

# Labour Relations – 2023 Year in Review



## FEDERAL

### LAWS & ANNOUNCEMENTS

**Feb 17:** With negotiations at an impasse, the federal government commission recommended wage increases of 1.5% for 2021, 4.5% for 2022, and 3.0% for 2023, as well as enhanced allowances, shift premiums and family-related leave for all 4 Public Service Alliance of Canada (PSAC) bargaining units in the Core Public Administration.

**Apr 20:** If it passes, newly tabled [Bill C-330](#) will amend the *Canada Labour Code* to require an employer that's an airport authority (or provider of services to such authority that replaces a previous contractor) to observe the previous trade union and terms of employment applicable to the previous contractor's employees.

**Sep 19:** The federal government plans to table legislation by the end of the year that would ban the use of replacement workers at federally regulated workplaces during a strike or lockout. Today, the ESDC published a [What We Heard Report](#) summarizing the feedback received during public consultations floating the idea.

**Nov 9:** The federal government introduced legislation ([Bill C-58](#)) to ban the use of replacement workers during strikes or lockouts and increase potential penalties to up to \$100,000 per day. Exceptions would apply for certain emergencies and any work that employers and unions agree must continue during the job action.

### CASES

#### **Labour Relations: Senate Employees Don't Get Compensation for Phoenix Pay System Fiasco**

Remember all the glitches that the federal government encountered when it first implemented its new Phoenix payroll system a few years ago? The government ended up having to agree to a settlement with the unions paying a lump sum of \$2,500 to each affected government employee as compensation for the stress, aggravation, pain and suffering experienced they suffered as a result of that fiasco. However, the federal labour Board rejected a union proposal to include employees in the Building Operations Section and the Material Management and Logistics Section and Senate of Canada in on the lump sum deal, finding that those employees didn't suffer as much as others covered by the settlement. The federal appeals court said the Board's ruling was reasonable and refused to overturn it [[Public Service Alliance of Canada v. Canada \(Senate\)](#), 2023 FCA 111 (CanLII), May 24, 2023].

#### **Labour Relations: Air Canada Need Only Negotiate, Not Grant Wage Increase for Inflation**

The union filed a grievance against Air Canada for breaching an agreement to

negotiate and pay wage increases after the Consumer Price Index (CPI) increased by over 3% in 2021. Air Canada claimed that the union misinterpreted the agreement and what the company had to do in the event of a CPI of over 3%. Our only obligation was to negotiate, not grant an increase, it contended. The federal arbitrator agreed, noting that the agreement merely specified that wage increases would be “subject to” negotiation. Thus, while the company didn’t enter into the required negotiations, the union had no remedy for the breach [[Air Canada v CUPE](#), 2023 CanLII 58239 (CA LA), June 29, 2023].

## ALBERTA

### LAWS & ANNOUNCEMENTS

**Jun 22:** The Alberta Labour Relations Board [revised](#) its Rules of Procedure dealing with delegation powers (Rule 2), while also issuing a new mandatory form for reconsideration applications seeking to challenge a Board decision (Rule 4) and updating rules relating to the Director of Settlement’s powers (Rule 22) and Pre-hearing conferences (Rule 25).

**Nov 28:** [Bill 5](#), the *Public Sector Employer Amendment Act*, which would harmonize union and non-union pay structure across different public agencies is in Second Reading and will likely pass.

### CASES

**Labour Relations: City Can’t Make Transit Operators Pay for their Own Traffic Tickets**  
Edmonton issued a new policy requiring transit operators to pay the City for any red-light violations caught on camera via the Automated Traffic Enforcement (ATE) system they commit while operating a City vehicle. The City contended the policy was a legitimate safety measure; the union said it violated the disciplinary provisions set out in the collective agreement. The arbitrator agreed with the union. The Alberta Labour Relations Board found the arbitrator’s ruling reasonable and rejected the City’s appeal [[Edmonton \(City\) v Amalgamated Transit Union, Local No. 569](#), 2023 CanLII 16166 (AB LRB), March 6, 2023].

## BRITISH COLUMBIA

### LAWS & ANNOUNCEMENTS

**Feb 9:** Newly tabled [Bill 5](#) amends the *Public Service Labour Relations Act* to include practicing lawyers and articulated students as “employees” covered by the law unless they’re employed in the Criminal Justice Branch, the Office of Legislative Counsel or as a member of the staff of a court.

