

5.2 Legislation and regulations

The Canada Labour Code RSC 1985, c.L-2 (as amended), which consolidates previous legislation regulating industrial relations, occupational safety and health, and employment standards, applies only to federal undertakings and any other operations that Parliament declares to be for the general advantage of Canada or two or more provinces.

Because it imposes conditions on the rights of the employer and employee to enter into an employment contract, labour legislation is, generally speaking, law in relation to civil rights, and provincial legislatures are authorized to make laws in relation both to local works and to property and civil rights. Power to enact labour legislation has therefore become largely a provincial prerogative; a large body of legislation has been enacted affecting working hours, minimum wages, physical conditions of workplaces, apprenticeship and training, wage payment and wage collection, labour-management relations and worker compensation.

5.2.1 Federal labour legislation

Industrial relations. Part I of the Canada Labour Code regulates the conduct of labour-management relations in federal jurisdiction. The Federal Mediation and Conciliation Service (FMCS) of Labour Canada administers the dispute resolution provisions of the Canada Labour Code. It is responsible for the prevention or settlement of collective bargaining disputes and other types of industrial relations problems in industries and undertakings under federal jurisdiction.

The labour code provides that parties to a collective bargaining dispute must notify the Minister of Labour of any dispute over the negotiation of a collective agreement. The Minister has the option of appointing a conciliation officer, conciliation commissioner, or conciliation board to direct discussions. The legal right to strike or lockout is acquired only if a dispute is not settled when the conciliation process is completed.

If a dispute is not resolved in the first stages, the Minister may appoint a mediator, hoping to avert or resolve a strike or lockout. Both conciliation and mediation efforts rely on persuasion and exploration of available alternatives to assist the parties to resolve their differences. The process differs from arbitration in which a third party makes a binding decision. The Mediation and Conciliation Branch also investigates, on the Minister's behalf, requests for consent to refer bargaining-related complaints to the Canada Labour Relations Board.

The Minister has the authority to appoint industrial inquiry commissions to investigate and make recommendations on labour relations problems affecting an industry or a specific collective bargaining relationship.

The Canada Labour Relations Board determines applications for certification of trade unions as bargaining agents, and deals with successor rights in situations involving merger or amalgamation of unions or sale of businesses. It decides on applications for the termination of bargaining rights based on employee wishes or where bargaining rights were allegedly obtained by fraud. It hears and determines complaints of unfair labour practice against employers, trade unions, or individuals, ordering reinstatement, compensation, or other relief where appropriate. It deals with applications relating to technological change with power to order stay of implementation and opening of negotiations. Where cases are referred by the Minister of Labour, the board may impose the provisions for a first collective agreement. The board processes applications alleging unlawful strike or lockout and has authority to issue cease and desist orders. The board supervises union hiring hall rules and requires trade unions and employer organizations to provide annual financial statements to their members. On the application of a trade union it may order an employer or proprietor to grant union representatives access to employees in remote areas. The board deals with appeals against the decision of a safety officer in situations where imminent danger is alleged and determines complaints alleging that employees have been penalized for exercising rights.

Occupational safety and health. Part II of the Labour Code, promulgated in 1968 and amended in 1978 and 1984, was the first general legislation passed by Parliament to deal exclusively with occupational safety and health. It obliges employers and employees to perform their duties in a safe manner, authorizes regulations to deal with safety and health problems, and provides authority for the establishment of joint labour-management safety and health committees with specific powers. It gives workers the right to refuse to work where their health or safety could be endangered and provides for research into causes and prevention of accidents and for an extended safety education program. Federal public service employees are given the same protection. Since April 2, 1987, the application of the Code has been extended to federal public service employees.

Regulations govern coal mine safety, elevating devices, first aid, machine-guarding, noise control,