example, the legislation merely states that while the employer may not intimidate, threaten or coerce their employees on issues relating to the union, "nothing precludes an employer from communicating facts and its opinions to its employees" (s.11(1)(a)).

Board May Certify if Unfair Labour Practice

The employer's right to express an opinion has some limitation. For instance, attempts by the employer to intimidate or threaten their employees not to unionize is considered an unfair labour practice in all jurisdictions (see Appendix B).

Table 4 – Remedy after Unfair Labour Practice

	Unionization Free of Intimidation	Certification as Remedy	Hold New Vote as Remedy
Federal	x	x	
British Columbia	x	x	
Alberta	x		x
Saskatchewan	x		x
Manitoba	x	x	
Ontario	x	x	
Québec	x		
New Brunswick	x		
Nova Scotia	x	x	
Prince Edward Island	x		
Newfoundland and Labrador	x	x	

When an unfair labour practice has been ruled against an employer and ruined the union's attempt at certification, some jurisdictions offer a remedy.

In the Federal Sector, British Columbia, Manitoba, Ontario, Nova Scotia, and Newfoundland, the respective labour boards may certify a workplace if there has been unfair labour practices, despite the regular requirements of certification not being met (for example, if a representation vote does not demonstrate adequate support).

In Alberta and Saskatchewan, the board can demand another vote be held if there has been unfair labour practices. A second vote is hardly a remedy, however, since the cause of the improper vote result has not actually been reversed. For example, if the employer has threatened an employee's job security if that worker votes for a union, and the threats made have not disappeared before the second vote, as such, a second vote would not necessarily represent the worker's true desire any more than the first.

Access to the Workplace

The union's opportunity to access employees while trying to certify their workplace is also an important aspect of the certification process. While access in the workplace during working hours is generally forbidden, eight of the 11 Canadian labour relations codes explicitly state that the union may access employees with permission from the labour board when they live on their employer's premises (only Alberta, Nova Scotia, and Prince Edward Island do not specify this in their Acts). The federal labour code takes this access one step further and states that the labour board may demand that the union be given the contact information of all off-site employees.

Delays for New Attempts for Certification

All jurisdictions impose mandatory delays before another certification attempt may take place. There are generally delays for both, after the first attempt has been rejected, and when a unionized workplace has been decertified.

For example, in Alberta, a union cannot apply to certify a workplace for six months after it has been decertified, but if an application for certification has been rejected by the labour board, the union must only wait 90 days.

Some jurisdictions have longer delays, with Ontario requiring a one year wait before another certification attempt when the last has been

dismissed. New Brunswick requires a minimum of 10 months wait when an application has been rejected.

Many jurisdictions (Federal Sector, Saskatchewan, Manitoba, and Newfoundland) require a six-month delay when the first application has been rejected. However, Manitoba demonstrates its flexibility by way of a clause stating that the six-month delay can be ignored if the rejection was merely based on technical error.

Certification Process: the Champions are...

Federal workers and employees in Québec have the best protection for certification. Both jurisdictions offer the card check procedure and certify if over 50% of the employees show support for the union. Furthermore, both allow the union to access employees outside working hours when attempting to certify, with the Federal Sector also demanding that the union have access to off-site employees' information.

It should also be noted that the delay before a new certification attempt is among the shortest in Canada for both these jurisdictions. Québec also requires that all eligible employees vote if a representation vote is held due to only 35 to 50% of workers having demonstrated support for a union.

Both British Columbia and Saskatchewan require the highest number of members in good standing in order to even qualify for a vote. While most of the voting jurisdictions require an application with 40% support, British Columbia and Saskatchewan require 45%.

Saskatchewan's general and potentially easily abused statement that employers may express opinions during the certification process without repercussions is highly problematic as well.

Finally, the limits on the labour relations board's power to offer remedies in Saskatchewan requiring them to simply hold a (arguably ineffective) second vote if the employer participated in unfair labour

practices makes this one of the most hostile jurisdictions for workers who wish to unionize.

Part 3. First Contract Arbitration

After a workplace has been certified, the process of reaching a first collective agreement is rarely easy. Tensions between workers and their employer can be at their highest at this point, and the employer may be very difficult to bargain with and refuse offers out of anger. First contract arbitration lets an arbitrator, an arbitration board or the labour relations board of the jurisdiction impose an agreement on any points not yet agreed upon by the parties when they reach an impasse.

Benefits of First Contract Arbitration

Legislation that provides for a decision-maker to impose a binding contract is useful in difficult labour disputes. It avoids work stoppages and sets a starting point for future collective agreements. In the jurisdictions that offer first contract arbitration, parties to labour disputes can rest assured that a collective agreement will come out of the process no matter the indecision at the bargaining table. This can lead both parties to accept this outcome and to bargain seriously with the intent of reaching agreement. The knowledge that an agreement may be imposed which does not necessarily satisfy either party can cut through the usual strategic moves, forcing the parties to get down to basics and sincerely attempt to agree.

Jurisdictions with First Contract Arbitration Provisions

In Canada, seven of the 11 jurisdictions (Federal Sector, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, and Newfoundland) offer specific provisions on first contract settlements if the parties cannot agree amongst themselves (see Table 5 and Appendix C).

For the Federal Sector, the parties can apply to the labour board for binding arbitration if there were problems at the negotiating table. The legal strike or lockout provisions have to have been met in order for

the application to go through. Also, if the designation of a service as essential causes the workers to provide significant enough service during a strike that it is no longer effective, they may demand arbitration.

Saskatchewan's arbitrators are listed for the minister to choose from, after consultation with labour and employment groups. The application for first contract arbitration will be approved if a strike vote has passed, if the workers are locked out, if there has been refusal or failure to bargain collectively by one of the parties or 90 days have passed since certification.

Table 5 – First Contract Arbitration

	First Contract Arbitration	Duration	Retroactive Contract
Federal	x	2 years	
British Columbia	x	-	
Alberta			
Saskatchewan	x	2 years	x
Manitoba	x	1 year	
Ontario	x	2 years	x
Québec	x	max. 3 years	x
New Brunswick			
Nova Scotia			
Prince Edward Island			
Newfoundland and Labrador	x	1 year	

In Manitoba, the board will consider whether the parties are likely to come to agreement on their own, without aid, before approving an application.

Québec's minister of labour requires proof that the union demonstrates that they informed their members on the process before the application for first contract arbitration is approved.

In Ontario, when the minister has approved an application for first contract arbitration, the parties may choose the labour relations board to settle the collective agreement or can request an arbitration board. Newfoundland's minister of labour directs the board to enquire into the dispute and to settle the collective agreement.

British Columbia is notable in that it requires that the parties submit to mediation before binding arbitration if they are at odds over

the first collective agreement. Either party can request mediation when they have been unable to reach agreement and the workers have voted to strike. The board will require that the parties attempt mediation for twenty days before other dispute resolution options are discussed, with no work stoppages permitted during this period.

The process in B.C. has been praised because it supports voluntary negotiation, aids the parties in establishing bargaining relationships, and encourages them to learn to negotiate with one another without simply falling back on arbitration when it gets too hard. This mediation-supported system has been proven to encourage collective bargaining, to resolve disputes quickly, and to create enduring bargaining relationships.

Duration of Settled Agreement

As shown in Table 5 above, the jurisdictions which offer first contract arbitration specify the duration of this first agreement, with the exception of British Columbia. The default term in the Federal Sector, Saskatchewan, and Ontario is for two years. For Manitoba and Newfoundland, the duration is for one year. Québec states that the duration can be no longer than three years.

British Columbia, however, does not specify a term for the imposed first collective agreement, giving the arbitrator the freedom to impose a very short or very long contract. The legislation does provide a remedy for the parties if the collective agreement that is imposed is for too long a period: either party may apply to the minister of labour that the agreement ought to expire at its next anniversary date. This gives the parties the chance to collectively bargain for an agreement that better suits them, assuming the minister accepts the application to end the current imposed agreement.

Retroactive Application

Of those jurisdictions which specify a procedure for first contract dispute resolution, Saskatchewan, Ontario, and Québec allow for a retroactive application of this new contract (Table 5). Ontario is explicit in this retroactive provision, while the language of Saskatchewan's and Québec's legislation states that the agreement can apply back to a date agreed upon by the parties. Retroactive application protects the workers that were mistreated during the process of negotiating the contract. Without a retroactive application, the employer may deny an employee benefits the union is fighting for right up until the collective agreement has been signed, without repercussion.

First Contract Arbitration: the Champions are...

While Ontario provides for retroactive application of the first collective agreement protecting workers' rights during the negotiation period, the evidence required in order to be permitted to have the first agreement settled by a third party could put an onus on the union that would be hard to fulfil.

Depending on the standards required by the board when determining if the other party has, in fact, been uncompromising and has refused to make a true effort, the union may find that their application for first contract arbitration could be refused due to lack of sufficient evidence.

Manitoba allows for first contract arbitration where the parties will unlikely reach agreement in a reasonable time. This minimal requirement for evidence in order to request the process means that a collective agreement is more likely to come out of negotiations, without an application being refused for lack of evidence.

As mentioned above, British Columbia's mediation-supported approach has demonstrated success, and weans the parties of costly and time-consuming arbitration for future collective agreements.

