



backgrounder

Canada and the International Labour Organization (ILO)

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Introduction

The International Labour Organization (ILO) is a United Nations specialized agency based in Geneva, Switzerland, that promotes social justice and internationally recognized human and labour rights.

The ILO was founded in 1919 and is the only surviving major creation of the Treaty of Versailles, which brought the League of Nations into being. The ILO became the first specialized agency of the UN in 1946.

Within the UN system, the ILO has a unique tripartite structure with workers and employers participating as equal partners with governments. *Tripartism* within the ILO means that the power of decision-making is distributed between governments, workers' organizations and employers' organizations.

Currently there are 183 nations (including Canada) that are member States of the ILO.

Canada has been a major participant in the ILO from the beginning and was a founding member of the organization in 1919. Montreal was home to the ILO during the Second World War. Canada has chaired the "Industrialized Market Economy Countries" group within the ILO and several Canadians have provided leadership within the organization over the years. Former Canadian Labour Congress president Joe Morris served as chair of the ILO's Governing Body in the 1970s.

International Labour Conference

The ILO's broad policies are set by the International Labour Conference, which meets once a year and brings together the organization's constituents. The Conference adopts new international labour standards and approves the ILO's work plan and budget.

Governing Body

The Governing Body is the executive body of the International Labour Office (the Office is the secretariat of the Organization). It meets three times a year, in March, June and November. It takes decisions on ILO policy, decides the agenda of the International Labour Conference, adopts the draft program and budget of the Organization for submission to the Conference, and elects the Director-General.

It is composed of 56 titular members (28 Governments, 14 Employers and 14 Workers) and 66 deputy members (28 Governments, 19 Employers and 19 Workers). Ten of the

titular government seats are permanently held by States of chief industrial importance (Brazil, China, France, Germany, India, Italy, Japan, the Russian Federation, the United Kingdom and the United States). The other Government members are elected by the Conference every three years (the last elections were held in June 2008). The Employer and Worker members are elected in their individual capacity.

International Standards

One of the primary roles of the ILO is to formulate international labour standards in the form of *Conventions* and *Recommendations*. These minimum standards of basic labour rights cover: freedom of association, the right to organize, collective bargaining, abolition of forced labour, equality of opportunity and treatment, and other standards regulating conditions across the entire spectrum of work related issues.

Conventions

ILO Conventions are considered legal instruments which define international standards and provide a model for nations to follow. Member nations are encouraged to ratify Conventions and have an obligation to put the Conventions before their Parliament for consideration.

Once a Convention is ratified by a country, its government is expected to treat it as an international treaty and therefore has accepted two obligations: a commitment to apply the provisions of the Convention to its laws and a willingness to accept a measure of international supervision through formal monitoring and reporting mechanisms.

The ILO currently has developed 188 Conventions. Of those, Canada has ratified 30 and has only ratified two of the ILO Conventions developed since 1982.

Fundamental Conventions

Eight ILO Conventions have been identified by the ILO's Governing Body as being fundamental to the rights of human beings at work, irrespective of levels of development of individual member States. The ILO views these fundamental Conventions as a precondition for all the other Conventions in that they provide for the necessary foundation to strive freely for the improvement of individual and collective conditions of work. The eight fundamental Conventions are as follows:

- No. 29 – Forced Labour Convention, 1930
- No. 87 – Freedom of Association and the Right to Organize Convention, 1948
- No. 98 – Right to Organize and Collective Bargaining Convention, 1949
- No. 100 – Equal Remuneration Convention, 1951
- No. 105 – Abolition of Forced Labour Convention, 1957

- No. 111 – Discrimination (Employment and Occupation) Convention, 1958
- No. 138 – Minimum Age Convention, 1973
- No. 182 – Worst Forms of Child Labour Convention, 1999

Canada has ratified only five of the eight ILO fundamental Conventions. We have yet to ratify Conventions No. 29, 98 and 138.

Convention No. 87 – Freedom of Association and the Right to Organize

Freedom of association is among the founding principles of the ILO. *Convention No. 87*, adopted at the 1948 International Labour Conference, establishes the right of all workers to form and join unions of their own choosing without prior authorization, and lays down a series of guarantees for the free functioning of organizations without interference by public authorities, including the right to engage in free collective bargaining.

Convention No. 87 was ratified by Canada and all provincial governments in March 1972 and in fact the federal Parliament went so far as to make reference to *Convention No. 87* in the Preamble of the *Canada Labour Code*.