**Mar 21:** BC confirmed that the more than 75% of public servants that have tentative or ratified collective agreements will receive a 6.75% wage increase for the next 2 years—the guaranteed general wage increase of 5.5% and the maximum 1.25% cost-of-living adjustment.

**May 11:** Newly adopted [Bill 5](#) amends the BC *Public Service Labour Relations Act* to include practising lawyers and articulated students as “employees” covered by the law unless they’re employed in the Criminal Justice Branch, the Office of Legislative Counsel or as a member of the staff of a court.

**Aug 11:** The Midwives Association of British Columbia ratified a new 3-year collective agreement with the province. The deal, which is effective retroactively from April 20, 2022 until March 2025, includes a year 1 fee-for-service increase of 3.24%,

followed by a 6.75% increase in year 2 and a 2% increase in year 3.

## CASES

### **Labour Relations: OK for New Union to Organize Employees of Recently Decertified Union**

Right after the BC Labour Board canceled its bargaining rights, Local 40 swooped in to begin efforts to organize the employees that USW previously represented. The USW characterized the move as an illegal raid in violation of Section breach of Section 33(10) of the *Labour Relations Code*, which prevents another trade union from applying for certification for a period of time after a decertification is granted. The Board tossed the complaint, reasoning that the Section 33.10 ban applies to certification and doesn't say anything about organizing. The arbitrator found the Board ruling reasonable and nixed USW's appeal [[Sodexo Canada Limited v United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-1937](#), 2023 BCLRB 39 (CanLII), March 15, 2023].

### **Labour Relations: Union Not Entitled to Detailed Info on Employer's Suppliers**

At issue was a provision in a collective agreement requiring a hotel to use only services and products that "are manufactured, provided or produced under fair labour conditions." Rather than citing any particular service or product produced under unfair conditions, the union contended that the hotel violated the spirit of the duty by refusing to provide an itemized list of all its service and product providers along with an explanation of its methods for ensuring they complied with fair labour practices. The BC arbitrator tossed the grievance, noting that the clause didn't say anything about the hotel's having to make detailed disclosures about its suppliers or what process it had to follow to verify their labour practices. The arbitrator's role "is to interpret and apply collective agreement language and not to amend or add terms," it concluded [[Hyatt Regency Vancouver v Unite Here, Local 40](#), 2023 CanLII 71651 (BC LA), August 2, 2023].

## MANITOBA

### LAWS & ANNOUNCEMENTS

**Jul 20:** With doctors in short supply, Manitoba and Doctors Manitoba reached tentative agreement on a landmark new physician services deal providing for total funding increases of \$268 million over 4 years, including an innovative new blended funding model for family medicine. If it's ratified, the new deal will replace the current agreement that expired on March 31.

**Aug 27:** Liquor marts across the province reopened after 1,400 Manitoba General Employees Union employees ended their 6-week strike and returned to work. But labour peace was short lived as about 1,700 Manitoba Public Insurance workers walked off the job the same day. The sides appear far apart with MPI workers demanding up to 17% in total wage hikes and the government offering increases of only 2%.

## CASES

### **Labour Relations: Province Owes Union \$19.4 Million for Unconstitutional Law**

In 2017, Manitoba passed a law called the *Public Services Sustainability Act* (PSSA) banning wage increases for new provincial public sector employees in the first 2 years of employment and capping raises in years 3 and 4 at 0.75% and 1.00%, respectively. A year later, a court found the law to be an unconstitutional infringement on collective bargaining rights and awarded the University of Manitoba Faculty Association \$19.4 million in damages because of the harm it suffered during collective bargaining with the University. Had it not been for the PSSA, the sides

would have concluded a 4-year agreement and the union wouldn't have had to go on strike. The government appealed but Manitoba's top court, the Court of Appeal, has upheld the ruling and damage award [[Manitoba Federation of Labour et al v The Government of Manitoba](#), 2023 MBCA 65 (CanLII), July 13, 2023]

## NEW BRUNSWICK

### LAWS & ANNOUNCEMENTS

**Sep 13:** Members of the New Brunswick Teachers' Federation voted to accept the tentative agreement made with the province in July. Teachers have been working without a contract for over 2 years since the previous collective agreement expired. The government said it wouldn't release the terms of the new deal until the agreement is officially signed.