Alberta, New Brunswick, Nova Scotia, and Prince Edward Island do not specify any processes for first contract arbitration, making it more difficult to settle a first agreement. By refusing to take the negotiation attempts seriously and rejecting all of the union's offers, employers in these jurisdictions can prevent a first contract from ever happening. When this lack of protection for a first contract is combined with short delays for a decertification application or a jurisdiction where the employer may request decertification if a first contract is not settled, all the union's and workers' attempts to certify their workplace could be for nought. Leaving this gap in labour relations legislation can thus severely impact workers' rights.

All jurisdictions should offer some form of first contract arbitration since the process will avoid work stoppages and keep employers from using a series of loopholes to decertify their workers' union. The sole evidence relevant to provide to the labour relations board of the province ought to be regarding the likelihood of reaching agreement without the board or an arbitrator's aid. Any further evidence required simply delays the process further and equals unnecessary hoops for either the union or the employer to jump through to settle their contract.

Some form of retroactive application ought to be included in all jurisdictions as explicitly as it is in Ontario. This will ensure that the benefits that workers fought so hard to achieve will apply back to when the process actually started, and not merely to when a document was signed.

Finally, a mediation-supported first contract arbitration provision can help the parties establish a solid bargaining relationship for future collective agreements, while still guaranteeing a contract if the negotiations nevertheless break down in mediation.

Part 4. The Right to Strike and Essential Services

When a collective agreement cannot be reached, a labour dispute between the parties may result in a work stoppage in the form of a strike or a lockout, assuming there is no back-to-work legislation in place prior to or during the labour dispute.

In many cases, the right to strike or lockout are forbidden when the interruption of services represents a danger to the health and safety of the public. This is the case for specific occupations, such as police, ambulance workers, and firefighters.

However, there are other services which governments have labelled as “essential services” which are more controversial. For these services, different jurisdictions have created legislation which requires varying levels of work to be continued during a work stoppage. Services designated as essential fluctuate. The services discussed below are current examples, but do not represent an exhaustive list. See Appendix D for detailed information.

No Right to Strike

In Alberta, firefighters, hospital workers, regional health authorities, and some ambulance workers may not strike, but must instead attend compulsory arbitration. Police officers in Alberta also may not strike.

Fire protection staff and hospital workers do not have the right to strike in Ontario, while Prince Edward Island submits police, firefighters, ambulance services, and others to binding arbitration instead of being permitted to engage in work stoppages. Police and firefighters in Nova Scotia may not strike, but rather are submitted to interest arbitration. This jurisdiction may soon require that health services be limited by the same plan.

Québec's Essential Services Council may remove a union's right to strike if the strike is basically ineffective due to the high number of employees required to maintain basic services.

The Federal Sector has similar legislation requiring dispute resolutions instead of a strike if the amount of employees deemed necessary to work during a work stoppage is significant.

Definition of Essential Services

The definition of what constitutes an essential service determines which workers could lose their right to strike. Most jurisdictions state that a service is essential if a work stoppage would create a danger to the health or safety of the public.

On top of this, in British Columbia's definition, if a strike at a workplace poses a threat to the provision of educational programs to students and children under the *School Act*, the service will also be deemed essential.

As shown in Table 6 below and detailed in Appendix D, if the definition includes services that will pose a danger to property if the parties strike (such as in Saskatchewan's, Manitoba's, Ontario's, Nunavut's, and the Northwest Territories' *Public Service Act*), the net is cast much wider than if the definition only includes services that pose an immediate and serious danger to public health or safety (as the Federal Sector definition states).

While Alberta does not have specific essential services legislation, they would label a strike an “emergency,” thus disallowing the work stoppage if an “unreasonable hardship” is caused or could be caused to persons who are not party to the dispute. Newfoundland and Labrador also may declare a strike an emergency and demand that it cease, but the legislation is narrower — stating that the strike must be injurious to

the health or safety of the public or to the security of the province to be called an emergency.

Table 6 – Essential Services in Canada

	Forbidden Right to Strike for Selected Occupations	Essential Services Provisions	Essential Services includes Damage to Property	Proposes Level of Essential Services	Final Level of Essential Services
Federal and Territories	x	x	x	Both	Board
British Columbia	x	x		Both	Board
Alberta	x			Both	Labour Min.
Saskatchewan	x	x	x	Employer	Board
Manitoba	x	x	x	Employer	Board
Ontario	x	x	x	Both	Board
Québec	x	x		Employees	Board
New Brunswick	x	x		Both	Board
Nova Scotia	x			Employer	
Prince Edward Island	x			Employer	
Newfoundland and Labrador	x	x		Employer	Board

Some Degree of Service Required

Many services deemed essential must provide a basic level of service during a strike. For example, Québec states that specific percentages of employees in certain fields (such as residential care centres, hospitals, and child and family services) must be kept on in the event of a strike.

To ensure that the number of workers forced not to strike is kept to an absolute minimum, Manitoba's *Essential Services Act* states that the number must only be enough to maintain a basic level of service, and not enough to benefit the business.

In Saskatchewan, an exceptionally long list of services are deemed essential and must have an Essential Services Agreement in place, as per the *Public Service Essential Services Act.* The government can add more services to this list as desired, without strict guidelines.

Employer Decides Degree of Service

Problems arise with requirements for some degree of service when the employer has the right to determine which workers are necessary.

For example, in the federal jurisdiction's *Public Service Labour Relations Act*, the employer has the exclusive right to determine the degree of service necessary to uphold during a strike. It is in the employer's interest to demand as many as possible during a strike.

Under some essential services legislation, employers can designate more workers as “essential” than would even be employed on a normal day. In Manitoba during a health care standoff, one employer designated 125% of his staff as essential.

This right of the employer to decide who must work could be especially problematic if the jurisdiction also dictates that when the number of workers deemed necessary is too high to make the strike effective, the strike will cease. The employer could demand a high degree of service just to end the strike. For example, in Newfoundland's legislation, where a majority of employees are designated essential, all the workers will be deemed essential (thus stopping the strike), yet the employer decides who ought to be named essential.

As mentioned above, Manitoba's, Newfoundland's, and Saskatchewan's *Public Service Essential Services Act* all allow the employer to determine the number of employees necessary to continue working during a strike. The union can oppose the number in all of these jurisdictions, wherein the labour board will hold a hearing to determine the appropriate amount.

On the opposite side, in Québec, if the parties cannot agree on the amount of workers necessary to uphold basic services, it is the union who can submit a list which the Essential Services Council will analyze to determine if it is sufficient.

Controversial Designation as Essential Services

Recently, the Toronto Transit Commission (TTC) was deemed to be an essential service in Ontario. As such, workers for the TTC are not

permitted to strike (*TTC Labour Disputes Resolution Act*, s.15(1)). As discussed above, normally in Canadian jurisdictions, an essential service is defined as services that are necessary to prevent danger to life, health or safety of the public or disruption to administration of the courts. This is the definition included in the *Crown Employees Collective Bargaining Act* in Ontario, for example.

Clearly, some jurisdictions are stretching the normal definition of "essential" to include services that cause inconvenience to the public when they are not operating at full capacity.

Montreal was faced with similar labour dispute problems with public transit, but chose not to designate the service as essential. Instead, the *Société de transport de Montréal* (STM) must provide a minimum level of service during rush hours.

Essential Services: the Champions are...

In terms of definition, Alberta's broad standards for labelling a strike a state of emergency allows for nearly every strike to fit the bill. Nearly all strikes cause significant hardship to some third parties — it is this public pressure from outside parties that renders a strike effective as a tool in labour disputes.

Manitoba's requirement that those deemed essential are only essential to the provision of services and not to the benefit of the business could avoid an excess of workers being labelled necessary. However, since this jurisdiction allows the employer to name which workers they need during a strike anyway, the first provision is more reactive than preventive in that it only helps the union when they are before the labour board disputing the number the employer has already chosen.

In Québec, the power is somewhat more in the hands of the workers and their union to designate which workers ought to actually

continue work. If the right to strike must absolutely be removed, it ought to at least be up to those who are losing that right to submit how many workers are necessary.

So as not to undermine the workers' power in their strike action, the definition of “essential services” must be very specific to when the health and safety of the public are in danger.

Essential services should be determined, as in Québec, with recommendations from the union on the minimum employees actually necessary.

The designation as “essential” should be applied to an absolute minimum, ensuring that the important power move of striking during a labour dispute is not removed unless absolutely necessary.

Part 5. Union Security

Finally, the implementation of freedom of association can only be feasible if collective organizations have means to exist and implement their goals. In Canada, unions are funded from dues paid by workers they represent, and different rights and rules provide that union security.

Union security in Canada rests on two basic provisions in labour relations codes: a dues check-off section, and a closed shop section. A dues check-off provision, also known as the Rand formula, states that employers must deduct union dues from a worker's pay and remit them to the worker's union. Closed shop provisions require or allow that collective agreements include a section that new employees are automatically members in the union that represents that workplace. Unions rely on these sections both for funding to operate and for a secure position in certified workplaces.

Rand: Must versus May

All Canadian jurisdictions mention the Rand formula in some form in their legislation. Some jurisdictions have sections that demand that dues be deducted and remitted, while others merely allow a Rand provision to be included in collective agreements.

As shown in Table 7 and detailed in Appendix E, the Federal Sector, Manitoba, Ontario, Québec, and Newfoundland all explicitly state that dues check-off is mandatory in their jurisdictions. They do so either by way of demanding that a provision on dues check-off be included in all collective agreements or by simply putting a provision demanding dues be deducted and remitted in the labour relations legislation itself.

Saskatchewan specifies that if an employee has requested in writing that dues be deducted and remitted, and the union has also requested this, the employer must honour this request. British Columbia

also requires a specific written statement from the worker authorizing the dues deduction.

