



## CANADA<sup>68</sup>

### El affiliates

<b>CTF/FCE</b>	Canadian Teachers Federation
<b>CSQ</b>	Centrale des syndicats du Quebec
<b>FQPPU</b>	Fédération québécoise des professeures et professeurs d'université
<b>CAUT/ACCPU</b>	Canadian Association of University Teachers
<b>FNEEQ-CSN</b>	Fédération nationale des Enseignantes et Enseignants du Québec

### Ratification

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1972
- C. 100 Equal Remuneration (1951) ratified 1972
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1964
- C. 144 Tripartite Consultations (1976) ratified 2011

### Education System

In Canada, there is no federal department of education and no integrated national system of education. Within the federal system, Canada's Constitution Act of 1867 provides that each provincial legislature exclusively make laws in relation to education. In the 13 jurisdictions — 10 provinces and 3 territories, departments or ministries of education are responsible for the organization of education from elementary through to post-secondary education and skills training.<sup>69</sup>

Each province and territory has one or two departments/ministries responsible for education, headed by an elected Minister and a deputy Minister who belongs to the civil service, and is responsible for the operation of the departments. The ministries and departments provide educational, administrative, and financial management and school support functions, and they define both the educational services to be provided and the policy and legislative frameworks.

Local governance of education is usually entrusted to school boards or school districts. The funding and curriculum guides are provided by provincial education ministries. Education is free from age 4 to 6 until 18 and is compulsory until the age of 16 years.

In Canada, religious schools may be included within the public system; the right to Roman Catholic Schooling is guaranteed in the British North America Act. Some provinces once had separate religious education systems but have opted out. In the provinces of Ontario,

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<sup>68</sup> Grateful acknowledgements to Myles Ellis, Acting Deputy General Secretary, CTF/FCE who provided valuable information and comments for this country study.

<sup>69</sup> Council of Ministers of Education: Education in Canada: an Overview <http://www.cmec.ca/299/Education-in-Canada-An-Overview/index.html> accessed 2.02.2013

Alberta and Saskatchewan, and the 3 territories, provisions have been made for denominational minorities to operate separate school systems, the majority of which are Roman Catholic. In addition, there are a number of private schools – both denominational and non-denominational, as well as schools which operate under the jurisdiction of the Aboriginal bands on reserves located within the provinces and territories.<sup>70</sup>

In 2006, Canada's elementary and secondary school systems employed over 430,000 educators, most of whom had four or five years of postsecondary study. They are licensed by the respective provincial and territorial departments or ministries of education.

### Freedom of Association and Collective Bargaining

Freedom of association is guaranteed by the Charter of Rights and Freedoms in both the public and private sector. In 2007, the Supreme Court ruled that collective bargaining was included within the meaning of the term “association” in Canada's charter of rights and freedoms, effectively establishing collective bargaining as a charter right. The parameters around that ruling are still being debated.

In Canadian labour law, there is an automatic check-off system whereby the payment of trade union dues is mandatory in workplaces covered by collective agreement. This system is known as the Rand formula in Canada, named after the Supreme Court justice who made the ruling in 1946 in the arbitration of a strike where one of the issues involved the company (Ford Motor Company) refusing to collect the dues of union members in the closed shop.

Over the past three decades, both at Federal and Provincial levels, there has been a serious attempt at eroding basic labour rights. This has occurred through legislation which determines exclusions and restrictions on the effective right to organise, and in relation to categories of workers without the right to organise. According to the Canadian Foundation for Labour Rights, the Federal and Provincial governments passed 199 pieces of legislation since 1982 that have restricted, suspended or denied collective bargaining rights.<sup>71</sup>

Every Province has established collective bargaining provisions for teachers- in four Provinces there is a specific teacher bargaining or general education statute which regulates the process; in other Provinces, there is a public sector or general labour relations statute. In Alberta and British Columbia, and most recently Ontario, teachers' right to collective bargaining is covered under legislation that also applies to the private sector. While seven provinces engage in some form of local bargaining, the most common model is bargaining for all public schools in a Province/Territory with a single organisation to represent teachers.<sup>72</sup> Manitoba is unique in that it follows totally local bargaining with the locals holding the bargaining certificate.

