Right of association, collective bargaining, pressure tactics, strikes, and legal issues

EVERYTHING YOU NEED TO KNOW

Bargaining Guide

Centrale des syndicats du Québec

lacsq.org

TABLE OF CONTENTS

Definitions 1

Introduction 2

1. Right of association 3

2. Collective bargaining 8

2.1 Public and parapublic sectors 10

2.2 Private sector 13

2.3 ECP sector 14

3. Collective bargaining obligations and remedies 15

3.1 Mediation under Bill 37 – Public and parapublic sectors 16

3.2 Conciliation under the *Code* 17

3.3 Mediation under the *Act respecting representation* 17

4. Pressure tactics 20

4.1 Picketing 21

4.2 Visibility actions 25

4.3 Other pressure tactics 28

4.3.1 Demonstrations 28

4.3.2 Civil disobedience 29

4.3.3 Flash mobs 29

4.3.4 Occupation of property 29

4.3.5 Work slowdowns 29

5. Strikes 31

5.1 Procedures for calling a strike 34

5.2 Strikebreakers or scabs 36

5.3 Effects of a legal strike on workers 38

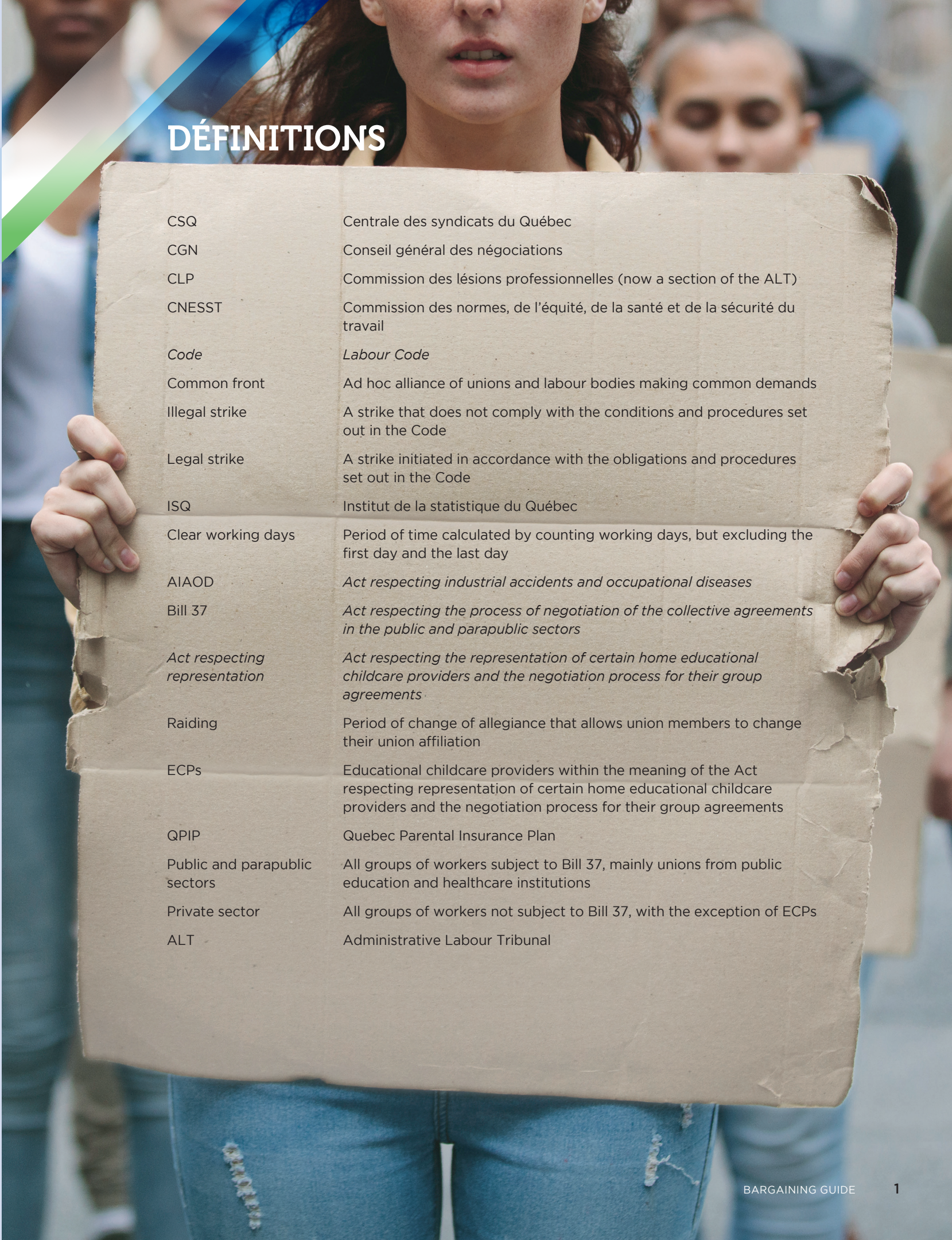
5.4 Lockouts 42

6. Essential services 43

7. Raiding 47

Appendix 1 50

Appendix 2 51



DÉFINITIONS

CSQ	Centrale des syndicats du Québec
CGN	Conseil général des négociations
CLP	Commission des lésions professionnelles (now a section of the ALT)
CNESST	Commission des normes, de l'équité, de la santé et de la sécurité du travail
Code	*Labour Code*
Common front	Ad hoc alliance of unions and labour bodies making common demands
Illegal strike	A strike that does not comply with the conditions and procedures set out in the Code
Legal strike	A strike initiated in accordance with the obligations and procedures set out in the Code
ISQ	Institut de la statistique du Québec
Clear working days	Period of time calculated by counting working days, but excluding the first day and the last day
AIAOD	*Act respecting industrial accidents and occupational diseases*
Bill 37	*Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors*
Act respecting representation	*Act respecting the representation of certain home educational childcare providers and the negotiation process for their group agreements*
Raiding	Period of change of allegiance that allows union members to change their union affiliation
ECPs	Educational childcare providers within the meaning of the Act respecting representation of certain home educational childcare providers and the negotiation process for their group agreements
QPIP	Quebec Parental Insurance Plan
Public and parapublic sectors	All groups of workers subject to Bill 37, mainly unions from public education and healthcare institutions
Private sector	All groups of workers not subject to Bill 37, with the exception of ECPs
ALT	Administrative Labour Tribunal

INTRODUCTION

Collective bargaining of working conditions is one of the most essential aspects of the right of association and unionism. It allows workers to put pressure on their employer to negotiate working conditions that suit them rather than having conditions imposed unilaterally, without consultation.

This bargaining guide is therefore a summary of the key elements that will be important to consider when preparing and conducting the bargaining process.

Topics include:

- The right of association and how it has evolved;
- The bargaining process in sectors that CSQ represents;
- The parties' obligations;
- How we can use pressure tactics to increase our bargaining power
- What you need to know about the right to strike, which is a constitutionally entrenched right;
- The concept of essential services;
- Raiding.

1 RIGHT OF ASSOCIATION

1 RIGHT OF ASSOCIATION

What are the key decisions that have marked a turning point in terms of the right of association, the right to collective bargaining, and the right to strike?

First and foremost, three recent key decisions (the 2015 trilogy) represent an important step in the evolution of the right of association, the right to collective bargaining, and the right to strike:

- *Mounted Police Association of Ontario v. Canada (Attorney General), 2015*;
- *Meredith v. Canada (Attorney General)*;
- *Saskatchewan Federation of Labour v. Saskatchewan, 2015*.

The decision in British Columbia Teachers' Federation v. British Columbia, 2016, should also be included.

These decisions recognize the following principles:

- Confirmation of the right of association and the right to collective bargaining;
- Constitutional protection of the right to strike;
- The existence of an imbalance in labour relations between the employer and staff;
- Demonstration of substantial interference with the bargaining process;
- A restorative approach to labour relations.

How have these rights evolved and do they have limits?

The Supreme Court has gradually recognized and confirmed these principles through various decisions since 1987.

However, we must also be aware that we had a long way to come and that the case law that recognizes and protects workers' collective rights, although confirmed over a long period of time, is not set in stone. There is still dissent among conservative judges, but the Supreme Court is taking the lead and gradually driving lower court decisions in that direction.

It is important to understand that this line of case law was developed in response to strong attacks on the right of association, the right to collective bargaining, and the right to strike.

What specifically are the right of association and the right to collective bargaining?

The first decision of the 2015 Supreme Court trilogy, *Mounted Police Association of Ontario v. Canada (Attorney General)*, was the result of a challenge by private associations of members of the Royal Canadian Mounted Police (RCMP) to the constitutionality of a law excluding them from the Ontario public service labour relations regime. The Ontario legislation imposed a non-union system on them. This forced RCMP members to bargain within a system that did not guarantee collective rights recognized by other associations.

The Supreme Court held that freedom of association is protected by Section 2(d) of the *Constitution Act, 1982* (the *Canadian Charter of Rights and Freedoms*), which guarantees the following rights:

- The right to join with others and form associations;
- The right to join with others in the pursuit of other constitutional rights, such as the right to bargain;
- The right to join with others to meet on more equal terms the power and strength of other groups or entities.

Ontario's legislation therefore denied RCMP members this freedom of choice.

It should be noted, however, that the right to collective bargaining guarantees a process rather than an outcome or a particular model of labour relations. No legislation should impose a process that substantially interferes with employees' right to work together to truly achieve collective workplace goals.

The Court also noted that the freedom of choice and the independence that allow associations to determine and achieve their collective interests are not absolute. They are limited by the context of the collective bargaining. The analysis required to judge this must therefore be contextual. In short, it is done on a case-by-case basis.

The second decision, *Meredith v. Canada (Attorney General)*, 2015, also involved the RCMP. After granting salary increases of almost 9% over three years (2008–2010) and other increases in supplementary allowances, the government reduced them to 4.5%, aligning them with those of the public service through the *Expenditure Restraint Act*.

On the basis of the previous decision, the majority of the judges held that this law did not substantially interfere with the right or freedom of association in the outcome of bargaining. The concrete results of the bargaining were not decisive in terms of the right of association and the right to collective bargaining.

Photo Archives CSQ

Everything was analyzed based on the context[1], good faith, and substantial interference with the process. In addition, the government's wage restrictions were consistent with the prevailing rate established in agreements with other public sector groups and did not prevent consultation on other past or future wage issues. The *Expenditure Restraint Act* allowed the consultation process to continue.

1 Each case must be examined in light of substantial interference with the right to this process.

1 RIGHT OF ASSOCIATION

What about the right to strike?

The third decision, *Saskatchewan Federation of Labour v. Saskatchewan*, 2015, followed the government's passage of two draconian bills in May 2008. One of the bills prohibited the right to strike in essential services. The other amended the union certification process by increasing the required percentage of employee support, reducing the period for obtaining such support in writing, and changing the rules for employer-employee communications.

For the Supreme Court:

> The right to strike is an essential part of a meaningful collective bargaining process [...]. The right to strike is not merely derivative of collective bargaining, it is an indispensable component of that right. [...] the ability to engage in the collective withdrawal of services is a necessary component of the process through which workers can continue to participate meaningfully in the pursuit of their collective workplace goals. (*Saskatchewan Federation of Labour v. Saskatchewan*, 2015).

This right promotes equality in the bargaining process. It does not guarantee the outcome of the bargaining. However, it does allow workers to bargain on an equal footing with respect to their working conditions, and Canada's international human rights obligations include the protection of the right to strike as part of a meaningful bargaining process.

The repercussions of this decision were quickly felt in the union movement, with a Superior Court decision that applied the Supreme Court's teachings in a challenge by the union representing lawyers employed by the Government of Quebec. Essentially, in *Les avocats et notaires de l'État québécois c. Procureure générale du Québec*, 2019, the Superior Court concluded that the Government of Quebec cannot unilaterally withdraw the right to strike from a group of employees without establishing a real mechanism for settling disputes at the bargaining table. The Superior Court therefore struck down the special legislation that forced the lawyers to end their strike and unilaterally imposed the bargaining unit's working conditions. Subsequently, the Court of Appeal (*Procureur général du Québec v. Avocats et notaires de l'État québécois*, 2021) upheld the decision, and the Supreme Court, to whom the matter was referred, refused to hear the government's appeal, thereby sealing the issue.

What does the decision involving the British Columbia Teachers' Federation and the Government of British Columbia add, and how does it remind us of the key aspects of good faith bargaining?

In the Supreme Court decision involving the British Columbia Teachers' Federation and the Government of British Columbia, the court ordered from the bench that the working conditions that had been unilaterally repealed by the province be reintroduced into the collective agreement, including the rules governing the formation of student groups[2].

2 It must be kept in mind that the province's repeal of negotiated working conditions followed an earlier law that was declared unconstitutional by the Supreme Court!

On this point, the trial court concluded that the province had negotiated on false premises and had refused to consider alternatives to its negotiating position. The court therefore found that there was bad faith bargaining on the part of management. Justice Donald of the Court of Appeal agreed with the trial court's arguments, and the Supreme Court overturned the decision of the British Columbia Court of Appeal, endorsing Justice Donald's arguments.

Justice Donald also analyzed *Health Services and Support v. British Columbia*, 2007, and *Ontario (Attorney General) v. Fraser*, 2011, in relation to good faith bargaining.

Good faith bargaining is described as requiring the parties to meet and engage in meaningful dialogue in which their respective positions are explained and considered by the other party. The parties' positions must be flexible and not uncompromising, and the parties must make a reasonable effort to find common ground. To determine whether the government has negotiated in good faith, it will also sometimes be necessary to consider the basis of its position at the bargaining table.

Given the above analysis, can we say that a government that puts forward a regime of austerity goes against the right of association, the right to collective bargaining, and the right to strike?

The Canadian and provincial governments can no longer ignore the obligations and rights that flow from the *Charter*, rights enshrined by the highest court in the land.

However, the constitutional right to strike does not prevent governments from regulating the right to strike. It requires them to allow it to take place, to put in place dispute settlement mechanisms, and to implement means to promote an agreement.

The constitutional right to collective bargaining does not prevent governments from enacting working conditions, provided that the principles established by case law and mentioned above are respected. However, it requires management to come to meetings, sit at the table, present proposals, and try to reach a settlement. In short, the decisions of the highest court require it to bargain in good faith. Union organizations have the same obligations. Neither management nor the union are required to reach an agreement.

Moreover, the constitutional right of association requires governments to respect the freedom of workers to join associations without interference in their choice of association.

