Studies in
Labour Markets

35 YEARS 1974-2009 FRASER INSTITUTE

August 2009

Labour Relations Laws in Canada and the United States

An Empirical Comparison

2009 Edition

by Amela Karabegović, Alex Gainer, and Niels Veldhuis

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Contents

Executive summary

This study is the third installment of a long-term project to evaluate the extent to which labour relations laws bring flexibility to the labour market while balancing the needs of employers, employees, and unions. Balanced labour laws are crucial in creating and maintaining an environment that encourages productive economic activity. Labour relations laws inhibit the proper functioning of a labour market and thus reduce its performance when they favour one group over another or are overly prescriptive through the imposition of resolutions to labour disputes rather than fostering negotiation among employers, employees, and unions. Empirical evidence from around the world indicates that jurisdictions with flexible labour markets have more productive labour markets (higher job creation rates, lower unemployment, and higher incomes) which produce a higher standard of living.

This publication provides an empirical assessment of labour relations laws in the private sector for the 10 Canadian provinces, the Canadian federal jurisdiction, and the 50 US states. In all, 11 components of labour relations laws are examined, grouped into three categories: (1) Organizing a Union; (2) Union Security, and; (3) Regulation of Unionized Firms. Below is a brief summary of the overall results as well as of the performance in each of the three categories.

Index of Labour Relations Laws

The Index of Labour Relations Laws measures the extent to which jurisdictions achieve balance and flexibility in their labour relations laws. The overall results suggest four groups of jurisdictions. First are the 22 US Right-to-Work (RTW) states, which have the most balanced and least prescriptive labour relations laws and receive a score of 9.2 out of 10.0 (Exsum table 1; Exsum figure 1). The remaining 28 US states, which are not RTW states, make up the second group of jurisdictions. They have relatively balanced labour relations laws, although not as balanced as those of the RTW states. These states were tied for 23rd position with an overall score of 7.5. RTW states differ from non-RTW states in having added to, or expanded on, the US federal labour relations laws regarding union membership and union dues payment.

Alberta, which received a score of 5.3, falls into a third category as it scored well ahead of other Canadian jurisdictions though it fell short of competing with US states. Alberta's basic failing is a number of provisions that are generally common within Canada, such as successor rights and the absence

Exsum Table 1: Index of Labour Relations Laws (scores out of 10; ranks out of 61)

	Index of Labour Relations Laws		Organizing a Union		Union Security		Regulation of Unionized Firms	
	Score	Rank	Score	Rank	Score	Rank	Score	Rank
British Columbia	**2.8**	**56**	**6.3**	**53**	**0**	**51**	**2.0**	**55**
Alberta	**5.3**	**51**	**10.0**	**1**	**0**	**51**	**6.0**	**51**
Saskatchewan	**3.2**	**54**	**7.5**	**2**[c]	**0**	**51**	**2.0**	**55**
Manitoba	**1.8**	**59**	**3.3**	**60**	**0**	**51**	**2.0**	**55**
Ontario	**3.4**	**52**	**6.3**	**53**	**0**	**51**	**4.0**	**52**
Quebec	**1.3**	**60**	**3.8**	**59**	**0**	**51**	**0.0**	**61**
New Brunswick	**2.8**	**56**	**6.3**	**53**	**0**	**51**	**2.0**	**55**
Nova Scotia	**3.3**	**53**	**5.8**	**57**	**0**	**51**	**4.0**	**52**
Prince Edward Island	**3.0**	**55**	**5.0**	**58**	**0**	**51**	**4.0**	**52**
Newfoundland & Labrador	**2.8**	**56**	**6.3**	**53**	**0**	**51**	**2.0**	**55**
Canadian federal gov't	**1.1**	**61**	**1.3**	**61**	**0**	**51**	**2.0**	**55**
US Right-to-Work States[a]	**9.2**	**1**[b]	**7.5**	**2**[c]	**10**	**1**[b]	**10.0**	**1**[b]
US Non Right-to-Work States	**7.5**	**23**[d]	**7.5**	**2**[c]	**5**	**23**[d]	**10.0**	**1**[b]

a Right-to-Work States include Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming (National Institute for Labor Relations Research, 2005).

b Tied for first place. c Tied for second place. d Tied for 23rd place.

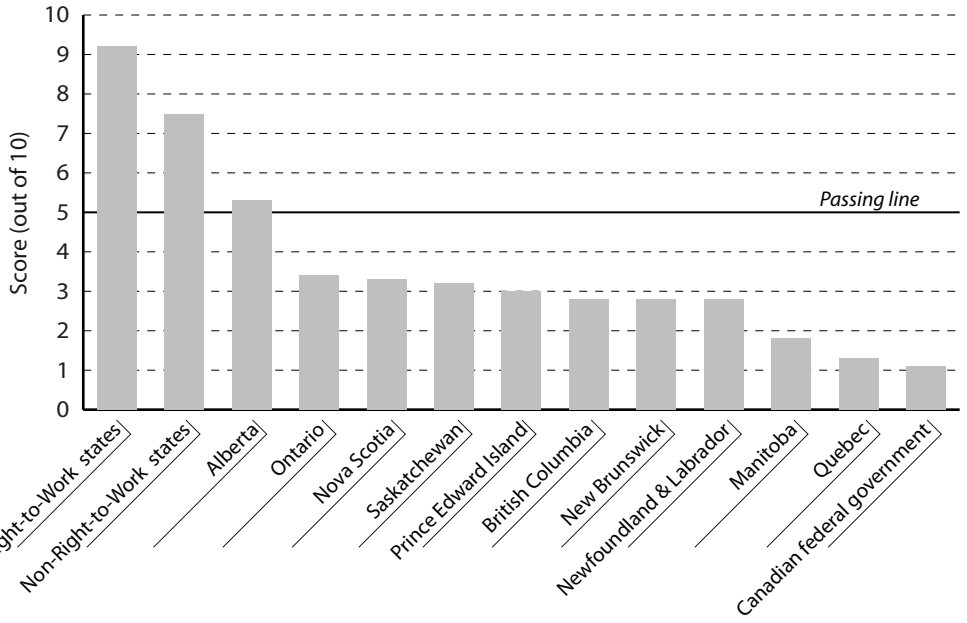
Sources: Government of Canada, Canada Labour Code (1985); Province of British Columbia, Labour Relations Code (1996); Government of Alberta, Labour Relations Code (2000); Government of Saskatchewan, The Trade Union Act (1978); Government of Manitoba, The Labour Relations Act (1987); Government of Ontario, Labour Relations Act (1995); Government of Quebec, Labour Code (1977); Government of New Brunswick, Industrial Relations Act (1973); Government of Nova Scotia, Trade Union Act (1989); Government of Prince Edward Island, Labour Act (1988); Government of Newfoundland and Labrador, Labour Relations Act (1990); National Labor Relations Act 1935 (for details see the list of References, p. 48).

of worker-choice laws. If Alberta is to improve its performance and pursue more balanced laws, it will have to diverge from the Canadian standard on these aspects of labour relations laws.

Finally, there are the remaining nine Canadian provinces and the Canadian federal government, which all failed to receive scores of 5.0 or higher. These jurisdictions have biased labour relations laws that impede labour market flexibility. The federal government (score 1.1) and Quebec (1.3) had the most rigid and biased labour relations laws. Manitoba (1.8) as well as British Columbia, New Brunswick, and Newfoundland & Labrador (tied at 2.8) also had very weak scores.

Overall the trend is clear. US states tend to have balanced labour relations laws focused on providing workers and employers with choice and flexibility. Canadian jurisdictions, on the other hand, generally maintain much more biased and prescriptive labour relations laws.

Exsum Figure 1: Scores on the Index of Labour Relations Laws



Components of the Index of Labour Relations Laws

1 Organizing a Union

Organizing a Union refers to the processes through which a union acquires and loses the right to be the exclusive bargaining agent for a group of employees. Alberta ranks first for its union organizing rules with a score of 10.0 out of 10.0, indicating a well-balanced set of regulations. Saskatchewan as well as all the US states tied for second place with a score of 7.5 out of 10.0. Four Canadian provinces, British Columbia, Ontario, New Brunswick, and Newfoundland & Labrador, received scores of 6.3. Unfortunately, four Canadian jurisdictions (Manitoba, Quebec, Prince Edward Island, and the federal government) received a score of 5.0 or lower, indicating biased rules for organizing a union. The federal government received the lowest score, 1.3.

2 Union Security

Union Security refers to regulations governing union membership and the payment of union dues by workers covered by a collective agreement. These regulations set out whether or not provisions regarding mandatory union membership and dues payment can be included in a collective agreement. The results for this component indicate that there are three distinct groups of jurisdictions in Canada and the United States. The first group comprises US RTW states, in which workers are permitted to choose whether or not to join a union and pay any union dues. RTW states received a score of 10.0 out

of 10.0 on union security clauses (Exsum table 1). They represent the jurisdictions that offer workers the greatest degree of choice and flexibility.

The second group comprises US states without worker-choice laws (RTW). These states scored 5.0 out of 10 on union security clauses as workers are permitted to choose whether or not to join a union but are required to remit at least a portion of union dues to cover costs associated with negotiating and maintaining the collective agreement.

The final group consists of all the Canadian provinces and the Canadian federal government. None of the Canadian jurisdictions provide workers with a choice regarding union membership or payment of dues since they do prohibits mandatory union membership or dues payments as a condition of employment.

3 Regulation of Unionized Firms

The third component of labour relations laws included in this study examines provisions of labour relations laws that come into effect once a firm is unionized. A number of provisions were examined, including successor rights, technological change, arbitration, replacement workers, and third-party picketing.

The results indicate two basic groups, one that generally promotes balance and flexibility and another that maintains heavily biased and prescriptive laws. The first group is composed of all of the US states and one Canadian province, Alberta. The US states all received a score of 10.0 out of 10. Alberta, some distance behind, received a score of 6.0.

The second group is composed of the remaining nine Canadian provinces and the Canadian federal government. Three Canadian provinces (Ontario, Nova Scotia, and Prince Edward Island) received a score of 4.0. Six other Canadian jurisdictions (British Columbia, Saskatchewan, Manitoba, New Brunswick, Newfoundland & Labrador, and the federal government received a low score of 2.0 while Quebec ranked last with a score of 0.0.

The results from the analysis of regulation of unionized firms indicate that the US states and, to a certain extent, Alberta impose relatively balanced requirements on firms once they are unionized. The remaining nine Canadian provinces as well as the Canadian federal government, on the other hand, tend to impose biased and prescriptive regulations on organized firms.

Labour relations laws and unionization rates

The relationship between labour relations laws and unionization rates were analyzed using basic correlation statistics. While a higher level of statistical analysis is needed to determine whether unbalanced labour relations laws lead to higher rates of unionization, correlations do provide some interesting insights. Correlations between private-sector and total unionization rates in

Canadian provinces and US states and the provisions of labour relations laws that apply to organizing a union and union security (automatic certification, certification and decertification application differential, remedial certification, first contract provisions, mandatory dues payment, and mandatory union membership) were calculated.

The two provisions of labour relations laws that showed the strongest negative relationship with unionization rates are both provisions for union security: mandatory dues payment and mandatory union membership. This means that, in jurisdictions where mandatory union dues and mandatory union membership are not permitted, there tends to be lower unionization rates. It was also found that first contract provisions have a strong negative relationship with unionization rates. While the correlations for the other variables analyzed were not as strong, the relationships (positive versus negative) with unionization rates were still in line with expectations; remedial certification was the sole exception. On the whole, correlation estimates provide results that were aligned with expectations based on previous empirical research and economic intuition regarding the relationship between certain aspects of labour relations laws and unionization rates.

The *Employee Free Choice Act*

In February 2007, a bill called the *Employee Free Choice Act* (EFCA) was presented in the United States Congress. The EFCA passed the House of Representatives but was stopped in the US Senate. With the subsequent election of President Barack Obama, who publically supported the bill, the EFCA was reintroduced in the Congress in March 2009 and in some form is likely to be passed during the new President's administration. As of July 2009, it appears that a revised bill, rather than that originally proposed, might be passed (*Wall Street Journal*, 2009, July 21; Greenhouse, 2009, July 17). For this reason, it is important to understand the impact this bill could have on the flexibility of the labour relations laws in United States.

The original EFCA proposed the most significant changes to the US labour relations laws in decades; most importantly, it would allow the National Labor Relations Board (NLRB) to automatically certify a union without a secret-ballot vote if the union has indicated a majority of support through signed union cards (a procedure known in the United States as a card-check). In the revised bill, the card-check provision will likely be dropped. In its place, the proponents of the bill are considering additional provisions that would: (a) shorten the union elections period to five to 10 days (from the current median time period of 38 days); (b) require employers to give union organizers access to company property; and (c) prohibit employers from requiring that the workers hear employer's side of the argument.