Alberta, New Brunswick, Nova Scotia, and Prince Edward Island all permit union security provisions to be included in the legislation, but do not require it. Prince Edward Island states that if there is no Rand provision in a worker's collective agreement, the worker can request the deduction in writing and the employer must honour it. In Nova Scotia and Alberta, the employer also must honour a written deduction request. New Brunswick law gives a specific format that the worker's authorization must be in writing for the employer to be bound to honour it.

Table 7 – Union Security

	Dues Check-off Mandatory	Dues Check-off Allowed but not Required	Religious Objection	Required Closed Shop
Federal	x		x	
British Columbia			x	
Alberta		x	x	
Saskatchewan			x	x
Manitoba	x		x	
Ontario	x		x	
Québec	x		x	
New Brunswick		x		
Nova Scotia		x		
Prince Edward Island		x		
Newfoundland and Labrador	x			

Religious Objection

For those that have true objection to paying union dues based on religious reasons, most legislation in Canada allows the worker's dues to be remitted to a charity as opposed to being given to the union. The Federal Sector, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and Québec all include specific sections in their labour relations codes allowing for religious exemption from the payment of dues. With these provisions, the freedom of religion of these workers is protected.

With religious objection exemptions in place, there is no other reason for a worker to refuse to pay the dues that have earned them benefits at work, except that they wish to freeload off the work of their union representatives and off their fellow workers who have chosen to

pay dues and support that work. Removing dues deduction requirements from labour relations legislation would allow them to get the milk for free without buying the cow.

Closed Shop

All Canadian jurisdictions allow for closed shop provisions in their legislation. The labour relations codes in these jurisdictions state that the Act is not meant to prohibit provisions requiring union membership for new employees or granting preference of employment to union members.

Some jurisdictions take a stronger stance on closed shop provisions. In Saskatchewan, upon request by the union, the employer is actually required to include a closed shop provision in the collective agreement.

Alberta is slightly vague in their closed shop provision, stating that collective agreements can require union membership for employees, but not specifying "newly hired" employees. Ontario has one caveat for closed shop provisions — that first collective agreements can have closed shop provisions, with the exception that they cannot be included if less than 55% of the workers are members of the union. This is the case unless the union is certified; the employer has already been bound by a collective agreement with this union for a year; the employer agrees to such a provision or the work is related to construction or decoration.

Right to Work Threat

Campaigns such as the Right to Work movement in the United States seek to remove these legislative protections. In 22 states, legislation reflects the Right to Work movement — wherein payment of dues and requiring union membership for new employees in certified workplaces is banned.

This movement has gained support by small and large corporations opposed to unionization in the hopes that they can determine all conditions of employment for their workers without objection. The abolition of required payment of union dues means that the union must still fight for the certified worker's rights, but without the funding necessary to do so. It also provides employees a free ride, where they can enjoy the benefits of collective bargaining without the cost. It is quite an attractive tool for many.

Union Security: the Champions are...

Those jurisdictions that expressly require dues check-off in collective agreements (Federal Sector, Manitoba, Ontario, Québec, and Newfoundland) are more in tune with workers' rights. While all Canadian jurisdictions have some form of dues check-off legislation, model provisions would require dues deduction, and not merely allow it.

Saskatchewan has a protective section on closed shop provisions, which is a model that other jurisdictions could look to. However, even more important than improving current legislation is to retain union security provisions in Canadian labour relations codes, since all provinces do have some form of union security protection. The threat from the U.S. to remove union security from legislation is strong, and workers' rights advocates should set their eye to protecting and retaining these provisions in legislation.

Dues check-off ought to be required in all collective agreements, guaranteeing that workers who are benefiting from their unions' efforts are contributing to those efforts.

Provinces that have not made the payment of dues mandatory should include provisions similar to Québec's, wherein an exemption is not an option. Just as we are not exempt from the payment of taxes having agreed to live in this country nor should workers who have joined

a union be exempt from payment toward the shared benefits it has provided.

Conclusion

The purpose of this paper was to compare the fundamental set of labour relations laws across Canada. We looked at the set of rights that implements our guaranteed Freedom of Association as laid out in S.2(d) of the *Canadian Charter of Rights and Freedoms*, in a *Wagner Act* tradition.

First, we found that many groups of workers are not covered, are excluded by law or excluded by default from labour relations laws that guarantees workers' access to their fundamental right to unionize and collectively bargain.

Second, we found that when workers are covered by a labour relations law, access to unionization varies a lot between jurisdictions as a result of reforms that made it more and more difficult to join a union and collectively bargain over the years.

Third, we found that after certification, the process of reaching a first collective agreement is rarely easy. Tensions between workers and their employer can be at their highest at this point, and the employer may be very difficult to bargain with and refuse offers out of anger. First contract arbitration is a tool that can facilitate collective bargaining while providing an end to a difficult process.

Fourth, we found that not all workers can try to resolve a labour dispute with the use of strike. Many aren’t allowed to strike. The imposition of back-to-work legislation and “essential services” have made the right to strike less and less effective.

Finally, we found that union security is a key element of our collective representation system and its effectiveness. Without required payment of union dues by all workers covered by a collective agreement, a union would have to fight for the certified workers' rights, but without the funding necessary to do so, decreasing its effectiveness. It would also

provide employees a free ride, where they could enjoy the benefits of collective bargaining without the cost.

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Appendices A to E

Appendix A-1 – Exclusions	Exclusion Explicit in Section on Code's Application			Exclusion by Way of Not Being Included in the Definition of "Employee"	
	Act Coverage	**Act Exclusion (both specifically excluded in Act and covered by other legislation)**	**Act Covering Excluded**	**"Employee" means**	**"Employee" does not mean**
Federal	Employment in connection with federal work, undertaking or business (s.4) Crown corporations (s.5) Canadian carriers (defined in *Telecommunications Act*)	Ontario Nuclear Facilities New Brunswick Nuclear Facilities Saskatchewan Uranium Mines and Mills Ontario Uranium Mines Public Servants Parliament Staff RCMP Marine Personnel (in some minor respects)	Ontario Hydro Nuclear Facilities Exclusion from Part I of CLC Regulation Point Lepreau, New Brunswick Nuclear Facility Exclusion Regulations (Parts I, II, and III of CLC) Saskatchewan Uranium Mines and Mills Exclusion Regulations Uranium Mines (Ontario) Employment Exclusion Order, *Atomic Energy Control Act* *Public Service Labour Relations Act* *Parliamentary Employment and Staff Relations Act* Excluded from *Public Service Labour Relations Act* Marine Personnel Regulations	Anyone employed by an employer, including dependant contractor and private constable (s.3).	Person who performs a managerial function or is employed in a confidential capacity with regard to labour relations (s.3).
British Columbia	N/A	Fishing Industry (where labour relations act not in line with this act, this act applies) Education Employees Firemen and Police Health Sector Employees (where labour relations act not in line with this act, this act applies) Public Service Employees Community Services Employees	*Fishing Collective Bargaining Act* *Public Education Labour Relations Act* *Fire and Police Services Collective Bargaining Act* *Health Authorities Act, Health Sector Partnerships Agreement Act* Public Service Labour Relations Regulations *Community Services Labour Relations Act*	Person employed by an employer, including dependant contractor (performs work for another person for compensation – in a position of economic dependence on or under obligation to perform duties for – relationship more closely resembles 'er-'ee than independent contractor).	Manager/superintendent nor those employed in a confidential capacity in matters relating to labour relations or personnel.

Appendix A-2 – Exclusions	Exclusion Explicit in Section on Code's Application			Exclusion by Way of Not Being Included in the Definition of "Employee"	
	Act Coverage	**Act Exclusion (both specifically excluded in Act and covered by other legislation)**	**Act Covering Excluded**	**"Employee" means**	**"Employee" does not mean**
Alberta	"Every employer and employee and is binding on the Crown" (s.4(1))	Public Service	*Public Service Employee Relations Act*	A person employed to do work who is in receipt of or entitled to wages (s.1(l)).	Managerial functions, or employed in a confidential capacity in matters relating to labour relations (s.1(l)(i)).
		Police Officers (s.4(d))	*Police Act, Police Officers Collective Bargaining Act*		Professionals (s.1(l)(ii)).
		Farm workers (whose employment is directly related to production of eggs, milk, grain, seeds, fruit, vegetables, honey, livestock, domestic cervids, poultry or bees (s.4(e)).			Nurse Practitioner (s.1(l)(iii)) – covered by *Public Health Act*.
		Domestic workers (employed in private dwelling or where employer is ordinarily resident in dwelling) (s.4(f)).			
		Construction	Construction Industry Labour Relations Regulation (regulation for Labour Relations Code)		
		Regional Health Authority	Regional Health Authority Collective Bargaining Regulation		
Saskatchewan	N/A	Construction	*Construction Industry Labour Relations Act*	A person in employ of an employer and a person engaged to perform services, plus the board believes their relationship could be the subject of collective bargaining (s.2(f)(i.1)), including those who the board decides are 'ees even though they are usually independent contractors, and any person on strike or locked out or wrongfully dismissed and is in proceedings (s.2(f)(iii)).	Primary responsibility is the actual exercise of authority and managerial function or who has confidential capacity with regards to labour relations (s.2(f)(A).
		Public Service	*Public Service Essential Services Act*		
		Health Sector Employees	*Health Labour Relations Reorganization Act*		