An austere government that makes a management offer annihilating hard-won rights is certainly an anti-union government that mobilizes us and deserves to be denounced and condemned. A government that doesn't respond to union demands certainly shows contempt that arouses our indignation. However, it does not necessarily violate the principles set out by the Supreme Court. No decision has been made to that effect.

In conclusion, decisions regarding the right to association and collective bargaining and the right to strike must be analyzed based on the following five factors:

- Substantial interference;
- Good faith;
- Contextual analysis;
- The bargaining process rather than the outcome;
- Bargaining on a level playing field.

2 COLLECTIVE BARGAINING

As the Supreme Court noted in Health Services and Support v. British Columbia, 2007, collective bargaining is the process by which workers express their opinions through representatives of their choice, not those selected, appointed, or authorized by employers. More than that, it is a process whereby an employer and its employees can negotiate to reach an agreement on working conditions, provided that their respective bargaining power is relatively equal.

Collective bargaining is governed primarily by the *Labour Code*, which sets out the obligations of the parties, the procedures to be followed, and the possible remedies in the event of difficulties. However, the general framework for bargaining will differ depending on whether it is a public or parapublic sector union, a private sector union, or a union representing educational childcare providers (ECPs).

What happens when a collective agreement expires during bargaining?

In the private sector, until negotiations result in a new collective agreement, the *Code* specifies that the terms and conditions of employment in the expiring collective agreement remain in effect until the right to strike or lockout is exercised (Quebec, 2020a: s. 59, para. 2). However, the *Code* also specifies that the parties may agree in a collective agreement that it will continue to have effect until a new agreement is signed (Quebec, 2020a: s. 59, para. 3). In practice, all collective agreements provide for such a stipulation.

In the public and parapublic sectors, the *Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors* (Bill 37) says that the expiring collective agreement will continue to apply until a new one comes into force.

For ECPs, the *Act respecting representation* says that a group agreement continues to apply after its expiry date until a new agreement comes into force (Quebec, 2020c: s. 44).

2 COLLECTIVE BARGAINING

2.1 PUBLIC AND PARAPUBLIC SECTORS

What is the bargaining framework for these sectors?

The bargaining framework for the public and parapublic sectors has two distinct but intrinsically linked sources: the *Code* and Bill 37.

The *Code* sets out the general rules for bargaining between employer and union, as well as the rights and obligations of each party. The *Code* also provides for modulation of certain rules in this sector in sections 111.1 et seq., as well as the possibility of maintaining essential services in healthcare facilities.

Bill 37 provides for the details of the bargaining process by laying down certain rules. This system was established taking into account the fact that several hundred bargaining units would be negotiating with the government at the same time. Bill 37 also specifies that certain clauses are negotiated at the national level (i.e., covering all of Quebec), (Quebec, 2020d: s. 44 et seq.) while others are negotiated at the local level (Quebec, 2020d: s. 57 et seq.). This law should be updated to take into account the most recent legal developments on the bargaining rights of unions.

What matters are negotiated at the national level and at the local level?

Bill 37 specifies that matters negotiated at the national level cover everything contained in a collective agreement except matters defined as subject to negotiation at the local level:

> **Section 44**. The clauses negotiated and agreed at the national level shall deal with all the matters contained in the collective agreement, except those matters that are defined as being the subject of clauses negotiated and agreed at the local or regional level under sections 57 and 58.
>
> They may also provide for modes of discussion between the parties for the duration of the collective agreement for the purpose of resolving difficulties.

Moreover, salary and wage scales are a matter to be negotiated at the national level for all groups:

> **Section 52**. The clauses of the collective agreement which deal with salaries and salary scales shall be negotiated and agreed at the national level for a period ending, at the latest, on the last day of the year in the course of which an agreement concerning such clauses has been reached at the national level.
>
> For each of the two years following the year for which the clauses are applicable, the salaries and salary scales shall be determined in accordance with the provisions which follow.

Matters that are negotiated at the local level will vary depending on the group of workers and the federation involved. For example, support and professional staff at school service centres can negotiate matters delegated to them by parties at the national level, whereas teachers and certain other occupations may negotiate matters set out in Schedule A or A.1 of Bill 37. Some arrangements at the local level are also possible for matters negotiated at the national level (Quebec, 2020d: s. 70 and 70.1). For more details, please see the schedules to Bill 37.

Bargaining at the national level

Who bargains at the national level?

Bill 37 determines that unions that are part of a group, such as a federation or central labour body, must negotiate through a bargaining agent appointed by the group:

> **Section 26**. Every association of employees that belongs to a group of associations of employees shall negotiate and agree on the clauses contemplated in section 44 through a bargaining agent appointed by that group.
>
> A group of associations of employees includes a union, federation, confederation, legal person, labour body or other organization which an association of employees representing persons employed by a school service centre, a school board, a college or an institution joins, or to which it belongs or is affiliated.

For unions affiliated with CSQ, federations will be represented by a front-line bargaining agent. However, CSQ will also act as a bargaining agent on certain matters.

Since certain common topics are dealt with for all CSQ federations, the affiliates meeting in federations, through Conseil général des négociations (CGN), define (Centrale des syndicats du Québec, 2018) cross-sectoral matters that fall under the jurisdiction of CSQ (or, where applicable, of the common front). In fact, it is CGN that determines at each of the negotiations the so-called cross-sectoral matters that will be negotiated by CSQ. In general, these topics include wages, pensions, regional disparities, and parental rights. All other national matters will be dealt with at the sectoral level, i.e., at the federative level.

Bill 37 also sets out who the interlocutors are for management. These are the management negotiating committees, commonly referred to as CPNs. Each network has its own CPN, and there are separate CPNs for the Cree and Kativik school boards. CPNs are made up of representatives of the ministries concerned (education, higher education, or health) as well as representatives of the management groups. CPNs determine, organize, direct, and coordinate management negotiations with employee association groups. Conseil du Trésor also plays a role in public sector bargaining. It grants mandates to various CPNs on matters that it deems to be of government interest and may also delegate observers to the various bargaining tables. However, Conseil du trésor seems to be taking on more and more of a role in public sector bargaining at the expense of CPNs.

2 COLLECTIVE BARGAINING

In April 2019, a few months before the start of the 2020 round of negotiations, the government issued an order in council tasking the president of Conseil du trésor with developing a comprehensive strategy for collective bargaining with the government and coordinating collective bargaining across Quebec to ensure the consistency and organization of negotiations (Quebec, 2019).
Conseil du trésor is therefore playing a greater role not only in public and parapublic sector bargaining but also with respect to educational childcare and home educational childcare.

When does the bargaining period begin?

The bargaining period begins on the 180th day before a collective agreement expires (Quebec, 2020a: s. 111.7). As of that date, labour organizations have a legal filing deadline.

How long does the union have to file its demands?

The *Code* specifies that the union is the initiator of the process. The union is the party that plays its first card by filing its demands. It must do so no later than 150 days before the expiration date of a collective agreement (Quebec, 2020a: s. 111.8, para. 1).

The *Code* states that a public and parapublic sector union must, through its bargaining agent, present in writing to the other party not later than 150 days before the expiration date of a collective agreement, its proposals on all matters to be negotiated at the national level except salaries and salary scales. These are called the union filing, containing prescriptive elements, or the **prescriptive filing**.

A union therefore has a 30-day strategic window, between the 180th and 150th days prior to the expiration of the collective agreement, to file its demands.

How long does management have to respond to a union's demands?

The *Code* provides that within 60 days of receiving a union's demands, management must present its own proposals to the union, with the exception of salaries and salary scales (Quebec, 2020a: s. 111.8, para. 3).

What about salary proposals?

Institut de la statistique du Québec (ISQ) is required by law (Quebec, 2020b: s. 4) to publish a report on changes in total compensation for government employees by November 30 of each year. The *Code* provides that the union and management must submit their proposals on salaries and salary scales within 30 days of the date of publication of this report. This is called the **salary filing**.

What should prescriptive and salary filings include?

Filings must include all union proposals. Sometimes proposals will be broad so as not to omit anything, since it is very difficult, if not impossible, to introduce a new demand during negotiations.

Are the deadlines mandatory?

Negotiating deadlines are not mandatory, unlike some other deadlines in the Code, such as those for raiding or strike action.

However, given the context of good faith and due diligence imposed on the parties, compliance with these deadlines by the unions puts management in a situation where it is in its best interest to stick to them as closely as possible. In doing so, management will avoid a situation where the union accuses it of bad faith and failure to act diligently.

Furthermore, we must always remember that good faith is assumed. The mere fact that a party is past a deadline by a few days will not automatically be considered bad faith or a lack of diligence. However, if the failure to meet deadlines is repetitive and tends to undermine the bargaining process, it could be grounds for recourse for bargaining in bad faith.

How do the parties deal with these deadlines in practice?

In the past, deadlines have often been applied flexibly on both sides. Because bargaining is complex and subject to many laws, unions sometimes proceed strategically. For example for some time, federations and labour bodies have been sending their salary proposals at the same time as other demands, without waiting for the ISQ report.

2.2 PRIVATE SECTOR

When can bargaining begin?

Bargaining may officially begin as soon as either party gives the other party at least eight days' notice of a bargaining meeting (called a notice to bargain), specifying the date, time, and place of the meeting. This notice may be sent within 90 days before the expiration date of the collective agreement, unless the collective agreement provides for another period of time (Quebec, 2020a: s. 52).3 However, nothing prevents the parties from initiating informal proceedings before that date.

If this notice is not sent as required, the *Code* specifies that it will be deemed to have been sent 30 days after the expiration date of the collective agreement (Quebec, 2020a: s. 52.2). In the case of a first collective agreement, the union may send the notice to bargain at any time after the union is certified. Since each negotiation is different, it is up to the union to determine, based on its strategy, when it is best for it to send its notice to the employer once it is a position to do so.

What happens if the notice to bargain is sent prematurely?

A notice sent prematurely is not invalid (*Syndicat des travailleurs et travailleuses du Hilton Québec [CSN] c. Union des municipalités régionales de comté et des municipalités locales du Québec inc.*, 1992), but the starting point for other time limits provided for in the Code, including time limits for acquiring the right to strike, will be the 90th day before the expiration of the collective agreement.

What are the formal requirements for the notice to bargain?

The notice to bargain must be in writing and sent by fax, courier, registered mail, or bailiff (Quebec, 2020a: s. 52.1; Quebec, 2020f: s. 5). Proof of the notice and the date of its receipt are important as they mark the starting point for calculating the period for acquiring the right to strike.

3 Collective agreements rarely contain a different time limit..

2 COLLECTIVE BARGAINING

2.3 ECP SECTOR

What is the bargaining framework for this sector?

The ECP bargaining regime is a separate regime that is subject primarily to the Act respecting representation. It is based on the *Code* but reflects the uniqueness of this group of union members by recognizing their status as self-employed workers who receive a government subsidy for the operation of their educational service rather than a salary. It should also be noted that the terms related to the exercise of their right of association differ from those of traditional labour groups. The term group agreement is used rather than collective agreement, concerted action rather than strike, and a disagreement rather than a grievance.

When does the bargaining period begin?

Section 36 of the Act specifies that bargaining begins when either party gives the other party at least 30 days' notice of a meeting to begin bargaining. Notice may be sent within 90 days of the expiration of the group agreement.

How does bargaining work for a group agreement?

The Act does not set out a very formal framework, so the parties agree to a bargaining protocol after the first notice is sent. The group agreement to be reached must include the subjects listed in Section 31 of the Act:

1e The subsidy granted;

2e The terms and conditions applicable to days of leave;

3e The procedure for settling disagreements;

4e The setting up of committees;

5e The circumstances giving rise to and terms and conditions applicable to the indemnification of a home educational childcare provider for losses sustained as a result of a suspension, revocation, or non-renewal of recognition.

A group agreement may not deal with a rule under the *Educational Childcare Act* or the contract with the parent (Quebec, 2020c: s. 33).

3 COLLECTIVE BARGAINING OBLIGATIONS AND REMEDIES

3 COLLECTIVE BARGAINING OBLIGATIONS AND REMEDIES

What are a union's obligations regarding voting on a collective agreement?

A collective or group agreement may not be signed unless it has been authorized by secret ballot decided by a majority vote of those present at the meeting who exercise their right to vote (Quebec, 2020a: s. 20.3; Quebec, 2020c: s. 45). Voting members are those who are members of the certified association and are included in the bargaining unit.

The bargaining committee is not required to vote on every offer from the employer. It is up to the committee to determine when to submit offers to its members based on its strategy. In addition to submitting the agreements in principle it has concluded, the committee may, for example, submit offers to reaffirm its negotiating mandate or refuse to put to a vote any offers that it considers too weak.

An employer could also apply to the Administrative Labour Tribunal (ALT) for an order (Quebec, 2020a: s. 58.2) to hold a vote on its offers. The ALT could agree and hold a vote if it considers this to be conducive to the negotiation or conclusion of a collective agreement. However, this request cannot be renewed during the same negotiation.

How are mediation and conciliation processes monitored during negotiations?

Bill 37, the *Code*, and the *Act respecting representation* provide a framework for mediation for some and conciliation for others. Mediation and conciliation are related in that they are two processes involving a neutral person with the objective of resolving a dispute. However, in the case of collective bargaining, mediation is only for public and parapublic sector groups and ECPs, whereas conciliation is available to all groups covered by the *Code*.

3.1 MEDIATION UNDER BILL 37 – PUBLIC AND PARAPUBLIC SECTORS

Bill 37 provides for a mediation mechanism that can be initiated at the request of either party. The Minister of Labour then appoints a mediator who will attempt to settle a dispute on matters at the national level, except for salary issues (Quebec, 2020d: s. 46). The term of the mediator's mandate is, in principle, 60 days, during which they must help the parties reach an agreement (Quebec, 2020d: s. 47). This period may be extended with the agreement of both parties. At the end of their mandate, the mediator must provide the parties with a report containing their recommendations.

Bill 37 also specifies that the parties may use a different mediation process, such as a mediation board or public interest group (Quebec, 2020d: s. 48). If no agreement can be reached, the report resulting from the mediation process must be made public. The parties may also prepare a joint report specifying the reason for their dispute and make it public (Quebec, 2020d: s. 49).

In all cases, notice must be given to the Minister of Labour on the day the report is made public. The Minister will then send an acknowledgement of receipt to the parties (Quebec, 2020d: s. 50).