To measure the reduction in balance and flexibility, we have recalculated the Index of Labour Relations Laws using the originally proposed EFCA and the original EFCA without the card-check provision. Under the original EFCA including the card-check provision, there would be deterioration in labour-relations flexibility relating to organizing a union. All US states would experience a significant drop, from 7.5 to 5.0 in terms of the extent to which the process of organizing a union balances the needs of workers and employers. A score of 5.0 puts US states behind all Canadian jurisdictions except for three (Quebec, Manitoba, and the federal government). The lower scores for organizing a union have a notable impact on overall scores of the Index of Labour Relations Laws: overall, RTW states would still rank first but their scores would drop from 9.2 to 8.3; similarly, the non-RTW states would keep their ranking at 23rd but their scores would drop from 7.5 to 6.7.

Under the original EFCA without the card-check provision, there would also be deterioration in labour-relations flexibility relating to organizing a union. All US states would experience a significant drop, from 7.5 to 6.3 in terms of the extent to which the process of organizing a union balances the needs of workers and employers. The lower scores for organizing a union have an impact on overall scores of the Index of Labour Relations Laws: overall, RTW states would still rank first but but their scores would drop from 9.2 to 8.8; similarly, the non-RTW states would keep their ranking at 23rd but their scores would drop from 7.5 to 7.1. It is important to note that other provisions now being considered, such as shortening the union election period, requiring employers to give union organizers access to company property, and prohibiting employers from requiring that the workers hear employers' arguments, would reduce labour market flexibility but are not captured by the Index of Labour Relations Laws.

Conclusion

Canadian provinces generally lag their US counterparts in the level of flexibility accorded their citizens by labour relations laws. Such flexibility has proven to be of great benefit to citizens both in the United States and around the world. In order to promote greater labour market flexibility, Canadian provinces would be well advised to pursue balanced and less prescriptive labour laws.

Labour Relations Laws in Canada and the United States

An Empirical Comparison 2009

Introduction

Labour relations laws regulate the interactions among unionized workers, their collective representatives (unions), and employers. In addition, these laws control the process through which unions gain and lose the right to represent workers in collective bargaining. While the private and public sectors are both covered by labour relations laws, jurisdictions in Canada and the United States usually have separate legislation for each sector.

In 2008, labour relations laws directly covered about 4.5 million workers in Canada—31.2% of total public and private employment—and about 18 million workers in the United States—13.7% of total public and private employment (Statistics Canada, 2008; Hirsch and Macpherson, 2009). In both countries, unionization rates in the private sector are significantly lower than those in the public sector. In 2008, Canada's unionization rate in the private sector stood at 17.9% compared to 74.2% in the public sector (table 1). Likewise, the United States' unionization rate in the private sector was 8.4% in 2008 compared to 40.7% in the public sector. It is important to note however, that the effect of labour relations laws extends well beyond unionized workers and firms. Indeed, labour relations laws affect any worker or employer who has the potential to become unionized.

One of the over-arching objectives of government in designing labour relations laws should be to establish an environment within which productive economic activities can flourish. Empirical evidence from around the world indicates that jurisdictions with more flexible labour markets enjoy better economic performance.[1] For example, the Organisation for Economic Co-operation and Development (OECD) concluded that jurisdictions with more flexible labour markets had better job-creation records, enjoyed greater benefits from technological change, and experienced faster growing economies (OECD, 1994).[2] Another important study, which appeared in the *Quarterly Journal of Economics*, concluded that increased regulation of the labour market is associated with lower labour-force participation and higher unemployment (Botero et al., 2004; see also, Bierhanzl and Gwartney, 1998). Di Tella

1 See Godin et al. (2008) for a more in-depth review of the academic literature examining the flexibility of labour markets.

2 In 2006, the OECD published a reassessment of the original Jobs Study in which labour market flexibility was again emphasized. The reassessment was published in two papers (OECD, 2006a, 2006b) that again recommended the adoption of policies providing greater flexibility for workers and employers, including flexible work-time arrangements and a greater degree of wage flexibility to enhance performance.

Table 1: Unionization Rates in Canada and the United States (2008)

	Canada	United States		
		Non-RTW	RTW	Overall
Total Union Rate	**31.2**	**18.0**	**7.2**	**13.7**
Private Sector Union Rate	**17.9**	**11.1**	**4.2**	**8.4**
Public Sector Union Rate	**74.2**	**54.0**	**21.7**	**40.7**

Note: Right-to-Work States include Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming (National Institute for Labor Relations Research, 2005).

Sources: Statistics Canada (2008); Hirsch and Macpherson (2009); calculations by authors.

and MacCulloch (2005), using data for 21 OECD countries for the period from 1984 to 1990, concluded that increased flexibility of the labour market had a positive impact upon both the employment rate and the rate of participation in the labour force. Alonso et al. (2004) found that income and capital (investment) per worker depended positively on the flexibility of the labour market.

In addition, labour laws inhibit the proper and efficient functioning of the labour market when they favour one group over another, prevent innovation and flexibility, or are overly "prescriptive," that is, when they impose a resolution to labour disputes rather than fostering negotiation between employers and employees. Besley and Burgess (2004) studied labour market regulation in India from 1958 to 1992 and found that jurisdictions that legislated labour relations in a direction favouring one group over another experienced lower output, employment, investment, and productivity, and increased urban poverty. Workers and, indeed, all citizens in jurisdictions with flexible labour markets enjoy the benefits of a stronger and more productive labour market (higher rates of job creation and lower unemployment) and a generally stronger economy.

Labour market flexibility determines how well labour markets respond to changes in economic conditions. In technical terms, flexibility permits employees and employers to reallocate resources to maximize productivity. In non-technical terms, flexibility means employees can shift their efforts to endeavours that provide the greatest return or benefit to them. For instance, workers in a flexible labour market would be able to shift their efforts easily from one industry or region to another in seeking improved compensation. Similarly, flexibility allows employers to change the mix of capital and labour to respond to market changes.

Labour Relations Laws in Canada and the United States: An Empirical Comparison (2009 Edition) is the third edition[3] of a study by the Fraser Institute

3 First edition: Karabegović et al., 2004a; second edition: Godin et al., 2006.

that empirically quantifies differences between Canadian and American private-sector labour relations laws. This study evaluates private-sector labour relations laws by examining provincial laws (which cover the overwhelming majority of Canadian workers) and federal laws in Canada, and federal and state laws in the United States in 2008.[4] The study evaluates the extent to which labour relations laws achieve balance and flexibility in the labour market.

Organization of this publication

The first section of this publication compares the private-sector labour relations laws of the 10 Canadian provinces, the Canadian federal government, and the 50 US states. This section is further divided into three subsections based on the aspects of labour relations laws analyzed: (1) Organizing a Union, (2) Union Security, (3) Regulation of Unionized Firms. This section also includes the Index of Labour Relations Laws, which presents an overall assessment of labour relations laws amongst the analyzed jurisdictions.

The second section presents a basic statistical analysis of the relationship between labour relations laws and unionization rates. This is a first step towards a broader analysis aimed at gaining a deeper statistical understanding of what drives unionization rates amongst Canadian provinces and US states. The third section presents a summary of major proposed policy changes in American labour relations laws, the *Employee Free Choice Act*. This section also presents an empirical analysis of the impact this proposed legislation will have on the balance and flexibility achieved by American labour relations laws, if enacted. The last section contains a detailed summary.

Jurisdictional differences

Prior to the examination of labour relations laws in Canada and the United States, it is important to recognize that there is a marked difference between the two countries in terms of the level of government responsible for the regulation of labour relations. In Canada, the regulation and enforcement of labour relations laws is largely decentralized to the provinces. Each province has its own set of labour relations laws for both the private and public sectors and these laws are independent of those in other provinces and the federal law. Approximately 800,000 Canadian workers (5.5%) are employed in

4 State laws can expand upon but not contravene or supersede US federal law. The Canadian federal law covers those employed in the federally regulated industries such as interprovincial transportation, banking, broadcasting, and telecommunications as well as workers in the three Canadian territories.

federally regulated industries such as interprovincial transportation, banking, broadcasting, telecommunications (Canada Industrial Relations Board, 2009). Workers in the Canadian territories are also covered under federal labour relations laws.[5]

The United States, on the other hand, has a highly centralized system of federal private-sector labour relations laws, which are enforced by the National Labor Relations Board (NLRB).[6] However, federal laws allow individual states to clarify, expand upon, or introduce new laws in addition to, but not contravening, federal law. Like Canadian provinces, US states have the sole authority to regulate labour relations in the public sector.[7]

5 Federal labour relations laws are enforced by the Canadian Industrial Relations Board (CIRB); for more information, see <http://www.cirb-ccri.gc.ca>.

6 Information on the United States National Labor Relations Board (NLRB) is available at <http://www.nlrb.gov/>. The NLRB's jurisdiction extends generally to all employers involved in interstate commerce, other than airlines, rail-roads, agriculture, and government.

7 For an overview of public-sector labour relations laws in Canada and the United States, see Karabegovic et al., 2004a.

1 Labour relations laws in the private sector

This section compares the private-sector labour relations laws of the 10 Canadian provinces, the Canadian federal government, and the 50 US states. Labour relations laws can be broken down into three main areas: (1) Organizing a Union, (2) Union security, and (3) Regulation of Unionized Firms. Clauses falling under *Organizing a Union* relate to how unions gain and lose the right to represent workers collectively, called certification and decertification. It also includes how first collective bargaining agreements are formed. *Union Security* provisions pertain to workers' choice with respect to union membership and dues payment once a firm is unionized. Finally, *Regulation of Unionized Firms* includes a series of requirements that apply to firms and workers once the employing firm has been unionized.

1 Organizing a Union

Certification[8]

Certification refers to the process through which a union acquires the right to be an exclusive bargaining agent for a group of employees. There are a number of important aspects of certification, including the use of mandatory secret-ballot elections, remedial certification, and differences between the thresholds for certification and decertification (table 2).

8 It is also important to note that certification and decertification have a far greater impact on Canadian workers than on workers in United States. In Canada, mandatory union membership is permitted in collective agreements and can be included as a condition of employment. In addition, all Canadian workers covered by a collective agreement are required to pay full union dues even if they are not members of the union. In the United States, on the other hand, federal law prohibits union membership clauses as a condition of employment and allows workers the choice of whether or not to give financial support to union activities unrelated to representation. In addition, 22 US states have extended the federal provision by prohibiting any forced payment of dues regardless of its nature. Overall, certification has a substantially greater impact on labour market balance and flexibility in Canadian jurisdictions than in US states. See (2) Union security below for a more detailed discussion of mandatory membership and dues payment regulations.

Table 2: Certification

	Application		Certification			
	Union membership required?	Threshold required?	Vote by secret ballot required?	Threshold required for vote	Threshold for automatic certification[a]	Remedial certification allowed?
British Columbia	**Yes**	**45%**	**Yes**	**50%+1**	**n/a**	**Yes**
Alberta	**No**	**40%**	**Yes**	**50%+1**	**n/a**	**No**
Saskatchewan	**No**	**45%**	**Yes**	**50%+1**	**n/a**	**No**
Manitoba	**Yes**	**40%**	**No**	**50%+1**	**65%**	**Yes**
Ontario	**Yes**	**40%**	**Yes**[c]	**50%+1**	**n/a**	**Yes**
Quebec	**Yes**	**35%**	**No**	**50%+1**	**50%+1**	**No**
New Brunswick	**Yes**	**40%**	**No**	**50%+1**	**60%**[e]	**Yes**
Nova Scotia	**Yes**	**40%**	**Yes**	**50%+1**	**n/a**	**Yes**
Prince Edward Island	**Yes**	**50%+1**	**No**	**50%+1**	**50%+1**[f]	**Yes**[g]
Newfoundland & Labrador	**Yes**	**40%**[b]	**Yes**	**50%+1**	**n/a**	**Yes**[g]
Canadian federal gov't	**Yes**	**35%**	**No**	**50%+1**	**50%+1**	**Yes**
All US States	**No**	**30%**	**Yes**[d]	**50%+1**	**n/a**	**Yes**

a Threshold for automatic certification is the threshold required to certify a union without a vote.

b In Newfoundland & Labrador, a union has to have at least 50%+1 of the unit sign union cards in order to apply to the Labour Relations Board for certification but, if the Board after investigation determines that the union has the support of only 40% of the bargaining unit, it will still conduct a vote.

c In 2005, Ontario removed the requirement for secret ballot votes in the construction sector. If 55% of workers in a unit indicate support with signed union cards, the union will be certified without a secret-ballot vote.

d In the United States, a union can apply for certification without a secret-ballot vote if it has enough (30%) employees in the unit as members. However, an employer is not obligated to accept membership cards as proof of majority status (see *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969)).

e In New Brunswick, if a union has membership cards for more than 60% of the unit, the workplace will be unionized and there will be no vote. If a union has membership cards between 50% and 60% of the unit, the workplace may be unionized without a vote, at the discretion of the Labour Relations Board.

f Prince Edward Island's legislation states that if the majority of employees in a unit sign union cards, the Labour Relations Board may certify the union without a representation vote. The definition of "majority" is left to the Labour Relations Board but it is always more than 50%.

g Based on case law or practice. There is nothing in the labour legislation of Newfoundland & Labrador or Prince Edward Island about remedial certification. Communication with the PEI Labour Board indicates the precedent case for Prince Edward Island is *Polar Foods v. Labour Relations Board* (Doucette, Roy, Acting Director, Community and Cultural Affairs, Labour and Industrial Relations, Prince Edward Island; personal communication with A. Gainer, 2008, November, December).