Appendix A-3 – Exclusions	Exclusion Explicit in Section on Code's Application			Exclusion by Way of Not Being Included in the Definition of "Employee"	
	Act Coverage	**Act Exclusion (both specifically excluded in Act and covered by other legislation)**	**Act Covering Excluded**	**"Employee" means**	**"Employee" does not mean**
Manitoba	Includes those who would normally be within the jurisdiction of the Legislature to regulate.	Firefighters (s.4(3)(a)) Government Employees (s.4(3)(b)) Police Officers (s.4(3)(d.1) s.59 of *Labour Relations Act* (multiple-employers being considered as one) excluded in the case of schools (s.4(3)(e)). Teachers (s.4(3)(f))	*Firefighters and Paramedics Arbitration Act* *Civil Service Act* City of Winnipeg Charter (s.169-173) *Colleges Act* (s.42), *University College of the North Act* (s.29) *Public Schools Act, Education Administration Act*	Person employed to do work, including those that the employer would not normally be vicariously responsible for regarding the 'ees actions (s.1).	Where board considers inclusion unfair because they perform managerial function or who has confidential capacity with regard to labour relations (s.1).
Ontario	N/A	Construction Domestic employed in private home (s.3(a)) Hunting or Trapping Employee (s.3(b)) Agricultural Employees (s.3(b.1)) Horticulture Employees (s.3(c)) Police Officers (s.3(d)) Applied Arts and Technology College Employee (s.3(h)) Firefighting Staff (s.3(e)) Teachers (s.3(f)) Provincial Judge (s.3(i)) Labour Mediator or Conciliator (s.3(j)) Crown Employees (s.4(1))	Different rules under *Labour Relations Act* *Agricultural Employees Protection Act* *Police Services Act* *Ontario Colleges of Applied Arts and Technology Act* *Fire Protection and Prevention Act* *Education Act* *Crown Employees Collective Bargaining Act*	Includes a dependant contractor (s.1(1)), a striking or locked out employee (s.1(2)).	Professionals (s.1(3)). Managerial function, or who has confidential capacity with regard to labour relations (s.1(3)).

Appendix A-4 – Exclusions	Exclusion Explicit in Section on Code's Application			Exclusion by Way of Not Being Included in the Definition of "Employee"	
	Act Coverage	**Act Exclusion (both specifically excluded in Act and covered by other legislation)**	**Act Covering Excluded**	**"Employee" means**	**"Employee" does not mean**
Québec	N/A	Civil Servants (in some respects)	*Civil Service Act*	Person who works for an employer and for remuneration (s.1(l)).	Where commission considers they are manager, superintendent, foreman or representative of `er in relations with employees (s.1(l)(1)).
		Employees in Health Care	An Act respecting bargaining units in the social affairs sector, An Act to ensure that essential services are maintained in the health and social services sector.		Director or officer of a legal person (s.1(l)(2)).
		Construction (in some respects)	An Act respecting labour relations, vocational training and workforce management in the construction industry.		Public servant of government with confidential position – such as mediators, executive staff, etc. (s.1(l)(3)) – covered by *Public Service Act*.
		Education Employees, employees covered by the *Public Service Act* and government employees	An Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors. *Public Service Act*.		Criminal/prosecuting attorney (s.1(l)(4)) – covered by *An Act Respecting the Collective Bargaining Plan of Criminal and Penal Prosecuting Attorneys.*
					Member of *Sûreté du Québec* (s.1(l)(5)).
					Labour relations officer (s.1(l)(7)).
					Chief electoral officer personnel (s.1(l)(6)).
New Brunswick	N/A	Government Employees (s.1(8))	*Public Service Labour Relations Act*	Person employed to do skilled or unskilled manual, clerical, technical, or professional work (s.1).	Manager or superintendent, or is employed in confidential capacity in manners relating to labour relations (s.1).
		Construction (s.38)	Different rules under *Industrial Relations Act*	Striking, locked out or wrongfully dismissed remain employees (s.1(2)).	Domestic service in a private home (s.1).
		Fishing Industry	*Fisheries Bargaining Act*	Police Officers (s.1(3)).	Agricultural worker (if less than five employees) (s.1(5)(a)).

Appendix A-5 – Exclusions	Exclusion Explicit in Section on Code's Application			Exclusion by Way of Not Being Included in the Definition of "Employee"	
	Act Coverage	**Act Exclusion (both specifically excluded in Act and covered by other legislation)**	**Act Covering Excluded**	**"Employee" means**	**"Employee" does not mean**
Nova Scotia	Applies to all matters within the legislative jurisdiction of the province (s.4(1)).	Government Employees (s.4(2)) Construction Ambulance Employees Teachers	*Civil Service Collective Bargaining Act* Regulations respecting procedure, sectors in the construction industry and craft units and votes of employees (regulation for *Trade Union Act*), *Construction Projects Labour-Management Relations Act* *Ground Service Ambulance Act* *Teachers Collective Bargaining Act*	Person employed to do skilled or unskilled manual, clerical or technical work, includes police constable and those employed by the city, as well as those employed in fishing vessels (if paid) (s.2(k)).	N/A
Prince Edward Island	N/A	Police (in some respects) Government Employees Construction	*Police Act* *Civil Service Act* Different rules under *Labour Act*	Person employed to do skilled or unskilled manual, clerical or technical work (s.7(h)). Member of police department (s.7(h)). Security at University of PEI (s.7(h)). Teachers at police academy (s.97(h)).	Professionals (s.7(2)). School employees (s.7(2)) – covered by *School Act*. Person exercising managerial function or who is employed in confidential capacity regarding labour relations (s.7(2)).
Newfoundland and Labrador	N/A	Constables (s.3) Fishing Industry (s.3) Teachers (s.3) Firefighting Staff (s.3) Public Service (s.3) Construction Interns and Residents (LRB Regulations s.3)	*Royal Newfoundland Constabulary Act* *Finishing Industry Collective Bargaining Act* *Teachers Collective Bargaining Act* *City of St. John's Act* *Public Service Collective Bargaining Act* Different rules under *Labour Relations Act* *Interns and Residents Collective Bargaining Act*	Person employed to do skilled or unskilled manual, clerical or technical work. Includes professional employee and a dependant contractor (s.2(m)).	Manager or superintendent or who is employed in a confidential capacity with regard to labour relations (s.2(m)).

Appendix B-1 – Certification	Card Check	%	Mandatory Vote	Majority	Good Standing	Notes	Protections for Employees while Certification Application Pending	Employers can Express Personal Points of View	Union Access to Employees	Board can Certify if Unfair Labour	Delay for Next Certification Application
Federal	Card Check: where board believes majority of employees want the union certified (s.28), board MAY request a vote (s.29).	50 = no vote/ 35 = vote	Board "shall" order a vote only if 35-50% of employees are members (s.29).	Majority is of ballots cast (s.31(3)).	Card signed and $5 paid (CIRB regulation s.31).	Vote void if less than 35% of eligible employees voted (s.31).	No alteration to pay, employment contract (terms/conditions, rights/privileges) while certification pending – or until 30 days after certified (s.24(4)) – up until the first agreement is reached (s.36.1).	As long as the employer does not use coercion, intimidation, threats, promises, or undue influence (s.94(2)c).	Where 'ees live on premises, union can apply to board for specific access to certify, or conduct business (s.109(1)). Board can demand union be given names and addresses of all off-site 'ees to communicate with them (s.109(2)).	Board can certify without proof of majority if there has been unfair labour practice, and board believes union would have had support (s.99.1).	Union cannot apply again for certification until six months have elapsed since rejected (s.38 Board regulations). Decertification delay – as per certification requirements of s.24 (s.38(4)).
British Columbia	Apply by union with adequate % of members in good standing (card check), board double-checks with representation vote (s.18).	45, or majority if different union is already certified.	Board "must" order a representation vote – required for certification (s.24).	Decided by majority of voters, not just majority of employees (s.25).	Signed card with specific statement (s.3 regulations).	Board can order another vote if less than 55% of employees voted (s.24(3)).	No strikes, lockouts, or alterations to employment (pay or terms/conditions) while certification application pending (s.32).	Right to communicate opinions by both 'er and 'ee – as long as no intimidation, or coercion (s.8).	Where employees live on premises, and union has board's permission, 'er must allow them access to convince 'ees to join and to conduct union business (s.7(2)). Cannot conduct union business on floor during working hours without 'er's consent (s.7(1)).	Board can certify without vote if they think that union would have won if not for unfair labour (s.14(f)).	If certification application is rejected, board can determine time to wait until new application, no less than 90 days (s.30). If decertified, no re-application for 10 months (s.33(7)).
Alberta	Apply by union with adequate % of members in good standing, or who have signed to demonstrate their support, board double-checks with representation vote (s.32).	40	Board "shall" conduct a vote – required for certification (s.34(1)(d)).	Majority is of ballots cast (s.58).	Applied for membership and paid $2 minimum no longer than 90 days before application, or member as per union rules (s.33).	Voluntary recognition of union means employer bound to bargain collectively. If not, union can apply for official certification (s.42). Limits on construction certification applications and MERFs (s.148.1).	No alterations to employment (pay, term/condition, right/privilege) from certification application to 30 days after certified, 60 days after notice to collectively bargain served, date certification is refused, or finally strike/lockout commences (s.147).	Employer can express views as long as doesn't coerce, intimidate, threaten, promise, or impose undue influence (s.148(2)(c)).	No certification if a result of picketing for membership (s.38(2)). Cannot attempt to certify 'ees during working hours (s.151(d)).	Only with majority vote does board have power to certify if unfair (s.17(2)).	Union shall not apply again after decertified for six months (s.54(2)(c)). If rejected, cannot apply for 90 days since rejection (s.57(a)).

