

TIMELINESS OF APPLICATION*	APPROPRIATE BARGAINING UNIT	REPRESENTATION VOTE	DECERTIFICATION
<p><u>No certified trade union, no collective agreement</u></p> <p>At any time. s.18(1)</p> <p><u>Certified trade union but no agreement in force</u></p> <p>When:</p> <p>a) 6 months have elapsed since the date of certification of a trade union for the unit, or</p> <p>b) the Board** has consented to an application before the expiry of the period of 6 months. s.18(2)</p> <p>No application during a strike or lockout without the consent of the Board. s.18(3)</p> <p><u>Agreement in force</u></p> <p>Only during the 7th and 8th months in each year of its term or of any renewal or continuation thereof. However, an application may not be made within 22 months of a previous application which resulted in a decision by the Board on the merits of the application. s.19(1),(2)</p> <p>No application during a strike or lockout without the consent of the Board. s.19(3)</p>	<p>"Unit" means an employee or a group of employees; "employee" includes a dependent contractor; and the expression "appropriate for collective bargaining" or "appropriate bargaining unit", where used with reference to a unit, means a unit determined by the Board to be appropriate for collective bargaining, whether it is an employer unit, craft unit, technical unit, plant unit, or any other unit, and whether or not the employees therein are employed by one or more employers. s.1(1)</p> <p>In determining that a unit is appropriate for collective bargaining, the Board may include or exclude employees. s.22(1)</p> <p>The term "employee" includes a dependent contractor as defined in the Code. s.1(1)</p> <p>Dependent contractors may be included in a new bargaining unit or form a new unit. Where a certification already exists for a group of employees of the same employer, the Board must determine whether the dependent contractors are more appropriately included in the existing unit or a separate unit. s.28(1)</p> <p>In the case of an application for certification concerning supervisory employees and other employees, the Board may certify the applicant trade union for the unit, for a unit of supervisory employees only, or for a unit composed of some or all of the other employees. s.29</p>	<p>Where there is no collective agreement or certified trade union, an application for certification may be made by a trade union claiming to have as members in good standing not less than 45% of the employees in a unit. If a union has been certified for a unit or a collective agreement is in force, an application may be made by a union claiming to have majority support. s.18(1),(2), 19(1)</p> <p>A secret ballot representation vote is mandatory when the Board is satisfied that on the date it receives an application for certification at least 45% of the employees in a unit are members in good standing of the trade union. The vote must be conducted within 10 days from the date the application is received or, if the vote is to be conducted by mail, within a longer period the Board orders. ss.24(1), (2), 39(1)</p> <p>The Board may order another representation vote if less than 55% of the employees in the unit cast ballots. s. 24(3)</p> <p>The minimum criteria for establishing membership in good standing in a trade union are as follows:</p> <ul style="list-style-type: none"> - a membership card must be signed and dated at the time of signature; - a membership card signed on or after January 18, 1993 must contain the following statement: In applying for a membership I understand that the union intends to apply to be certified as my exclusive bargaining agent and to represent me in collective bargaining; - the membership card must have been signed or active membership must have been maintained by dues payments within 90 days prior to the application for certification. Labour Relations Regulation s.3 	<p>Certification may be cancelled by the Board at any time after it occurs if it is satisfied that the trade union has ceased to be a trade union or that the employer has ceased to be the employer of the employees in the unit. s.33(1)</p> <p><u>Mandatory representation vote</u></p> <p>The Board must order that a representation vote be taken where at least 45% of the employees in the unit sign an application for cancellation of the certification. The vote must be held within 10 days after the application or such longer period as ordered by the Board if it is conducted by mail. s.33(2)</p> <p>There may be no application for a mandatory vote:</p> <p>a) during the 10 months following certification,</p> <p>b) during the 10 months following a refusal to cancel the certification because of an unfair labour practice or improper interference, or</p> <p>c) during a period determined by the Board (minimum 90 days if one is prescribed) following a refusal to cancel the certification because a majority of votes were in favour of the union. ss.30,33(3)</p> <p>The Board may order another representation vote if participation by eligible employees is less than 55%. s.33(5)</p>

* While an application for certification is pending, the employer concerned may not alter rates of pay or any other term or condition of employment of the employees affected without the authorization of the Board. If a union is certified and no collective agreement is in force, this freeze continues to apply with respect to employees in the unit during four months after certification, unless a collective agreement is negotiated. ss. 32(1), 45 (1), (3)