Sources: Government of Canada, Canada Labour Code (1985); Province of British Columbia, Labour Relations Code (1996); Government of Alberta, Labour Relations Code (2000); Government of Saskatchewan, The Trade Union Act (1978); Government of Manitoba, The Labour Relations Act (1987); Government of Ontario, Labour Relations Act (1995); Government of Quebec, Labour Code (1977); Government of New Brunswick, Industrial Relations Act (1973); Government of Nova Scotia, Trade Union Act (1989); Government of Prince Edward Island, Labour Act (1988); Government of Newfoundland and Labrador, Labour Relations Act (1990); National Labor Relations Act 1935 (for details see the list of References, p. 48).

Application for certification

For a union to submit an application for certification to a Labour Relations Board, which oversees and enforces a jurisdiction's labour relations laws, it must have written support from a prescribed percentage of workers. That is, unions need to obtain a certain level of support from affected workers in order to apply to become their representative. Eight of the 10 Canadian provinces as well as Canadian federal law require workers to complete union membership cards while the remaining two provinces require written petitions, individual letters, or membership cards. In the United States, written petitions, individual letters, or membership cards can all be used as support for an application (table 2). In Canada, the threshold for indications of support ranges from a low of 35% of workers in a bargaining unit in Quebec or under federal jurisdiction to 50%+1 in Prince Edward Island. For all US states, the threshold is 30% (table 2).

Secret-ballot vote versus automatic certification

Another important aspect of the certification process is the means by which a union is certified to be the representative of workers. In most jurisdictions in Canada and the United States, a secret-ballot vote is required to certify or approve a union. All 50 US states as well as six Canadian provinces (British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, and Newfoundland & Labrador) require a mandatory secret-ballot vote to certify a union (table 2).[9] The remaining four provinces (Manitoba, Quebec, New Brunswick, and Prince Edward Island) and Canadian federal law allow unions to be certified automatically, without a secret-ballot vote, if the initial indication of support for certification among workers exceeds a specified threshold—that is, if a union can show that a certain percentage of workers have signed union membership cards. The threshold for automatic certification varies from 50%+1 in Quebec and Prince Edward Island and under federal law to 65% in Manitoba (table 2).

The presence of automatic certification in labour relations laws has a strong effect upon balance in the labour market since workers may be subjected to undue pressure from co-workers and union representatives to sign a union card or petition without recourse to an autonomous decision made in private by secret ballot. There is substantial academic evidence that provisions for automatic certification increase unionization rates (Clemens et al., 2005). For instance, Johnson (2002b), examining nine of the Canadian provinces from 1978 to 1996, concluded that mandatory secret-ballot votes reduced union certification success rates by approximately 9 percentage points when compared to automatic certification. Similarly, Riddell (2004) investigated

9 In 2005, Ontario removed the requirement for a secret-ballot vote and introduced card-check certification for the construction sector.

the experience of British Columbia between 1978 and 1998. This is an interesting period since mandatory voting was introduced in 1984, eliminated in 1993, and reintroduced in 2001. Riddell found that union success rates fell by 19 percentage points after mandatory secret-ballot voting was introduced.[10] Furthermore, Slinn (2004) examined Ontario's 1995 policy change from automatic certification to mandatory secret-ballot voting and concluded that there was a highly significant negative effect on the probability of successful certification. Johnson (2004) suggests that 17% to 24%[11] of the difference between unionization rates in Canada and the United States could be explained by the widespread use of mandatory votes in the Unites States compared to the less widespread use of such votes in Canada.

Most recently, Bartkiw (2008) in the academic journal *Canadian Public Policy* found that the Ontario's 2005 introduction of a card-check for the construction sector and remedial certification for all sectors are already having an impact on the volume of union organizing attempts and their success rates. Specifically, these changes led to an average increase of seven new bargaining units certified per month. This translated into an overall increase in certification success rates of 10.2 percentage points. The study also found that the increase in the number of new bargaining units certified had an effect on the number of workers covered by collective bargaining agreements: the 2005 changes increased the number of workers covered by an average of about 380 per month.

Certification vote

The percentage of ballots cast in favour of certification has to be at least 50%+1 in every Canadian province and all US states in order for the Labour Relations Board to certify a union (table 2).

Remedial certification

Remedial certification refers to situations in which the Labour Relations Board of a jurisdiction automatically and unilaterally approves a union to represent a group of workers. This normally happens only in extreme circumstances, such as when an employer has been deemed to have illegally interfered with a union's campaign in a way that irreparably damages the potential for a fair vote. In most cases, the Labour Relations Board will only automatically certify a union if, in their opinion, a fair and representative election is not possible.

The Labour Relations Boards in seven Canadian provinces (British Columbia, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland) and the federal Canada Industrial Relations

10 Riddell's previous study (2001), which used 1984–1993 data for British Columbia, similarly concluded that unionization success rates fell by 20% and the number of certification attempts fell by over 50% when mandatory secret-ballot voting was implemented.

11 The equivalent of 3 to 5 percentage points in total unionization rates (Johnson, 2004: 361).

Board (CIRB) have the power to certify a union automatically in the event an employer has been deemed to have committed an unfair labour practice. The appointment of officials to the Labour Relations Boards in these jurisdictions as well as the level of transparency exhibited by the Boards are, therefore, much more critical given their discretionary power.[12] The remaining three Canadian provinces (Alberta, Saskatchewan, and Quebec) do not permit remedial certification (table 2).

In the United States, the National Labor Relations Board (NLRB) has remedial certification authority but it is the US Supreme Court's position that the National Labor Relations Board has remedial authority only where the unfair labour practices of the employer are so outrageous and pervasive "that there is no reasonable possibility that a free and un-coerced election could be held" (395 U.S. 575). For the overwhelming majority of cases, the NLRB would issue an investigation and proceed to normal certification procedures.[13]

Decertification

Decertification is the opposite process of certification. It is the process through which a union ceases to be a bargaining agent for a group of workers. Similar to the certification process, workers must gather a prescribed percentage of support for decertification in order for the Labour Relations Board to issue a decertification vote. The level of support required to issue a vote varies from a low of 30% of workers in a bargaining unit in US states to a high of 50%+1 in three Canadian provinces (Quebec, Nova Scotia, and Prince Edward Island) and the federal jurisdiction (table 3).

Secret ballot vote versus automatic decertification

Secret-ballot voting is required to decertify a union in every Canadian province, except Prince Edward Island and Quebec, and in US states. Only Canadian federal labour relations laws as well as the provincial laws in Prince Edward Island and Quebec allow a union to be decertified without a secret-ballot vote (table 3).[14]

Decertification vote

The percentage of ballots cast in favour of decertification has to be at least 50%+1 in every Canadian province and all US states in order for the Labour Relations Board to decertify a union (table 3).

12 Importantly, there is a general dearth of transparency in labour relations boards across Canada and in the United States; see Karabegović et al. (2005) for more information.

13 *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969) is the primary precedent-setting case.

14 If the Labour Relations Board in Prince Edward Island and Quebec or the CIRB is satisfied after reviewing the application for decertification that a majority of the employees in the unit support decertification, the Board may decertify the union without a secret-ballot vote.

Table 3: Decertification

	Application	Decertification			Differential
	Threshold required	Is vote by secret ballot required?	Threshold for decertification vote	Threshold for automatic decertification	Certification/ Decertification (%age points)
British Columbia	**45%**	**Yes**	**50%+1**	**n/a**	**0**
Alberta	**40%**	**Yes**	**50%+1**	**n/a**	**0**
Saskatchewan	**45%**	**Yes**	**50%+1**	**n/a**	**0**
Manitoba	**50%**	**Yes**	**50%+1**	**n/a**	**10**
Ontario	**40%**	**Yes**	**50%+1**	**n/a**	**0**
Quebec	**50%+1**	**No**[b]	**50%+1**	**50%+1**	**15**
New Brunswick	**40%**	**Yes**	**50%+1**	**n/a**	**0**
Nova Scotia	**50%+1**[a]	**Yes**	**50%+1**	**n/a**	**10**
Prince Edward Island	**50%+1**	**No**[c]	**50%+1**	**50%+1**	**0**
Newfoundland & Labrador	**40%**	**Yes**	**50%+1**	**n/a**	**0**
Canadian federal gov't	**50%+1**	**No**	**50%+1**	**50%+1**	**15**
All US States	**30%**	**Yes**	**50%+1**	**n/a**	**0**

a In Nova Scotia, the evidence of support is not needed in order for the union to apply for decertification. The application to the Labour Relations Board has to claim that there is majority of support (50%+1) but no petition or individual letters are needed.

b Communication with the Commission des Relations du Travail confirms that a decertification vote is not mandatory and is taken only in those cases the Commission deems it necessary (Quebec Labour Relations Board / Commission des relations du travail; personal communication with K. Godin, 2005, August).

c In Prince Edward Island, if the Labour Relations Board is satisfied that a majority of employees in the unit support the application for decertification, it may decertify the union without a vote. The interpretation of "majority" is left to the Labour Relations Board but it is always more than 50%.

Sources: Government of Canada, Canada Labour Code (1985); Province of British Columbia, Labour Relations Code (1996); Government of Alberta, Labour Relations Code (2000); Government of Saskatchewan, The Trade Union Act (1978); Government of Manitoba, The Labour Relations Act (1987); Government of Ontario, Labour Relations Act (1995); Government of Quebec, Labour Code (1977); Government of New Brunswick, Industrial Relations Act (1973); Government of Nova Scotia, Trade Union Act (1989); Government of Prince Edward Island, Labour Act (1988); Government of Newfoundland and Labrador, Labour Relations Act (1990); National Labor Relations Act 1935 (for details see the list of References, p. 48).

Differences between thresholds for certification and decertification

An important indicator of the degree to which labour relations laws favour one side at the expense of the other is the presence of a difference in certification and decertification requirements for application. That is, a jurisdiction that maintains a decertification threshold higher than its certification requirement makes it easier for a union to gain bargaining power than it would for the same union to lose such power. Three Canadian provinces (Manitoba, Quebec, and Nova Scotia) as well as the federal government maintain a lower threshold for certification application than for decertification application (table 3). The remaining Canadian provinces and all US states have the same thresholds requirements for certification and decertification application, indicating a more balanced approach to the certification and decertification process.

First contract provisions

First contract provisions refer to what happens in the event unions and employers fail to reach a first collective agreement once the union is certified. It is an important aspect of organizing a union, as failure to reach a collective bargaining agreement effectively makes the certification moot. There are three general approaches to first contract provisions. The first is to allow parties to exhaust voluntary negotiation mechanisms such as conciliation and mediation. The second is to force the parties into binding arbitration after a prescribed period of failed negotiation. The third, and certainly the most prescriptive approach, is for the Labour Relations Board to settle the impasse by directly imposing provisions of a first agreement.

Four Canadian provinces (Alberta, New Brunswick, Nova Scotia, and Prince Edward Island) and every US state allow parties to exhaust voluntary negotiation mechanisms such as conciliation (table 4). However, four Canadian provinces (British Columbia, Saskatchewan, Ontario, and Quebec) do allow their Labour Relations Boards to force parties into arbitration. Three provincial jurisdictions—Saskatchewan, Manitoba, Newfoundland & Labrador—and the Canadian federal jurisdiction allow the Labour Relations Board to directly impose first contract provisions (in Saskatchewan, the

Table 4: First Contract Provisions

	Can the Labour Relations Board force binding arbitration on the two parties?	Can the Labour Relations Board directly impose terms and conditions of a first agreement?
British Columbia	**Yes**	**No**
Alberta	**No**	**No**
Saskatchewan[a]	**Yes**	**Yes**
Manitoba	**No**	**Yes**
Ontario	**Yes**	**No**
Quebec	**Yes**	**No**
New Brunswick	**No**	**No**
Nova Scotia	**No**	**No**
Prince Edward Island	**No**	**No**
Newfoundland & Labrador	**No**	**Yes**
Canadian federal gov't	**No**	**Yes**
All US states	**No**	**No**

a In Saskatchewan, the Labour Relations Board can choose between forced arbitration and direct settlement.

Sources: Government of Canada, Canada Labour Code (1985); Province of British Columbia, Labour Relations Code (1996); Government of Alberta, Labour Relations Code (2000); Government of Saskatchewan, The Trade Union Act (1978); Government of Manitoba, The Labour Relations Act (1987); Government of Ontario, Labour Relations Act (1995); Government of Quebec, Labour Code (1977); Government of New Brunswick, Industrial Relations Act (1973); Government of Nova Scotia, Trade Union Act (1989); Government of Prince Edward Island, Labour Act (1988); Government of Newfoundland and Labrador, Labour Relations Act (1990); National Labor Relations Act 1935 (for details see the list of References, p. 48).

Labour Relations Board can choose between forced arbitration and direct settlement) (table 4). That is, these seven jurisdictions give their respective labour boards the power to force parties into arbitration or directly impose elements of a first contract.