**Nov 25:** [Bill 26](#), which is through First Reading, would impose new limits on employers' rights to use replacement workers, whether paid or not, during legal strikes and lock-outs, including via forced redeployment of workers from other company facilities.

**Nov 3:** [Bill 3](#), which has passed Third Reading but not yet received Royal Assent, amends the *Industrial Relations Act* to recognize employees that apply in writing for trade union membership as constituting members. Under current New Brunswick law, employees are recognized as members only if they apply in writing and pay at least \$1.00 in initiation fees or union dues.

## NEWFOUNDLAND & LABRADOR

### LAWS & ANNOUNCEMENTS

**Jan 24:** To end the Teamsters' ambulance strike against Fewer's Group, Newfoundland passed [Bill 24](#) requiring employers and unions to negotiate and implement an agreement to ensure the continued operation of essential ambulance services during a strike or lockout. The Labour Relations Board may resolve the matter via binding arbitration if the sides can't reach an agreement.

**Jun 22:** Newfoundland and CUPE ratified 7 new collective agreements covering 3,500 government workers across the province. Key terms include a 2% annual wage increase for 4 years, one-time \$2,000 recognition bonus, increases to meal, vehicle, uniform and footwear allowances, increase in unpaid maternity, adoption and parental leave to 78 weeks and paid family violence leave.

**Jul 24:** Union members ratified a new 4-year collective agreement with Newfoundland covering 5,800 registered nurses across the province providing for a 2% per year wage increase, one-time recognition bonus payment of \$2,000, increases to travel allowances and paid family violence leave, among other things.

**Aug 21:** Newfoundland and the Royal Newfoundland Constabulary Association reached a tentative deal on a new collective agreement. Terms of the agreement were not disclosed pending ratification by the RNCA's approximately 400 members.

**Nov 17:** The government announced that it has reached tentative agreement with the Newfoundland and Labrador Teachers' Association on a new collective agreement covering 6,500 educators and school administrators across the province. The agreement still has to be ratified by members.

## CASES

### **Labour Relations: Failure to Object Immediately Dooms Union's Termination Grievance**

The union didn't say anything upon receiving notification of the employers' association's intent to terminate 14 janitorial workers employed on a nickel plant construction project on a particular date. It was only after the association went through with the planned terminations that the union objected. The association claimed that by keeping silent until then, the union had effectively waived its right to grieve the terminations. The Newfoundland arbitrator agreed, ruling that the union was "estopped" from pursuing the grievance. However, the court reversed. Now the province's top court, the Court of Appeal, has had the final word by determining that the original arbitration ruling was reasonable and that the court was wrong to overturn it [[Long Harbour Employers Association Inc. v Resource Development Trades Council of Newfoundland and Labrador](#), 2023 NLCA 24 (CanLII), August 15, 2023].

## NOVA SCOTIA

### LAWS & ANNOUNCEMENTS

**Mar 23:** Second Reading for [Bill 269](#), which would extend the *Construction Projects Labour Relations Act* requirement that construction contractors and unions enter into collective agreements to prevent work stoppages to large-scale green hydrogen production facilities.

**Apr 12:** Nova Scotia officially adopted [Bill 269](#) extending the *Construction Projects Labour Relations Act* requirement that construction contractors and unions enter into collective agreements to prevent work stoppages to large-scale green hydrogen production facilities.

**Jul 20:** The province reached agreement with Doctors Nova Scotia on a new 4-year academic funding agreement under which physicians paid on a fee-for-service basis will be eligible for a grant and receive an annual payment based on their number of patients.

## CASES

### **Labour Relations: Union Certification Voters' Indiscretions Don't Justify Excluding their Ballots**

During a union certification vote, one of the voters wore a sweatshirt with the union logo visibly emblazoned across the chest. Another voter showed her marked ballot to a union rep acting as an election officer and asked "is this right?" The ballot was marked spoiled but the voter was allowed to fill in a new one immediately after. The employer contended that these events violated the secret ballot rules and that neither of the ballots should count. The Nova Scotia arbitrator disagreed, finding that the violations were of only minor significance and that tribunals should refrain from letting voters express themselves especially when there's no evidence of coercion or intimidation [[Nova Scotia Government and General Employees Union v Autobus Transco Inc.](#), 2023 NSLB 17 (CanLII), March 9, 2023].