3.2 CONCILIATION UNDER THE *CODE*

The conciliation process is available to all groups of employees covered by the *Code*, both in the public and parapublic sectors and in the private sector, with the exception of ECPs. This process is triggered by a request to the Minister of Labour from either party, regardless of the status of the negotiation. The Minister then designates a conciliator, and the parties are required to attend all meetings called by the conciliator (Quebec, 2020a: ss. 54 and 56). The Minister may also designate a conciliator *ex officio* and must inform the parties of such appointment (Quebec, 2020a: s. 55). The conciliation officer reports to the Minister at the Minister's request (Quebec, 2020a: s. 57).

3.3 MEDIATION UNDER THE *ACT RESPECTING REPRESENTATION*

The ECP mediation process is very similar to that under Bill 37. At the request of one of the parties, the Minister of Labour appoints a mediator (Quebec, 2020c: s. 38). However, the Minister of Labour may not appoint a mediator ex officio, simply because the employer is none other than the Minister of Families. The mediator attempts to bring the parties to an agreement. The parties must attend all meetings to which they are convened (Quebec, 2020c: s. 39). The mediator has 60 days to bring the parties to an agreement. This period may be extended (Quebec, 2020c: s. 40). If no agreement is reached, the mediator submits a report to the parties and the Minister of Labour, who must then make it public (Quebec, 2020c: s. 41).

Can mediation and conciliation be used in succession in the public and parapublic sectors?

Neither Bill 37 nor the *Code* precludes the use of both.

What about the obligation to negotiate in good faith?

Both the employer and the union have an obligation to bargain diligently and in good faith (Quebec, 2020a: s. 53). One of the fundamental elements of the duty to bargain in good faith is the obligation to hold meetings and devote time to the process *(Health Services and Support v. British Columbia*, 2007). However, that does not mean there is an obligation to reach an agreement. A party will therefore be at fault if it refuses to sit down at the bargaining table and seriously consider the other party's arguments or explain its own positions, or if it manoeuvres in such a way as to avoid reaching an agreement.

It will not be in default if it negotiates hard or maintains firm positions (*Association des juristes de l'État v. Quebec*, 2012). The parties remain free to adopt a "tough position in the hope and expectation of being able to force the other side to agree to one's terms" (*Canadian Union of Public Employees v. Labour Relations Board (N.S.) et al.*, 1983). A party may, of course, also decide to break off negotiations if it considers further discussions would be futile. To reach this point, it is necessary to have had a real dialogue beforehand. Furthermore, an employer cannot refuse to negotiate with the union because of an internal dispute within its management group (*Fédération des professionnels et professionnels de l'éducation du Québec (CSQ) et Comité patronal de négociation de la Commission scolaire Kativik*, 2016).

The Code provides for both criminal and civil remedies under the ALT's order-making powers to force the employer to negotiate (Quebec, 2020a: s. 141).

3 COLLECTIVE BARGAINING OBLIGATIONS AND REMEDIES

Can an employer negotiate directly or individually with employees?

An employer cannot negotiate on a matter affecting working conditions directly with its employees, since negotiating working conditions is central to the union's mandate. For example, it cannot communicate an offer directly to its employees without presenting it to the union or negotiate an individual salary agreement with an employee without the union's agreement. Nor may an employer attempt to discredit the union to its members during negotiations. Furthermore, since it is the union that plays the role of bargaining agent, an employer cannot conduct a survey of employees to find out about the collective issues that concern them (*Syndicat des employé-e-s d'Urgences-santé [CSN] and Corporation d'Urgences-santé*, 2020).

However, not all of an employer's communications with its employees necessarily constitute interference in union affairs. It is the context, content, and consequences of those communications that make it possible to draw a fine line between the exercise of freedom of expression and the prohibition contained in the Code (*Syndicat canadien de la fonction publique, section locale 4290 c. Sainte Béatrix (Municipalité),* 2004; *Syndicat des professeurs et professeures de l'Université du Québec à Montréal c. Université du Québec à Montréal*, 2022). The employer must be neutral and not undermine the union in its communications. The ALT is particularly harsh on employers during the bargaining stage.

If an employer attempts to negotiate directly with employees or communicates with them in order to undermine the union, such actions may be qualified as hindrances. Even if a hindrance is minor, it is still illegal (*Syndicat de la santé et des services sociaux d'Arthabaska-Érable [CSN] c. Centre de santé et de services sociaux d'Arthabaska-Érable*, 2006). The *Code* provides remedies to stop hindrances (Quebec, 2020a: ss. 12 and 143).

In 2021, Minister of Health Christian Dubé violently attacked the healthcare unions during a press conference on the health emergency. The Minister publicly accused them of favouring union stewards and did not hesitate to speak directly to members to criticize union work. The ALT, which received a complaint of hindrance that included the Minister's comments, concluded that it was indeed a hindrance to union activities contrary to the *Code*:

> [236] In this case, the Minister's disparaging remarks were unequivocally hindrances to union action. Publicly displaying negative views about the associations by raising only the issue of union leaves reveals an intent to interfere with union action that cannot be protected by the immunity claimed for acts done in good faith.
>
> [237] Nothing in the circumstances described justifies such comments, which have moreover sparked discontent, dissatisfaction, and reproaches (*Fédération interprofessionnelle de la santé du Québec – FIQ c. Comité patronal de négociation du secteur de la santé et des services sociaux [CPNSSS]*, 2022).

Can the government use special legislation to impose a collective agreement?

Historically and theoretically, yes. The government can enact a special law during a deadlock and impose working conditions. One of the most recent special laws unilaterally imposing working conditions on the public and parapublic sectors dates back to 2005. But as noted in the section on the right of association in this guide, case law has since evolved in favour of unions and union members. The imposition of a law like the one in 2005 seems less and less feasible, given the most recent developments.

During the COVID-19 pandemic, the Quebec government used an exceptional legislative tool to unilaterally change the working conditions of employees working mainly in the healthcare and education sectors. These were powers arising from the state of emergency under the *Public Health Act* (Quebec, 2022). The unilateral changes to working conditions could only be temporary and had to be justified by a public health imperative. The state of emergency could not therefore be used as a pretext for the government to change working conditions as it saw fit.

However, as a result of the abuse noted in relation to the issuance of certain orders in council, labour organizations filed a complaint alleging that the government's behaviour was a hindrance to union activities. Subsequently, the ALT, in a landmark decision, recognized that the government's conduct in announcing certain measures and taking certain actions in response to the state of emergency constituted a hindrance to union activities (*Fédération interprofessionnelle de la santé du Québec – FIQ c. Comité patronal de négociation du secteur de la santé et des services sociaux [CPNSSS]*, 2022).

4 PRESSURE TACTICS

4.1 PICKETING

Picketing is generally defined as the act of employees gathering outside a workplace or at some other strategic location to express their dissatisfaction, attempt to obtain or convey information about it, or persuade the employer, other employees, or the public of the validity of their demands and encourage them to support them.

How should picketing take place?

Picketing must remain peaceful. Employees must therefore avoid any form of intimidation, violence, vandalism, or obstruction. In short, no offences can be tolerated. The principle of picketing is that it should have an effect. It is therefore normal for a picket line to be visible or noisy, but always within reason. Picketers also have the right to hand out leaflets and talk to people wishing to cross the line, but do not have the right to block access or restrict the movement of others.

Who can cross the picket line?

In principle, the purpose of the picket line is not to block access to the establishment since the Code already prohibits the employer from using scabs. The picket line therefore has more of a visibility and information objective and constitutes an exercise in the strikers' freedom of expression. It is there to let the employer and the general public know that there is a labour dispute. Anyone seeking access to the establishment can therefore cross the picket line.

Strikers will obviously not cross it, much less scabs. Similarly, out of union solidarity, members of bargaining units who are not on strike will generally not cross the picket line. They will have to refer to their immediate supervisor or another manager if they feel they are unable to enter the workplace. The obligation of non-striking employees is to report to work, notify a representative of the employer that access is prohibited, and wait for instructions. If they feel their safety is compromised, they must notify the employer. The employer cannot force its non-striking employees to confront strikers to gain access to the workplace.

A worker could still decide to cross the picket line. Picketers will approach the person to inform them of their reasons for picketing, but they cannot prevent the person from accessing the establishment or restrict their movements.

4 PRESSURE TACTICS

Healthcare institutions

In the health and social services sector, the situation is different for employees providing essential services. They must cross the picket line to provide these services and must not, for health and safety reasons, slow down or obstruct user access.

Educational institutions

In school service centres, management often tends to close schools on strike days. That way, the only people who would have to cross the picket line are managers or third parties, such as delivery people. Picketers may approach these people to make them aware of their cause but may not block their access to the establishment. The same applies to administrative offices.

Where can you picket?

An employer has the right to prohibit picketing on its premises or grounds. This is a principle that stems from its property rights, which is why picket lines generally end up on sidewalks near the entrance to establishments. Because the goal of strikers is visibility, they are placed in strategic places where managers, employees, and users can see them, but without ever impeding access to the establishment.

Secondary picketing, on the other hand, is intended to put pressure on the "allies" of the company or institution concerned, such as its clients or suppliers. This form of picketing is less prevalent in the public sector. Picketing in front of the National Assembly would be considered secondary picketing!

The third form of picketing is intended to put pressure on the leaders of a company or the elected officials at the head of a public agency and will therefore take place near the residence of one or more of those elected representatives. This form of picketing is not strictly prohibited, but it will necessarily lead to an injunction to stop what is clearly an invasion of privacy for these individuals and especially their families. The court could choose to limit picketing rather than ban it altogether.

The employer's property rights are clearly established in the case of a private company. The same rule applies to schools and healthcare institutions. The fact that the employer is a public legal entity, i.e., a public institution, in no way changes the legal framework. In fact, a recent Superior Court ruling confirmed the right of a public corporation, i.e., Société des casinos du Québec, to prohibit employees from picketing on its property.

Healthcare institutions

In healthcare institutions, it is common to have an agreement between the union and the employer so that picketing may take place on the employer's property. This is often because the union is committed to responding to medical emergencies that sometimes occur unexpectedly. If the distance between the picket line and the institution increases the emergency response time, it is preferable to reach an agreement with the employer to picket on the grounds. Such an agreement is the result of a compromise between the employees' right to picket, the employer's property rights, and the health of patients. If, despite everything, the employer refuses to make such a compromise, it must be informed that it will be responsible for the delays incurred and the harm that patients may suffer.

Educational institutions

With regard to schools, picketing could take place on the sidewalk in front of a school or on a street corner close to it. On the eve of a strike, management sometimes informs the unions that it will not tolerate any presence on school grounds, including schoolyards. This directive must therefore be respected by moving the picket line to the immediate vicinity of the school grounds.

Office towers

If the employer's premises are in a building with several other tenants (e.g., a shopping mall or office tower), picketing must be done outside on public property. Picketing can therefore not take place inside an office tower or shopping mall, and the owners, who remain third parties in the dispute, would be entitled to request that their property rights be respected.

Access to parking lots

During a strike, the employer could prohibit picketers from being in or using the regular employee parking lot if it is the employer's property. Employees would therefore not be able to park their vehicles there. However, if employees pay the employer for this service, they should claim the parking fee for reimbursement for that day. If the parking lot is owned by a third party, such as a shopping mall, the third party has the right to decide whether or not to allow access. In other words, if the mall asks the picketers to move their vehicles, they will have to do so. Caution must also be exercised in this case, as the third party could make a unilateral decision to have the vehicles towed if the parking lot is reserved for mall customers.

What happens if picketing takes place on the employer's property?

Picketers could end up on the employer's property or on private property that houses the employer's premises. Of course, when informed of the situation, the picketers must then move off the property. Anyone representing the employer or acting on behalf of the employer, such as a security guard, may ask the picketers to vacate the grounds or property. The employer may also call the police directly.

What happens if employees refuse to leave?

If employees refuse to move the picket line outside the property or grounds at the request of the employer or its representatives, the employer or its representatives may ask the police to intervene. When the police intervene, it is best to have a designated person speak with the police officer to acknowledge the reason for their involvement. The police officer will then inform the picketers that they are on private property and must leave the premises at the owner's request. Employees will therefore have to move peacefully off the premises. If protesters refuse to leave, they could be subject to arrest. An injunction could also be sought.

4 PRESSURE TACTICS

What happens if the police make arrests?

In extreme cases where the situation is expected to deteriorate when the police are called in, the police may make arrests. Should this occur, the basic rules of thumb are:

- Do not resist arrest or assault police officers (verbally or physically).
- You should in no way make any statements, question the actions of the police, or make any attempt to explain. Anything you say may be held against you. The golden rule is absolute silence about the events. It's important to understand that you will have to identify yourself and therefore talk to the police officers, but do not say anything about what happened.
- When police officers make arrests, they have an obligation to read you your rights. You have a fundamental right to speak to your lawyer. We strongly advise you to call one of the lawyers whose name and phone number will be provided to you.
- If you meet with investigators at the police station, do not say anything about what happened and, even if you've done nothing wrong, don't try to convince them.

What other means can an employer use against picketing?

As we have explained, it is perfectly normal for a picket line to be disruptive and attract attention. Just because a picket line is disruptive on account of leafleting or noisiness doesn't mean it isn't peaceful. However, if threats are made, violent acts occur, or access to the establishment is intentionally impeded for users or anyone else who has the right to access it, the employer or anyone else may file a complaint for activities that could then be considered criminal. The employer may also apply to the courts for an injunction to prohibit employees from engaging in certain activities, limit the number of picketers, or prohibit access to certain places. Once an injunction is in effect, any violation may result in contempt of court.

What happens if someone gets hurt on a picket line?

If a striker is injured on a picket line, it is not an industrial accident. An industrial accident is defined in the *Act respecting industrial accidents and occupational diseases* (AIAOD) as "a sudden and unforeseen event, attributable to any cause, which happens to a person, arising out of or in the course of his work and resulting in an employment injury to him" (Quebec, 2020e: s. 2). There is no doubt that an accident on a picket line would not "arise out of work," as a strike is a concerted cessation of work under the Code. It would also be hard to argue that the accident occurred "in the course of work" for the same reason, especially since the employer has proper notice of the strike and it's easy for the employer to show that the strike is not of use to them.

This would not be the case if someone not on strike suffered an accident as a result of something that happened on a picket line or during a strike by other employees. In such a case, the accident could be considered "in the course of work," depending on the circumstances.