<sup>70</sup> *Canadian Teachers' Federation – the Canadian Educational System* <http://www.ctf-fce.ca/TIC/Default.aspx?sid=626066> accessed 2.02.2013

<sup>71</sup> *Summary of Legislation Restricting Collective Bargaining and Trade Union Rights in Canada 1982-2012 Canadian Foundation for Labour Rights Fact Sheet September 2012* <http://www.labourrights.ca/> accessed 4.02.2013

<sup>72</sup> *Joint ILO – UNESCO Committee of Experts on the Application of Recommendations concerning Teaching Personnel (CEART) Social dialogue in education: national good practices and trends, Background Paper for the 11st CEART Session, by Bill Ratteree CEART-R-[WGS1-2012-08-0014-1]-En.docx/v4 p.49*



In most Provinces, the Government determines the basic formulas for class sizes and some Provinces specifically preclude issues of staffing and class sizes from collective bargaining. Collective agreements generally cover salaries and other benefits, and procedures for individual grievances. Most contracts include provisions for dental and supplementary medical insurance, supplementary benefits for maternity leave, sick leave and leave on other grounds, disability insurance and retirement gratuities (which are increasingly coming under attack). Teachers are covered by the Federal Social Security Insurance (Employment Insurance) and Public Sector Pension Plan (CPP Canada Pension Plan age 60 and OAS Old Age Security age 65 gradually moving to age 67) and each Province has established a specific Teachers' Pension Plan.

There are a wide range of collective dispute resolution procedures (mediation, conciliation, fact-finding and voluntary arbitration). Strikes are also allowed in the majority of provinces. The Canadian Labour Code also allows for the introduction of replacement labour during industrial disputes. The restrictions or exclusions have been the subject of long-standing cases before the ILO supervisory mechanisms.<sup>73</sup> Apart from limitations on the right to organise of certain professionals, agricultural workers and domestic workers in some Provinces, there are also the following categories of workers in the education sector who face restrictions:

- a) Principals, vice-principals in educational establishments and community workers (Ontario) although these restrictions are under review as a result of a recent Memorandum;
- b) Public colleges' part-time employees (Ontario), although again these restrictions are under review;<sup>74</sup>
- c) post-secondary academic staff (Alberta).

There are also three Provinces (Nova Scotia, Ontario and Prince Edwards' Island), where the bargaining agent for teachers and educators is specified by law.

Some provinces restrict or exclude strikes in the education sector: In Manitoba, the Public Schools Act Section 110 (1) prohibits teachers from taking strike action. In recent years legislatures in Quebec, BC, Alberta, New Brunswick, Newfoundland, and most recently Ontario have shown a willingness to intervene with legislation that limits collective bargaining, imposes settlements, and limits industrial action.

### **Financial Crisis and the Ideological Shift to Neo-liberal Policies**

Canada had a relatively strong fiscal position when the financial crisis hit, with less exposure to the sub-prime mortgage market and a relatively strongly regulated banking system, all of which mitigated the negative impact of the financial crisis. In January 2009, the government introduced a C. \$40 billion stimulus package over a two-year period.<sup>75</sup>

In May 2011, a Conservative Party majority government was elected which marked a radical ideological shift to the right. The strategy has been to create fear and resentment of public sector workers and to gain public support for weakening labour laws generally. The government brought in a programme of reductions in personal income tax and corporate income tax, and implemented cuts to public services and jobs and fiscal austerity. The result was a sharp rise in unemployment and inequality levels. Statistics Canada reported in May 2012 that 13% of Canadian youth were not in school or employment and that there was 7.4% official unemployment in Canada in October 2012, although many consider the figure should be nearer 10%.<sup>76</sup>