** The term "Board" means the Labour Relations Board and "Mediation Division" means the Mediation Division of the Board.

CERTIFICATION OF TRADE UNIONS (continued)

British Columbia

TIMELINESS OF APPLICATION	APPROPRIATE BARGAINING UNIT	REPRESENTATION VOTE	DECERTIFICATION
<p><u>Exceptions</u></p> <p>a) A trade union that is a party to a collective agreement, but is not certified with respect to employees covered by it, may apply at any time; and</p> <p>b) a council of trade unions comprising trade unions that are parties to collective agreements may apply at any time to be certified in place of those trade unions. s.18(4)</p> <p><u>Where application refused</u></p> <p>No new application by the same applicant for a period determined by the Board (minimum 90 days if such a period is prescribed). s.30</p> <p><u>Where certification has been cancelled without regard to a vote, due to an unfair labour practice or improper interference</u></p> <p>No new application by the trade union for 10 months. s.33(7)</p> <p><u>Where certification cancelled</u></p> <p>No application by another trade union for 10 months unless the Board abridges that period. s.33(10)</p>		<p>Certification takes place if the majority of employees in the unit who vote are in favour of representation by the trade union and the unit is appropriate for collective bargaining. s.25</p> <p>If, on inquiry, the Board is of the opinion that a trade union seeking certification would likely have obtained the requisite support in the absence of an unfair labour practice, it may certify the union despite the fact that it did not obtain the support of a majority of voters in a representation vote. If certification is granted in such circumstances, the Board may impose conditions on the trade union, and, if the conditions are not substantially fulfilled to its satisfaction within 12 months or a lesser period it may specify, the certification is cancelled. s.14(4)(f),(5)</p>	<p>The Board may cancel or refuse to cancel certification without regard to the result of any vote if any employees in the unit are affected by an order pertaining to a prohibited act, or if it considers that, by reason of improper interference by any person, a vote is unlikely to disclose the true wishes of the employees. s.33(6)</p> <p><u>Other causes for decertification</u></p> <p>On receipt of an application for cancellation of certification, the Board may grant this demand if it is satisfied that the trade union has abandoned its bargaining rights. s.33(11)</p>

COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS

British Columbia

NOTICE TO BARGAIN

FAILURE TO SETTLE COLLECTIVE BARGAINING DISPUTE

No previous collective agreement

Either party may require the other to commence bargaining. s.45(1)

Prior to expiry of collective agreement

Either party may, at any time within 4 months immediately preceding the expiry of the agreement, require the other to commence bargaining. s.46(1)

If a notice is not given 90 days or more prior to the expiry of the agreement, the parties are deemed to have given notice 90 days prior to the expiry. s.46(4)

Copy to Board

A copy of the notice to bargain must be sent to the associate chair of the Mediation Division of the Board. s.46(2)

Statutory obligation

Bargaining in good faith must commence within 10 days after the date of the notice. s.47

Statutory freeze following notice to bargain

During negotiations for a first collective agreement, the employer may not alter rates of pay or other terms or conditions of employment until 4 months after the certification of the trade union, unless a collective agreement is entered into or an authorization is granted by the Board. s.45(1),(3)