4.2 VISIBILITY ACTIONS

Union organizations can use a number of means to make an employer and the public aware of their demands and contribute to a sense of belonging. It's important to mention that visibility actions are part of freedom of expression, which is enshrined in the charters. However, it should also be noted that freedom of expression is not absolute, and certain abusive actions could result in civil or criminal liability for the union and its members.

Wearing a button, sweater, or other insignia

The courts are generally of the view that wearing a sweater or button is protected by freedom of expression, and any limitation on that right, particularly in the context of collective bargaining, could constitute an infringement (*Syndicat des travailleuses et des travailleurs de l'Hôtel Méridien de Montréal [CSN] c. Laplante,* 2016; British Columbia Teachers' Federation v. British Columbia Public School Employers' Association, 2013). However, certain conditions apply to the message conveyed: it must be non-violent and must not tarnish the employer's image (*Syndicat des constables spéciaux du gouvernement du Québec and Government of Quebec [Ministère de la Sécurité publique]*, 2017) or be defamatory, and the act of carrying the message must not contravene any occupational health or safety rule.

The same rules apply when it comes to changing an employer's regulation uniform. Most arbitrators agree that any change to uniforms, such as letter carriers

4 PRESSURE TACTICS

wearing jeans (*Canada Post Corporation v. Canadian Union of Postal Workers*, 2013) or police officers wearing cowboy boots (*Châteauguay [Ville] c. Fraternité des policiers de Châteauguay inc.*, 2014), must be protected under freedom of expression when the change occurs during the collective bargaining period. However, when this issue is addressed outside the bargaining period, during a period of industrial peace, the use of a pressure tactic that contravenes the collective agreement, i.e., a change to the mandatory uniform, may be considered illegal and not covered by freedom of association and freedom of expression (*Corporation d'Urgences-Santé de la région de Montréal Métropolitain c. Syndicat du préhospitalier-CSN*, 2022).

Decisions about essential services tend to be more nuanced. For example, in a 2016 decision, Commission des services essentiels deemed that "failure to wear an ID tag was likely to cause harm to the public" (*Syndicat des professionnels en santé du Lac des Deux-Montagnes [FIQ] et Centre intégré de santé et de services sociaux des Laurentides*, 2016) and consequently ordered that this pressure tactic cease. In another decision, the failure of special constables to wear their regulation uniforms was deemed to put the health and safety of the public at risk (*Syndicat des constables spéciaux du gouvernement du Québec et Gouvernement du Québec [Ministère de la Sécurité publique]*, 2017).

Use of an employer's email system

The legality of using an employer's email system to convey union messages is a controversial area of case law. The inclusion of union messages at the end of emails during a collective bargaining period has been recognized as valid in a few decisions (*Association professionnelle des ingénieurs du Gouvernement du Québec c. Procureure générale du Québec*, 2019; *Syndicat professionnel des scientifiques à pratique exclusive de Montréal et Montréal (Ville de)*, 2015). However, the location and content of a union message added to the end of an email must be separate so that recipients understand it is not a message from or a position of the employer. Of course, the message must also not exceed the usual limits of freedom of expression, e.g., by being threatening.

Leafleting

On several occasions, the Supreme Court has recognized that labour organizations have the right to make their demands known to the general public. Leafleting is therefore part of the freedom of expression of labour organizations (*UFCW, Local 1518, v. KMart Canada Ltd., 1999: para*. 28).

However, certain conditions must be met when leaflets are hand delivered:

- The message conveyed by a leaflet must be accurate, not defamatory or unlawful, and must not incite people to commit illegal acts.
- Leafleting must not be coercive or intimidating, either in the manner in which leaflets are handed out or by the presence of too many people.
- Leafleting must not unduly impede people from entering or exiting the leafleted premises.
- Leafleting must not prevent employees of third-party establishments from working or interfere with other contractual relationships with suppliers of third-party establishments.

Like any *Charter* right, this right is not absolute and may be limited by certain rules of law. Among other things, it must be exercised in accordance with the bylaws governing the distribution or posting of leaflets in public places. It is therefore the responsibility of each affiliated union to review the municipal bylaws and ensure that leafleting is permitted. For example, the borough of Ville-Marie in Montreal prohibits placing any paper on a vehicle parked in the public domain, except for parking tickets (City of Montreal, 2019: s. 47).

Chalk marking

Writing with chalk on public property such as a sidewalk is not mischief (R. v. Quickfall, 1993). However, this interpretation applies only to so-called public property, i.e., public property and not government property (e.g., a school of a school service centre). Furthermore, while chalk marking on the sidewalk is not a criminal offence, it is questionable if it's done on the pavement of a street and compromises road safety, e.g., by hiding a sign. The same would be true for chalk marking on a wall if it became hard to remove over time or because of its location.

As long as marking is done on a municipal sidewalk, it will not be considered a criminal act. However, if marking is done on property, whether it be the school entrance or the schoolyard, it could be mischief under the Criminal Code if it results in damage, since the Court of Appeal distinguishes between public and private property. Even if it were not considered a criminal act, it could result in the perpetrator being held civilly liable since the peaceful enjoyment of the property would be affected. A school could decide to have the marking removed at the expense of the perpetrator or the union and even, theoretically, take legal action.

Lastly, municipal bylaws must be checked to ensure that perpetrators are not issued notices of violation of such a bylaw, if it exists.

Displaying banners on public infrastructure

Sometimes unions want to display banners of varying sizes to draw attention to their demands, commonly known as a banner drop. In principle, putting up banners is legal, but circumstances could make it illegal.

As long as a banner is held by people, this action can be carried out in most places if it is safe and does not impede the free passage of people. For example, it could be done on an overpass or on the side of a boulevard. However, if a banner is displayed on private property or on public buildings such as a stadium, it could lead to charges of public mischief. For example, Greenpeace was charged after putting up a banner on the Olympic stadium. Furthermore, some places are not accessible to pedestrians, such as highway infrastructure, so you can't stop there to display a banner.

In all cases, check the municipal bylaws, which could prohibit the installation or display of banners in certain locations and under certain circumstances. If damage is caused during the operation, claims could be made by the owner of the place where the banner is located or the property on which it is hung.

4 PRESSURE TACTICS

Massive use of stickers

Massive use of stickers on the employer's furniture is a pressure tactic that has the advantage of being simple while making the union message very visible. It is used during a strike as well as at other points in the bargaining process. This method has been used by paramedics, police officers (*Fraternité des policiers et policières de Richelieu Saint-Laurent c. Régie intermunicipale de police Richelieu Saint-Laurent,* 2020), bus drivers, and firefighters, who plastered vehicles with stickers.

It isn't prohibited per se, but an employer may seek an injunction to stop this pressure tactic if it can prove the use of stickers is clearly causing irreparable harm that makes court action urgent (*Corporation d'Urgences-santé c. Syndicat du préhospitalier – FSSS-CSN*, 2017a). An employer may also submit its request to an arbitrator to have this union action stopped (*Corporation d'Urgences-santé and Syndicat du préhospitalier FSSS-CSN*, 2017b; *Ville de Montréal [SPVM] c. Fraternité des policiers et policières de Montréal*, 2016). When the adhesive on stickers used makes them difficult to remove or the use of stickers has damaged the employer's property, the employer may sue for damages in order to be reimbursed for cleaning or restoration costs (*Syndicat des Paramédics de l'Estrie-CSN et Ambulance de l'Estrie inc.*, 2016; *Montréal (Ville) c. Association des pompiers de Montréal inc.*, 2000). The use of stickers that deface public property could also be considered a form of mischief under the *Criminal Code*.

4.3 OTHER PRESSURE TACTICS

4.3.1 Demonstrations

Freedom of expression and peaceful assembly is protected by the charters and includes the right to demonstrate. This right is fundamental and is also recognized in international law. In Canada and Quebec, it can be restricted only within the limits that are acceptable to our democratic society.

Some municipalities also have regulations governing the right to demonstrate. They may require demonstrators to protest with their faces uncovered or to provide their itinerary. Many of these regulations have been struck down by the courts on the basis that they violate constitutional rights to a degree that is democratically unjustified (Mathieu, 2019). An interesting guide on the subject was produced jointly by Ligue des droits et libertés and UQAM's Service aux collectivités (Lemonde, 2019).

Since the freedom to demonstrate is a fundamental principle recognized in our society, a union can organize a multitude of visibility and protest actions.

The fact that a demonstration occupies public space and consequently disrupts traffic does not in itself make it illegal or less legitimate. Obviously, under the Criminal Code, a demonstration can be declared illegal because acts of violence are committed. That's why it's important to make sure you have stewards—to avoid any misbehaviour. Furthermore, the fact that a demonstration takes place during an illegal strike has no bearing on its legality (*Syndicat des cols bleus regroupés de Montréal [SCFP, section locale 301] c. Coll*, 2009).

4.3.2 Civil disobedience

Unions sometimes use civil disobedience as a pressure tactic. This means of political action is by definition illegal, contrary to the rules of civil law, penal law, and sometimes criminal law. Civil disobedience is a conscious, public refusal to submit to a law, regulation, organization, ideology, or power deemed illegitimate by those who challenge it (Mouvement d'éducation populaire et d'action communautaire du Québec, 2017). Historically, the civil disobedience movement has raised awareness of or advanced many causes, including the independence of many nations, women's right to vote, access to abortion, and the end of apartheid and segregation.

4.3.3 Flash mobs

A flash mob is an impromptu gathering of people in a public place for the purpose of creating visibility. It is therefore a spontaneous event, although it can be planned, but differs from occupation of property because of its fleeting nature. Organizers announce the meeting point at the last minute. A flash mob should not include illegal acts such as vandalism or mischief.

4.3.4 Occupation of property

The occupation of public or private property (sit-in) is an act of both visibility and disruption. Depending on the location chosen, the framework for legal analysis will change.

Occupation of public property

Public property is defined as property dedicated to public use, i.e., parks, streets, sidewalks. Public buildings are not included in this definition.

A permit can be obtained for the occupation of most public property. However, as in the case of a demonstration, the right to freedom of expression and peaceful assembly allows people to occupy a public space to assert their claims without undue red tape or beyond what is tolerable in a democratic society.

Occupation of private property

Private property includes the property of individuals, corporations, and public legal entities, such as healthcare institutions and school service centres.

The occupation of private property is more problematic from a legal perspective than the occupation of public property. For example, a sit-in organized by some local unions at their MP's or employer's office is not allowed.

It is an offence under the Criminal Code to take possession of property without right and in a manner likely to cause a breach of the peace. However, in practice, charges are rarely laid against people who leave the scene of a sit-in and cease this pressure tactic at the request of the police.

Furthermore, police will be involved only if there is a complaint from the owner or lawful occupant of the property. Therefore, depending on the political context of the occupation, it may be more problematic for the employer to call in the police than to let the action run its course. For example, when parents and their children were occupying a university's management offices, the employer felt it would be more damaging to call the police than tolerate the action until the families left the premises on their own.

4.3.5 Work slowdowns

Work slowdowns are explicitly prohibited by the Code in all circumstances (Quebec, 2020a: s. 108). As soon as an employer is deprived of "overall labour input" (*Brasseries Molson et Union des routiers, brasseries, liqueurs douces et ouvriers de diverses industries, section locale 1999*, 2002) due to concerted actions by employees, this is an illegal work slowdown. The slowdown can take many forms. For example, a collective refusal to work overtime has often been deemed to be an illegal work slowdown as such concerted refusal creates delays in the employer's operations (*ArcelorMittal Mines Canada et Métallurgistes unis d'Amérique, 2009; Société de transport de Montréal et Syndicat du transport de Montréal [CSN]*, 2019). The collective refusal to work overtime can also be qualified as an illegal strike. In the healthcare sector, the ALT concluded that the concerted refusal of nurses to work mandatory overtime was an illegal pressure tactic (*Centre intégré de santé et de services sociaux de la Montérégie-Est c. FIQ – Syndicat des professionnelles en soins de Montérégie-Est*, 2021).[4]

4 PRESSURE TACTICS

Taking longer breaks, performing work more slowly, or refusing to do routine tasks as a collective pressure tactic are also all acts that can be considered illegal work slowdowns.

Labour organizations can put in place a number of other pressure tactics. For example, during the 2015 round of negotiations, unions affiliated with Fédération des syndicats de l'enseignement (FSE CSQ) delayed the preparation of report cards or extended breaks and recesses to apply pressure at a strategic point in the negotiations. However, the school boards quickly challenged these measures before Commission des relations du travail (CRT) on the grounds that such tactics infringed on a service to which the public is entitled, in violation of the *Code* (Quebec, 2020a: s. 116). The school boards won their case in the first instance, but CSQ continued legal proceedings by challenging the constitutionality of this section of the Code on the grounds that it substantially reduces on the freedom of association of labour organizations by preventing them from freely and democratically exercising the choice of pressure tactics, which undermines the balance of power in their negotiations with the government employer. The case is currently before the Superior Court.

In the 2020 round of negotiations, the vast majority of labour organizations, though not standing as a united front, decided to organize joint actions to highlight the fact that public sector workers had been without a contract for a year. The theme was "On March 31, we ring the alarm!" Organizations invited their members to sound an alarm at their workplace. The management negotiating committee for the health and social services sector, on behalf of all healthcare sector employers, asked the ALT (Essential Services Division) to intervene on the grounds that sounding alarms in healthcare settings could harm the health services to which the public is entitled. At the hearing, the unions specified the limits to which they intended to exercise this visibility tactic, either by using a telephone or watch alarm set only to a normal volume, in places where there are no users, for a short period of time and a maximum of four times per shift. The Tribunal found that under these circumstances, the tactic did not risk harming the public health services to which the public is entitled and allowed workers to exercise their right to freedom of expression (*Comité patronal de négociation du secteur de la santé et des services sociaux c. Fédération interprofessionnelle de la santé du Québec – FIQ*, 2021).

The Code defines a strike as "the concerted cessation of work by a group of employees" (Quebec, 2020a: s. 1, para. g). The meaning of "cessation of work" does not require a total cessation of production and includes a partial cessation of operations (*Brasseries Molson et Union des routiers, brasseries, liqueurs douces et ouvriers de diverses industries, section locale 1999*, 2002). Even if an action is called a "study day" or "freeze of activities," if there is a work stoppage as a result of the collective will to suspend the performance of work, then it is a strike within the meaning of the law.

Similarly, exercising an individual right under the collective agreement in a concerted manner could also be characterized as a strike. This is the case, for example, if all employees take their break at the same time in order to put pressure on the employer (*Montreal [Ville] c. Syndicat des cols bleus regroupés de Montréal [SCFP 301]*, 2015).