Overall observations on organizing a union[15]

Alberta ranks first, receiving a score of 10.0 out of 10.0 for its well-balanced set of regulations regarding union organization. Saskatchewan and all the US states tied for second place with a score of 7.5 out of 10.0. It is important to note that Saskatchewan showed a marked improvement in its overall score due to changes made to its certification rules in 2008; most importantly, introducing secret ballot votes for all elections and eliminating its previous certification-decertification differential.[16] Another four provinces (British Columbia, Ontario, New Brunswick, and Newfoundland & Labrador) received a score of 6.3 while Nova Scotia followed with a score of 5.8. Unfortunately, four Canadian jurisdictions (Prince Edward Island, Quebec, Manitoba and the federal government) received a score of 5.0 or less, indicating biased rules for organizing a union. Of note, the federal government received the lowest score of 1.3 (table 5, figure 1).

2 Union Security

Union Security refers to regulations governing union membership and the payment of union dues by workers covered by a collective agreement. These regulations set out whether or not provisions regarding mandatory union membership and dues payment can be included in a collective agreement. These provisions vary from restrictive, where all workers must be members of a union and pay full dues as a condition of employment, to flexible, where employees have the choice of becoming union members and do not have to pay any union dues.

Allowing workers choice in the matter of union membership and payment of union dues increases the flexibility of the labour market in two ways. First, it makes unions more responsive to employees' demands since members and dues are no longer guaranteed. Second, it ensures competition between unions for the right to represent workers. Differences in union security laws have a major impact on unionization rates. Scholars such as Daphne Gottlieb Taras and Allen Ponak (2001) have concluded that the difference in how

15 See Appendix: Methodology (p. 45) for details on how the scores were computed.

16 While results are not directly comparable with those in previous editions because a consideration of first-contract provisions has been added to this edition, it is nonetheless worth noting Saskatchewan's marked improvement in ranking; in 2006, Saskatchewan ranked 56th out of the 61 jurisdictions with a score of 5.0 out of 10.

Table 5: Scores and ranks for Organizing a Union

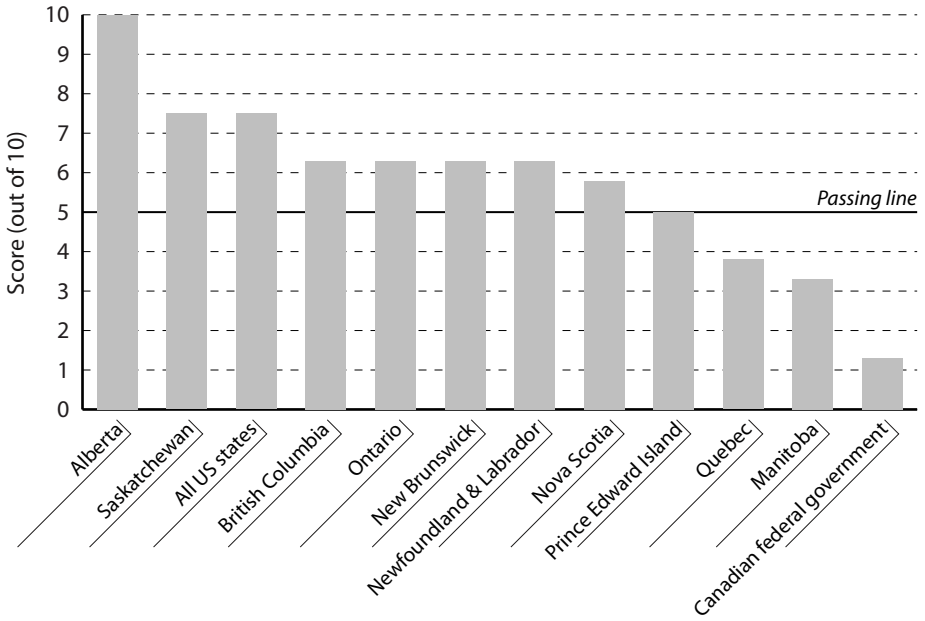
	Score[a] (out of 10)	Rank (out of 61)
British Columbia	**6.3**	**53**
Alberta	**10.0**	**1**
Saskatchewan	**7.5**	**2**[b]
Manitoba	**3.3**	**60**
Ontario	**6.3**	**53**
Quebec	**3.8**	**59**
New Brunswick	**6.3**	**53**
Nova Scotia	**5.8**	**57**
Prince Edward Island	**5.0**	**58**
Newfoundland & Labrador	**6.3**	**53**
Canadian federal gov't	**1.3**	**61**
All 50 US states	**7.5**	**2**[b]

a The score for the component, Organizing a Union, is based on an equally weighted average of mandatory-vote requirement for both certification and decertification, remedial certification, certification-decertification differential, and first contract provisions. For further details, see the Appendix: Methodology (p. 45).

b Tied for second place.

Sources: Government of Canada, Canada Labour Code (1985); Province of British Columbia, Labour Relations Code (1996); Government of Alberta, Labour Relations Code (2000); Government of Saskatchewan, The Trade Union Act (1978); Government of Manitoba, The Labour Relations Act (1987); Government of Ontario, Labour Relations Act (1995); Government of Quebec, Labour Code (1977); Government of New Brunswick, Industrial Relations Act (1973); Government of Nova Scotia, Trade Union Act (1989); Government of Prince Edward Island, Labour Act (1988); Government of Newfoundland and Labrador, Labour Relations Act (1990); National Labor Relations Act 1935 (for details see the list of References, p. 48).

Figure 1: Scores for Organizing a Union



Canadian and American labour relations laws address union security is one of the fundamental explanations for the divergence between the unionization rates of the two countries (figure 2, table 6).[17]

In all Canadian jurisdictions mandatory union membership is permitted in collective agreements and can be included as a condition of employment. In addition, all workers covered by a collective agreement can be required to pay full union dues even if they are not members of the union.[18] The combination of allowing mandatory membership conditions and the remittance of full union dues results in a strong pro-union bias in Canadian labour relations laws (table 6).

In the United States, on the other hand, the National Labor Relations Act (NLRA) and complementary rules makes two conditions explicit: (1) a union-security provision in a collective agreement cannot require that applicants for employment be members of the union in order to be hired; and (2) such an agreement cannot require employees to join or maintain membership in the union in order to retain their jobs. That is, the US federal law prohibits union membership clauses as a condition of employment (table 6).[19] In addition, the federal laws in the United States allow workers the choice of whether or not to give financial support to activities of their union such as lobbying and political support that are unrelated to representation. That is, workers in the United States can either pay full union dues or, if they choose, only pay the portion of dues directly related to representation costs such as bargaining and maintaining the collective agreement (NLRB, 1997).[20]

Twenty-two US states have extended worker choice by expanding upon the federal law through the introduction of Right-to-Work (RTW) legislation—more accurately described as worker-choice laws.[21] The 22 Right-to-Work

17 For a summary of this research, see Clemens et al., 2005.

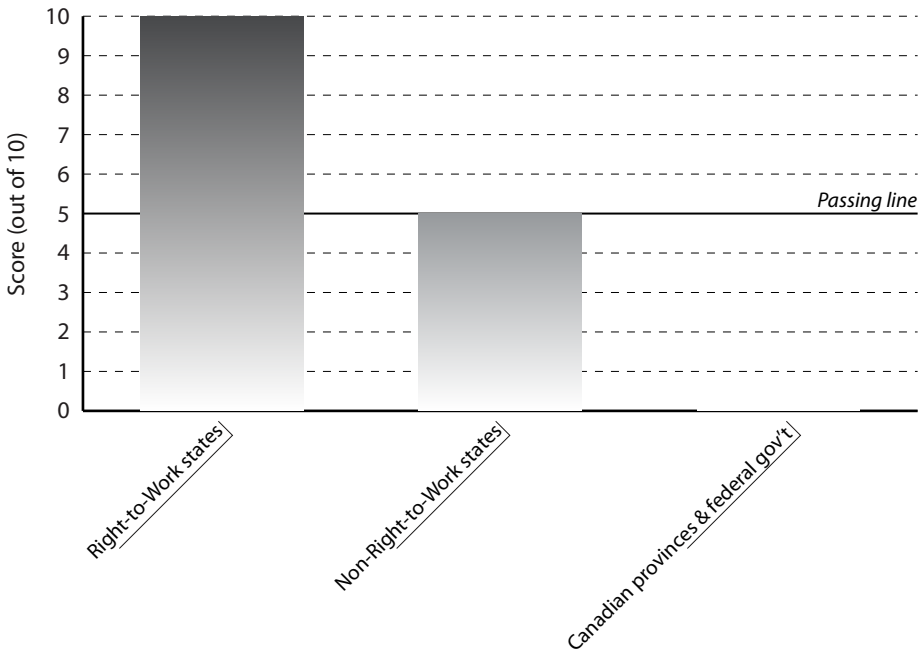
18 In a landmark arbitration case, Justice Ivan Rand of the Supreme Court of Canada imposed an agency shop, referred to as the Rand Formula, on the Ford Motor Company in Windsor, Ontario, in 1946. This, in effect, resulted in the imposition of mandatory dues payment by Canadian workers as condition of employment, regardless of union membership status (Rand, 1958).

19 While section 7 and 8(a)(3) of the NLRA states that "union membership" may be required for employment, subsequent case law such as the Beck line of cases has clarified what exactly a union "member" is. For further explanation, see Karabegović et al., 2004a.

20 Note that in Canadian provinces unionized workers have no legal precedent or legislation supporting their preference to refrain from union spending they do not agree with. That is, in addition to representation costs, unions are free to spend workers' dues on political activism or any other myriad of activities workers may or may not agree with. The lack of choice for workers is exacerbated because financial disclosure from unions is not required; see Palacios et al., 2006 for more information.

21 Right-to-Work States include Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming.

Figure 2: Scores for Union Security



states have extended the federal provision that allows for partial payment of union dues by prohibiting any forced payment of dues regardless of its nature. That is, workers in the 22 RTW states can not only choose whether or not to be a member of a union but they also have full discretion with respect to the payment of any union dues.

Observations on union security

The results for this area of labour relations laws indicate that there are three distinct groups of jurisdictions in Canada and the United States. In the first group are American Right-to-Work states, in which workers are permitted to choose whether or not to join a union and pay any union dues. Right-to-Work states received a score of 10.0 out of 10.0 on union security clauses (table 6). This group offers workers the greatest choice and flexibility with respect to unionization.

In the second group are US states without worker-choice laws (RTW legislation). These states scored 5.0 out of 10.0 on union security clauses as workers are permitted to choose whether or not to join a union but are required to remit at least a portion of union dues to cover costs associated with negotiating and maintaining the collective agreement.

The final group consists of the Canadian provinces and federal government. All of the Canadian jurisdictions allow unions to impose mandatory union membership and full dues payment as conditions of employment and, as a result, received a score of 0.0 for union security.

Table 6: Union Security

	Is mandatory union membership allowed?	Are mandatory union dues allowed?	Score (out of 10)	Rank (out of 61)
British Columbia	**Yes**	**Yes**	**0.0**	**51**
Alberta	**Yes**	**Yes**	**0.0**	**51**
Saskatchewan	**Yes**	**Yes**	**0.0**	**51**
Manitoba	**Yes**	**Yes**	**0.0**	**51**
Ontario	**Yes**	**Yes**	**0.0**	**51**
Quebec	**Yes**	**Yes**	**0.0**	**51**
New Brunswick	**Yes**	**Yes**	**0.0**	**51**
Nova Scotia	**Yes**	**Yes**	**0.0**	**51**
Prince Edward Island	**Yes**	**Yes**	**0.0**	**51**
Newfoundland & Labrador	**Yes**	**Yes**	**0.0**	**51**
Canadian federal gov't	**Yes**	**Yes**	**0.0**	**51**
Right-to-Work States[a]	**No**	**No**	**10.0**	**1**[c]
Non Right-to-Work States	**No**	**Yes**[b]	**5.0**	**23**[d]

a Right-to-Work States include Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming (National Institute for Labor Relations Research, 2005).

b In non-Right-to-Work States, partial union dues are allowed at the request of employees. Partial union dues cover a union's costs relating to representation of employees during collective bargaining, contract administration, and grievance adjustment.

c 22 states tied for first place. d 28 states tied for 23rd place.

Sources: Government of Canada, Canada Labour Code (1985); Province of British Columbia, Labour Relations Code (1996); Government of Alberta, Labour Relations Code (2000); Government of Saskatchewan, The Trade Union Act (1978); Government of Manitoba, The Labour Relations Act (1987); Government of Ontario, Labour Relations Act (1995); Government of Quebec, Labour Code (1977); Government of New Brunswick, Industrial Relations Act (1973); Government of Nova Scotia, Trade Union Act (1989); Government of Prince Edward Island, Labour Act (1988); Government of Newfoundland and Labrador, Labour Relations Act (1990); National Labor Relations Act 1935 (for details see the list of References, p. 48).

3 Regulation of Unionized Firms

The final aspect of labour relations laws included in this study, Regulation of Unionized Firms, examines components of labour relations laws that come into effect once a firm is unionized. These regulations apply only to existing unionized firms that have reached a collective agreement with a union. Like all regulations, these impose costs on affected firms and can have an impact on their performance, particularly in sectors of the economy where there is a mix of both unionized and non-unionized firms since non-unionized firms, unaffected by the regulations, may gain a competitive cost advantage.