The 2012 federal government's budget released in late March includes further major cuts to public services including some 19,000 job cuts<sup>77</sup> and the increase of the pension age from 65 to 67 years. The CTF has identified several negative trends and pressures occurring across the country. This includes applying a business/market approach to education, the powerful impact of the test-driven accountability agenda on curriculum and other aspects of education, the use of public debt and the austerity agenda to justify cost-cutting at the expense of program needs".<sup>78</sup>

### Collective Bargaining since the Financial Crisis

Both at Federal and Provincial level over the last few years, new legislation has been introduced, or is in the process of adoption, designed to limit or deny collective bargaining rights and to undermine unions capacity to operate.

*"The main reason for these trends has been the ideological shift towards the right at Federal, Provincial and Territorial level designed to undermine bargaining rights through draconian legislation. It is a clear attack on unions".<sup>79</sup> Myles Ellis Acting Deputy General Secretary Canadian Teachers' Federation*

### Federal level

At the Federal level, the government has used back-to-work legislation to impose settlements, as in the case of postal workers and Air Canada. The Canadian government continues to implement legislation introduced in conjunction with the 2009 Federal Budget, which fixes the level of wage increases for all federal public service employees. Federally, MP Pierre Pollièvre has launched a campaign to introduce changes that would preclude the collection of union dues from federally-regulated employees in unionized workplaces (Geddes, 2012).

<sup>76</sup> Myles Ellis and Bernie Froese-Germain, AERA *The Changing Context Facing Teacher Unions in Canada*

<sup>77</sup> the Canadian Centre for Policy Alternatives estimates that the total number of federal core public service job losses over the next three years will be closer to 30,000 see Gergin, Maria (April 6, 2011). <http://www.policyalternatives.ca/publications/commentary/silencing-dissent-conservative-record>

<sup>78</sup> Fraser, Calvin (Oct. 2012). "CTF AGM attendees discuss education as a public good." *CTF Perspectives*. <http://perspectives.ctf-fce.ca/en/9/Default.aspx>

<sup>79</sup> Interview with Myles Ellis, Acting Deputy General Secretary CTF 23.01. 2012



The Private Member's Bill C-377 – *An Act to Amend the Income Tax Act* (requirements for labour organizations) would amend the *Income Tax Act* to require that labour organizations provide financial information to the Minister for public disclosure. The Bill passed the lower house in December 2012. Unions would be required to provide information on a range of activities including union organising, collective bargaining, education and training, and political action, all of which would be made available online on the Canada Revenue Agency (CRA) website.

CTF has expressed concerns regarding this proposed legislation because of the costs to the unions and taxpayers and privacy issues. Most provinces already require that financial statements of unions be provided to members so it would create an additional, unnecessary and costly work, when staff should be employed elsewhere. By framing the proposal as an amendment to income tax law, which falls under the federal powers in the Constitution, the reporting requirements cross the usual constitutional barrier which prevents the federal government from passing legislation which regulates unions under provincial jurisdiction.

### Provincial and Territorial Level

*"At Provincial and Territorial level, some governments have used legislation to impose settlements and engage in a systematic process of contract stripping, with increments spaced over longer periods of time, reductions in benefits and increasing signs that current pension plans will be scaled back."*<sup>80</sup> Myles Ellis Acting Deputy General Secretary, Canadian Teachers' Federation

In March 2012, the British Columbia Liberal government passed legislation known as the Bill 22 "Education Improvement Act" which prohibited strike action by the British Columbia Teachers Federation, imposed a "cooling off period", and put in place a mediator with a mandate to negotiate the new agreement on the understanding there would be a "net zero" comparison to the previous agreement. Effectively, this was legislation that the government could determine the content of the collective agreement, and it prevented teachers from bargaining on issues which had previously been included, such as class sizes, composition and staffing levels.<sup>81</sup> The British Columbia Supreme Court has ruled against this legislation but despite the ruling, the collective bargaining rights of teachers continue to be curtailed.<sup>82</sup>