With respect to ECPs, a strike is called "concerted action" but produces the same result: a work stoppage.

4 Decision confirmed in internal review at the ALT, *Centre intégré de santé et de services sociaux de la Montérégie-Est and FIQ – Syndicat des professionnels en soins de Montérégie-Est*, 2022..

5 STRIKES

5 LA GRÈVE

What is the difference between a legal and an illegal strike?

The right to strike does not always exist. It is acquired only after certain steps have been taken under the collective bargaining system specific to a group of workers and only if the procedures are followed. Failure to comply with the procedures could make it illegal to strike.

To be legal, a strike must also be total, meaning that all workers in the unit covered by a certification must stop working. For example, if the unit covers all teachers in a school service centre, there cannot be a partial strike of a few schools or only secondary schools (*Cascades groupe papiers fins inc. c. Syndicat canadien des communications, de l'énergie et du papier, section locale 174,* 2010; Québec (*Procureur général) c. Syndicat de la fonction publique du Québec inc.*, 2010; *Syndicat de la fonction publique du Québec inc. c. Québec (Procureur général)*, 2012[5]).

The only exception to this rule is for the healthcare sector in terms of maintaining essential services to ensure public health and safety. The essential services rules will force workers to provide a certain minimum level of work during a strike.

What are some examples of illegal strikes?

Examples of strikes considered illegal include:

- A strike when the collective agreement has not expired and bargaining has not begun ;
- A surprise strike when no strike vote was taken;
- A concerted effort by workers to arrive late for work;
- A union meeting held during working hours without notice or authorization.

What are the consequences of an illegal strike?

An illegal strike can have a number of legal consequences. In terms of labour relations, the Code provides for criminal penalties for anyone who declares, provokes, or participates in an illegal strike. Fines can be up to $100 a day for workers. Penalties are more severe for union leaders and unions (Quebec, 2020a: s. 142). The employer may also exercise its management right by issuing administrative or disciplinary measures to employees who participate in an illegal strike.

In terms of civil liability, striking employees or their union could be sued for damages caused by the strike. An employer affected by an illegal strike could seek damages for the harm suffered. Furthermore, although cases are rare, third parties directly affected by an illegal strike can take legal action, either collectively or individually.

Consequences of pressure tactics

To learn more about the consequences of pressure tactics, please refer to the table in Appendix II

5 Appeal allowed, but for reasons related to the Commission's jurisdiction in *Syndicat de la fonction publique du Québec inc. c. Québec (Procureur général)*.

5.1 PROCEDURES FOR CALLING A STRIKE

When is the right to strike acquired?

Legally, there is a distinction between acquiring the right to strike and being able to exercise it. According to the rules of the *Code* and subject to the procedures that each sector concerned must complete, the general principle is that the right to strike is acquired 90 days after the notice to bargain is sent (Quebec, 2020a: s. 58). For example, in the private sector, if the notice to bargain is sent at the earliest, 90 days before the expiration of the collective agreement, then the right to strike will be acquired 90 days later, when the collective agreement expires. If, however, no notice is sent, then the right to strike will be acquired, by default, 90 days after the expiration of the collective agreement.

Furthermore, for all groups of workers, the right to strike is conditional on obtaining a strike mandate, which must be authorized by secret ballot decided by the majority vote of the union members in the bargaining unit who exercise their right to vote (Quebec, 2020a: s. 20.2). This also applies to ECPs (Quebec, 2020c: s. 50).

Once unions have acquired the right to strike, they must ensure that they can exercise it in accordance with the obligations set out in the *Code*.

.

5 STRIKES

What are a union's obligations with respect to holding a vote on a strike mandate?

Both the Code and the Act respecting representation specify that the union must take the necessary steps to inform the members of the bargaining unit, at least 48 hours in advance, that a secret ballot vote for a strike mandate will be held (*Syndicat des employés[es] des magasins Zellers d'Alma et de Chicoutimi [CSN] c. Turcotte*, 2002). Union bylaws and regulations may contain provisions setting out requirements that go beyond the Code or the Act respecting representation in terms of the notice to be sent and the majority required to validate a strike mandate. However, under no circumstances may the requirements be lower.

What happens if members challenge the legitimacy of a strike mandate?

Members may challenge the legitimacy of a strike mandate, alleging certain irregularities. While it is essential to comply with the requirements of the Code regarding the holding of a secret ballot and the calculation of the majority required, failure to comply with these requirements does not in itself make the strike illegal (*Syndicat des employés[es] des magasins Zellers d'Alma et de Chicoutimi [CSN] c. Turcotte*, 2002). However, a union may be subject to criminal sanctions under Section 20.4 of the Code or Section 60 of the Act respecting representation if the procedure is not followed.

It should also be noted that an employer cannot use a union's internal bickering, a shortened notice for a strike vote, or other matters relating to the internal workings of the union to oppose a strike. In other words, union business concerns only its members.

What are the procedures in the private sector?

Once a strike validated by secret ballot is called, the union must send a notice to the Minister of Labour under Section 58.1 of the Code. This notice is available online (Quebec, Secrétariat du travail, 2020), and the union must indicate the number of employees included in the bargaining unit.

What are the procedures specific to the public and parapublic sectors that do not have an obligation to maintain essential services?

After voting to strike by secret ballot, public and parapublic sector employees must submit to the mediation procedure provided for in Bill 37 before they can exercise their right to strike. Bill 37 specifies that the mediator must produce a report following mediation. The right to strike may not be exercised until 20 days after the report is submitted (Quebec, 2020a: s. 111.11).

The *Code* also specifies that seven clear working days' notice[6] must be sent to the Minister and the employer (Quebec, 2020a: s. 111.11). Once the deadlines are met and the notice is sent, the union can exercise its strike mandate. However, the same notice cannot contain more than one strike date (*Sherbrooke (Ville de) et Syndicat canadien de la fonction publique, section locale 2729*, 2010). Only one is allowed. Therefore, in the event of a rotating strike, a different notice must be sent for each day of the strike. Lastly, the Code provides that the time between two strike periods must be at least seven clear working days.

It is also important to note that the date the notice is received determines compliance with the deadline. It is therefore essential to keep the documents acknowledging receipt of notices for evidentiary purposes.

What are the procedures specific to the sectors that must maintain essential services?

In sectors that must maintain essential services,

particularly healthcare institutions, a strike cannot be declared until the union has reached an agreement with the employer on the level of service to be maintained. If no agreement is reached, the union must submit to the ALT a list of services to be maintained in the event of a strike, and the ALT will assess whether the services listed are sufficient.

Once an agreement is reached, the union may strike in the same manner as other public and parapublic sector groups, i.e., after the 20-day period following the mediator's report and with seven clear working days' notice.

End of a strike and return to work

The right to strike ceases when a new collective agreement is reached (Quebec, 2020a: s. 58), when the parties submit their dispute to arbitration, or when the working conditions are determined by an arbitrator in the case of a first collective agreement (Quebec, 2020a: s. 93.5). Under the terms of a strike, it is often necessary to specify the conditions of return to work in an agreement, including when and how employees will be reinstated to their respective positions. This is called the "return to work protocol."

An employer cannot fire an employee for participating in a strike. If there is a disagreement about an employee's return to work, the matter may be referred to arbitration within six months of the date on which the employee should have been reinstated, as if it were a grievance (Quebec, 2020a: s. 110.1).

5.2 STRIKEBREAKERS OR SCABS

From the time a strike is called, the anti-scab provisions of the Code apply. Passed in 1977, these provisions prevent an employer in a strike or lockout situation from using workers who are not part of the bargaining unit, i.e., scabs. Generally speaking, only certain managers at the striking establishment may perform work otherwise done by striking employees. However, the prohibition of scabs has been interpreted as applying primarily to a physical establishment, thus allowing the employer, in certain circumstances, to resort to subcontractors or scabs outside the physical establishment, such as through telework.

Concept of "establishment"

The restrictive interpretation of the concept of "establishment" has thus made it clear that the employer is authorized to have work performed outside the striking establishment, e.g., at a subcontractor's (*Syndicat canadien de la fonction publique, section locale 1450 c. Journal de Québec,* 2011). However, the new use of telework, highlighted by the pandemic, has led the courts to revisit the concept of "establishment" set out in Section 109.1 of the Code. Recent case law has introduced the concept of "deployed establishment," thus expanding the notion of "establishment" to recognize not only the physical component, but also an intellectual component that may extend beyond the physical boundaries of the establishment. If an employer's establishment is extended and the employees perform the same tasks at home as if they were at the employer's physical establishment, it should then be borne in mind that such employees perform their work within the same establishment. If this development in case law is confirmed, the notion of "establishment" will be interpreted more broadly and liberally, thus allowing better protection of the right to strike and the resulting balance of power (*Unifor, section locale 177 c. Groupe CRH Canada inc., 2021; Syndicat des travailleuses et travailleurs de la Coop Lanaudière CSN c. Coop Novago*, 20227).

Employer's use of management staff

An employer may use the services of a manager to perform the work of striking employees, but only if the manager in fact usually performs managerial duties and was hired prior to the start of this phase. The employer may not change the balance of power thereafter by hiring new management staff to perform

6 See the Definitions section.

5 STRIKES

the duties of these employees (*Syndicat québécois des employées et employés de service, Local 298 (FTQ) et Chartwell Appartements de Bordeaux résidence pour retraités*, 2019). In some circumstances, the courts have authorized an employer to assign management positions to employees in the striking bargaining unit and have these workers perform the duties of striking workers. However, the employer will have the burden of proving that it did this in the course of its regular operations and is not trying to get around the anti-scab provisions (*Syndicat des employées et employés professionnels et de bureau, Local 571 [SEPB] CTC-FTQ c. Commission des relations du travail,* 2014).

An employer may also contravene anti-scab provisions to prevent the destruction or serious deterioration of its property. However, the employer must demonstrate that the risk of destruction or deterioration is likely or imminent and not purely hypothetical or feared. Furthermore, the employer must act reasonably and diligently to avoid violating the anti-scab provisions as much as possible (*Syndicat du personnel de soutien du Collège Ahuntsic [CSQ] c. Collège Ahuntsic,* 2021). A table outlining the different situations can be found in Appendix I of this guide.

Employer's use of volunteers

The use of volunteers is not expressly prohibited by the Code. However, according to case law, it runs counter to the principle that hiring scabs is prohibited and must therefore be interpreted very restrictively (*Syndicat canadien des communications, de l'énergie et du papier, section locale 866 c. Matériaux spécialisés Louiseville inc*., 2008). The use of false volunteers is not tolerated under any circumstances. Furthermore, volunteers must not receive any consideration or benefit of any kind in exchange for their work (*Syndicat des travailleuses et travailleurs de Volailles Marvid (CSN) et Volailles Marvid Canada inc.*, 2004).

7 Both of these decisions are being appealed to the Superior Court for judicial review..

Interns and independent workers

Unless otherwise stipulated in the collective agreement, interns are not part of the bargaining unit and are therefore not on strike. However, there can be no question of the employer hiring massive numbers of interns to get around the anti-scab provisions.

In the case of independent workers, i.e., employment agency staff, these individuals will not usually be on strike because they will not be recognized as part of the bargaining unit. That said, the actual employer of these employees within the meaning of the *Code* for strike purposes is not always seen as the employment agency. Legal recourse is available to include these individuals in the bargaining unit and have the actual employer recognized instead of the employment agency (*Pointe-Claire [Ville] c. Quebec [Tribunal du Travail],* 1997). However, this issue must be addressed before the strike is called.

Recourse against scabs

If the union has reason to believe that the employer is using scabs or some other scheme, such as illegally using employment agency staff, it can request prompt intervention from the ALT to order the employer to cease using the services of such individuals (*Syndicat des travailleuses et travailleurs du Marriott Château Champlain – CSN c. 9006 6051 Québec inc.,* 2004). The union may also request that an investigator from Ministère du Travail verify whether the employer is in violation of the *Code*.

5 STRIKE

5.3 EFFECTS OF A LEGAL STRIKE ON WORKERS

What happens to my employment relationship?

Striking employees maintain their employment relationship. They therefore cannot be considered as temporarily laid off for employment insurance purposes. Employees are still legally attached to the company that employs them even if they are temporarily deprived of work (Quebec, 2020a: s. 110). Consequently, once a strike is over, they have the right to return to their jobs in preference to anyone else (Quebec, 2020a: s. 110.1).

What happens if I was supposed to work on a strike day?

The first direct consequence of a strike is a cut in pay. According to the maxim "no work, no pay," striking employees do not get paid. However, some unions may have set up a strike fund that will provide partial compensation to employees.

Special case: Teachers in public and private schools

All teachers (regular, part-time, or paid by the lesson) with a 200-day work schedule who are scheduled to work on a strike day, including pedagogical days, will have their pay cut on the basis of 1/200th of their annual salary per day of strike. The length of a scheduled work day is not taken into account.

However, if a strike is called for a half-day and the employer maintains services for the other half-day, the pay cut will be 1/400th of the annual salary. But in practice, it is common for the employer to impose a lockout for the other half-day, which will result in a 1/200th cut in pay for the day. You should also check whether there are local arrangements for managing pay cuts on strike days.

In the case of part-time employees with a work schedule of less than 200 days, the number of days provided for in the contract will be reduced by one day.

Special case: ECP sector

In response to concerted action that involves cessation of work, Ministère de la Famille may reduce or cease to pay a subsidy, in accordance with the Act respecting representation (Quebec, 2020c: s. 52). The subsidy is reduced by issuing an instruction to the coordinating offices, but it must be proportional to the duration of the strike (Alliance des intervenantes en milieu familiale de Québec, Rive-Nord, Rive-Sud [CSQ] c. Quebec [Famille], 2012). For example, Ministère de la Famille cannot order a reduction in the subsidy equivalent to two work days for each strike day.

What happens if I am not scheduled to work during a strike?

Employees who are not scheduled to work during a strike will not be docked any pay. The Code protects employees from any form of reprisal (Quebec, 2020a: s. 14) for exercising a right provided for in the Code. As striking is one such right, any unjustified docked pay could constitute a form of reprisal.

With respect to teachers, all members who performed all their duties prior to a strike will not be docked any pay (Syndicat de l'enseignement du grand portage c. Commission scolaire du Fleuve et des Lacs, 2016). An employer that docks pay must therefore take into account the specific characteristics of each employment contract.