This section examines the following: successor rights, the status of collective agreements when a unionized business is sold or transferred; whether or not businesses are required to notify a union if it intends to invest in

technological change; whether or not businesses and unions are forced into arbitration to resolve disputes; and whether or not replacement workers and second-site picketing are permitted (figure 3; table 7, pp. 26–27).

Successor rights

In technical terms, provisions for successor rights determine whether, and how, collective bargaining agreements survive the sale, transfer, consolidation, or other disposal of a business. This is an important aspect of labour relations laws and, to a larger extent, the process of capital reallocation. If a business or portion of a business is rendered uneconomical as the result of changes in the market, reductions in competitiveness, or other reasons, stringent successor laws will impede the reorganization of the business and the efficient reallocation of its capital.

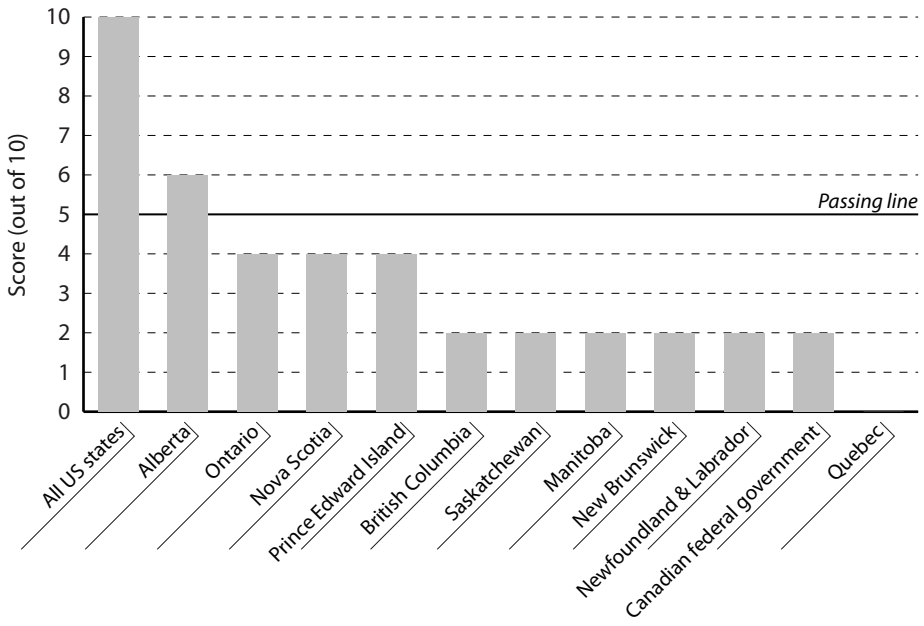
Legislation in every Canadian province as well as the federal laws make an existing collective agreement binding upon a new employer when a business, in whole or in part, is sold, transferred, leased, merged, or otherwise disposed of (table 7). In other words, a purchasing employer (owner) is bound by a contract (existing collective agreement) that it had no part in negotiating. There is little variance in the treatment of successor rights among Canadian provinces: some provinces provide the Labour Relations Boards with discretion in certain circumstances but the general direction of the laws in all provinces is towards protecting the collective bargaining agreement before and after a change in ownership.

Conversely, it is rare in the United States for a purchaser to be responsible for the incumbent collective bargaining agreement (table 7). The National Labor Relations Board decides whether the purchaser is a successor employer by taking into account a number of factors including the number of employees taken over by the purchasing employer, the similarity in operations and product of the two employers, the manner in which the purchaser integrates the purchased operations into its other operations, and the character of the bargaining relationship between the union and the original employer. While successor employers may be bound to recognize and bargain with the incumbent union, the general tendency of the NLRB in the United States is not to consider successor employers to be bound by the provisions of a collective bargaining agreement negotiated by their predecessors.

Technological change

Labour relations laws make provision for technological change by requiring a notice of technological investment and change be sent by an employer to the union (and, in some provinces, to the Minister of Labour). These provisions determine whether an employer must notify a union and the length of notice required and, in addition, allow the union to grieve or otherwise object to the investment.

Figure 3: Scores for Regulation of Unionized Firms



A barrier to technological change can have serious and adverse effects on productivity and, thus, ultimately on workers' wages.[22] The productivity of workers is in part dependent upon the capital (machinery and equipment) available to them. Since wages are ultimately determined by workers' productivity, anything that affects productivity will eventually affect wages. Thus, any reduction of the capital available to workers in the form of plants, machinery, equipment, and new technologies will adversely affect the future wages and benefits of workers.

Five Canadian provinces (British Columbia, Saskatchewan, Manitoba, Quebec, and New Brunswick) and the federal government require notice be sent to a union in advance of proposed technological investment if it might affect either the collective agreement or employment. It further permits the union to lodge a complaint with the Labour Relations Board (table 7). There is no formal requirement for employers in the remaining five Canadian provinces or any of the US states to inform unions of technological change (table 7).

Arbitration of disputes

Although most collective bargaining agreements have provisions for resolving disputes (usually called a grievance procedure) about the meaning and application of the agreement or about alleged violations, it is important to recognize

22 Empirical analyses based on cross-country comparisons tend to confirm that the employment record has been better in those countries where the pace of structural change, technological specialization, investment rates, and productivity gains have been high (OECD, 1994). See also Veldhuis and Clemens, 2005.

Table 7: Regulation of Unionized Firms

	Successor Rights: Is the existing collective agreement binding?	Is mandatory notice required for introduction of technological change?	Advanced notice of technological change
British Columbia	**Yes**	**Yes**	**60 days**
Alberta	**Yes**	**No**	**n/a**
Saskatchewan	**Yes**	**Yes**	**90 days**
Manitoba	**Yes**	**Yes**	**90 days**
Ontario	**Yes**	**No**	**n/a**
Quebec	**Yes**[a]	**Yes**[c]	**not specified**
New Brunswick	**Yes**	**Yes**[d]	**not specified**
Nova Scotia	**Yes**	**No**	**n/a**
Prince Edward Island	**Yes**	**No**	**n/a**
Newfoundland & Labrador	**Yes**	**No**	**n/a**
Canadian federal gov't	**Yes**	**Yes**[e]	**120 days**
All US States	**No**[b]	**No**	**n/a**

a In Quebec, a small but important change was made to the respective legislation wherein, if only a portion of a firm is transferred, the existing collective agreement may not be binding.

b In the United States, an employer who purchases or otherwise acquires the operations of another may be obligated to recognize and bargain with the union but rarely is the new employer bound by the existing collective agreement. In general, these bargaining obligations exist—and the purchaser is called a successor employer—where there is a substantial continuity in the employing enterprise despite the sale and transfer of business. Whether the purchaser is a successor employer is dependent on several factors, including the number of employees taken over by the purchasing employer, the similarity in operations and product of the two employers, the manner in which the purchaser integrates the purchased operations into its other operations, and the character of the bargaining relationship and agreement between the union and the original employer. There are circumstances where the employer is bound by the existing collective agreement but the mere fact the new employer is doing the same work in the same place with the same employees as his predecessor does not mean that he is bound by the existing collective agreement. Rather, it depends if the new employer inherited other liabilities and contracts of its predecessor.

c The Quebec Labour Code requests that the employer send a notice to the union in cases where the technological change causes an employee to become a contractor. An Act Respecting Labour Standards (Government du Québec, Ministère des Relations avec les citoyens et de l'Immigration, Publications Quebec, 2005), however, has more detailed procedures with respect to technological change.

d In New Brunswick, the provision dealing with technological change in the Industrial Relations Act differs from that in other provinces; it does not specify how much time in advance an employer has to send the written notice to the union before technological change is implemented nor does it define "technological change." The Act requires that the employer give "reasonable advance notice" to the bargaining agent but it does not specify what "reasonable" is.

e The notice does not have to be given when (1) the collective agreement contains provisions that specify procedures by which a technological change may be negotiated and settled during the term of the agreement or (2) the two parties specify that provisions pertaining to technological change in the Canada Labour Code do not apply during the term of the collective agreement.

f Refers to disputes regarding collective bargaining agreement, its meaning, application, or alleged violation. It should also be noted that we are gauging this provision slightly differently than we did in the previous edition of this study (Godin et al., 2006). We believe that this change allows a more accurate assessment of what we are trying to measure, the level of balance and flexibility in the labour relations laws.

Must every collective bargaining agreement include a mechanism for the final and binding settlement of a grievance (i.e. arbitration)?[f]	Are temporary replacement workers allowed?	Is third-party picketing allowed?	Score (out of 10)	Rank (out of 61)
Yes	**No**	**No**[i]	**2.0**	**55**
Yes	**Yes**	**No**	**6.0**	**51**
Yes	**Yes**	**Yes**[i]	**2.0**	**55**
Yes	**Yes**	**Yes**[i]	**2.0**	**55**
Yes	**Yes**[g]	**Yes**[i]	**4.0**	**52**
Yes	**No**	**Yes**[i]	**0.0**	**61**
Yes	**Yes**[g]	**Yes**[i]	**2.0**	**55**
Yes	**Yes**[g]	**Yes**[i]	**4.0**	**52**
Yes	**Yes**	**Yes**[i]	**4.0**	**52**
Yes	**No**[g]	**Yes**[i]	**2.0**	**55**
Yes	**Yes**[h]	**Yes**[i]	**2.0**	**55**
No	**Yes**	**No**[k]	**10.0**	**1**[l]

g Ontario, New Brunswick, Nova Scotia, and Newfoundland have nothing in their legislation that either prohibits or allows the hiring of replacement workers during a legal strike or lockout. In Newfoundland, this was interpreted to mean that replacement workers are prohibited. In Ontario, New Brunswick, and Nova Scotia, on the other hand, it was interpreted to mean that replacement workers are allowed since they are not prohibited in the legislation.

h The Canada Labour Code specifies that an employer cannot hire replacement workers for the demonstrated purpose of undermining union capacity.

i In British Columbia, second-site picketing of an "ally" business is allowed. An "ally" business is a business that is found to be assisting the employer by doing work done by the employees on strike or lockout.

j Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and the Canadian federal government have nothing in their legislation that either prohibits or allows third-party picketing. Since third-party picketing is not addressed in their corresponding labour legislation, third-party picketing falls under the jurisdiction of courts rather than the Labour Relations Boards. In 2002, a decision by the Supreme Court of Canada acknowledged the right of employees to picket third parties, provided it does not constitute criminal or tortuous (accidental or unintentional harm) activity; see *R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.* [2002] 1 S.C.R. 156, 8 S.C.C.

k In general, secondary picketing is prohibited in all US states. The exceptions are as follows: (1) workers may picket a secondary "ally" employer where it is performing the work that would have been done by the striking employees; (2) consumer picketing, where picketers dissuade the public from patronizing retail establishments rather than to dissuade employees from working, is permitted provided that the union's case is closely confined to the primary dispute and the secondary employer can easily substitute another employer's goods or services; (3) secondary boycotts are allowed in construction and textile industry; (4) informational picketing is allowed if the sole object of the picketing is to inform the public even if such picketing interferes with deliveries or pickups.

l Tied for first place.

Sources: Government of Canada, Canada Labour Code (1985); Province of British Columbia, Labour Relations Code (1996); Government of Alberta, Labour Relations Code (2000); Government of Saskatchewan, The Trade Union Act (1978); Government of Manitoba, The Labour Relations Act (1987); Government of Ontario, Labour Relations Act (1995); Government of Quebec, Labour Code (1977); Government of New Brunswick, Industrial Relations Act (1973); Government of Nova Scotia, Trade Union Act (1989); Government of Prince Edward Island, Labour Act (1988); Government of Newfoundland and Labrador, Labour Relations Act (1990); National Labor Relations Act 1935 (for details see the list of References, p. 48).

how disputes are resolved when both parties cannot, or no longer wish, to negotiate. Generally, there are three stages to resolving a labour dispute. The first is conciliation, whereby disputing parties meet separately with a third party to facilitate negotiation. The second is mediation, where parties meet face-to-face in the presence of a third party but any final decision is not legally binding. The third is arbitration, which is characterized by face-to-face negotiations among all parties and a final, legally binding, decision by a third-party arbitrator.

It is generally seen as beneficial to exhaust voluntary alternatives such as mediation before relying on final and binding mechanisms such as arbitration. Proceeding immediately to binding arbitration without taking prior steps may not only result in increased costs for both parties but it may also create hostility between them. A stronger commitment to voluntary negotiation may increase the odds that both parties will be satisfied with the agreement and greater balance and flexibility in the labour relations environment is achieved if parties are free to prolong the dispute until it is in the best interests of all parties to enter *voluntarily* into a process of final and binding resolution (i.e., arbitration).

All Canadian jurisdictions require that every collective bargaining agreement include a mechanism for the final and binding settlement of a grievance (i.e., arbitration). No Canadian jurisdiction allows parties to exhaust non-binding mechanisms and only enter arbitration when all parties voluntarily choose to do so (table 7). This is an important aspect of Canadian labour relations laws since it means that most disputes in these jurisdictions will be resolved by binding arbitration.