Appendix B-2 – Certification	Card Check	%	Mandatory Vote	Majority	Good Standing	Notes	Protections for Employees while Certification Application Pending	Employers can Express Personal Points of View	Union Access to Employees	Board can Certify if Unfair Labour	Delay for Next Certification Application
Saskatchewan	No card check (since '08) adequate % of employees must submit written application to demonstrate support for union (s.6).	45 must support (s.6(1.1))	Board must direct a vote – required. But the board could cancel it if another vote has been made in the past 6 months (s.6(2)).	Majority of eligible voters is quorum, and majority of those is the winner (s.8).	Form for certification application requires cards, authorization cards, check off cards, or other evidence of support with a list (LRB reg).	/	Employee cannot lockout, threaten or make changes to pay, hours, conditions, tenure of employment, benefits, or privileges while any application under the act is pending (s.11(j)).	Employer can communicate facts and its opinions to its employees (s.11(1)(a)) – the wording loosely states as long as it's not intimidating, threatening, etc., but could also be read not to specify this.	Where employees live on premises, union wanting to represent, or who do represent must be allowed access to them (s.11(1)(n)). Employer can allow the union use of notice boards or premises without being charged with interfering (s.11(1)(b)).	Board must order another vote and fine if unfair labour practices, and it seems the application for certification would have gone through (s.10.1).	No re-application for six months after first application dismissed (s.5(b)). Where within six months before application, vote was already conducted with regards to same union, board can refuse to conduct vote (s.6(2)(d)).
Manitoba	Card Check: if % of employees want union, automatically certified (s.40). With certification application, must submit list of employees wanting the union and documents (cards) proving this (regulation s.8(2)).	65 must support for auto cert (s.40)	If 40-65% of employees demonstrate interest, board will conduct a vote. If less than 40%, application dismissed (s.40).	Majority is majority of votes (s.40(3)).	Member of union 6 months before certification application, or became member in the 6 months (s.52).	For decertification, must be more than 50% of employees that want out and then will conduct a vote, or decertification – unless 'er frustrated the collective bargaining process, in which case dismiss even if 50%+ (s.50).	No alteration to contract of employment and wages after certification application and until 90 days after certification (s.10).	Employer has freedom of speech as long as not intimidation, coercion, threats, or undue influence, or interfere with the formation or selection of a union (s.32(1)).	Union must be able to access employees that reside at work if they have a permit issued by the board (s.21(1)). Certified union must be able to access employees at work, and meetings must happen with 'er to work out access specifications (s.22).	Board can certify if unfair labour (s.41).	No re-application for at least six months after dismissed (s.8(14)). Unless rejected b/c of technical error (s.8(15)).
Ontario	Application by union must come with list of 'ees supporting the application and evidence of their membership (cards) (s.7(13)). If % adequate, board holds representation vote (s.8(2)).	40	Vote required (s.8). If 40% of employees of unit members, vote. If more than 50% demonstrate interest in the vote, certified. If 50% or less, dismissed (s.10).	Majority is more than 50% of ballots (s.10).	Membership in union demonstrated by list and cards (s.8(3)).	Specifies that board determines unit and then looks at percentage of supporters out of that pool (s.8.6). Construction industry has card-check process (s.128.1).	When union has applied for certification, 'er cannot alter wages, terms or conditions, or privileges until notice is given to collectively bargain (where these same protections apply until conciliation) or until certification application dismissed (s.86(2)).	Employer can express personal point of view, as long as no coercion, intimidation, threat, promise, or undue influence (s.70).	Where employees live on premises, union has access with direction of board to try to convince them to join (s.13).	Board can order first or second representation vote, or if no other remedy is sufficient, can certify (s.11(2)).	No application by any trade union after certification dismissed for one year (s.10(3)).

Appendix B-3 – Certification	Card Check	%	Mandatory Vote	Majority	Good Standing	Notes	Protections for Employees while Certification Application Pending	Employers can Express Personal Points of View	Union Access to Employees	Board can Certify if Unfair Labour	Delay for Next Certification Application
Québec	Card Check. If absolute majority support (indicated by cards) and no argument with 'er over unit composition, immediate certification (s.28(a)).	Over 50	If 35-50% support the application and no argument over unit composition, vote (s.28(b)). If argument over composition, report and then officer decides if it's voting time, or certification time (depending on support) (s.28(c)).	Majority is absolute majority of voters (s.28(b)) – but all eligible must vote (s.38 – see notes).	Card signed and minimum $2 personally paid within 1 year preceding application (s.36.1).	One (1) 'ee can form a group to be certified (except for farm workers, where at least 3 are required) (s.21). All eligible 'ees must vote, unless they have a legitimate excuse (s.38).	No alterations in condition of employment from the filing of petition for certification until strike or lockout starts, or an arbitration award is handed down (s.59).	Not written in Act. Only includes that no person shall use intimidation or threats to induce anyone to become, refrain from becoming, or cease to be a member of a union (s.13).	No soliciting membership during work hours (s.5). Can only hold meetings on work property with consent of 'er and if certified (s.6). With permit, union must have access to employees on mining or logging operations (s.9 + s.36 of reg).	N/A	Petition for certification cannot be renewed for three months after refusal by board or withdrawal (s.40).
New Brunswick	Card Check – Board can certify if more than 50% of 'ees are members in good standing (s.14(5)). Board will certify if more than 60% (s.14(3)).	50 (s.14(5)), 60 (s.14(3))	Board may order representation vote if 40-60% of 'ees are members in good standing (s.14(2)).	If more than 50% of ballots are for union, certification (s.14(3)).	Card signed and minimum $1 paid, OR union dues paid (s.16(3) + s.125 of reg).	Union can request pre-hearing representation vote after certification application (s.15(1)).	No alteration to rights, privileges, or duties of either 'er or 'ee once certification application starts until notice to collectively bargain (s.35). Once notice is given, new, more extensive protections come in (s.35(2)).	Employer can express opinion so long as he or it does not do so in a manner that is coercive, intimidating, threatening, or intended to unduly influence any person (s.3(5)).	Where employees live on premises, union has access with permit issued by board (s.4(2)). This access will not be trespass (s.4(4)). No access to employees during work hours at work unless permission by 'er (s.4(1)).	N/A	Board can decide the appropriate delay (s.20). Re-application delay of not more than 10 months on unsuccessful application (s.126(c)).
Nova Scotia	Application to certification must be supported with adequate % of members (s.23).	40	Board "shall" order a vote when there is a certification application (s.25), and certify if majority approves. Vote required.	If majority in favour, certify (s.25(8)).	Card signed, or other membership evidence if card not reasonable and has paid fees or dues (s.9(2A) + s.10(3) of regulations).	Certification exceptions for technical employees (s.24).	Where an application to certify has been made, no alterations to alter wages, or terms of contract while pending, or if certification is approved, until notice to collectively bargain (s.23(7)). Then other protections kick in (s.35(b)).	Employer can express his point of view as long as not coercive, intimidating, threatening, or causing undue influence (s.58(2)).	Giving access of union to employees at work during work hours is not against the Act (s.53(2)(a)(i)).	If unfair labour, and 40% members, board can certify without vote if union would have won (s.25(9)).	Board can determine the appropriate delay after dismissing an application for certification (s.25(16)).

Appendix B-4 – Certification	Card Check	%	Mandatory Vote	Majority	Good Standing	Notes	Protections for Employees while Certification Application Pending	Employers can Express Personal Points of View	Union Access to Employees	Board can Certify if Unfair Labour	Delay for Next Certification Application
Prince Edward Island	Card Check – Board certifies when adequate amount of members support the application (s.13(5)).	Over 50	Board can take representation vote to check the wishes of the 'ees (s.13(3)(b)).	Majority of vote turnout is majority of ballots cast (s.13(4)+(8).	Card signed and at least $2 paid in the 3 months prior to application (s.3(4) of reg.	Union can request a pre-hearing representation vote (s.14). Section on voluntary recognition (s.19). Separate section for construction (s.52).	No alterations in wages or terms/conditions of employment until board has decided on the application (s.16). If board certifies, not until notice, wherein other protections come into play (s.22).	'Er can express views on collective bargaining, or terms/conditions of employment if no coercion, intimidation, threat, or undue influence (s.9(8)).	'Er can consent to union business on their time and in their space without repercussion (s.9(8)). Union cannot access 'ees at work during work hours without consent of 'er (s.10(2)).	N/A	Board can determine the delay for new application when first application dismissed (s.13(7)).
Newfoundland and Labrador	Where application is supported by majority of 'ees, board may certify (s.38) – see notes. Also, where, as a result of vote, majority supports application (s.38).	40	Mandatory vote required where application for certification is supported by not less than 40% (s.47). Where vote supported by majority, board may certify (see different types of majority) (s.38).	Majority is majority of 'ees, OR must be at least 70% of eligible 'ees that have voted plus majority is majority of ballots (s.38).	When 'ee has signed not more than 90 days before application (s.49). To decide good standing, board can order vote (s.46).	No need for vote where the 'er and union jointly request not to have one (s.47(2)) – this is where the board can certify just by being assured of majority (see first box).	No alteration of wages or terms/conditions of employment once 'er has received written notice from board that union has applied for certification, until the application has been granted, refused, or withdrawn (s.45). Upon notice to collectively bargain, no alterations until collective agreement concluded, or conciliation commences, or is found not to be appropriate (s.74).	Not written in Act. Only includes that an employer shall not seek by intimidation, threat of dismissal or other kind of threat, or by other means to compel a person to refrain unionizing (s.25(3)).	Union cannot access 'ees at work during work hours to certify or maintain certification without consent of 'er (s.28(2)). 'Er can allow union to conduct business on floor during working hours without contravening the Act (s.23(2)(a)(i)). Board can authorize union access to employees living on premises to certify or do union business (s.34).	Board not bound by results of vote if unfair labour practice (coercion, etc.) (s.47(8)).	Where application refused, no re-application for six months (s.18(1) of regulations).

