

TIMELINESS OF APPLICATION*	APPROPRIATE BARGAINING UNIT	REPRESENTATION VOTE	DECERTIFICATION
<p><u>No certified trade union</u></p> <p>At any time if there is no other application concerning all or some of the employees. s.22(a)</p> <p>First filing rule: the first filing of a petition for certification, regarding non-unionized employees, renders inadmissible any similar petition filed in the days following. s.27.1</p> <p><u>Certified trade union but no collective agreement</u></p> <p>12 months after certification or the decision of the Commission** on the description of the bargaining unit when certification was granted despite the fact that there is no agreement with the employer as regards part of the unit, or 9 months after the expiry of a collective agreement or of an arbitration award replacing an agreement, where a dispute has not been submitted to arbitration and no legal strike or lockout is in progress. s.22(b.1),(b.2),(c)</p> <p><u>Agreement in force (three years or less)</u></p> <p>From the 90th to the 60th day before the date of expiration of an arbitration award replacing an agreement or the date of expiration or renewal of a collective agreement whose term is three years or less. s.22(d)</p>	<p>The right to be certified applies to all the employees of an employer or to employees who constitute a separate group according to an agreement between the employer and an association of employees, ascertained by a labour relations officer, or according to the decision of the Commission. s.21</p> <p>A single employee may form a group, except in farming operations, where the minimum requirement for certification is three ordinarily and continuously employed persons. s.21</p> <p>Every employer, who intends to make changes to the mode of operation of his/her undertaking entailing the conversion of the status of an employee to whom a certification or a petition for certification applies to that of contractor without employee status, must so inform the association of employees concerned by means of a written notice containing a description of the changes. The certified association may, within 30 days after receipt of the notice, apply to the Commission for a determination as to whether or not employee status will be maintained for those who accept to work under the proposed new conditions. The Commission must render its decision within 60 days after receipt of the association's application. The employer may not implement the intended changes until the Commission has dealt with the application or until the 30-period for requesting its intervention has expired. s.20.0.1</p> <p>The Commission may settle, after an investigation, any matter relating to the bargaining unit and the persons contemplated by it, and may for that purpose modify the unit proposed by the petitioning association. ss.,32,39</p>	<p>Certification is applied for by an association of employees by means of a petition filed with the Commission. The latter must send a labour relations officer immediately. ss.25,28</p> <p>If the parties agree on the bargaining unit (even if there is some disagreement as to the inclusion of certain persons mentioned in the petition), the labour relations officer will certify the association of employees when he/she is satisfied it is representative (i.e., absolute majority), or, if he/she ascertains that 35% to 50% of the employees comprised in the unit are members of the association of employees, he/she holds a ballot and certifies the association if it obtains the absolute majority vote of the employees comprised in the unit. ss.21, 28a), b), d)</p> <p>The labour relations officer must certify an association of employees, even where there is no agreement with the employer as regards part of the bargaining unit, if the officer considers that the association is nevertheless representative and that it will remain representative regardless of any decision of the Commission on the description of the bargaining unit. s.28(d.1)</p> <p>Where a certified association already exists, or where there is more than one petitioning association of employees, if the labour relations officer ascertains that there is agreement on the bargaining unit, he/she must certify the association grouping the absolute majority of the employees or, if not, hold a secret ballot in accordance with the provisions of sections 37 and 37.1 described on the next page. If there is disagreement on the bargaining unit, the officer must make a report on the disagreement to the Commission. s.28(e)</p>	<p><u>Timeliness of application</u></p> <p>Same as for certification. s.41</p> <p><u>Criteria</u></p> <p>The Commission may cancel the certification:</p> <ul style="list-style-type: none"> a) if the association of employees has ceased to exist, or b) if it no longer comprises a majority of the employees in the unit for which it was certified. <p>An employer may request the Commission to examine these two criteria. s.41</p> <p>The Court may order the dissolution of an association of employees if it is proven that it is dominated or financed by the employer or its representative. The association has an opportunity to be heard and to attempt to prove that it is blameless. s.149</p>