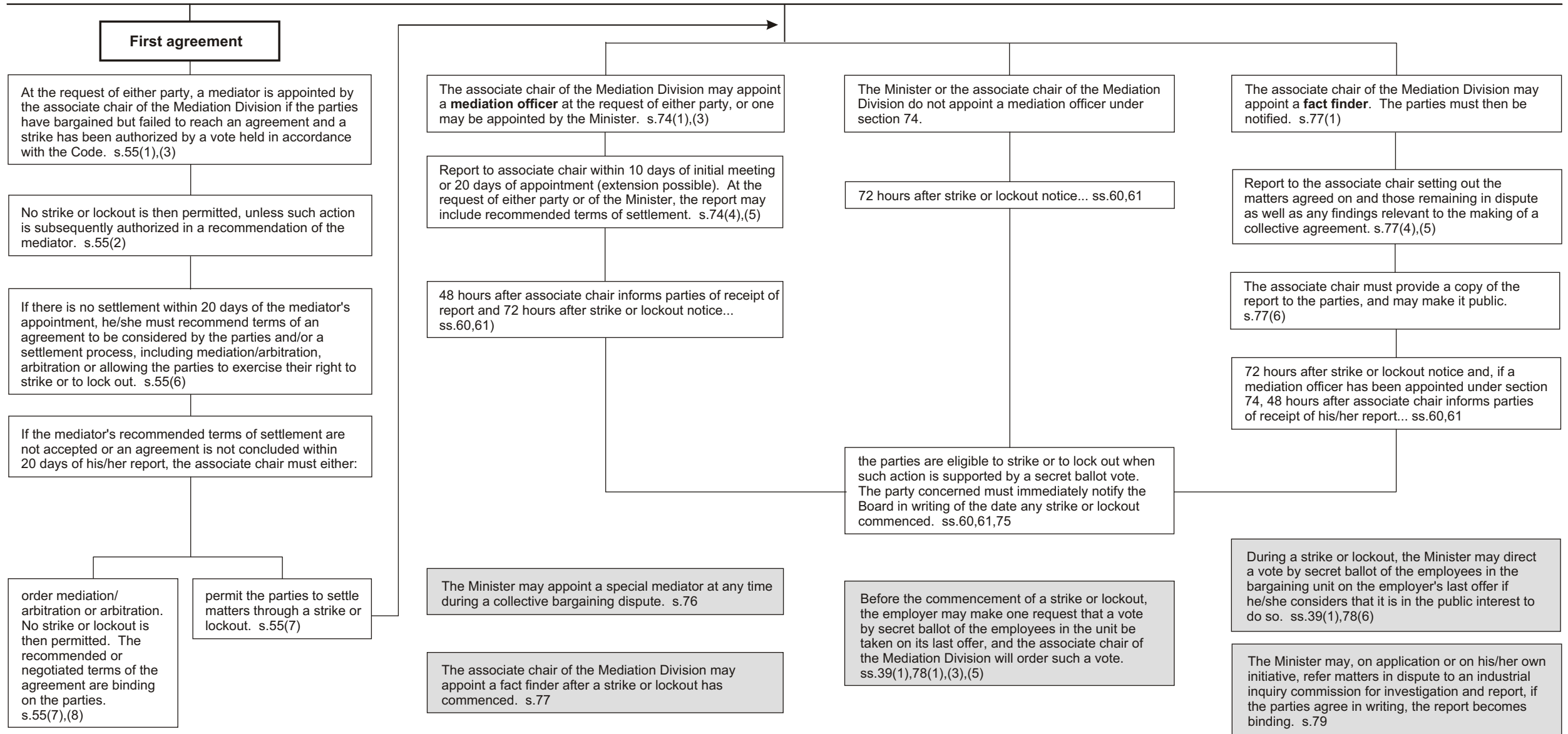
When a collective agreement between the parties has expired, the employer or trade union may not, except with the consent of the other, alter any term or condition of employment. This applies until a strike or lockout has begun, a new collective agreement has been negotiated or the bargaining rights have been cancelled. s.45(2)

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COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS (continued)

British Columbia

FAILURE TO SETTLE COLLECTIVE BARGAINING DISPUTE



REQUIREMENTS CONCERNING LEGAL STRIKES
(Similar requirements apply with respect to lockouts)

British Columbia

PREREQUISITES TO LEGAL STRIKE

Strike action is prohibited during the term of a collective agreement. All disputes arising from the interpretation, application or alleged violation of a collective agreement must be settled, without stoppage of work, by arbitration or other method. ss.57,58,84,85

Unless the parties agree otherwise in writing, it is prohibited to declare a strike:

- more than three months after the date of a vote favouring a strike; s.60(3)(a)
- until the trade union gives a written strike notice to the employer and files the notice with the Board; s.60(3)(b)
- until 72 hours after the notice has been served on the employer and filed with the Board; s.60(3)(b)
- if a mediation officer has been appointed under section 74, until 48 hours after the associate chair of the Mediation Division informs the trade union that he/she has received the report and after the expiration of the 72 hours' strike notice. s.60(3)(b)

Longer period of notice

On application or on its own initiative, the Board may direct that a longer period of strike notice be given for the protection of perishable property or other property or persons affected by perishable property. s.60(4)

Essential Services

The Chair of the Board may, on his/her own initiative or on application by either of the parties to a collective bargaining dispute, investigate whether the dispute poses a threat to the health, safety or welfare of the public or the provision of educational programs to students and eligible children under the School Act, and report the results of the investigation to the Minister. s.72(1)