In the United States, arbitration is voluntary and US legislation does not force the parties to include clauses stipulating binding arbitration in their labour agreements (table 7).[23] The National Labor Relations Board (NLRB) works in conjunction with the independent Federal Mediation and Conciliation Service and, depending on the significance of the dispute with the American Arbitration Association and state arbitration services, to resolve disputes.

Replacement workers

In the event of a legal strike by workers or lockout by an employer, a firm may wish to hire replacement workers in order to continue at least partial operations while addressing reasons for the dispute. Several researchers have concluded that bans on the use of replacement workers can have significant economic impacts. For instance, Cramton et al. (1999) studied private-sector contract negotiations in Canadian provinces from 1967 to 1993 and found that negotiation costs were significantly higher in provinces that prohibited

23 However, over 99% of collective bargaining agreements in the United States provide for arbitration as a final step in the grievance procedure (Sloane and Whitney, 2004:. 227).

employers from using replacement workers. In addition, they found that wage settlements were, on average, 4.0% higher while the duration of strikes was, on average, two weeks longer compared to wage settlements in jurisdictions without bans on replacement workers. This implies an increase in average negotiation costs of around $1.9 million (1993 Canadian dollars) per contract.

Another study, by John Budd and Yijiang Wang (2004), concluded that labour policies such as bans on replacement workers that increase the bargaining power of unions resulted in lower investment. The study looked at provincial investment from 1967 to 1999 and found that the net investment rate (new investment minus depreciation) is 0.746 percentage points lower when a province bans the use of replacement workers during strikes.[24]

A previous study by Budd (2000) examined statistics of employment and bargaining units for Canadian provinces from 1966 to 1994 and concluded that bans on replacement workers have adverse consequences on employment. Budd found that provinces that prohibit hiring of replacement workers tend to have a lower employment-to-population ratio and a drastically reduced number of employees in the bargaining unit over time.

Four Canadian provinces (Alberta, Saskatchewan, Manitoba, and Prince Edward Island) as well as the federal government have legislation allowing replacement workers during legal strikes and lockouts. These five jurisdictions also stipulate that striking or locked-out workers have the right to immediate reinstatement once the dispute has been resolved (table 7). Two provinces, British Columbia and Quebec, specifically prohibit the use of replacement workers. The remaining four Canadian provinces do not have legislation specifically allowing or prohibiting the use of replacement workers although, surprisingly, the treatment of replacement workers differs among these four provinces: Ontario, Nova Scotia, and New Brunswick generally allow replacement workers whereas the Labour Relations Board of Newfoundland & Labrador interprets the absence of such provisions to mean employers do not have the right to hire replacement workers (table 7).[25]

The National Labor Relations Act in the United States allows replacement workers (table 7). Employees who strike for a lawful reason fall into two classes: economic strikers and strikers against unfair labour practices. While

24 Caballero et al. (2004) found that job security protection in labour laws prevented, or at least impeded, the Schumpeterian process of "creative destruction" or re-allocation of capital.

25 In the four jurisdictions that do not have legislation specifically allowing or prohibiting the use of replacement workers, a record of precedent or procedure regarding whether replacement workers are allowed or prohibited was compiled through personal communication with Labour Relations Boards' officers. Communication with Board officers in Ontario, Nova Scotia, and New Brunswick confirmed that, as a matter of policy, the Board generally allows replacement workers while in Newfoundland & Labrador the Board does not generally allow replacement workers.

both classes continue as employees (that is, they cannot be discharged), economic strikers may be permanently displaced whereas those striking against unfair labour practices can be only temporarily replaced. However, upon resolution of the dispute, the employer must place economic strikers who wish to return to work on a preferential hiring list and offer to reinstate them when any job for which they are qualified becomes available.[26]

Third-party picketing

Third-party (or second-site) picketing refers to the ability (or inability) of striking workers and their union to picket and disrupt the operations of enterprises not covered by the collective agreement. For example, striking workers might engage in third-party picketing of suppliers to, or retailers of, the firm who is a party to the collective agreement. The ability to disrupt the operations of third parties means that the union and workers have the ability to affect not only the employer covered by the collective agreement but also any other company doing business with the primary firm and pressure from these third parties may force the employer to settle a strike instead of addressing the reasons for the strike.

Only two Canadian provinces, British Columbia and Alberta, specifically prohibit third-party picketing. The remaining eight provinces and the federal government do not address third-party picketing and, therefore, regulation is achieved through court precedent. A decision in 2002 by the Supreme Court of Canada (*R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*) instituted a right for employees to picket third parties (table 7).

For the overwhelming majority of cases in the United States, third-party picketing is prohibited; however, some loopholes exist in the current case law. The overall direction, however, of the labour relations law and case law is to prohibit involving third parties as much as possible (table 7).

Observations on the regulation of unionized firms

All US states received a score of 10.0 out of 10, indicating a high degree of balance in the labour relations laws dealing with firms once they are unionized. Alberta received the second-highest score of 6.0. Three Canadian provinces (Ontario, Nova Scotia, and Prince Edward Island) received a score of 4.0 and five (British Columbia, Saskatchewan, Manitoba, New Brunswick, Newfoundland & Labrador) as well as the federal government received a score of 2.0. Quebec was the only jurisdiction that received a score of 0.0.[27]

The results from the analysis of regulation on unionized firms indicate that the US states as well as Alberta impose relatively balanced requirements

26 For a detailed discussion of replacement workers in United States and Canada, see Singh and Jain, 2001 and Cramton et al., 1999.

27 See the Appendix: Methodology (p. 45) for details on how the scores were computed.

on firms once they are unionized. The remaining nine Canadian provinces as well as the federal government, on the other hand, tend to impose upon unionized firms regulations that are biased and prescriptive, in effect mandating a resolution to labour disputes rather than fostering voluntary negotiation between employers and unions.

4 Index of Labour Relations Laws

The Index of Labour Relations Laws provides an overall measure of the level of balance and promotion of labour market flexibility in the various jurisdictions' labour relations laws. It is a composite measure of the three areas analyzed and discussed previously: (1) Organizing a Union; (2) Union Security; and (3) Regulation of Unionized Firms (table 8; figure 4).

The 22 US Right-to-Work states have the most balanced and least prescriptive labour relations laws amongst the 10 Canadian provinces, the Canadian federal government and 50 US states. Each received a score of 9.2 out of a possible 10.0. Recall that these states have added to, or expanded on, the US federal labour relations laws regarding union security (union membership and union dues payment). This is the only difference between RTW states and non-RTW states in the United States. The remaining 28 US states were tied for the 23rd position with an overall score of 7.5.

Canadian jurisdictions fared poorly overall. The Canadian provinces and the federal government occupied positions 51 to 61. The only province with a score above 5.0 was Alberta, with an overall score of 5.3. The remaining 10 jurisdictions all received scores below 5.0. The federal government (score 1.1) and Quebec (score 1.3) have the most rigid and biased labour relations laws. British Columbia, New Brunswick, and Newfoundland & Labrador, all with scores of 2.8, and Manitoba (1.8) also recorded very weak scores. Overall, the trend is quite clear: US states tend to have balanced labour relations laws focused on providing workers and employers with choice and flexibility. Canadians jurisdictions, on the other hand, generally have much more biased and prescriptive labour relations laws.

5 Other important aspects of labour relations laws

In addition to the labour relations provisions discussed above, there are a number of other important aspects of labour relations laws, including the definition of a bargaining unit, the timing and mechanism for certification votes, and the balance of information during unionization drives. Similar to the provisions of the labour relations laws included in the Index of Labour Relations Laws, these aspects show the extent to which jurisdictions achieve

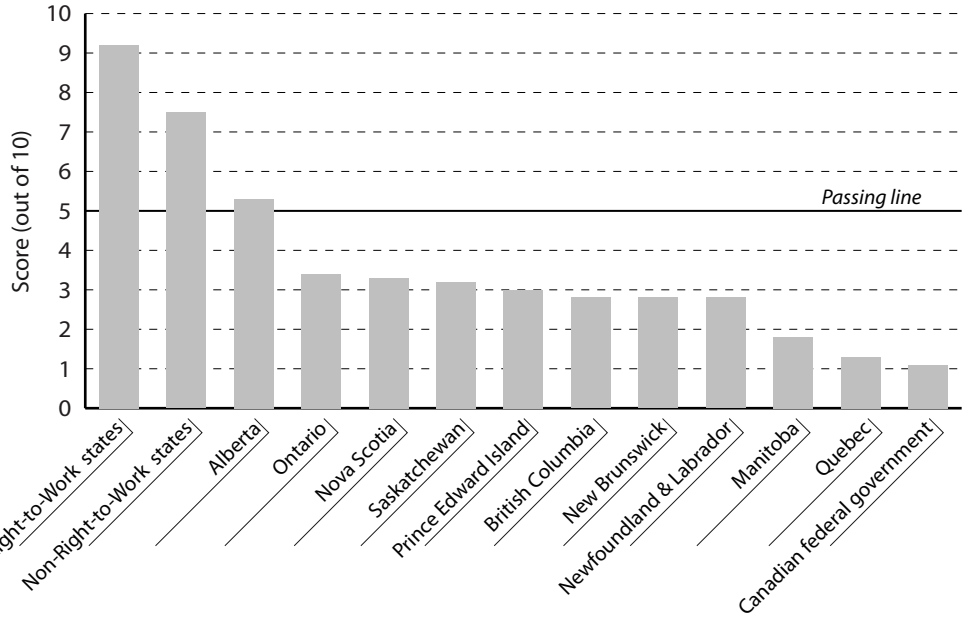
Table 8: Scores and Ranks on the Index of Labour Relations Laws

	Overall Index (out of 10)	Rank (out of 61)
British Columbia	**2.8**	**56**
Alberta	**5.3**	**51**
Saskatchewan	**3.2**	**54**
Manitoba	**1.8**	**59**
Ontario	**3.4**	**52**
Quebec	**1.3**	**60**
New Brunswick	**2.8**	**56**
Nova Scotia	**3.3**	**53**
Prince Edward Island	**3.0**	**55**
Newfoundland & Labrador	**2.8**	**56**
Canadian federal gov't	**1.1**	**61**
Right-to-Work States	**9.2**	**1**[a]
Non Right-to-Work States	**7.5**	**23**[b]

a Tied for first place. b Tied for 23rd place.

Sources: Government of Canada, Canada Labour Code (1985); Province of British Columbia, Labour Relations Code (1996); Government of Alberta, Labour Relations Code (2000); Government of Saskatchewan, The Trade Union Act (1978); Government of Manitoba, The Labour Relations Act (1987); Government of Ontario, Labour Relations Act (1995); Government of Quebec, Labour Code (1977); Government of New Brunswick, Industrial Relations Act (1973); Government of Nova Scotia, Trade Union Act (1989); Government of Prince Edward Island, Labour Act (1988); Government of Newfoundland and Labrador, Labour Relations Act (1990); National Labor Relations Act 1935 (for details see the list of References, p. 48).

Figure 4: Scores on the Index of Labour Relations Laws



balance and flexibility in their labour relations environment. These additional aspects are not currently included in the Index either because it is difficult to develop objective measures for them or because there is no empirical evidence about what the optimal provision might be.

Definition of a bargaining unit

An important factor in the unionization process is the definition of a bargaining unit. The bargaining unit can vary considerably, from a small group of workers with similar job functions to entire firms. The ability to define the bargaining unit varies from restrictive, where a Labour Relations Board has considerable discretion in deciding who is in the bargaining unit, to flexible, where the definition of the bargaining unit is strictly a matter of open negotiation between union and employer. While the definition of a bargaining unit affects the number of unionized workers and thus the unionization rate, it also has an impact on the structure of collective bargaining. Where there is flexibility in determining the bargaining unit, employers could have multiple collective bargaining agreements rather than one comprehensive contract. Moreover, the definition of a bargaining unit is closely linked to successor rights, as the ability of an employer to reorganize an uncompetitive business is significantly affected by the size, structure, and number of contracts inherited upon purchase.

There are three important questions worth exploring in future research. (1) How is the appropriate bargaining unit determined? (2) Does the Labour Relations Board have discretion over the definition of a bargaining unit? (3) Are professionals or any other occupations excluded?

Voting mechanism

Once a vote for certification (or decertification) has been authorized by a Labour Relations Board, there are several ways to determine if the vote was successful. One way is to base it on a simple majority (50%+1) of those casting valid votes. For example, if there are 100 workers in a bargaining unit but only 50 show up to vote, then only 26 votes in favour of the union are needed to certify the union. Currently, six Canadian provinces (Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia, and Prince Edward Island) and US states compute the outcome of the vote using this method. Alternatively, the outcome of a vote could be based on a majority of votes cast in the bargaining unit. For instance, if there are 100 workers in a bargaining unit, there must at least be 51 workers who vote in favour of the union in order for the unit to become certified. Quebec is the only jurisdiction where this method is used. Lastly, and similar to the first method, the outcome of a vote could be based on a majority (50%+1) of those casting valid votes as long as a certain percentage of workers in a unit cast a vote. The required percentage of

workers in the bargaining unit that have to cast a ballot in order for the vote to be valid ranges from 35% in the Canadian federal jurisdiction to 70% in Newfoundland & Labrador. In this case, if there are 100 employees in a unit in Newfoundland & Labrador, at least 70 of them must vote and at least 36 of them must support the union in order for the union to be certified. British Columbia and Saskatchewan also use this method.