*From the filing of a petition for certification, no employer may change the conditions of employment of the employees affected without the written consent of each petitioning association of employees and the certified association if there is one. This freeze applies until the right to lock out or to strike is exercised or an arbitration award is handed down. s.59

** The term « Commission » means the Labour Relations Commission (Commission des relations du travail)

CERTIFICATION OF TRADE UNIONS *(continued)*

Quebec

TIMELINESS OF APPLICATION	APPROPRIATE BARGAINING UNIT	REPRESENTATION VOTE	DECERTIFICATION
<p><u>Agreement in force (more than three years)</u></p> <p>a) From the 180th to the 150th day before the date of expiration or renewal of a collective agreement; and</p> <p>b) From the 180th to the 150th day before the sixth anniversary of the signing of the collective agreement or of its renewal and every other anniversary that follows (unless that period would end 12 months or less before the start of the period described in point a) above). s.22(e)</p> <p><u>Where application refused or withdrawn</u></p> <p>No renewal of an application for certification for three months, unless the petition is not admissible because of the first filing rule or the withdrawal occurs following an amalgamation of the territories of local municipalities or school boards, an integration of personnel within an urban community, or the establishment of a transit authority. s.40</p> <p><u>Failure to file agreement with one of the offices of the Commission</u></p> <p>An application for certification may be made by another association 60 days after the signing of a collective agreement or of any amendment thereto until such agreement or amendment has been filed. s.72</p>		<p>A labour relations officer does not grant certification and makes a report to the Commission in the following circumstances:</p> <ul style="list-style-type: none"> - certification has not been granted by the labour relations officer because he/she has not come to the conclusion that the association of employees has the representative character required; - the employer does not agree with the proposed bargaining unit; he/she has informed the labour relations officer of the reasons for his/her disagreement; and has provided, within the prescribed time, a description of the unit he/she believes to be appropriate; - the labour relations officer believes that there is interference on the part of the employer with the employees' association, or a complaint has been filed in this respect. s.28(a),(b),(c),(d),(e), 29, 30 <p>The Commission decides whether the petitioning association is representative after investigating the question in any manner he/she thinks advisable, including by calculating membership or holding a vote by secret ballot. s.32</p> <p>When a petition for certification is filed or a demand is made for assessment of the representative character of a certified association of employees, a person is recognized as a member of that association if, by the date of the filing of the petition or the making of the demand, he/she is an employee in the concerned bargaining unit, he/she has signed an application for membership, duly dated and not revoked, and has personally paid at least two dollars in union dues within the preceding 12 months. s.36.1</p> <p>The Commission must order a vote by secret ballot when an association has as members 35% to 50% of the employees in the unit. Only the association(s) comprising each not fewer than 35% of the employees and the certified association, if any, may compete for election. This requirement for a vote does not apply when one of the associations has the absolute majority of the employees. s.37</p> <p>Where a vote by secret ballot involves more than two associations which, together, obtain an absolute majority of the votes of eligible employees, without any having an absolute majority, the Commission orders a new vote by secret ballot excluding the association with the fewest votes. s.37.1</p> <p>Where a vote by secret ballot involves two associations, the Commission certifies the one which has obtained more votes if they, together, obtain an absolute majority of the votes of eligible employees. s.37.1</p>	

COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS

NOTICE TO BARGAIN

No previous collective agreement

Either party must give to the other party at least eight days' written notice of the time and place its representatives will be ready to meet. s.52

Prior to expiry of collective agreement

A notice of meeting may be given by either party within 90 days preceding the expiration of the agreement, unless another period is provided therein, or the expiration of an arbitration award made in lieu of an agreement. s.52