After receiving such a report or on his/her own initiative, the Minister may direct the Board to designate as essential services those facilities, productions and services that it considers necessary or essential to prevent immediate and serious danger to the health, safety or welfare of the public or immediate and serious disruption to the provision of educational programs in public schools. s.72(2),(2.1)

STRIKE VOTE

A strike vote may not be taken until the parties have bargained collectively. s.59(1)

Unless a legal lockout has lasted for longer than 72 hours, a strike vote by secret ballot is mandatory. The result is determined by a majority of those in the unit who vote. s. 59(2),60(1). Labour Relations Regulation. s.13

On application by a person directly affected by a strike vote or an impending strike, or on its own initiative, the Board may declare a vote to be void if it is satisfied that it has not been held in accordance with the Code or the regulations and may prescribe the terms of any subsequent vote. s.60(2)

Except as otherwise agreed in writing between the parties, the strike may be declared only during the 3 months following the date on which the vote was taken. s.60(3)(a)

Remarks re: strike and ratification votes

A collective agreement concluded outside the province applies to employees in the province who are covered only if it has been ratified by a majority of them. s.11(2)

A strike or ratification vote must be by secret ballot, and the results must be made available to the union members and the employer affected. s.39(1),(2)

All employees in a bargaining unit, whether or not they are unionized, are entitled to participate in strike and ratification votes held by the trade union. If a trade union coordinates collective bargaining on behalf of more than one bargaining unit, the ballots may not be counted until all units involved have voted. s.40

REQUIREMENTS CONCERNING LEGAL STRIKES *(continued)*

British Columbia

PREREQUISITES TO LEGAL STRIKE

The Board may appoint one or more mediators to assist the parties to reach an agreement on essential services designations. It must submit a decision regarding essential services within 30 days after receiving a mediation report. s.72(3),(5)

If the process of designation is initiated before the beginning of a strike or lockout, no work stoppage may occur until the process has been completed. s.72(6)

If the required 72-hour (or possibly longer) strike notice period expires without the work stoppage occurring in an establishment affected by essential services designations, the trade union is required to give a new notice of at least 72 hours before commencing a strike. s.60(6)

PROHIBITION REGARDING REPLACEMENT EMPLOYEES

During a legal strike or lockout, an employer is prohibited from using the services of the following persons, whether they are paid or not:

- a) those transferred, hired or engaged after notice to bargain was given or, in the absence of such notice, after the beginning of negotiations;
- b) those who ordinarily work at another of the employer's places of operations;
- c) those employed, engaged or supplied to the employer by another person.

These persons cannot be used to perform the functions of any striking or locked out employee, or the work ordinarily done by personnel permitted to perform replacement work (i.e., consenting members of the bargaining unit concerned as well as managers and employees not in the bargaining unit, who work at the place of operations and agree to perform such work). s.68

CERTAIN OBLIGATIONS AND PROHIBITIONS APPLYING TO THE PARTIES

British Columbia

BARGAINING AGENT

EMPLOYER

Duty of fair representation

A trade union or council of trade unions must not act in a manner that is arbitrary, discriminatory, or in bad faith in representing any of the employees in a bargaining unit, or in the referral of persons to employment, whether or not they are members of the trade union or of a constituent union of the council. s.12(1)

Limitations on the application of union security clauses requiring dismissal

Every person has a right to the application of the principles of natural justice in respect of disputes relating to the constitution of a trade union, membership in it, or disciplinary action it may take. If a complaint is made and, after having inquired into the matter, the Board is satisfied that there has been a contravention of this provision, it may order a trade union to reinstate a person to membership and to pay to that person a sum equal to wages lost due to his/her expulsion or suspension as well as the amount of any related financial penalty. s.10(1),14(4)(d)

A trade union or its representative may not require an employer to terminate an employee due to his/her expulsion or suspension from that trade union on the ground that he/she is or was a member of another trade union. s.15(2)

Compulsory deduction of union dues

An employer or its representative may not refuse to agree with a certified trade union, engaged in collective bargaining to conclude a first agreement, that all employees in the unit, whether union members or not, will pay union dues. s.6(3)(f)

The Board may exempt religious objectors from a requirement to belong to a trade union or to pay dues, fees or assessments to the union, so long as these amounts are paid to a registered charitable organization that it may designate. Such an employee is not entitled to participate in a vote conducted by the union or directed by the Board under the Code. s.17

Authorization to deduct union dues

An employer must honour an employee's written assignment of wages to a certified trade union unless the assignment is declared null and void by the Board or is revoked by the assignor. s.16(1)