Appendix C-1 – 1st Contract Arbitration	1st Contract Arbitration	Time Line	3rd Party can Conclude Agreement	Evidence	Arbitrator Choice	Future Collective Agreement	Last Offer vote	Default Length of Imposed Collective Agreement	Usage of 1st K Arbitration
Federal	**Specific section = s.80**. Either party, once given notice to collectively bargain, may request conciliation if problems with the process (s.71). Board can settle provisions of first agreement where legal strike/lockout provisions have been met (s.80). Can't run an effective strike, then can demand arbitration (see Essential Services).	Board can come in anytime after legal strike/lockout provisions have been met – notice to bargain given, failed, notice to minister of failure, and 21 days have elapsed since minister gives notice on outcome of conciliation (s.89(1)).	Yes, board may (s.80).	Parties can give evidence to board when it settles first contract on whether bargaining attempts were in good faith, terms were already agreed upon, and anything else (s.80(3)).	Minister appoints or refuses to appoint conciliator or council board (s.72). Arbitrator agreed upon by parties, or chosen by minister (s.57).	Provision for final settlement without stoppage of work in every collective agreement – arbitration or other (s.57).	Minister can order vote if "in the public interest" to do so (108.1). Majority of voters accept, parties bound, and lockout/strike ceases (s.108.1(3)).	When the board settles the provisions, the agreement is effective for two years following the date of settlement (s.80(4)).	/
British Columbia	**Specific section = s.55**. Either party can request mediation. If so, no strike until mediation. If after time line has passed, mediation doesn't work, and mediator doesn't recommend strike or lockout (s.55(6)(iii)), no strike until new format chosen (arbitration, arbitration board), and those decisions will be binding (s.55(7),(8)).	Mediation must be attempted for 20 days before can discuss other options (s.55(6)).	Yes, arbitrator may (s.55(8)).	Must demonstrate that majority of employees have voted to strike and that collective bargaining has failed (s.55(2)).	Associate chair of Mediation Division picks mediator.	Final settlement without stoppage in every collective agreement (s.84(2)). Board can demand arbitration during term of collective agreement (s.88).	Employers, employees, and minister can request this vote on offer before strike – does not specify "majority," just that the vote "favours" one way or the other (s.78).	None specified for 1st settled agreement. If collective agreement for a term of less than one year, default is that it is valid for one year (s.50(1)). At any time for longer agreement, one party can apply to minister (after contract has been in operation for eight months) that it terminate on the next anniversary date (s.50(2)).	/
Alberta	No specification on first contract arbitration – but for all when notice to collectively bargain, either party can request mediation from director (s.64). Appointed mediator can be requested by both parties and by minister (s.65). Fourteen (14) days after mediator appointed or results of vote on offer given mediator must make recommendation or notify that not making one (65(6)).	Cooling off period of 14 days after this is given (s.65(7)). Then must decide to accept or reject recommendations of mediator (s.66). If one party rejects, other party can request a vote (see "last offer").	N/A	N/A	Mediator chosen by director (s.65)	All collective agreements must contain a provision agreeing on a method to settle disputes (s.135).	Either party can request a vote on an offer (s.69). Only one application for a vote per dispute.	While no first contract arbitration, if collective agreement for unspecified term, default is one year from when it started to be in operation (s.129).	/

Appendix C-2 – 1st Contract Arbitration	1st Contract Arbitration	Time Line	3rd Party can Conclude Agreement	Evidence	Arbitrator Choice	Future Collective Agreement	Last Offer vote	Default Length of Imposed Collective Agreement	Usage of 1st K Arbitration
Saskatchewan	**Specific section = s.26.5**. Either party can apply to the board for assistance in concluding first agreement (s.26.5(1.1)). No strikes or lockouts if this is done (s.26.5(2)). Board can require parties to submit to conciliation (26.5(6)), or if they have already tried conciliation, board can either conclude the agreement after time line, or order binding arbitration.	If parties have gone to conciliation or 120 days have passed since the parties went to conciliation, conclusion can be determined by board or arbitrator 45 days after they decided to hear the case (s.26.5(6)).	Yes, board may (s.26.5(6)).	Board can assist in concluding collective agreement if strike vote passes, locked out, refusal or failure to bargain collectively, 90 days have passed since certification (one or more of these) (s.26.5(1.1)). Before concluding terms, board can see evidence relating to the parties' positions (s.26.5(7)).	Board or minister picks arbitrator from a list which was compiled after consulting labour and employer groups (s.26.6).	If no provision for arbitration in collective agreement, assumed to be included (s.26). Must submit to arbitration if other party applies.	If strike has continued for 30 days, union, employer, or employees (25% of unit or 100 – whichever is less) can apply for a mediator. Mediator can recommend vote, which board must hold (s.45).	Agreement concluded in this way is for two years from its effective date, or any other date the parties agree on (s.26.5(8)).	/
Manitoba	**Specific section = s.87**. When parties are to commence collective bargaining, and they have gone through conciliation which didn't work (s.68(3.1)) or 120 days have expired since conciliator appointed, and 90 days have passed since certification, AND no first agreement still, either party can apply to have board settle. Board sends notice of the application to the other party (s.87).	After 10 days of receiving notice, parties can still arbitrate and inform board of this. If not, board can settle or decline to settle if they think that the parties could settle on their own. If after another 30 days still not settled, board settles (s.87).	Yes, board may (s.87).	Parties can present evidence in applying to the board to settle the first agreement, including terms already negotiated for employees with similar jobs in similar units, and anything else they deem important (s.87(6)). Board considers whether the parties are likely to settle on their own (s.87(3)(b)).	Conciliation officer picked by minister (s.67(1)). Parties choose their own arbitrator when they receive first notice from board (s.87(2)).	If no provision for final settlement without stoppage of work (arbitration or otherwise), default is that arbitration clause is included (s.78), even after expiry of agreement.	Minister can demand that board hold a ratification vote before or after strike starts to vote on last offer by 'er (s.72.1),	The settled first agreement will be valid for one year from date of settlement (s.87(7)).	/
Ontario	**Specific section = s.43**. Conciliator appointed by minister for all negotiations where either party requests it (s.18) or can get mediator (s.19). If that doesn't work, council board (s.21). Where all council didn't work or minister gives notice that council board not appropriate, either party can apply for arbitration (s.43(1) – see Evidence. If approved, parties can choose board to arbitrate or can have arbitration board (s.43(3)).	Council officer must submit report after 14 days of starting (s.20). Council board has 30 days, can be extended (s.34). Board must decide on whether to approve of the application within 30 days (s.43(2)). Voluntary arbitration available at any time after notice to collectively bargain (s.40).	Yes, arbitrator may (s.43(2)).	Board will approve application for arbitration if 'er is being stubborn, if other party uncompromising, not making true effort or any other reason (s.43(2)).	Conciliation officer chosen by minister, alternative mediator chosen jointly by parties (s.19). For both conciliation and arbitration board, each party chooses one, and then those two choose a third (s.43(6)).	All collective agreements must provide for final and binding settlement by arbitration, without work stoppage (s.48).	Before or during strike or lockout, either party can request vote of employees directed by minister to determine if they approve the last offer (s.42). Mandatory ratification vote for proposed collective agreement (s.44).	First collective agreement settled will be valid for two years from date of settlement, and can be declared to be retroactive (s.43(19)).	/