Transfer of part of an undertaking

Where the new employer is bound, under the Code, by the certification of an association of employees and a collective agreement that is in force, the agreement is deemed to expire on the day the transfer becomes effective, and a notice of meeting may be given by either party within the following 30 days. s.52

Notice of meeting deemed given and received

If no notice of meeting is given, it is deemed to have been received, as the case may be, 90 days after the association of employees obtained certification, at the expiry of the collective agreement or the arbitration award made in lieu of it, or 30 days following the deemed expiration of the agreement in the case of the partial transfer of an undertaking. s. 52.2

Statutory obligation

After a notice of meeting has been received, negotiations must begin and be carried on diligently and in good faith. s.53

Statutory freeze after the termination of a collective agreement

No employer may change the conditions of employment of its employees without the written consent of the certified association of employees. This freeze applies until the right to lock out or to strike is exercised or an arbitration award is handed down. s.59

During the freeze, it is forbidden to advise or enjoin employees not to continue furnishing their services under the same conditions of employment. s.60

FAILURE TO SETTLE COLLECTIVE BARGAINING DISPUTE

Upon written application to the Minister by both parties, a dispute is submitted to an **arbitrator** whose decision is final and binding for a maximum of three years. The parties may, however, agree to amend the award. ss.58,74,92,93

At the request of either party or on his/her own initiative, the Minister appoints a **conciliator***. ss.54,55

Report to Minister if he/she so requests. s.57

Upon written request of either party:

First agreement

The Minister submits the dispute to an arbitrator. ss.93.1,93.2,93.3

The Minister does not submit the dispute to an arbitrator. ss.93.1,93.2,93.3

If he/she believes that a settlement is unlikely within a reasonable time, the arbitrator informs the parties and the Minister that he/she will determine the content of the first agreement. s.93.4

The Act respecting the ministère du Travail gives the Minister of Labour the power to appoint a special mediator at any time*. s.13

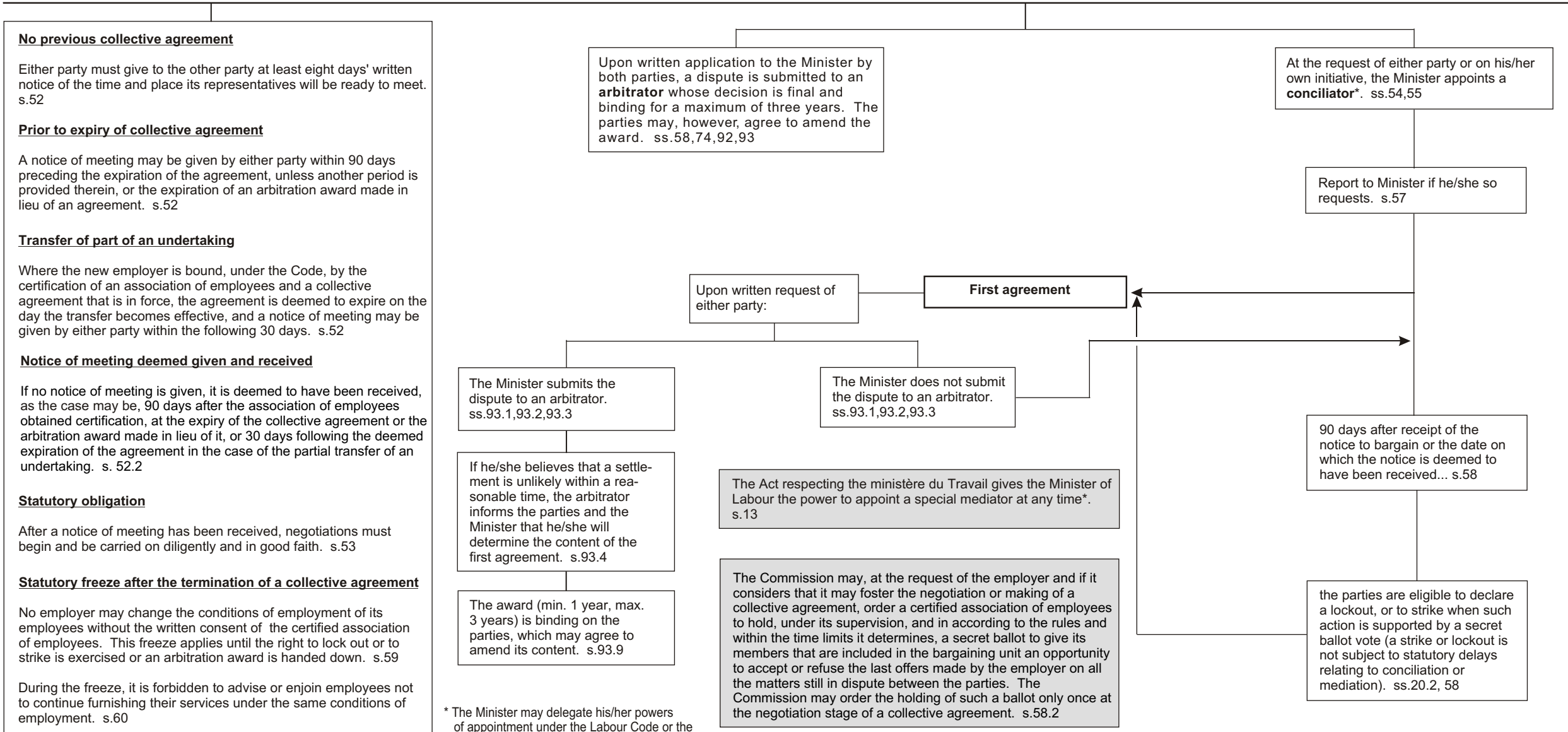
The award (min. 1 year, max. 3 years) is binding on the parties, which may agree to amend its content. s.93.9