Declaration on Fundamental Principles and Rights at Work

In 1998, the ILO adopted the *Declaration on Fundamental Principles and Rights at Work*, which reaffirms the commitment of the international community “to respect, to promote and to realize in good faith” the rights of workers and employers to freedom of association and the effective right to collective bargaining, and to work towards the elimination of discrimination in respect of employment and occupation. The *Declaration* underlines that all member countries have an obligation to respect these fundamental principles.

Canada supported the adoption of the 1998 *Declaration* and the official position of the federal government is that “*Canada attaches great importance to the Declaration ... as a key instrument for the promotion of the fundamental principles of freedom of association and collective bargaining ... Its implementation will contribute significantly to improving the lives of working people and their families.*”

Declaration on Social Justice for a Fair Globalization

The ILO *Declaration on Social Justice for a Fair Globalization* adopted by the International Labour Conference in 2008 affirmed the relevance of the ILO’s mandate to promote social justice using all the means available to it, including the promotion of international labour standards. The Declaration underlined that, in order to reach the ILO’s objectives in the context of globalization, the Organization must “promote the

ILO's standard-setting policy as a cornerstone of ILO activities by enhancing its relevance to the world of work, and ensure the role of standards as a useful means of achieving the constitutional objectives of the Organization".

Committee on Freedom of Association

The Committee on Freedom of Association (CFA) is responsible for carrying out an examination of the complaints concerning infringements of Freedom of association and collective bargaining rights around the world. The CFA is a tripartite body set up in 1951 by the ILO Governing Body. It is composed of nine members and nine deputies from the Government, Workers' and Employers' groups of the Governing Body, and has an independent Chairperson.

Complaints may be brought against a member State by workers' and employers' organizations.

The Committee will always ask governments that have been alleged to have violated an ILO Convention to comment on the complaint made against it. Once these comments have been considered along with any further observations from the complaining organization, the CFA will report to the ILO Governing Body at its next session.

The experience acquired through the examination of more than 2,700 cases in nearly 60 years of existence has enabled the CFA to build up a body of decisions and principles covering most aspects of freedom of association, collective bargaining and the protection of trade union rights.

If the CFA finds that there has been a violation of freedom of association principles, it issues a report and makes recommendations on how the situation could be remedied. Governments are requested to report on the implementation of its recommendations. nt concerned, drawing attention to the violations which it has observed and requesting them to take appropriate measures to remedy the situation.

Since 1982, Canada's record with respect to the number of complaints submitted to the CFA is one of the worst of any of the ILO's 183 member States with unions in Canada filing more complaints than the national labour movements of any other country.

The 79 ILO complaints filed against Canadian federal and provincial labour legislation represent almost five percent of all complaints filed with the ILO since 1982. Several of these complaints were subject to more than one restrictive piece of labour legislation.

Of those 79 complaints, the ILO has reached decisions on 77 and found that freedom of association principles had been violated in 73 of the cases. Over 90 percent of all ILO complaints on restrictive labour laws passed in Canada since 1982 were found to be in violation of ILO freedom of association principles.

How effective is the ILO Committee on Freedom of Association procedure?

While the ILO does not have any legal authority to enforce its recommendations on governments that it has found to violate basic ILO Conventions, it does have a great deal of moral persuasion in having a government reconsider its actions that are contradictory to basic international labour standards.

Most governments that are found guilty of violating basic ILO Conventions and refuse to comply with rulings of the ILO Governing Body are usually from countries that have fragile democracies and a poor record on human rights.

In recent years the ILO rulings have had a major bearing on decisions of Canadian courts in recent years. In fact, there has been a notable link established between Canadian rights protected by the Charter of Rights and Freedoms and those in Conventions signed by Canada as a member State of the ILO.

In the precedent-setting ruling of the Supreme Court of Canada in June 2007 against BC legislation known as Bill 29 which declared collective bargaining a constitutional right for all Canadians, the justices were also quite clear that Canada has not only a moral, but a legal, obligation to live up to its international commitments as spelled out in the ILO Conventions and Declarations ratified by Canada.

To quote directly from the Supreme Court ruling:

"The Charter should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified," the historic ruling declared.

"The interpretation of these Conventions [ILO], in Canada and internationally, not only supports the proposition that there is a right to collective bargaining in international law, but also suggests that such a right should be recognized in the Canadian context under s.2(d) [freedom of association]."