Appendix C-3 – 1st Contract Arbitration	1st Contract Arbitration	Time Line	3rd Party can Conclude Agreement	Evidence	Arbitrator Choice	Future Collective Agreement	Last Offer vote	Default Length of Imposed Collective Agreement	Usage of 1st K Arbitration
Québec	**Specific section: s.93.1.** Where conciliation has failed (or is still ongoing - s.93.3), a party may apply to minister to submit the dispute to an arbitrator (s.93.1). No striking or locking out during first contract arbitration (s.93.5). Arbitrator will conclude contract where it is unlikely the parties will come to agreement within a reasonable time (s.93.4). At any point of negotiations, either party may request minister to designate a conciliator (s.54).	Arbitrator must present award no longer than 60 days after last day of hearings (s.90).	Yes, arbitrator may (s.93.4).	Arbitrator must believe that parties will not come to agreement on their own within a reasonable time (s.93.4). Any parts already agreed upon by the parties will be automatically included in the contract (s.93.4).	Conciliation officer is chosen by minister (s.54). Arbitrator decided by agreement of both parties or chosen by minister (s.77).	N/A	No signing of collective agreement until final vote of members to see if they approve (s.20.3).	Term of first collective agreement shall not be more than three years (s.65). The general default term of a collective agreement is one year (s.66). Collective agreement can apply back to any date specified in the contract or to the date signed (s.72).	/
New Brunswick	No specific first contract arbitration provisions. When notice has been served to commence collective bargaining, either party can request conciliation officer (s.36(1)) or mediator (s.70). If that fails or minister decides board better, minister can appoint council board (s.36(2)). When both parties have failed to make agreement, can agree to be subject to binding arbitration (s.79(1)).	Council officer or board makes report after 14 days (s.61(1), s.68(1)). This can be extended. Fifteen (15) months after appointment of council or mediator, minister can appoint another upon request of both parties (s.36(9)), but can be decertified in that time.	N/A	Application for conciliation must be accompanied by statement of the difficulties encountered in collective bargaining (s.36(1)) – as per the application form in regulations.	Minister appoints conciliation officer (s.36(1)), each party nominates one member of conciliation board, minister chooses (s.62(2)). The two chosen nominate a third. Minister can appoint a mediator at any time (s.70(6)).	All collective agreements must include a provision for arbitration or otherwise before work stoppage (s.55).	Where seven days have passed since minister rejected application for conciliation or council report has been submitted and thus strike or lockout is legal (s.91(2)), 'er can request a vote of 'ees, or union can request vote of 'er (s.105.1(1)). Vote can only be taken once per dispute (s.105.1(7)).	While no first contract arbitration, general default term is one year (s.57(1)).	/
Nova Scotia	No specific first contract arbitration provisions. After notice has been given, and collective bargaining has not commenced within the time line, or has failed, either party can request conciliator and minister can appoint one (s.37). Where, after time line, officer fails, parties jointly or severally can request council board, and minister must grant the request (s.39). Minister can also appoint mediator at any time (s.40). If officer fails, either party can request interest arbitration of one or three arbitrators (s.52C).	Parties must meet within 20 days of notice to collectively bargain (s.35). Report from conciliation officer to minister must be within 14 days (s.38).	N/A	Application for conciliation must include statement of difficulties in collective bargaining (s.37(b)).	Each party nominates one person for council board (s.39). Parties attempt to agree on arbitrator, if not able, minister appoints (s.52D). Arbitration board is done by each party picking one and that arbitrator picking a third (s.52E).	All collective agreements will have provision for settlement by arbitration or otherwise (s.42).	Before the commencement of a strike, there is a mandatory vote of 'ees on last offer made in conciliation (s.103(3)). Also for 'ers on last union vote (s.103(7)).	While no first contract arbitration, general default term is one year (s.45).	/

Appendix C-4 – 1st Contract Arbitration	1st Contract Arbitration	Time Line	3rd Party can Conclude Agreement	Evidence	Arbitrator Choice	Future Collective Agreement	Last Offer vote	Default Length of Imposed Collective Agreement	Usage of 1st K Arbitration
Prince Edward Island	No specific first contract arbitration provisions – where collective agreement has not commenced within 20 days of notice, or has failed, or minister thinks it is advisable to do so, either party can request help and minister can instruct conciliation officer to take the case (s.25). Where failure of officer, minister can instruct for council board. Minister can also appoint a mediator (s.34).	Council officer reports after 10 days (s.26), council board reports after 14 days (s.32).	N/A	Conciliation application must include statement of difficulties in collective bargaining if collective bargaining has failed (s.25(b)).	Council board determined by each party nominating one, and the third picking the other two (s.27).	All collective agreements will include a provision for final and binding arbitration before stoppage of work (s.37).	N/A	While no first contract arbitration, general default term is one year (s.35(3)).	/
Newfoundland and Labrador	**Specific section = s.81**. Minister can direct the board to enquire into the dispute and settle the collective agreement (s.81(1)). For offshore petroleum workers, it will be binding arbitration for first agreement, not board (s.81.1). Construction will be subject to settlement by arbitration (s.92).	After collective bargaining has commenced and failed, parties can request (s.81).	Yes, board may (s.81(1)).	The parties can give evidence on whether bargaining was in good faith, which terms already applicable to similar 'ees in similar positions could be transferred, and other (s.82). *Industrial Inquiry Committee Repor*t: the parties should be able to ask minister to intervene on the dispute if the can show they bargained in good faith and its in the public interest to intervene (p68).	N/A (Board)	Collective agreement shall contain provision for final settlement without stoppage of work (arbitration or otherwise) (s.86).	N/A	Where board settles agreement, it shall be effective for one year from date it was settled (s.83).	/

Appendix D-1 – Essential Services	Notes on Essential Services	Definition of Essential	Who Labels it Essential?	Can an Employer Determine Necessary Number of Employees?
Federal	If the supply required during work stoppage is substantial, board can demand a binding method of settlement (s.87.4(8)). Services to grain vessels also limited in striking rights (s.87.7). *Public Service Labour Relations Act* also designates which federal 'ees must continue services in work stoppage (s.4(1), s.194). Back to work legislation for those with specific group agreements (firefighters, hospital, etc.):*Government Services Act*.	Services, operation of facilities, or production of goods to the extent necessary to prevent an immediate and serious danger to the safety or health of the public (s.87.4(1)). Service, facility, or activity of government of CDA that is, or will be necessary for the safety or security of the public, or segment of the public (PSLRA s.4(1)).	Where the process of ADR is conciliation, the essential services section applies (PSLRA s.119). Where notice to collectively bargain is given, either party can send an estimate of the level required in the event of work stoppage to meet the definition (s.87.4(2)). If no agreement, board will determine (s.87.4(4)). 'Er has the exclusive right to determine the level at which an essential service is to be provided, including the extent to which and the frequency with which the service is to be provided (PSLRA s.120).	No. 'Er can determine level of service required, but 'er and 'ee must make agreement as to number of 'ees (PSLRA s.121). If they fail, can apply to board to decide (PSLRA s.123).
British Columbia	When board designates some facility as essential, the employer must maintain production (s.72(8)). Chair can appoint mediator to agree between themselves on essential services (s.72(3)). Return to work – regulated by last valid collective agreement while designated essential to the extent that services resume (s.73).	Whether or not the dispute poses a threat to the health, safety, or welfare of the residents of British Columbia, or the provision of educational programs to students and eligible children under the *School Act* (s.72).	Chair of board designates essential services, with approval of minister (s.72).	No. Parties encouraged first to agree on essential services (s.72(3)). Board to designate as essential services those facilities, productions, and services that the board considers necessary to prevent immediate and serious disruption or danger (s.72(2.1)).
Alberta	No specific legislation. Compulsory arbitration for certain services (firefighters, hospital employees, regional health authorities and employees, and ambulance operators in certain instances)– no striking or locking out (s.96). Other services can be deemed essential if the specifications on the definition of 'emergency' are met; in these situations there is no locking out or striking permitted (s.112(3)). Police officers may not strike or be locked out (*Police Officers Collective Bargaining Act* s.3).	Definition where service can be labelled essential because strike is considered emergency: Damage to health or property is caused or likely to be caused because sewage plant or equipment, water, heating, electric or gas plant or equipment has ceased or is likely to cease to operate (s.112(a)(i)). Where health services have been reduced or are likely to (s.112(a)(ii)). Or unreasonable hardship is likely to be or is caused to persons not party to the dispute (s.112(b)).	Stated in legislation (s.96), or determined by the Lieutenant Governor in Council (s.112) if it meets the definition.	No, the parties may not strike (s.112). Minister may prescribe terms of employment during dispute (s.112(5)).
Saskatchewan	*Public Service Essential Services Act* specifies that the parties must have an Essential Services Agreement (s.6). No work stoppages (s.14), must resume work (s.18). Some jobs in the following departments deemed essential: Advanced education, labour, agriculture, corrections, public safety and policing, energy, environment, government services, health, highways/infrastructure, IT, court staff, social services, tourism/culture (PSESA Regulations appendix).	For services provided by a public employer other than the Government of Saskatchewan, services that are necessary to enable a public employer to prevent: danger to life, health or safety; the destruction or serious deterioration of machinery, equipment or premises; serious environmental damage; or disruption of any of the courts of Saskatchewan. For services provided by the Government of Saskatchewan, services that: meet the criteria set out above and are "prescribed" (PSESA s.2(c)).	Set out in regulations (PSESA Regulations). Lieutenant in council has power to include any service as an essential service (s.21(c)).	Yes (PSESA s.9). 'Er decides and can have more as required. If union opposes, board can decide (s.10). While the order of the board is pending, the 'er gets his number (implied by s.12).