The Commission may, at the request of the employer and if it considers that it may foster the negotiation or making of a collective agreement, order a certified association of employees to hold, under its supervision, and in according to the rules and within the time limits it determines, a secret ballot to give its members that are included in the bargaining unit an opportunity to accept or refuse the last offers made by the employer on all the matters still in dispute between the parties. The Commission may order the holding of such a ballot only once at the negotiation stage of a collective agreement. s.58.2

90 days after receipt of the notice to bargain or the date on which the notice is deemed to have been received... s.58

the parties are eligible to declare a lockout, or to strike when such action is supported by a secret ballot vote (a strike or lockout is not subject to statutory delays relating to conciliation or mediation). ss.20.2, 58

* The Minister may delegate his/her powers of appointment under the Labour Code or the Act respecting the ministère du travail (see s.8.1) to a representative in his/her Department.



REQUIREMENTS CONCERNING LEGAL STRIKES

PREREQUISITES TO LEGAL STRIKE (Similar requirements apply with respect to legal lockouts)

Strike action is prohibited:

- until 90 days after receipt by either party of the notice to commence bargaining (if no notice of meeting is given, it is deemed to have been received, as the case may be, 90 days after the association of employees obtained certification, at the expiry of the collective agreement or the arbitration award made in lieu of it, or 30 days following the deemed expiration of the agreement in the case of the partial transfer of an undertaking); s.58
- from the time an arbitrator informs the parties that he/she will determine the content of a first agreement; s.93.5
- if an association of employees has not been certified; s.106
- during the period of application of a collective agreement, except where such agreement has a clause permitting the revision thereof by the parties and the conditions for a legal strike have been met. Any disagreement over the interpretation or application of a collective agreement is submitted to binding arbitration as may be provided in the agreement, or is referred to a grievance arbitrator in accordance with the Labour Code. ss.100,101,107

Remarks

Following a petition for certification or for reconsideration or cancellation of certification, or for resolving an issue resulting from the sale or concession of an undertaking, the Commission may order the suspension of negotiations and of the period for exercising the right to strike. s.42