Can a school service centre turn a pedagogical day into a school day to compensate for a strike day?

In 2016, a school board tried to turn pedagogical days into school days to compensate for teacher strike days. After issuing a safeguard order preventing the school board from doing this because there was an appearance of interference with freedom of association and bargaining, thereby rendering the objective of the strike meaningless, arbitrator Denis Nadeau, in his decision on the merits, concluded that the collective agreement did not allow the employer to do this. However, he ultimately rejected the union's argument that the school board had violated freedom of association provided for in the Canadian Charter of Rights and Freedoms and the Charter of Human Rights and Freedoms (Syndicat de l'enseignement de la région de Québec c. Commission scolaire des Premières Seigneuries, 2016; Syndicat de l'enseignement de la région de Québec c. Commission scolaire des Premières Seigneuries, 2020). However, any new context would require an analysis of local provisions and developments in the right of association, right to collective bargaining, and right to strike.

Can a school service centre turn an in-person school day into a remote learning day on a strike day?

In 2020, the COVID-19 pandemic had a significant impact on school organization and teaching. At the height of the pandemic, distance learning was introduced in Quebec schools.

In April 2021,[8] teachers affiliated with FSE-CSQ went on a short strike, with classes scheduled to start at 9:30 a.m. instead of the usual time. Some school service centres and school boards decided to turn that school day into a distance learning day. The unions involved challenged that decision. The union claim was that the employers could not do this because the use of distance learning was permitted only in the context of the pandemic and the extraordinary powers conferred by the health emergency. Management argued that school service centres and school boards had a right to manage the imposition of distance learning. The arbitrator largely accepted the employer's claim that there was nothing in the Education Act or the collective agreements to prevent distance learning. However, the arbitrator partially allowed the grievances, noting a breach of the union's right to be consulted. This debate is not over. Employers' decisions will have to be monitored in future short-term strikes (*Syndicat de l'enseignement du Haut-Richelieu et al. and Centre de services scolaire des Hautes-Rivières et al.*, 2021).

What happens if I am disabled or sick on a strike day?

The principle is that employees cannot claim sick leave during a strike simply because they would have been on strike if they had not been sick. However, for longer-term disabilities, some collective agreements specify that if an employee starts their leave prior to the strike, and under certain other conditions specific to each collective agreement, their salary may be maintained. For example, some collective agreements

8 It should be noted that after April 2021, schools were open and the vast majority of classes were being held in person.

5 STRIKE

may provide that benefits for disability leave that began before a strike will continue during the strike. In the case of a disability that began during a strike, disability leave will generally begin when the strike ends and normal work benefits resume. It is therefore important to check what the collective agreement provides for your bargaining unit.

Photo Pascal Ratthé

What happens if I am on parental, maternity, paternity, or adoption leave on a strike day?

If such leave began before the strike, Quebec Parental Insurance Plan (QPIP) benefits to which an individual is entitled will not be affected. Similarly, if the collective agreement provides for the employer to pay benefits in addition to QPIP benefits during such leave, as is often the case in the education and healthcare sectors, there will be no cut in pay, and compensation will continue as if there were no strike.

If an employee starts their leave during a strike, strike days may have a minor effect on their QPIP benefit rate, and they may not receive the additional benefit paid by the employer in cases where such a benefit is provided for in the collective agreement. However, it is possible to reduce or even cancel the effect of a strike on the QPIP benefit rate by requesting that Section 31.2 of the Regulation under the Act respecting parental insurance be applied, which allows the reference period used to calculate the benefit amount to be moved.

What happens if I'm receiving salary insurance or compensation from Société de l'assurance automobile du Québec (SAAQ) or Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) on a strike day?

In practice, anyone receiving compensation from CNESST or SAAQ for an occupational injury should continue to receive it despite a strike. However, in light of certain decisions by administrative tribunals, SAAQ and CNESST may stop paying benefits. In the 2006 *Leblanc* (Re) decision, Commission des lésions professionnelles (CLP) ruled that since employees do not perform any work, they cannot be exposed to the dangers that their work may entail, as a strike implies the decision to stop working. As a result, the employees were no longer entitled to the income replacement indemnity (IRI) during the strike.

However, with respect to the first 14 days payable following an occupational injury, the strike will have no effect on the calculation and payment of this compensation. CNESST sums up the approach taken in this regard:

> C'est la prestation normale de travail avant l'accident qui sert de base pour déterminer le nombre de jours payables, et ce peu importe qu'il y ait notamment, pendant les 14 premiers jours d'incapacité, des jours fériés, des vacances annuelles, des jours de grève ou de lockout, une fermeture d'usine ou de chantier, une mise à pied ou un congédiement. Ces facteurs ne doivent pas intervenir dans la détermination du nombre de jours payables (Commission des normes, de l'équité, de la santé et de la sécurité du travail [CNESST], 2017).

What about workers who are on preventive withdrawal?

Workers who have not yet requested preventive withdrawal will have to wait until the end of a strike or lockout to make their request, as they must be at work at the time of the request.

Workers who are on preventive withdrawal during a strike or lockout could have their compensation suspended, given the absence of danger during the work stoppage (CNESST, 2018). In practical terms, CNESST may waive the suspension of payment because of the administrative difficulties associated with such a suspension for short periods of time.

What happens if I was entitled to one of the special leaves?

Unless there is a specific provision to the contrary, an employee's pay will be cut if they had planned to use one of the special leaves provided for in the collective agreement. The fact that a collective agreement provides for special leave "without a break in pay" should be interpreted as meaning that you have the right to be absent from work without penalty. However, an employee entitled to special leave will be subject to a cut in pay like all other employees on strike and will therefore not be treated equally (*Syndicat de l'enseignement de la Jonquière c. Commission scolaire de la Jonquière*, 2016). The same is true for collective agreements that use the expression "employees receive equivalent compensation […]."

What if I was entitled to a vacation but was unable to take it because of a strike?

The very principle of vacation days is to allow employees to be absent without loss of pay when they should normally have worked. However, on a strike day, all employees are required to stop working. In this context, employees are not entitled to vacations during a strike, even if they were pre-approved. On the other hand, the rights employees acquire before a strike is called will not be lost. After the strike is over, employees are still entitled to the vacations they earned before the strike. Employees will therefore be able to take their vacations after the strike according to the terms of the collective agreement.[9]

9 However, it should be noted that an adjudicator has previously ruled that members of a striking bargaining unit who had been pre-approved for vacation could use it on legal strike days rather than rescheduling it: *Syndicat national des employées et employés de la Commission scolaire de Montréal c. Commission des écoles catholiques de Montréal*, SAET 5176.

5 STRIKE

5.4 LOCKOUTS

What is a lockout?

A lockout is defined in the Code as the refusal by an employer to give work to a group of its employees to compel them, or the employees of another employer, to accept certain conditions of employment. A lockout is to the employer what a strike is to the employees.

When can an employer declare a lockout?

A lockout is subject to the same requirements as a strike. When employees acquire the right to strike, the employer acquires the right to lockout (Quebec, 2020a: s. 109). However, in public services, lockouts are strictly prohibited when there is a need to maintain essential services in the event of a strike (Quebec, 2020a: Quebec, 2019).

What are the effects of a lockout?

The effects of a lockout are the same as for a strike. For example, the provisions prohibiting the use of scabs and pay cuts apply in the same way.

In the public sector, in education, it is common to see some school service centres respond with a half-day lockout when workers call a half-day strike. This allows them to close schools completely and avoid managing school transportation.

End of a lockout

When an employer declares that a lockout is over, employees must return to work immediately. Strategically, in order to control the return to work, most unions will vote to strike at the same time as the employer's lockout.

6 ESSENTIAL SERVICES

6 ESSENTIAL SERVICES

When a strike is about to take place, the negotiating parties may be required to maintain "essential services." This concept, found in the Code, applies to certain job categories and is intended to protect public safety by limiting the effects of the right to strike. The concept of essential services must be limited to what is strictly and truly essential to the protection of the health and safety of a segment of the population or of the population as a whole. Employees will be required to maintain a specified level of services to ensure the health and safety of the public during the strike.

The essential services regime underwent a major reform in October 2019, following a decision by the ALT (*Syndicat des travailleuses et travailleurs du CIUSSS du Centre-Ouest-de-l'Île-de-Montréal – CSN et Centre intégré universitaire de santé et de services sociaux du Centre-Ouest-de-l'Île-de-Montréal*, 2017) rendering inoperative the former provisions regarding essential services that did not respect employees' right of association. The new provisions of the Code allow unions and employers to better define the level of service that must be provided to the public. Therefore, for the healthcare sector, it is no longer a question of maintaining a level of service defined in the Act, but rather of negotiating a level of service that will subsequently be monitored by the ALT. Moreover, there is no longer any doubt about management's contribution to maintaining essential services (*Syndicat des travailleuses et travailleurs de la santé et des services sociaux de l'Outaouais – CSN c. Centre intégré de santé et de services sociaux de l'Outaouais,* 2021).

What job categories must maintain essential services during a strike?

The Code provides for two broad job categories where essential services must be maintained during a strike:

- **Public services**: are listed in Section 111.0.16 of the Code and include primarily municipalities, certain healthcare facilities that are not part of the public and parapublic sectors, certain transportation companies, energy and waste removal companies, and ambulance services.
- **The public and parapublic sectors** are defined in Section 111.2 of the Code and include primarily the government and its departments, colleges, school boards, and establishments covered by the *Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors*.

In the public and parapublic sectors, maintenance of essential services covers services whose interruption may endanger public health or safety at the establishments concerned, i.e., primarily healthcare institutions. However, since the reform of the essential services regime, Section 111.0.17 provides that the ALT, on its own initiative or at the request of a business, may order that the business be subject to the essential services provisions if it can demonstrate that public health or safety is being compromised (*SOS Violence conjugale c. Syndicat du personnel des organismes communautaires [SPOC-CSQ]*, 2022).

Although education is included in the definition of public and parapublic sectors, it is not directly covered by the provisions regarding the maintenance of essential services. Educational workers do not have to maintain a level of service during a strike.

The concept of "service to which the public is entitled"

However, when pressure tactics are used outside a strike period, these workers could be required to provide a "service to which the public is entitled." This concept is referred to in sections 111.17 and 111.18 of the *Code* and allows the ALT to issue an order requiring workers to cease their pressure tactics and provide full service to the public. A legal challenge by CSQ unions is still underway to limit the scope of the concept of "service to which the public is entitled." To be continued…

What are the formalities that a union subject to the maintenance of essential services must complete before it can strike?

The union of an institution subject to the maintenance of essential services must negotiate with the employer the services that will be maintained during a strike, in accordance with sections 111.10 and 111.10.1 of the *Code*. An essential services agreement must meet the following criteria:

- Essential services must be broken down by care unit and class of care or services.
- Normal operation of intensive care units and emergency units, if any, must be ensured.
- A person's freedom of access to the institution's services must be ensured.

Bargaining may also take place, where appropriate, within the parameters agreed upon between a federation of unions and a provincial management committee. However, setting parameters at the provincial level is not mandatory and is not binding on local parties, which may decide otherwise.

The parties must negotiate which categories of employees will maintain services and the level of service to be provided. It is therefore no longer a question of maintaining a predetermined level, such as 90% at a psychiatric hospital. Some services may now be non-essential as they do not involve public health and safety, whereas previously a minimum level of service had to be maintained.

What are the parties' obligations when negotiating essential services?

The parties have the same obligations as when negotiating a collective agreement, i.e., they must act diligently and in good faith (Quebec, 2020a: s. 111.21.1). This diligence and good faith are all the more important to preserve public health and safety, but also to allow employees to exercise their constitutional right to strike.

As part of this negotiation, an employer is also required to provide all relevant information requested by the union regarding the maintenance of essential services (Quebec, 2020a: s. 111.10.2). The employer must provide the information within 10 business days of receipt of the request. The requested information must be relevant to the negotiation and may include lists of employees and names of managers and their experience to see if they can help maintain essential services.

What happens if the parties don't agree on the essential services to be maintained?

When negotiations regarding essential services are at an impasse, the union must send a list of essential services to be maintained to the ALT for approval (Quebec, 2020a: s. 111.10.3). The ALT will assess whether or not the services are sufficient, and the parties will be required to attend any sitting of the ALT to which they are convened (Quebec, 2020a: s. 111.10.4). The ALT will then approve the list with or without amendments, and the parties must comply with it. The ALT has 90 days following receipt of a list or agreement to determine whether the list is sufficient (Quebec, 2020a: s. 111.10.7).

6 ESSENTIAL SERVICES

During a strike, what happens if the union doesn't comply with the agreement or the decision on the essential services to be maintained?

The ALT may, under its remedial powers, issue an order requiring compliance with the agreement or list concerning the maintenance of essential services (Quebec, 2020a: s. 111.17). Failure to comply with the agreement or list may result in a criminal offence under the Code (Quebec, 2020a: s. 146.2).

7 RAIDING

7 RAIDING

What is raiding?

To unionize a group of workers who are not already unionized, it must be shown that the majority of them, i.e., 50% + 1, have joined the union by signing a membership card. Unionization is possible at any time for a group of workers who are not already unionized.

When another union goes after members of a group that is already represented by a union, this is called raiding. Unlike unionization, raiding is possible only within a period of time specified by law.

The golden rule at all times, but especially during raiding, is to make sure your union is representative, i.e., the majority (50% + 1) of workers have signed their membership card and have not resigned. That's why it's critical to make sure your memberships are up to date at all times.

What are the raiding periods in the private sector and for ECPs?

For all groups, including ECPs (Quebec, 2020c: s. 10) but with the exception of public and parapublic sector groups, raiding periods will vary depending on the term of the collective agreement, as outlined below.

Raiding period for a new certification:

For a new group, 12 months after the certification date if no collective agreement is reached

Raiding period prior to the expiration of a collective agreement:

- From the 90th to the 60th day before the expiration of a collective agreement with a term of three years or less
- From the 180th to the 150th day before the expiration of a collective agreement with a term of more than three years but not more than six years less a day
- From the 180th to the 150th day before the sixth anniversary of a collective agreement with a term of six or more years, and every second anniversary thereafter (eighth, tenth, twelfth, etc.) except when such a period would end less than 18 months after the expiration of the collective agreement

Raiding period after the expiration of a collective agreement:

- When a collective agreement has been expired for more than nine months and there is no arbitration dispute, strike, concerted action, or lockout.

What are the raiding periods in the public and parapublic sectors?