### **Labour Relations: High Court Reaffirms Denial of Union Certification**

The Labour Board denied certification to a construction workers union after determining that some cleaners weren't part of the bargaining unit because they didn't perform construction labourers work. The appeals court reversed and the case reached the Nova Scotia Court of Appeal, which restored the Board's ruling, saying it was reasonable and supported by the evidence and law [[Labourers International Union of North America, Local 615 v. Grafton Developments Inc.](#), 2023 NSCA 25 (CanLII), April 5, 2023].

## **Labour Relations: Teachers' Union Loses Bid to Strike Down Unconstitutional Bargaining Law**

In 2017, with union negotiations at an impasse, Nova Scotia passed Bill 75 unilaterally imposing a new 4-year collective agreement on teachers. The union claimed that the legislation violated teachers' constitutional rights. The court agreed, declaring the law unconstitutional but also not taking any actions to prevent the province from enforcing it. The union appealed the lack of remedy and the case reached the province's highest court, which upheld the lower court's ruling. The Charter allows but doesn't require courts to grant remedial action after finding that a law violates constitutional rights, the Court of Appeal explained. In this case, the lower court's decision not to grant a remedy after finding Bill 75 unconstitutional was appropriate based on the evidence [[Nova Scotia Teachers Union v. Nova Scotia \(Attorney General\)](#), 2023 NSCA 82 (CanLII), November 9, 2023].

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## **NUNAVUT**

### **LAWS & ANNOUNCEMENTS**

**Feb 24:** Second Reading for [Bill 20](#), which would amend the *Public Service Act* to resolve a discrepancy in the French and English versions of the law to clarify that the Minister may designate only a part of a day as a holiday.

**Mar 14:** The Nunavut Assembly passed [Bill 20](#), amending the *Public Service Act* to resolve a discrepancy in the French and English versions of the law to clarify that the Minister may designate only a part of a day as a holiday.

**Nov 10:** The GN and Nunavut Employees Union signed a new Memorandum of Understanding governing compensation for desperately needed accredited healthcare professionals in the territory through August 2025, including hourly wage premiums, recruitment and retention bonuses, student loan forgiveness and other incentives.

## **ONTARIO**

### **LAWS & ANNOUNCEMENTS**

**Jan 1:** High earning business or IT "consultants" are no longer covered by the ESA if: i. they provide services via a corporation or sole proprietorship; ii. there's a written agreement providing for at least \$60 per hour, not counting bonuses, expenses, benefits and allowances; and iii. the hourly wage covers all time worked under the agreement.

**Feb 1:** Effective today, employers must use the [OLRB's new standard document-naming protocol](#) when submitting documents to the Board. Specifically, each item must have a

title that describes what the document is, such as “Grievance letter,” and not just a string of numbers.

**Mar 30:** The Assembly tabled [Bill 90](#), the *Anti-Scab Labour Act*, to restore parts of the *Labour Relations Act* that ban employers from replacing employees on strike or lock-out with replacement workers except in specifically listed emergency situations.

**Sep 22:** Ontario was able to avoid school disruptions by reaching a tentative agreement with the Elementary Teachers’ Federation of Ontario (EFTO) Education Workers on the terms of a new central agreement.

**Nov 27:** The Ontario Assembly defeated anti-scab legislation ([Bill 90](#)) which would have restored provisions that make it illegal for employers from using replacement workers to replace employees during a legal strike or lock-out, except in specifically defined circumstances.

## CASES

### **Labour Relations: Court Finds Public Sector Wage Cap Law Unconstitutional**

In 2019, Ontario adopted Bill 124, a controversial piece of legislation limiting wage public sector worker wage increases to 1% per a year over a 3-year period. Unions claimed the law is unconstitutional and now the Ontario Superior Court of Justice has agreed. Specifically, the Court ruled that Bill 124 violated the right to freedom of association 800,000 public workers (under section 2(d) of the Charter) by taking away their right to engage in collective bargaining to negotiate their wages. **Result:** The Bill 124 wage caps are no longer in effect, although the government says it plans to appeal the ruling [[Ontario English Catholic Teachers Assoc. v. His Majesty](#), 2022, 2022 ONSC 6658 (CanLII), November 29, 2022].