The association of employees must notify the Minister in writing within 48 hours following the declaration of a strike and indicate the number of employees in the bargaining unit. s.58.1

Limitation of the right to strike in public services

Among others, "public services" include municipalities; intermunicipal agencies; telephone services; fixed-schedule land transport such as a railway or subway; transport by bus or boat; production, transmission, distribution or sale of gas or electricity; gas storage; operation or maintenance of a waterworks system, a sewer system or a water purification or treatment system; a certified organization for the protection of forests against fire; waste incineration and various operations involving household garbage or putrescible waste; ambulance services; and the collection, transportation or distribution of blood or blood products or human organs for transplantation. s.111.0.16

STRIKE VOTE

No strike may be declared unless it has been authorized by secret ballot decided by a majority vote of the members of the certified association of employees who are in the bargaining unit and who exercise their right to vote. The association of employees must inform its members of the taking of the vote at least 48 hours in advance. s.20.2

Remark re: ratification vote

A collective agreement may not be signed until it has been authorized by secret ballot decided by the majority of the members of the certified association in the unit who exercise their right to vote. s.20.3

PROHIBITIONS REGARDING REPLACEMENT EMPLOYEES

An employer is prohibited from using the services of replacement employees in an establishment affected by a legal strike or a lockout. The types of persons covered by the prohibition are as follows:

- a) persons hired between the day negotiations begin and the end of the strike or lockout;
- b) employees of other employers and subcontractors;
- c) members of the bargaining unit involved (unless an agreement has been reached by the parties; in designated public services, unless the trade union has submitted a list of essential services to be maintained or the Government has suspended the right to strike because of insufficient essential services);
- d) employees of the employer in another establishment;
- e) persons who are not employees under the Code (managers, foremen, etc.) that the employer employs in another establishment (unless employees of that establishment belong to the unit involved in the work stoppage);
- f) employees in the establishment who do not belong to the bargaining unit on strike or locked out. s.109.1

REQUIREMENTS CONCERNING LEGAL STRIKES *(continued)*

PREREQUISITES TO LEGAL STRIKE

Essential services

On the recommendation of the Minister, the government, if of the opinion that a strike in a public service might endanger the public health or safety, may, by order, require an employer and a certified association of employees to maintain essential services in the event of a strike. Such order may be made at any time prior to the filing of a collective agreement. From the date indicated, it suspends the right to strike until the certified association concerned meets the requirements pertaining to essential services, the right to declare a strike and the strike notice. The parties must then negotiate and forward their agreement on essential services to the Essential Services Council (Conseil des services essentiels). If no agreement is reached, the certified association must send to the employer and to the Council a list of the essential services that must be maintained. This list may not be amended thereafter, except at the request of the Council. ss.111.0.17,111.0.18

If the Council considers that the essential services provided for in this agreement or list are insufficient, it may, before reporting this to the Minister, make the appropriate recommendations to the parties to amend the agreement or list, and may order the certified association not to exercise its right to strike until it informs the Council of the action it intends to take in respect of the recommendations. If the Council considers that the essential services provided for in the agreement or list are insufficient or are not provided during a strike, it must make a report to the Minister and inform the public of its content. ss.111.0.19,111.0.20,111.0.21

Strike notice

In addition to the prerequisites to a legal strike mentioned above, a certified association in a public service must give a written strike notice of at least 7 juridical days to the Minister and the employer, and also to the Council when an order has been made regarding the essential services to be maintained. Such notice may be renewed only after the day indicated as the time of the beginning of the strike. In the case of a public service for which an order has been made, no strike may be declared unless, at least 7 days before its beginning, an agreement or list regarding essential services has been forwarded to the Council (and also to the employer in the case of a list). s.111.0.23

An employer, in a public service, is given a length of time within which to adapt its operations in view of the cancellation of a strike notice, or a return to work notice following a strike. s.111.0.23.1