For groups covered by Bill 37, i.e., school boards, colleges, and healthcare institutions, the raiding period is from the 270th to the 240th day before the expiration of a collective agreement (Quebec, 2020a: s. 111.3). This rule is different from the one provided for in Section 22(d) of the *Code*, which provides that raiding takes place from the 90th to the 60th day before the expiration of a collective agreement with a term of three years or less.

In the public and parapublic sectors, the Code prohibits, in principle, collective agreements with a term of more than three years. However, this prohibition is regularly lifted by ad hoc legislation that temporarily amends the rules, allowing for longer-term collective agreements. When such legislation is passed, the government ensures that a single period is maintained from the 270th to the 240th day (Quebec, 2016), regardless of the term of the collective agreement.

Can workers or the employer question a union's certification?

Yes. A petition for cancellation of certification can be made during the same periods as for raiding. This petition may be filed by a worker, a group of workers, or the employer seeking to "de-unionize" the workplace. For such a petition for cancellation to be granted, the petitioners must demonstrate that the union is no longer representative, hence the importance for the union to keep membership cards up to date at all times.

APPENDIX 1

Summary Table of Replacement Worker Provisions

Use of Labour in the Event of a Strike

Situation Covered	At the Establishment on Strike	At Another Establishment	With Another Employer
Employee belonging to the striking bargaining unit	NO S. 19.1(c)	NO S. 19.1(d)	YES Subject to Section 45, *Labour Code*
Employee employed at the striking establishment, but in another bargaining unit that is not on strike	NO S. 19.1(g)	YES	YES Subject to Section 45, *Labour Code*
Person hired between the day the bargaining period begins and the end of the strike	NO S. 19.1(a)	NO S. 19.1(a)	NO S. 19.1(a)
Person employed by another employer	NO Art. 19.1(b)	YES Art. 19.1(b)	YES Subject to Section 45, *Labour Code*
Employee employed at another establishment	NO Art. 19.1(e)	YES Art. 19.1(e)	YES Subject to Section 45, *Labour Code*
Manager employed at striking establishment	YES S. 19.1(a)	YES S. 19.1(f)	YES Subject to Section 45, *Labour Code*
Manager employed at another establishment	NO S. 19.1(f)	YES S. 19.1(f)	YES Subject to Section 45, *Labour Code*

Source: Fontaine, Léa. *Le droit des rapports collectives du travail au Québec*, 3rd ed., vol. 1. Cowansville: Éditions Yvon Blais, 2019.

APPENDIX 2

Consequences of Pressure Tactics

Summary Table – Potential Consequences of Pressure Tactics

Type of Action	Collective Agreement	Other Provisions
Freedom of expression - Announcements - News releases - Press conferences - Postcard campaigns - Petitions - Wearing a message (T-shirt, buttons) - Communications to parents	(Disciplinary measures)	Civil liability for defamation *Charter of Human Rights and Freedoms* (dignity) *Charter of Human Rights and Freedoms* (freedom of expression)
Demonstration - Local - National - Regional - With or without union leave	Provisions for union leaves	Municipal bylaws *Criminal Code* provisions, if applicable
Demonstration Blocking access to a facility other than a public sector body	—	Civil liability for damage *Criminal Code* provisions, if applicable
Demonstration Blocking access to a facility of a public service body (e.g., a school service centre's head office, a council of commissioners, or board meeting)	(Disciplinary measures)	Civil liability for damage
Demonstration With soup kitchen (National Assembly, head office, in front of a hotel), without hindrance	—	Municipal bylaws, if applicable *Criminal Code* provisions, if applicable
Occupation		
A facility of a public sector body (ministry) Other (hotel, MP's office)	—	*Criminal Code* provisions, if applicable
Work slowdown		
Activation of the telephone system's **Call forwarding** to management staff	Disciplinary measures	Section 108 of the *Labour Code*, prohibiting any slowdown at any time
Late action to follow up on mandates	Disciplinary measures	—
Mass emailings	—	—
Extension of recesses	—	Use of Conseil des services essentiels
Disruption of the report card preparation process	Employer grievances	Section 108 of the *Labour Code*, prohibiting any slowdown at any time
Silence, refusal to communicate at staff meetings, disruption of meetings	Disciplinary measures	Section 108 of the *Labour Code*, prohibiting any slowdown at any time
Strict adherence to the work schedule	—	Section 108 of the *Labour Code*, prohibiting any slowdown at any time

Summary Table – Potential Consequences of Pressure Tactics

Type of Action	Collective Agreement	Other Provisions
Boycotting		
Joint committees	Impact on certain subjects of consultation	—
Department and program committees (CEGEP)	Disciplinary measures	—
Governing boards	—	—
Staff meetings	Disciplinary measures	—
Student activities	Sections 8-2.01, 8-2.02, 8-6.02, and 8-6.03 of the teachers' collective agreement Disciplinary measures Employer grievances	Use of Conseil des services essentiels
Extracurricular activities (not covered by the collective agreement, e.g., volunteer work)	—	—
School-wide activities replaced by classroom activities (Christmas or Halloween party)	Sections 8-2.01, 8-2.02, and 8-6.02 of the teachers' collective agreement Disciplinary measures Employer grievances	Use of Conseil des services essentiels
Strike - Study days - Concerted refusal to work any overtime - Strike itself - Concerted resignation movement	Scheduling, workday, and work week arrangements Disciplinary measures Employer grievances	Sections 106 and 111.1 et seq. of the *Labour Code*

BIBLIOGRAPHY

Judgments

Alliance des intervenantes en milieu familial de Québec, Rive-Nord, Rive-Sud (CSQ) c. Québec (Famille) (2012). QCCRT 76, [Online]. [anlii.org/fr/qc/qccrt/doc/2012/2012qccrt76/2012qccrt76.html].

Arcelormittal Mines Canada et Métallurgistes unis d'Amérique (grief patronal) (2009). QCSAT 94154, [Online]. [canlii.org/fr/qc/qcsat/doc/2009/ 2009canlii94154/2009canlii94154.html].

Association de la police montée de l'Ontario c. Canada (Procureur général) (2015). 1 RCS 3, [Online]. [scc-csc.lexum.com/scc-csc/scc-csc/fr/item/ 14577/index.do].

Association des juristes de l'État c. Québec (2012). QCCRT 43, [Online]. [canlii.org/fr/qc/qccrt/doc/2012/2012qccrt43/2012qccrt43.html].

Association professionnelle des ingénieurs du Gouvernement du Québec c. Procureure générale du Québec (2019). QCCA 1171, [Online]. [canlii.org/fr/qc/qcca/doc/2019/2019qcca1171/2019qcca1171.html].

Brasseries Molson et Union des routiers, brasseries, liqueurs douces et ouvriers de diverses industries, section locale 1999 (2002). QCSAT 76577, [Online]. [canlii.org/fr/qc/qcsat/doc/2002/2002canlii76577/2002canlii76577.html].

British Columbia Teachers' Federation c. Colombie-Britannique (2016). 2 RCS 407, [Online]. [scc-csc.lexum.com/scc-csc/scc-csc/fr/item/16241/index.do].

British Columbia Teachers' Federation v. British Columbia Public School Employers' Association (2013). BCCA 241, [Online]. [canlii.org/en/bc/bcca/doc/2013/2013bcca241/2013bcca241.html].

Cascades groupe papiers fins inc. c. Syndicat canadien des communications, de l'énergie et du papier, section locale 174 (2010). QCCRT 526, [Online]. [canlii.ca/t/2dfp0].

Centre intégré de santé et de services sociaux de la Montérégie-Est c. FIQ – Syndicat des professionnelles en soins de Montérégie-Est (2021). QCTAT 4730, [Online]. [canlii.ca/t/jjgxd].

Centre intégré de santé et de services sociaux de la Montérégie-Est et FIQ – Syndicat des professionnelles en soins de Montérégie-Est (2022). QCTAT 1935, [Online]. [canlii.ca/t/jp2qm].

Centre intégré de santé et de services sociaux des Laurentides et Syndicat des professionnels(les) en santé du Lac des Deux-Montagnes (FIQ) (2015). QCCRT 564, [Online]. [canlii.org/fr/qc/qccrt/doc/2015/2015qccrt564/ 2015qccrt564.html].

Châteauguay (Ville) c. Fraternité des policiers de Châteauguay inc. (2014). QCCRT 693, [Online]. [canlii.org/fr/qc/qccrt/doc/2014/2014qccrt693/ 2014qccrt693.html].

Comité patronal de négociation du secteur de la santé et des services sociaux c. Fédération interprofessionnelle de la santé du Québec – FIQ (2021). QCTAT 2297, [Online]. [canlii.org/fr/qc/qctat/doc/2021/2021qctat2297/ 2021qctat2297.html?resultIndex=1].

Corporation d'Urgences-santé c. Syndicat du préhospitalier - FSSS-CSN (2017). CanLII 81906, [Online]. [canlii.org/fr/qc/qcsat/doc/2017/2017canlii81906/ 2017canlii81906.html].

Corporation d'Urgences-santé c. Syndicat du préhospitalier – FSSS-CSN (2017a). QCCS 2046, [Online]. [canlii.org/fr/qc/qccs/doc/2017/2017qccs2046/ 2017qccs2046.html].

Corporation d'Urgences-santé et Syndicat du préhospitalier - FSSS-CSN (2017b). QCTA 354, [Online]. [canlii.org/fr/qc/qcsat/doc/2017/2017canlii31485/ 2017canlii31485.html].

Corporation d'Urgences-Santé de la région de Montréal Métropolitain c. Syndicat du préhospitalier-CSN (2022). QCCA 97, [Online]. [canlii.org/fr/qc/qcca/doc/2022/2022qcca97/2022qcca97.html?resultIndex=1].

Fédération des professionnelles et professionnels de l'éducation du Québec (CSQ) et Comité patronal de négociation de la Commission scolaire Kativik (2016). QCTAT 5900, [Online]. [canlii.org/fr/qc/qctat/doc/2016/2016qctat5900/2016qctat5900.html].

Fraternité des policiers et policières de Richelieu Saint-Laurent c. Régie intermunicipale de police Richelieu Saint-Laurent (2020). CanLII 706, QC SAT, [Online]. [canlii.org/fr/qc/qcsat/doc/2020/2020canlii706/ 2020canlii706.html].

Fédération interprofessionnelle de la santé du Québec – FIQ c. Comité patronal de négociation du secteur de la santé et des services sociaux (CPNSSS) (2022). QCTAT 3711, [Online]. [canlii.org/fr/qc/qctat/doc/2022/ 2022qctat3711/2022qctat3711.html?resultIndex=1].

Health Services and Support – Facilities Subsector Bargaining Assn. c. Colombie-Britannique (2007). CSC 27, [Online]. [scc-csc.lexum.com/scc-csc/scc-csc/fr/item/2366/index.do].

Leblanc (Re) (2006). QCCLP 68979, [Online]. [canlii.org/fr/qc/qcclp/doc/ 2006/2006canlii68979/2006canlii68979.html].

Les avocats et notaires de l'État québécois c. Procureure générale du Québec (2019). QCCS 3897, [Online]. [canlii.org/fr/qc/qccs/doc/2019/ 2019qccs3897/2019qccs3897.html].

Meredith c. Canada (Procureur général) (2015). 1 RCS 125, [Online]. [scc-csc.lexum.com/scc-csc/scc-csc/fr/item/14576/index.do].

Montréal (Ville) c. Association des pompiers de Montréal inc. (2000). CanLII 18591 (QC CS), [Online]. [canlii.org/fr/qc/qccs/doc/2000/2000canlii18591/ 2000canlii18591.html].

Montréal (Ville) c. Syndicat des cols bleus regroupés de Montréal (SCFP 301) (2015). QCCRT 107, [Online]. [canlii.org/fr/qc/qccrt/doc/2015/ 2015qccrt107/2015qccrt107.html].

Ontario (Procureur général) c. Fraser (2011). 2 RCS 3, [Online]. [scc-csc.lexum.com/scc-csc/scc-csc/fr/item/7934/index.do].

Pointe-Claire (Ville) c. Québec (Tribunal du travail) (1997). 1 RCS 1015, [Online]. [canlii.org/fr/ca/csc/doc/1997/1997canlii390/1997canlii390.html].

Procureur général du Québec c. Les avocats et notaires de l'État québécois, (2021). QCCA 559, [Online]. [canlii.org/fr/qc/qcca/doc/2021/ 2021qcca559/2021qcca559.html?resultIndex=1].

Procureur général du Québec, et al. c. Avocats et notaires de l'État québécois, et al. (2021). CSC 98080, [Online]. [canlii.org/fr/ca/csc-a/doc/2021/2021canlii98080/2021canlii98080.html?resultIndex=1].

Québec (Procureur général) c. Syndicat de la fonction publique du Québec inc. (2010). QCCS 1702, [Online]. [canlii.org/fr/qc/qccs/doc/2010/ 2010qccs1702/2010qccs1702.html].

Québec (Procureure générale) c. Commission des relations du travail, division des relations du travail (2016). QCCS 5095, [Online]. [canlii.org/fr/ qc/qccs/doc/2016/2016qccs5095/2016qccs5095.html].

R. c. Quickfall (1993). QCCA 3509 (QCCA), [Online]. [canlii.org/ fr/qc/qcca/doc/1993/1993canlii3509/1993canlii3509.html].

Saskatchewan Federation of Labour c. Saskatchewan (2015). 1 RCS 245, [Online]. [scc-csc.lexum.com/scc-csc/scc-csc/fr/item/14610/index.do].

Sherbrooke (Ville de) et Syndicat canadien de la fonction publique, section locale 2729 (2010). AZ-50698706 (CSE), [Online]. [tat.gouv.qc.ca/uploads/ tat_decisions/20110223_sherbrooke_bleus_scfp2729.pdf].

Société canadienne des postes c. Syndicat des travailleurs et travailleuses des postes (2013). AZ-51015783.

Société de transport de Montréal et Syndicat du transport de Montréal (CSN) (2019). QCTAT 761, [Online]. [canlii.org/fr/qc/qctat/doc/2019/ 2019qctat761/2019qctat761.html].

SOS Violence conjugale c. Syndicat du personnel des organismes communautaires (SPOC-CSQ) (2022). QCTAT 1776, [Online]. [canlii.org/fr/qc/qctat/doc/2022/2022qctat1776/2022qctat1776.html?resultIndex=1].