One may criticize the first method because it allows a small, active minority to certify or decertify a union for all employees in the bargaining unit. The second method may similarly be criticized for allowing an equally active minority to influence employees so that they fail to participate in the election so the certification or decertification is thwarted. Some provinces have tried to address this imbalance by introducing the third method. One may argue that those workers who do not show up to vote are indifferent about certification. Empirical evidence, however, suggests that this might not be true. Ahlburg (1984) simulated changes in voting rules and found that requiring a majority of a unit to cast votes, as opposed to basing the vote outcome on a majority of votes cast, would lead to a significant reduction in the number of elections won by unions. Determining which voting mechanism achieves the greatest degree of balance and flexibility is subject to debate but it seems reasonable to expect that a majority of workers in a unit cast a ballot, whose preferences will determine the vote outcome (the third method) .

Timing of voting

The time between authorization for a vote on certification (or decertification) and the date of the vote itself can have an important impact on voting outcomes. Weiler (1983) explained that, if the time is too short, then employers and unions may not have adequate time to voice their concerns to workers regarding unionization. On the other hand, if the time is too long, then employers and unions may have too much time to voice their opinion and run into the danger of committing an unfair labour practice and over-stepping their boundaries. While there is very little research into this aspect of labour relations laws, it may be that the five days allowed in Ontario is too short while the 42 days allowed in the United States is too long. The optimal length of time between an authorization of a vote and the vote itself would be a fruitful subject of research.

Balance of information

The balance of information is closely related to the timing of voting because one of the main criticisms of a short time window for a certification vote is the inability of employers to share information about unionization with workers. To have the greatest degree of information and choice afforded to workers, it is important to have balance between the information from unions and

employers. To achieve this, there should be no barriers in place for parties to share information with workers. A recent example of an improvement in the balance of information afforded to workers was Saskatchewan's 2008 change to allow employers to communicate directly with workers, something that was previously prohibited during unionization drives. Balance of information is also served by prescribed penalties for unions or employers that overstep their boundaries and misinform or intimidate workers. All jurisdictions have penalties for such unfair labour practices. It is mportant that the penalties be equal for unions and employers.

2 Labour relations laws and unionization rates

Basic statistics

This section presents a basic, preliminary, statistical analysis of the relationship between labour relations laws and unionization rates. We begin with a simple analysis of the relationship between a jurisdiction's unionization rate and its scores on certain provisions of labour relations laws. In order to determine the relationship between labour relations laws and 2008 unionization rates (the most recent year for which data are available), correlations are used. A correlation is a statistical measure of the relationship between two indicators. The value of a correlation can range from –1.0 to +1.0. A negative correlation means that the two indicators are negatively related; that is, they move in an opposite direction. A negative correlation (between 0 and –1.0) between labour relations laws and unionization rates indicates that a high score for certain provisions of the labour relations laws is associated with lower unionization rates. Alternatively, a positive correlation means that the two indicators are positively related. The strength of a correlation is determined by how close the value is to 1.0 or –1.0: a negative correlation of –0.78, for example, is stronger than one of –0.23.

It is critical to note that even if two indicators are correlated, it does not mean that one causes the other. A higher level of statistical analysis is needed to determine causation. As a first step, however, correlations do provide some interesting insights into how labour relations laws relate to unionization rates.

Results and analysis

Correlations were calculated to determine the simple statistical relationship between private-sector and total unionization rates in Canadian provinces and US states and the scores for six different aspects of labour relations laws (where higher scores indicate higher levels of labour-market flexibility): (1) automatic certification and decertification (i.e., no secret-ballot vote); (2) certification and decertification application differential; (3) remedial certification, (4) first contract provisions; (5) mandatory dues payment; (6) mandatory union membership (table 9). These aspects of labour relations laws were chosen because they all apply to organizing a union (that is, to how a union gains and loses the right to represent workers) and to union security

Table 9: Correlations between private-sector and total unionization rates in Canadian provinces and US states and the scores for six different aspects of labour relations laws

	Private-sector unionization rates	Total unionization rates
Automatic certification	**–0.39**	**–0.53**
Remedial certification	**0.43**	**0.43**
Automatic decertification	**–0.30**	**–0.39**
Certification-decertification differential	**–0.49**	**–0.48**
Mandatory union membership	**–0.64**	**–0.79**
Mandatory union dues	**–0.63**	**–0.67**
First contract provisions	**–0.63**	**–0.65**

Note: Scores for each provision range from zero to 10 where a higher value indicates a more flexible labour market. For details on how the scores were computed, see the Appendix. All of the correlation coefficients are statistically significant at 1% level, except the coefficient for the correlation between private-sector unionization rate and secret ballot for decertification, which is significant at a 5% level.

Sources: Government of Canada, Canada Labour Code (1985); Province of British Columbia, Labour Relations Code (1996); Government of Alberta, Labour Relations Code (2000); Government of Saskatchewan, The Trade Union Act (1978); Government of Manitoba, The Labour Relations Act (1987); Government of Ontario, Labour Relations Act (1995); Government of Quebec, Labour Code (1977); Government of New Brunswick, Industrial Relations Act (1973); Government of Nova Scotia, Trade Union Act (1989); Government of Prince Edward Island, Labour Act (1988); Government of Newfoundland and Labrador, Labour Relations Act (1990); National Labor Relations Act 1935 (for details see the list of References, p. 48); Statistics Canada, 2008; Hirsch and Macpherson, 2009; calculations by authors.

clauses. Jurisdictions that permit automatic certification (i.e., without a secret-ballot vote), remedial certification, first contract provisions, mandatory dues payment, and mandatory union membership and have different thresholds for certification and decertification applications received lower scores on the Index of Labour Relations Laws and are expected to have higher rates of unionization. Other provisions of labour relations laws covered in this study regulate the interactions between firms, unions, and workers once a business has been unionized and thus we should not expect to find a correlation between these provisions and unionization rates.

Interestingly, the aspect of labour relations laws that shows the strongest relationship with unionization rates is the presence of mandatory union membership. The analysis indicates a negative correlation between total (and private) unionization rates and the ability of unions to impose mandatory union membership of –0.79 (–0.64).

Another aspect of labour relations laws that is correlated with unionization rates is mandatory dues payment: the simple correlation for the total unionization rate indicates a –0.67 (–0.63 for private sector unionization rate) relationship between mandatory payment of union dues and unionization rates. This means that in jurisdictions where mandatory union dues are

not permitted, there tends to be lower unionization rate.[28] This is particularly interesting since the two aspects of labour relations laws showing the strongest relationship (negative) with unionization rates are both provisions that relate to union security.

In addition, the correlation between first contract provisions and total unionization is –0.65 and –0.63 for private sector unionization rate. This suggests that providing a labour relations board with the power and discretion to help establish a first collective agreement has an impact on unionization rates. It also suggests that the proposed changes in the United States with the Employee Free Choice Act will likely have a significant impact on unionization rates in the United States.[29]

While the correlations for the other variables analyzed were not as strong, the relationships (positive versus negative) with unionization rates were still in line with expectations. For instance, the correlation between automatic certification and unionization is –0.53 (-0.39 for private sector unionization rate), which indicates that requiring a secret-ballot vote for certification is associated with lower unionization rates. Along the same lines, the presence of a certification-decertification application differential was associated with lower unionization rates (table 9).

The correlation with remedial certification is the only aspect of labour relations laws whose correlation was different from what was expected. That is, the correlation between remedial certification and unionization was positive, meaning that unionization rates tend to be higher in jurisdictions that do not allow their labour relations boards to grant remedial certification. Needless to say, correlation coefficients should be used with caution since they are unable to capture other indicators that have an impact on unionization rates. To do this, one needs do a proper empirical analysis.

Overall, the correlation estimates provided results that are in line with expectations based on previous empirical research and economic intuition regarding the relationship between certain aspects of labour relations laws and unionization rates. However, a more thorough empirical test is needed in order to determine whether causal relationships exist between these aspects of labour relations laws and unionization rates.

28 A jurisdiction receives a score of 10 if the legislation does not allow unions to require mandatory dues payment as condition of employment. For further details on the methodology, see the Appendix: Methodology (p. 45).

29 The Employee Free Choice Act is discussed in the next section.

3 The *Employee Free Choice Act*

In February 2007, a bill called the *Employee Free Choice Act* (EFCA) was presented in the United States Congress. The EFCA passed the House of Representatives but was stopped in the US Senate.[30] With the subsequent election of President Barack Obama, who publicly supported the bill, the EFCA was reintroduced in the Congress in March 2009 and in some form is likely to be passed during the new President's administration. As of July 2009, it appears that a revised bill, rather than that originally proposed, might be passed (*Wall Street Journal*, 2009, July 21; Greenhouse, 2009, July 17). For this reason, it is important to understand the impact this bill could have on the flexibility of the labour relations laws in the United States.

The original EFCA proposed the most significant changes to US labour relations laws in decades. Most importantly, the EFCA calls for the NLRB to automatically certify a union without a secret-ballot vote if the union has indicated a majority of support through signed union cards (a procedure known in the United States as a card-check). The proposed law states:

> If the Board finds that a majority of the employees in a unit appropriate for bargaining has signed valid authorizations [union cards] designating the individual or labor organization specified in the petition as their bargaining representative … the Board shall not direct an election but shall certify the individual or labor organization as the representative … (*Employee Free Choice Act*, 2 (a) (6)).

Currently, as outlined in section 1, practically every unionization drive requires a secret-ballot vote. On strictly technical grounds, there is a legal precedent for card check in the United States but the law is practically meaningless as employers have the right to request a vote in order to recognize a union. There are also a number of penalties that the NLRB can impose if the union or employer commits an unfair labour practice during a certification drive, designed to ensure a fair process. Essentially, the EFCA would eliminate the ability of workers to indicate, anonymously, their preference for

30 The Senate voted 51 to 48 for cloture, an agreement to vote on the bill that requires 60 Senate votes in favour of allowing the bill to be considered for a majority vote on the senate floor. With the vote failing to reach the critical 60-vote threshold, Republicans were able to prevent a vote from taking place. President Bush also indicated he would veto the bill if passed.

collective representation. Not surprisingly, empirical evidence shows that requiring union cards as the only evidence results in much higher rates of union certification success (Riddell, 2004).

Secondly, the EFCA proposed to provide the NLRB with the power to force parties into binding arbitration to settle disputes over a first collective agreement. This is an important aspect of becoming unionized, as the failure to settle a first collective agreement essentially makes certification moot. As explained in section 1, there are three general approaches to first contract provisions. The first is to allow parties to exhaust voluntary negotiation mechanisms such as conciliation and mediation. This is the method used across the United States currently. The second method, used in most Canadian jurisdictions, is to force the parties into binding arbitration after a prescribed period of failed negotiation. The third, and certainly the most prescriptive approach, is for a labour relations board to settle the impasse by directly imposing the provisions of a first agreement. Essentially, the EFCA proposed to adopt the second method, forcing parties into arbitration after a period of time:

> If after the expiration of the 30-day period beginning on the date on which the request for mediation is made … the [Federal Mediation and Conciliation] Service is not able to bring the parties to agreement by conciliation, the Service shall refer the dispute to an arbitration board … [that] shall render a decision settling the dispute and such decision shall be binding upon the parties for a period of 2 years … (*Employee Free Choice Act*, 3 (h) (3)).

Forcing parties to settle first collective agreements through arbitration means that there will likely be more collective agreements (i.e., a higher unionization rate). It also means conflict and disputes could increase, as there will likely be more agreements reached through arbitration than through voluntary concession. In any event, forcing a contract on parties that have not exhausted voluntary dispute-resolution mechanisms is a step backwards from greater balance and flexibility in the labour relations environment.

Lastly, the original EFCA proposed to introduce much stiffer penalties for employers who commit an unfair labour practice during a unionization drive. An employer who discharges, or threatens to discharge, an employee while workers are seeking representation or in the process of settling a first collective agreement can be forced to pay back-pay (i.e., any compensation that was lost due to the threat or discharge) to the employee in question, with damages, as well as fines to the NLRB. Depending on the violation, an employer can be forced to pay workers back-pay during a dispute and, in addition, twice that amount as liquidated damages. Further, civil penalties can escalate up to $20,000 for each violation, subject to the NLRB's discretion. Essentially, the EFCA proposes severe penalties on employers for

committing what is deemed an unfair labour practice during election drives. On the other hand, no such proposals were made for unions committing unfair labour practices.

It appears that two of the three major provisions in the original EFCA will be kept in the revised bill. The card-check provision will likely be dropped and, in its place, the proponents of the bill are considering additional provisions that would: (a) shorten the union election period to five to 10 days (from the current median time period of 38 days); (b) require employers to give union organizers access to company property; and (c) prohibit employers from requiring that the workers hear the employers' side of the argument (*Wall Street Journal*, 2009, July 21; Greenhouse, 2009, July 17).