Suspension of the right to strike

If it is of the opinion that the essential services provided for or actually rendered where a strike is apprehended or in progress are insufficient and that it endangers public health or safety, the government, on the recommendation of the Minister, may suspend the right to strike in a public service for which an order has been made regarding maintenance of those services. The suspension has effect until it is proved to the government that, where the right to strike is exercised, essential services will be sufficiently maintained in that public service. s.111.0.24

PROHIBITIONS REGARDING REPLACEMENT EMPLOYEES

In addition, an employer is prohibited from using, in another of its establishments, the services of an employee who is a member of the unit on strike or locked out. s.109.1

Employers are exempted from the provisions on the use of replacement employees during a legal strike or lockout to the extent necessary to ensure compliance with a violated agreement, list, or order pertaining to essential services (see item c) on the previous page). s.109.2

Employers are not prevented from taking necessary measures to avoid the destruction or serious deterioration of property, as long as those measures are for conservation and are not designed to enable production of goods or continuation of services, which would not otherwise be permitted. s.109.3

Upon application, the Minister may dispatch an investigator to ascertain whether the provisions mentioned above are being complied with. The investigator makes a report to the Minister and sends a copy to the parties. s.109.4

At the end of a strike or lockout, any affected employee is entitled to recover his/her employment by priority over any other person, unless the employer can produce a good and sufficient reason for not recalling such employee. Any disagreement between the employer and the certified association relating to the non-recall of an employee must be submitted to arbitration, as if it were a grievance, within 6 months from the date when employment should have been recovered. s.110.1

REQUIREMENTS CONCERNING LEGAL STRIKES *(continued)*

Quebec

PREREQUISITES TO LEGAL STRIKE

A lockout is prohibited in a public service contemplated by an order regarding the maintaining of essential services. s.111.0.26

Remedial powers

Where a lockout, a strike, a slowdown, or another concerted action contrary to law affects or is likely to affect the provision of a service to which the public is entitled or, where the essential services prescribed in a list or an agreement are not provided during a strike, the Council is empowered to intervene to make an inquiry, attempt to bring the parties to reach a settlement of the conflict and, if necessary, order the parties to implement the corrective measures required in the circumstances. ss.111.16,111.17,111.18

CERTAIN OBLIGATIONS AND PROHIBITIONS APPLYING TO THE PARTIES

Quebec

BARGAINING AGENT

EMPLOYER

Duty of fair representation

A certified association of employees is prohibited from acting in bad faith or in an arbitrary or discriminatory manner or showing serious negligence in respect of employees in the bargaining unit it represents. s.47.2

If an employee who has been the subject of a dismissal or of a disciplinary sanction believes that the certified association of employees does not represent him/her fairly, he/she may, within six months, submit a complaint and a written request to the Commission for an order that his/her claim be referred to arbitration. If the Commission considers that the association did not fulfil its obligation under the Code to afford equal and fair treatment to the employees it represents, it may authorize the employee to refer his/her claim to an arbitrator appointed by the Minister as if it were a grievance under a collective agreement. The association then pays the employee's costs. In addition, the Commission may issue any other order it considers necessary in the circumstances. ss.47.3 and 47.5

Limitations on the application of union security clauses requiring dismissal

A collective agreement is not binding on an employer regarding the dismissal of an employee for the sole reason that his/her union membership has been refused, deferred, suspended, or cancelled, except in the following cases:

- a) the employee has been hired contrary to a provision of the agreement;
- b) the employee has participated, at the instigation or with the direct or indirect assistance of management, in an activity against the certified association of employees. s.63

Compulsory deduction of union dues

As of the date of certification, an employer must withhold from the salary of every employee who is a member of the certified association, or who is included in the represented bargaining unit, the amount stated as an assessment by such association. The amounts so withheld must be remitted monthly to the certified association. s.47