### **Labour Relations: Using Non-Union Workers for Union Work Costs Contractor \$28,000**

A union organizer spots what he believes to be 3 non-union workers performing stucco work that the collective agreement assigned to the union at 2 different projects being run by the same masonry contractor, Liberty. He speaks to the workers and confirms that they’re non-union and were hired by Liberty; he takes photos of the workers, site and materials. Another union eyewitness confirms the organizer’s story. It’s an open and shut case and the Ontario arbitrator orders Liberty to pay \$28,000 for violating the collective agreement [[Bricklayers, Masons Independent Union of Canada, Local 1 v Liberty Alliance Stucco Wall Systems Ltd.](#), 2023 CanLII 3004 (ON LA), January 23, 2023].

### **Labour Relations: Higher Work Load Is OK When Teacher Agreed to Accept It Before Hiring**

The union wanted York University to reduce an Alternate Stream Faculty teacher’s load from 3.0 to 2.67 Full Course Equivalents (FCEs), the standard workload for that position. The University refused, noting that the teacher specifically agreed to take on a load of 3.0 FCEs before he was hired and that it had relied on that promise in hiring him for the position. The Ontario arbitrator sided with the University. The fact that the union was aware of the agreement between the University and teacher and didn’t speak out to oppose it constituted acceptance of the arrangement, the arbitrator concluded [[York University v York University Faculty Association](#), 2023 CanLII 8397 (ON LA), February 6, 2023].

### **Labour Relations: ER Visit Doesn’t Count as Hospital Admission for Injury Benefits Purposes**

After getting punched in the face by a passenger, a City of Mississauga bus driver goes to the hospital emergency room where he’s assessed, advised to take Tylenol for his wounds and sent home. The police confirm that the driver was assaulted. The

question is whether he's entitled to benefits for time missed as a result of the incident. At issue is the following language from the collective agreement providing for benefits to an employee that "is absent from work by reason of an on-duty serious physical assault, by a member of the public. . . confirmed by Police and *is admitted to a hospital*," (emphasis added). The City denied the driver benefits because he wasn't "admitted" and the Ontario arbitrator agreed. Although what happened to the driver was "terrible and life-altering," the fact is that he was never "admitted" to the hospital and thus didn't qualify for benefits. "Admitted" means being assigned a bed and/or room in the hospital for further observation and treatment, the arbitrator reasoned [[Amalgamated Transit Union Local 1572 v Mississauga \(City\)](#), 2023 CanLII 44247 (ON LA), May 23, 2023].

## QUÉBEC

### LAWS & ANNOUNCEMENTS

**Feb 15:** Newly tabled [Bill 10](#) would restrict the use of personnel placement agencies' services and independent labour in the health and social services sector to percentages and under specific conditions set out in the regulations. The Ministry of Health would carry out inspections and fine employers that fail to comply.

**Mar 23:** [Bill 10](#), which would restrict the use of personnel placement agencies' services and independent labour in the health and social services sector to percentages and under specific conditions set out in the regulations, is now in Committee. The Ministry of Health would carry out inspections and fine employers that fail to comply.

**Apr 20:** [Bill 10](#), which restricts the use of personnel placement agencies' services and independent labour in the health and social services sector to percentages and under specific conditions set out in the regulations, received Royal Assent. The Ministry of Health will carry out inspections and fine employers that fail to comply.

### CASES

#### **Labour Relations: Arbitrator Says It Has No Jurisdiction to Hear OHS Case**

A union filed a labour grievance against a packaging company for allegedly failing to provide workers the safety precautions for confined space work required by OHS laws. This is an OHS issue, not a labour grievance, the company argued; it's a labour grievance because the OHS violations also violate the collective agreement, the union countered. The Québec arbitrator sided with the employer, finding that it had no jurisdiction to hear what was essentially a case about what the OHS confined space rules did and didn't require [[Union of Service Employees, Local 800 c Westrock Company of Canada Corp.](#), 2022 CanLII 118602 (QC SAT), December 14, 2022].

## YUKON TERRITORY

### LAWS & ANNOUNCEMENTS

**May 26:** After nearly 18 months of deadlock, the government reached a tentative agreement with the Public Service Alliance of Canada/Yukon Employees' Union on the terms of a new collective agreement covering the union's approximately 3,515 members. Terms won't be announced until the agreement is officially ratified.

**Sep 21:** Yukon avoided a potential government shutdown by issuing a special warrant authorizing up to \$15.3 million in additional government spending while the Assembly decides on supplemental funding to authorize for the current fiscal year at its upcoming fall session.