The EFCA, either original or revised, heavily tilts the balance of power in favour of unions over workers and employers. If this bill is enacted, American labour relations laws will have less balance and flexibility, a key characteristic of a dynamic and well-functioning labour market. It is true that the revised bill would not have the card-check provision but the two remaining major provisions and the new ones that will likely be added would still have a substantially negative impact on the balance and flexibility of the labour relations laws in the American states.

Measuring the effect of the EFCA

To measure the reduction in balance and flexibility, we have recalculated the Index of Labour Relations Laws using the originally proposed EFCA and the original EFCA without the card-check provision. Table 10 shows quite clearly there would be a reduction in the balance and flexibility achieved in the American labour-relations environment whichever version of the EFCA were enacted. Under the original EFCA including the card-check provision, there would be deterioration in labour-relations flexibility relating to organizing a union. All US states would experience a significant drop, from 7.5 to 5.0 in terms of the extent to which the process of organizing a union balances the needs of workers and employers. A score of 5.0 puts US states behind all Canadian jurisdictions except for three (Quebec, Manitoba, and the federal government). The lower scores for organizing a union have a notable impact on overall scores of the Index of Labour Relations Laws: overall, RTW states would still rank first but their scores would drop from 9.2 to 8.3 (table 10); similarly, the non-RTW states would keep their ranking at 23rd but their scores would drop from 7.5 to 6.7.

Under the original EFCA without the card-check provision, there would also be a deterioration in labour-relations flexibility relating to organizing a union. All US states would experience a significant drop, from 7.5 to 6.3 in terms of the extent to which the process of organizing a union balances the needs of

Table 10: Scores and ranks for Organizing a Union and the Index of Labour Relations Laws if the *Employee Free Choice Act* (EFCA) is enacted with, and without, card-check provision

	With card-check provision				Without card-check provision			
	Organizing a Union		Index of Labour Relations Laws		Organizing a Union		Index of Labour Relations Laws	
	Score	Rank	Score	Rank	Score	Rank	Score	Rank
British Columbia	**6.3**	**3**	**2.8**	**56**	**6.3**	**3**	**2.8**	**56**
Alberta	**10.0**	**1**	**5.3**	**51**	**10.0**	**1**	**5.3**	**51**
Saskatchewan	**7.5**	**2**	**3.2**	**54**	**7.5**	**2**	**3.2**	**54**
Manitoba	**3.3**	**60**	**1.8**	**59**	**3.3**	**60**	**1.8**	**59**
Ontario	**6.3**	**3**	**3.4**	**52**	**6.3**	**3**	**3.4**	**52**
Quebec	**3.8**	**59**	**1.3**	**60**	**3.8**	**59**	**1.3**	**60**
New Brunswick	**6.3**	**3**	**2.8**	**56**	**6.3**	**3**	**2.8**	**56**
Nova Scotia	**5.8**	**7**	**3.3**	**53**	**5.8**	**57**	**3.3**	**53**
Prince Edward Island	**5.0**	**8**	**3.0**	**55**	**5.0**	**58**	**3.0**	**55**
Newfoundland & Labrador	**6.3**	**3**	**2.8**	**56**	**6.3**	**3**	**2.8**	**56**
Federal (Canada)	**1.3**	**61**	**1.1**	**61**	**1.3**	**61**	**1.1**	**61**
Right-to-Work States	**5.0**	**8**[a]	**8.3**	**1**[b]	**6.3**	**3**[c]	**8.8**	**1**[b]
Non Right-to-Work States	**5.0**	**8**[a]	**6.7**	**23**[d]	**6.3**	**3**[c]	**7.1**	**23**[d]

a Tied for eighth place. b Tied for first place. c Tied for third place. d Tied for 23rd place.

Sources: Government of Canada, Canada Labour Code (1985); Province of British Columbia, Labour Relations Code (1996); Government of Alberta, Labour Relations Code (2000); Government of Saskatchewan, The Trade Union Act (1978); Government of Manitoba, The Labour Relations Act (1987); Government of Ontario, Labour Relations Act (1995); Government of Quebec, Labour Code (1977); Government of New Brunswick, Industrial Relations Act (1973); Government of Nova Scotia, Trade Union Act (1989); Government of Prince Edward Island, Labour Act (1988); Government of Newfoundland and Labrador, Labour Relations Act (1990); National Labor Relations Act 1935; Employee Free Choice Act (for details, see References, p. 48).

workers and employers. The lower scores for organizing a union have an impact on overall scores of the Index of Labour Relations Laws: overall, RTW states would still rank first but but their scores would drop from 9.2 to 8.8 (table 10); similarly, the non-RTW states would keep their ranking at 23rd but their scores would drop from 7.5 to 7.1. Other provisions now being considered, such as shortening the union election period, requiring employers to give union organizers access to company property, and prohibiting employers from requiring that the workers hear employers' arguments, would reduce the flexibility of the labour market but are not captured by the Index of Labour Relations Laws.

A marked deterioration in America's labour-relations environment would have several negative ramifications. As the research shows, eliminating secret-ballot votes for certification tends to result in higher rates of

successful union organizing. The likely result is higher rates of unionization, which in turn have a negative impact on productivity, profitability, investment in physical capital and R&D, and, most importantly, the rate of employment growth (Hirsch, 1997). A recent study by Layne-Farrar (2009) examined the impact of the original *Employee Free Choice Act* (EFCA) with the card-check provision on employment and the unemployment rate in United States. The author first investigated the Canadian experience with the card-check and mandatory arbitration, analyzing data from 1976 to 1997 for the Canadian provinces. Using the Canadian estimates, the author then estimated the potential impact of the EFCA. Layne-Farrar (2009) found that the EFCA would increase the unemployment rate in the United States and decrease the job-creation rate. Specifically, if the unionization rate increases by three percentage points, due to card check and mandatory first-contract arbitration, the unemployment rate would increase by one percentage point and the job creation would fall by about 1.5 million jobs.

Second, the overall deterioration in balance and flexibility in the labour-relations environment can reduce overall labour-market flexibility, one of the most critical aspects of a dynamic and well-functioning labour market. If policy makers in the United States wish to see greater labour market performance achieved, they would be wise to steer clear of both the originally proposed and the revised EFCA.

Summary: Labour relations laws and labour market flexibility

This study evaluates the extent to which labour relations laws promote flexibility in the labour market while balancing the needs of employers, employees, and unions. Labour relations laws hinder the proper functioning of a labour market and thus reduce its performance when they favour one group over another or are overly prescriptive. The functioning of labour markets is deterred by imposition of a resolution to labour disputes rather than fostering negotiation between employers and employees. Empirical evidence from around the world indicates that jurisdictions with flexible labour markets enjoy higher rates of job creation, greater benefits from technological change, and higher rates of economic growth.

This study measures the labour relations laws in the private sector for the 10 Canadian provinces, the Canadian federal jurisdiction, and the 50 US states. The overall results suggest four groups of jurisdictions. Among the 10 Canadian provinces, the Canadian federal government, and 50 US states, the 22 US Right-to-Work states maintain the most balanced and least prescriptive labour relations laws. The remaining 28 US states were tied for the 23rd position.

Alberta falls into a third category as it scored well ahead of other Canadian jurisdictions though it fell short of competing with US states. Finally, there are the remaining nine Canadian provinces and the Canadian federal government. The federal government and Quebec had the most rigid and biased labour relations laws. Manitoba as well as British Columbia, New Brunswick, and Newfoundland & Labrador also have low ratings.

The study also analyzed the relationship between labour relations laws and unionization rates using basic correlation statistics. The two aspects of labour relations laws that showed the strongest negative relationship with unionization rates are mandatory dues payment and mandatory union membership. This means that jurisdictions where mandatory union dues and mandatory union membership are not permitted tend to have lower unionization rates.

Overall, this study indicates that the labour relations laws in the Canadian provinces are much less balanced and flexibile than their US counterparts. Empirical evidence shows that this flexibility is of great benefit to citizens both in the United States and around the world. In order to promote greater flexibility in the labour market, Canadian provinces would be well advised to pursue balanced and less prescriptive labour laws.

Appendix: Methodology

The Index of Labour Relations Laws provides an overall measure of how balanced a jurisdiction's labour relations laws are and to what extent they promote labour market flexibility. The Index is based on the scores of 11 components examined in the study. These components are grouped into three categories of labour relations law: (1) Organizing a Union, (2) Union Security, (3) Regulation of Unionized Firms. Each component is given equal weighting within its category and each category is given equal weighting in the overall index.

1 Organizing a union

a Mandatory secret-ballot vote

This component measures whether a vote by secret ballot for certification and decertification is mandatory. If the legislation requires a mandatory vote by secret ballot for both certification and decertification, a jurisdiction gets a score of 10. If the legislation requires a mandatory vote for one, either certification or decertification, a jurisdiction gets a score of 5; otherwise, it gets a score of zero.

b Remedial certification

If the legislation provides the Labour Relations Board with the power to certify a union without a mandatory vote by secret ballot when an employer commits an unfair labour practice, a jurisdiction gets a score of zero; otherwise, it gets a score of 10.

c Difference between certification and decertification thresholds for application

The value for this indicator is calculated as the difference between an application for decertification threshold and an application for certification threshold. The score for this indicator is calculated as follows:

$$(V_{max} - V_i) / (V_{max} - V_{min}) \times 10$$

The V_i is the actual difference in the thresholds, while V_{min} is set to zero and V_{max} to 15. V_{max} is set at 15 since the largest difference between decertification and certification threshold for application among the 61 jurisdictions is 15 percentage points.

d First contract provisions

If the legislation does not allow a Labour Relations Board to either force binding arbitration on the two parties or directly impose terms and conditions of a first collective agreement, a jurisdiction gets score of 10. If the Board has the power to resolve first contract disputes using both of these mechanisms, a jurisdiction gets a score of zero; if legislation allows one but not the other, a jurisdiction gets a score of 5.

2 Union security

a Mandatory union membership

If the legislation does not prohibit a union and employer from including a clause in their collective agreement that requires membership in a union as a condition of employment, a jurisdiction gets a score of zero; otherwise it gets a score of 10.

b Mandatory union dues

If the legislation requires or allows mandatory payment of dues by those employees who are not members of a union, a jurisdiction gets a score of zero; otherwise it gets a score of 10.

3 Regulation of unionized firms

a Successor rights

If, in general, a new employer is bound by the existing collective agreement, a jurisdiction gets a score of zero; otherwise, it gets a score of 10.

b Technological change

If the legislation requires an employer to inform the union (or, in Canada, the Minister of Labour) before technological change can take place, a jurisdiction gets a score of zero; otherwise, it gets a score of 10.

c Arbitration of disputes

If the legislation requires every collective bargaining agreement to include a mechanism for final and binding settlement (i.e., arbitration) of a grievance (regarding the application, interpretation, or alleged violation of the existing collective agreement), a jurisdiction gets a score of zero. If the legislation allows parties to exhaust non-binding resolution mechanisms and only enter arbitration voluntarily, it gets a score of 10.

d Replacement workers

If the legislation allows an employer to hire replacement workers during a legal strike or lockout, a jurisdiction gets a score of 10; otherwise, it gets a score of zero.

e Third-party picketing

If the legislation allows striking employees to picket businesses other than their own employer, a jurisdiction gets a score of zero; otherwise it gets a score of 10.

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Acknowledgments

The authors would like to express their sincerest appreciation to Professor Dennis Maki, Simon Fraser University; John Mortimer, President of LabourWatch; Mark Mullins, former Executive Director of the Fraser Institute; Paul Kersey, Bradley Visiting Fellow in Labor Policy at the Heritage Foundation, formerly of the Michigan-based Mackinac Institute; and Jerry Jordan, Senior Fellow at the Fraser Institute and formerly the President & CEO, Federal Reserve Bank of Cleveland for providing peer review and numerous suggestions for improving the first edition of the study. Special thanks go to Jason Clemens, Director of Research, Strategic Planning, and Budgeting at the Pacific Research Institute, and to Keith Godin, Labour Market Portfolio Manager, Ministry of Advanced Education and Labour Market Development, British Columbia, for their work on previous editions of this study.

The authors would also like to thank the many government employees in both Canada and the United States who supplied information and patiently answered questions. Finally, we would like to thank the Publications Department of the Fraser Institute for their assistance and diligence.

The authors take full and complete responsibility for any remaining errors or omissions. As the authors have worked independently, the views expressed in this study do not necessarily represent the views of the supporters, trustees, or other staff of the Fraser Institute.

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ISSN
ISSN 1715-7420 Studies in Labour Markets (print version)
ISSN 1715-7439 Studies in Labour Markets (online version)

Date of issue
August 2009

Citation
Karabegović, Amela, Alex Gainer, and Niels Veldhuis (2009). *Labour Relations Laws in Canada and the United States: An Empirical Comparison (2009 Edition)*. Fraser Institute

Editing and design
Kristin McCahon and Lindsey Thomas Martin.

Cover design
Bill Ray

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