Appendix D-2 – Essential Services	Notes on Essential Services	Definition of Essential	Who Labels it Essential?	Can an Employer Determine Necessary Number of Employees?
Manitoba	*Essential Services Act, CCSM cE145.* The number must be only those necessary to maintain essential services, not operation of business (s.11). Essential services include department of agriculture, of culture, of energy/mines, of environment, of family services, of finance, of government services, of health, of highways/transport, of justice, of labour, of natural resources, of rural development (ESA schedule).	Services that are necessary to enable the employer to prevent danger to life, health, or safety, the destruction or serious deterioration of machinery, equipment or premises, serious environmental damage, or disruption of the administration of the courts or of legislative drafting (ESA s.1).	Services declared in Act. Lieutenant Governor in Council may, by regulation, declare any other service to be essential (ESA s.6).	Yes (ESA s.7(1)). 'Er decides and can have more as required. If union opposes, board can decide after hearing or investigation (s.8(2)).
Ontario	Numerous acts list services excluded from the Labour Relations provisions (*Ambulance Services Collective Bargaining Act/Crown Employees Collective Bargaining Act/Hospital Labour Disputes Arbitration Act* RSO 1990 c H.14, etc.). Fire protection staff cannot strike (*Fire Protection and Prevention Act).*	Services that are necessary to enable the employer to prevent, danger to life, health or safety, the destruction or serious deterioration of machinery, equipment or premises, serious environmental damage, or disruption of the administration of the courts or of legislative drafting (CECBA s.30).	Designated in Acts. Some essential services must have an essential services agreement in place before a strike can begin so that services can be delivered still (CECBA s.31, ASCBA s.3(1)).	No. Parties must agree on number when making essential services agreement, can get conciliation at any time (CECBA s.35). Board can settle any unresolved matters (CECBA s.36). In case of fire staff and hospital staff, no striking at all (HLDAA s.11).
Québec	Essential Services Council established (s.111.0.1). Right to strike may be altogether removed by government on recommendation of minister, where services with essential 'ees are insufficient, and there is a threat to public (s.111.0.24). Public services that may be deemed essential: health, municipality, telephone, transport, gas/electricity, water treatment, forest fire protection, waste removal, ambulance (s. 111.0.16). Specific percentages of employees that must be kept on in the event of a strike at residential care centre (90), hospital (80-90), local community service (60), child and family services (55) (s.111.10). Police and fire services subject to mediation and arbitration if no agreement (s.94).	If strike in public service might endanger the public health or safety (s.111.0.17).	Government, on recommendation of minister, can demand that essential service be maintained during strike (s.111.0.17).	No. Parties must agree on the amount of staff necessary – if no agreement, union submits a list which council assesses to see if sufficient (s.111.0.19). Council can, at any time, decide who must work (s.111.0.13).
New Brunswick	*Public Service Labour Relations Act, Essential Services in Nursing Homes Act*. Fire department and police subject to binding arbitration without work stoppage (s.80, leading to s.92(2)). No strikes or lockouts of municipal or rural firefighters or police (s.91(4)).	The whole or part of the services provided by the bargaining unit are essential in the interest of the health, safety. or security of the public (PSLRA s.43.1(1)).	Employer applies to board to designate service essential (PSLRA s.43.1(1)). Parties will be encouraged to agree on essential services, and if no agreement, board will decide (PSLRA s.43.1(3)(a)).	No. Parties must agree on number of essential employees to maintain basic services (PSLRA s.43.1(3)). If they fail, board will give them opportunity to make arguments and then decide (PSLRA s.43.1(5)).
Nova Scotia	Technically no essential services legislation, but no right to strike for police and firefighters, now interest arbitration (s.52A+AA). Also potentially aiming to force health services to arbitration.	N/A	Listed in Act	N/A: No striking at all for police or firefighters.

Appendix D-3 – Essential Services	Notes on Essential Services	Definition of Essential	Who Labels it Essential?	Can an Employer Determine Necessary Number of Employees?
Prince Edward Island	Technically no essential services legislation. Police department, fire department, ambulance services, person employed to answer or dispatch emergency calls for police, fire or ambulance services, health care, security police officers by the University of PEI, nursing home or community care facility, non-instructional school staff (s.41(5)). Cannot participate in work stoppages and will be subject to final and binding arbitration (s.41(9)).	Listed in the Act, not defined.	Essential services labelled by the Act (s.41(5)).	N/A: No striking whatsoever for these services (s.41(5)).
Newfoundland and Labrador	Where a majority of employees are considered essential, all will be designated essential (s.10(6)). *Interns and Residents Collective Bargaining Act* specifies these positions as essential (s.10). Back to work legislation for striking nurses: *Health and Community Services Resumption and Continuation Ac*t. Police officers prohibited from being part of a union, or striking as per *Royal Newfoundland Constabulary Act* (s.45).	Employees whose duties consist in whole or in part of duties the performance of which at a particular time or during a specified period of time is or may be necessary for the health, safety, or security of the public (PSCBA s.10(13)). Where the strike is or would be injurious to the health or safety of persons or a group or class of persons, or the security of the province, may declare that a state of emergency exists and forbid the strike of all employees in a unit specified in the resolution (PSCBA s.30).	Board, after application by employer (PSCBA s.10). House of Assembly decides state of emergency (PSCBA s.30). Interns' and residents' positions specified in IRCBA.	Yes (board rules regulations s.54). If union opposes, the board will decide upon hearing both sides (s.10(3)).
Northwest Territories	*Public Service Act* specifies that essential services as per services agreements must be provided to some extent (PSA s.41.02). Senior employees of power plants must keep working during strikes (PSA s.41.02).	Services that are necessary to ensure a continuation of minimal service to protect the health and safety of the public, to prevent destruction or serious deterioration of machinery, equipment or premises, or to prevent disruption of the administration of the courts, and includes services provided by the most senior employee at each power plant who has responsibility for the on-site operation of the plant (PSA s.41.02).	Essential services determined in the service agreement made by the parties – if the parties cannot reach agreement, an arbitrator comes in (PSA s.41.02(2,3)). Emergency determined by the Minister (PSA s.41.02(4)).	No. Parties must agree on number in services agreement (PSA s.41.02(3)). If no agreement, the difference will be settled by an arbitrator (PSA s.41.02(3)).
Nunavut	*Public Service Act* in essential services part identical to NWT PSA: specifies that essential services as per services agreements must be provided to some extent (PSA s.41.02). Senior employees of power plants must keep working during strikes (PSA s.41.02).	Services that are necessary to ensure a continuation of minimal service to protect the health and safety of the public, to prevent destruction or serious deterioration of machinery, equipment or premises, or to prevent disruption of the administration of the courts, and includes services provided by the most senior employee at each power plant who has responsibility for the on-site operation of the plant (PSA s.41.02).	Essential services determined in the service agreement made by the parties – if the parties cannot reach agreement, an arbitrator comes in (PSA s.41.02(2,3)). Emergency determined by the Minister (PSA s.41.02(4)).	No. Parties must agree on number in services agreement (PSA s.41.02(3)). If no agreement, the difference will be settled by an arbitrator (PSA s.41.02(3)).

Appendix E – Union Security	Closed Shop Permitted	Specifies Non-members Must Pay	Dues Check-off	Religious Objection
Federal	Nothing prohibits requiring membership of new 'ees, or granting preference of employment to members (s.68).	yes	Compulsory check-off will be included in each collective agreement where 'er must deduct dues from wages even of non-members, and give to union (s.70(1)).	s.70(2)
British Columbia	Nothing precludes preference of employer or that new 'ees must be members (s.15).	yes	'Er must honour 'ees written assignment of dues until retracted (s.16). Unfair labour practice if 'er refuses to agree that all 'ees will pay dues (s.6(3)(f)).	s.17
Alberta	Nothing prevents 'ees being required to be members in collective agreement (s.29(1)).	no	Deduction of union dues with written authorization from 'ee -'er must make the deductions and give the money to the union (s.27).	s.29(2)
Saskatchewan	Nothing prohibits requirement that new 'ees be members (s.11(e)). Upon request by union, clause must be included in collective agreement requiring membership for new 'ees (s.36).	no	Employer will deduct and pay to union dues authorized by 'ees written request and request by union rep. Failure to do so is unfair labour practice (s.32).	s.(5)(l)
Manitoba	Nothing prohibits collective agreement containing preference of employment to members, membership of new 'ees, or dues payment (s.23(2)).	yes	Compulsory check-off required in each collective agreement, where all 'ees (even non-members) will deduct and remit dues to the union monthly (or as in collective agreement), with the dues of non-members not including benefits they do not receive (s.76(1)).	s.77
Ontario	Nothing prohibits collective agreement containing preference of employment to members, membership of new 'ees, or dues payment (s.51(1)). First agreements may not include such a provision if less than 55% 'ees support union, unless union is certified, or other exceptions (s.51(4)).	yes	In collective agreements, must include provision that 'er will deduct dues of all 'ees (even non-members), and to remit them to union (s.47). Specific dues for non-members which don't include benefit fees they don't receive (s.47(2)).	s.52
Québec	Collective agreement is binding on all current and future 'ees contemplated by the certification (s.67).	yes	'Er must withhold dues from 'ees pay and remit to the union monthly (s.47), from both 'ees in bargaining unit and 'ees who are members. Special rand for logging and mining operations (s.8 and 9).	N/A
New Brunswick	Nothing prohibits collective agreement containing preference of employment to members, membership of new 'ees, or dues payment (s.8(1)).	no	By written authorization (specific form of authorization in (9(2)), 'er must honour the deduction and remittance at least once each month to the union (s.9).	N/A
Nova Scotia	Can have a clause requiring new 'ees be members and that preference of employment be given to members (s.59(1)).	no	Putting in a rand provision to deduct and pay over wages into collective agreement is not prohibited by the Act (s.60). When written request by 'ee (specific form as per 60(3)), employer shall honour the request (s.60(2)).	N/A
Prince Edward Island	Nothing in the Act prohibits collective agreement from including a provision giving job preference to union member, dues provisions, or requiring union membership to work there (s.9(9)).	no	If no provision in collective agreement on check-off, deduction made by individual 'ee signed request and remitted to the person referred to in request at least once a month (s.45).	N/A
Newfoundland and Labrador	Nothing stops parties from putting in collective agreement that job preference to union members or that membership is a condition of employment (s.31).	yes	All collective agreements shall include the requirement of payment and remittance of dues (s.87). 'Er has to honour wage assignment when request is made in specific form. 'Er must remit this money at least once a month. 'Er has no responsibility for fees or dues unless they owe the 'ee money (s.35).	N/A