Syndicat canadien de la Fonction publique c. Conseil des relations du travail (N.-É.) et autre (1983). 2 RCS 311, [Online]. [scc-csc.lexum.com/scc-csc/scc-csc/fr/item/5388/index.do].

Syndicat canadien de la fonction publique, section locale 1450 c. Journal de Québec (2011). QCCA 1638, [Online]. [canlii.org/fr/qc/qcca/doc/2011/ 2011qcca1638/2011qcca1638.html].

Syndicat canadien de la fonction publique, section locale 4290 c. Sainte Béatrix (Municipalité) (2004). QCCRT 527, [Online]. [canlii.org/fr/qc/qccrt/doc/2004/ 2004qccrt527/2004qccrt527.html].

Syndicat canadien des communications, de l'énergie et du papier, section locale 866 c. Matériaux spécialisés Louiseville inc. (2008). QCCRT 389, [Online]. [canlii.org/fr/qc/qccrt/doc/2008/2008qccrt389/2008qccrt389.html].

Syndicat de l'enseignement de la Jonquière c. Commission scolaire de la Jonquière (2016). QCSAT 34265, [Online]. [canlii.org/fr/qc/qcsat/doc/2016/ 2016canlii34265/2016canlii34265.html].

Syndicat de l'enseignement de la région de Québec c. Commission scolaire des Premières Seigneuries (2016). QCSAT 25481, [Online]. [canlii.org/fr/ qc/qcsat/doc/2016/2016canlii25481/2016canlii25481.html].

Syndicat de l'enseignement de la région de Québec c. Commission scolaire des Premières-Seigneuries (2020). QCSAT 36083, [Online]. [canlii.org/fr/qc/qcsat/doc/2020/2020canlii36083/2020canlii36083.html?resultIndex=1].

Syndicat de l'enseignement du grand portage c. Commission scolaire du Fleuve-et-des-Lacs (2016). QCSAT 85732, [Online]. [canlii.org/fr/qc/qcsat/doc/2016/2016canlii85732/2016canlii85732.html].

Syndicat de l'enseignement du Haut-Richelieu et als. et Centre de services scolaire des Hautes-Rivières et als. (2021). SAE 9566.

Syndicat de la fonction publique du Québec inc. c. Québec (Procureur général) (2012). QCCA 2109 [Online]. [canlii.org/fr/qc/qcca/doc/2012/ 2012qcca2109/2012qcca2109.html].

Syndicat de la santé et des services sociaux d'Arthabaska-Érable (CSN) c. Centre de santé et de services sociaux d'Arthabaska-Érable (2006). QCCRT 276, [Online]. [canlii.org/fr/qc/qccrt/doc/2006/2006qccrt276/2006qccrt276.html].

Syndicat des cols bleus regroupés de Montréal (SCFP, section locale 301) c. Coll (2009). QCCA 708, [Online]. [canlii.org/fr/qc/qcca/doc/2009/2009qcca708/ 2009qcca708.html].

Syndicat des constables spéciaux du gouvernement du Québec et Gouvernement du Québec (Ministère de la Sécurité publique) (2017). QCTAT 3029, [Online]. [canlii.org/fr/qc/qctat/doc/2017/2017qctat3029/2017qctat3029.html].

Syndicat des employé-e-s d'Urgences-santé (CSN) et Corporation d'Urgences-santé (2020). QCTAT 677, [Online]. [canlii.org/fr/qc/qctat/doc/2020/2020qctat677/2020qctat677.html].

Syndicat des employées et employés professionnels et de bureau, section locale 571 (SEPB) CTC-FTQ c. Commission des relations du travail (2014). QCCS 5953, [Online]. [canlii.org/fr/qc/qccs/doc/2014/2014qccs5953/ 2014qccs5953.html].

Syndicat des employés(es) des magasins Zellers d'Alma et de Chicoutimi (CSN) c. Turcotte (2002). RJQ 2288, [Online]. [canlii.org/fr/qc/qcca/doc/2002/2002canlii41231/2002canlii41231.html].

Syndicat des Paramédics de l'Estrie-CSN et Ambulance de l'Estrie inc. (2016). QCTA 132, [Online]. [canlii.org/fr/qc/qcsat/doc/2016/2016canlii11735/ 2016canlii11735.html].

Syndicat des professeurs et professeures de l'Université du Québec à Montréal c. Université du Québec à Montréal (2022). QCTAT 396, [Online]. [canlii.org/fr/qc/qctat/doc/2022/2022qctat396/2022qctat396.html?resultIndex=1].

Syndicat des professionnels(les) en santé du Lac des Deux-Montagnes (FIQ) et Centre intégré de santé et de services sociaux des Laurentides (2016). QCTAT 4083, [Online]. [canlii.org/fr/qc/qctat/doc/2016/2016qctat4083/ 2016qctat4083.html].

Syndicat des travailleurs et travailleuses du Hilton Québec (CSN) c. Union des municipalités régionales de comté et des municipalités locales du Québec inc. (1992). RJQ 1190, EYB 199263962 (C.A.), [Online]. [canlii.org/fr/qc/qcca/doc/1992/1992canlii3067/1992canlii3067.html].

Syndicat des travailleuses et des travailleurs de l'Hôtel Méridien de Montréal (CSN) c. Laplante (2016). QCCS 2639, [Online]. [canlii.org/fr/ qc/qccs/doc/2016/2016qccs2639/2016qccs2639.html].

Syndicat des travailleuses et travailleurs de la Coop Lanaudière CSN c. Coop Novago (2022). QCTAT 1324, [Online]. [canlii.org/fr/qc/qctat/doc/2022/ 2022qctat1324/2022qctat1324.html?resultIndex=1].

Syndicat des travailleuses et travailleurs de la santé et des services sociaux de l'Outaouais – CSN c. Centre intégré de santé et de services sociaux de l'Outaouais (2021). QCTAT 1426, [Online]. [canlii.org/fr/qc/ qctat/doc/2021/2021qctat1426/2021qctat1426.html].

Syndicat des travailleuses et travailleurs de Volailles Marvid (CSN) et Volailles Marvid Canada inc. (2004). QCCRT 0560.

Syndicat des travailleuses et travailleurs du CIUSSS du Centre-Ouest-de-l'Île-de-Montréal – CSN et Centre intégré universitaire de santé et de services sociaux du Centre-Ouest-de-l'Île-de-Montréal (2017). QCTAT 4004, [Online]. [canlii.org/fr/qc/qctat/doc/2017/2017qctat4004/2017qctat4004. html?resultIndex=1].

Syndicat des travailleuses et travailleurs du Marriott Château Champlain – CSN c. 9006 6051 Québec inc. (2004). QCCRT 0151.

Syndicat du personnel de soutien du Collège Ahuntsic (CSQ) c. Collège Ahuntsic (2021). QCTAT 3682, [Online]. [canlii.org/fr/qc/qctat/doc/2021/ 2021qctat3682/2021qctat3682.html?resultIndex=1].

Syndicat professionnel des scientifiques à pratique exclusive de Montréal et Montréal (Ville de) (2015). QCCRT 699, [Online]. [canlii.org/fr/qc/ qccrt/doc/2015/2015qccrt699/2015qccrt699.html].

Syndicat québécois des employées et employés de service, section locale 298 (FTQ) et Chartwell Appartements de Bordeaux résidence pour retraités (2019). QCTAT 2892, [Online]. [canlii.org/fr/qc/qctat/doc/2019/2019qctat2892/2019qctat2892.html].

T.U.A.C., section locale 1518, c. KMart Canada Ltd. (1999). 2 RCS 1083, [Online]. [canlii.org/fr/ca/csc/doc/1999/1999canlii650/1999canlii650.html].

Unifor, section locale 177 c. Groupe CRH Canada inc. (2021). QCTAT 5639, [Online]. [canlii.org/fr/qc/qctat/doc/2021/2021qctat5639/2021qctat5639. html?resultIndex=1].

Ville de Montréal (SPVM) c. Fraternité des policiers et policières de Montréal (2016). CanLII 91693, [Online]. [canlii.ca/t/gwp1b].

Lois d'ordre public

CANADA (2009) : *Loi sur le contrôle des dépenses, chapitre 2, article 393*, [Online]. [laws-lois.justice.gc.ca/fra/lois/E-15.5/page-1.html].

QUÉBEC (2016). *Loi autorisant la conclusion de conventions collectives d'une durée supérieure à trois ans dans les secteurs public et parapublic, chapitre 10,* [Online], Québec, Éditeur officiel du Québec. [www2.publicationsduquebec. gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2016C10F.PDF].

QUÉBEC (2019). « Décret 416-2019, 17 avril 2019 », *Gazette officielle du Québec, Partie 2,* 151e année, no 19, Québec, Éditeur officiel du Québec. [www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=70461.pdf].

QUÉBEC (2020a). *Code du travail, chapitre C-27, à jour au 1er février 2020*, [Online], Québec, Éditeur officiel du Québec. [legisquebec.gouv. qc.ca/fr/showdoc/cs/C-27].

QUÉBEC (2020b). *Loi sur l'Institut de la statistique du Québec, chapitre I-13.011,* à jour au 1er février 2020, [Online], Québec, Éditeur officiel du Québec. [legisquebec.gouv.qc.ca/fr/showdoc/cs/I-13.011].

QUÉBEC (2020c). *Loi sur la représentation de certaines personnes responsables d'un service de garde en milieu familial et sur le régime de négociation d'une entente collective les concernant, chapitre R-24.0.1, à jour au 1er février 2020*, [Online], Québec, Éditeur officiel du Québec. [legisquebec.gouv.qc.ca/fr/showdoc/cs/R-24.0.1].

QUÉBEC (2020d). *Loi sur le régime de négociation des conventions collectives dans les secteurs public et parapublic, chapitre R-8.2, à jour au 1er* février 2020, [Online], Québec, Éditeur officiel du Québec. [legisquebec.gouv.qc.ca/fr/showdoc/cs/R-8.2].

QUÉBEC (2020e). *Loi sur les accidents du travail et les maladies professionnelles, chapitre A-3.001, à jour au 1er février 2020*, [Online], Québec, Éditeur officiel du Québec. [legisquebec.gouv.qc.ca/fr/showdoc/cs/A-3.001].

QUÉBEC (2020f). *Règles de preuve et de procédure du Tribunal administratif du travail, chapitre T-15.1, r. 1.1, à jour au 1er février 2020*, [Online], Québec, Éditeur officiel du Québec. [legisquebec.gouv.qc.ca/fr/ShowDoc/cr/T-15.1,%20r.%201.1].

QUÉBEC (2022). *Loi sur la santé publique, chapitre S-2.2, à jour au 1er avril 2022*, [Online], Québec, Éditeur officiel du Québec. [legisquebec.gouv.qc.ca/fr/ document/lc/s-2.2].

VILLE DE MONTRÉAL (2019). *Règlement sur le civisme, le respect et la propreté,* [Online]. [ville.montreal.qc.ca/sel/sypre-consultation/ afficherpdf?idDoc=27988&typeDoc=1]

Bill

QUEBEC (2019). *Bill 33, An Act to amend the Labour Code concerning the maintenance of essential services in public services and in the public and parapublic sectors.* 42nd Legislature, 1st Session. Quebec City: Quebec Official Publisher, [Online] [assnat.qc.ca/Media/ Process.aspx?MediaId=ANQ.Vigie.Bll.DocumentGenerique_146447&process=Default&token=ZyMoxNwUn8ikQ+TRKYwPCjWrKwg+vIv9rjij7p3xLGTZDmLVSmJLoqe/vG7/YWzz].

Publications

COMITÉ PATRONAL DE NÉGOCIATION DU SECTEUR DE LA SANTÉ ET DES SERVICES SOCIAUX (2016). *Convention collective intervenue entre le Comité patronal de négociation du secteur de la santé et des services sociaux et la Fédération de la santé du Québec (CSQ)*, [Online], 271 p. [cpnsss.gouv.qc.ca/download.php?f=06896d188379db000c2e581cfec40d24].

COMMISSION DES NORMES, DE L'ÉQUITÉ, DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL (2017). *Guide de calcul de l'indemnité de remplacement de revenu pour les 14 premiers jours*, [Online], 24 p. [cnesst.gouv.qc.ca/publications/200/Pages/dc_200_6232.aspx].

COMMISSION DES NORMES, DE L'ÉQUITÉ, DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL (2018). *Programme pour une maternité sans danger*, [Online], 31 p. [cnesst.gouv.qc.ca/Publications/200/Documents/ DC200-1024web.pdf].

LE JOURNAL DE QUÉBEC (2019). *Conflit syndicat et signature électronique : un « moyen de pression environnemental »*, [Online] (24 octobre). [journaldequebec.com/2019/10/24/conflit-syndicat-et-signature-electronique-un-moyen-de-pression-environnemental].

LEMONDE, Lucie (2019), *Le droit de manifester au Québec: les règlements municipaux sous la loupe,* [Online], Montréal, Ligue des droits et libertés, Service aux collectivités de l'UQAM (14 novembre). [liguedesdroits.ca/wp-content/fichiers/2020/02/guide_reglement_municipaux_sous_la_loupe_couleur.pdf].

MATHIEU, Isabelle (2019). « Fini l'itinéraire obligatoire pour les manifestations à Québec », *Le Soleil*, [Online] (22 octobre). [lesoleil.com/actualite/justice-et-faits-divers/fini-litineraire-obligatoire-pour-les-manifestations-a-quebec-3d1ba761ac46b825f6b52dfe4d82243f].

MOUVEMENT D'ÉDUCATION POPULAIRE ET D'ACTION COMMUNAUTAIRE DU QUÉBEC (2017). *Déranger et désobéir pour l'avancement de nos droits : petit guide pour démystifier l'action dérangeante et la désobéissance civile*, [Online], 12 p. [mepacq.qc.ca/wp-content/uploads/2017/02/deranger-et-desobeir.pdf].

QUÉBEC. SECRÉTARIAT DU TRAVAIL (2020). *Avis de grève et de lock-out*, [Online], [travail.gouv.qc.ca/relations_du_travail/formulaires/avis_de_greve_ et_de_lock_out.html].

Statutes and regulations

CENTRALE DES SYNDICATS DU QUÉBEC (2018). S*tatuts de la Centrale des syndicats du Québec (CSQ)*. [Online], Québec, D13177. [lacsq.org/fileadmin/user_upload/csq/documents/documentation/statuts/D13177_Statuts_CSQ_septembre_2018.pdf].

CSQ

Centrale des syndicats du Québec

lacsq.org

2223-023 D13780