In August 2012, the Ontario government passed legislation known as Bill 115 "Putting Students First Act"<sup>83</sup> to set rules that local school boards must adhere to when negotiating with local

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<sup>80</sup> Interview with Myles Ellis, *idem*

<sup>81</sup> BCTF News Release June 27 2012 BCTF concludes agreement with government but continues to challenge Bill 22 and assert teachers' labour rights

<sup>82</sup> ITUC Annual Report on Trade Union Rights <http://survey.ituc-csi.org/Canada.html#tabs-4> accessed 4.02.2013

<sup>83</sup> <http://www.policyalternatives.ca/publications/monitor/putting-students-first-doesnt-mean-putting-teachers-last> by Misha Abarbanel October 1st 2012 for a detailed explanation of the implications of this law.

unions, and allow the provincial government to impose a collective agreement on the board and the employee bargaining agent if negotiations were not completed by December 31, 2012. This bill required that contracts for 2013 and 2014 include a two year pay freeze, delay salary grid promotions for younger teachers, substantially reduce short-term sick leave plan,<sup>84</sup> long-term disability payments, maternity provisions and other issues. The bill further stated that none of the terms and conditions included in the act can be questioned or reviewed in any court and it limits the legality of teachers' unions and support staff going on strike. In January 2013, elementary and secondary teachers who had planned protest walk outs were informed by the Labour Relations Board that their action would be considered illegal and that they would face heavy individual and collective fines.

The CTF has filed a complaint to the ILO concerning Bill 115 on behalf of the Ontario Elementary Teachers' Federation, which has resulted in imposed collective agreements in over 200 schools. The President of CTF has stated that Bill 155 is an "unprecedented attack on collective bargaining rights" and expressed "grave concern at the unilateral and draconian actions of the current government of Canada."<sup>85</sup>

In post-secondary education, there are also examples of universities refusing to negotiate in good faith. The Canadian Association of University Teachers (CAUT) issued an alert, for the first time in a decade in October 2012, in the case of the Concordia University College, Alberta, accusing the employer of seriously impeding the negotiation process.<sup>86</sup>

However, in other Provinces, there remains a strong and effective collective bargaining system, such as in Manitoba where the Manitoba Teachers' Society has continued to negotiate reasonable contracts with annual increments and the government is committed to funding education on or above the rate of economic growth in the Province, even though the right to strike is denied.<sup>87</sup>

Also in Saskatchewan, despite a right-wing government, the Saskatchewan Teachers Federation was able to conclude an agreement with the Provincial government and the Schools Board Association after a long stand-off, which included a one-day strike action. The STF organised a one-day study day and rally in May 2011, using the time to volunteer in the community in order to galvanise public support. The previous contract expired in August 2010 and following the day of action, a mediation process was set up, leading to an agreement for a further three year period until 2014. The new Contract was signed at the end of September 2011. It had been a very matter of fact and patient campaign.

<sup>84</sup> *previously teachers had the right to bank up to 200 sick leave days over a career in return for an additional payment on retirement which has been reduced to 10 days entitlement per annum which cannot be banked.*

<sup>85</sup> *Letter from President Sam Hammond, CTF and Gene Lewis, General Secretary Elementary Teachers' Federation of Ontario to Fred Van Leeuwen, Education International General Secretary January 17th 2013*

<sup>86</sup> <http://www.caut.ca/pages.asp?page=1109> accessed 4.02.2013

<sup>87</sup> See <http://www.mbteach.org/collective-bargaining/collective-agreements.html> accessed 2.02.2013



### CTF's response

Unions have mobilised and called for new partnerships and models of cooperation. CTF has sought to involve parents and the community to promote education as a public good and to enhance legitimacy as they challenge the restrictions on collective bargaining rights and cuts to pay and benefits. It launched a campaign designed to promote the voice of teachers and to call on members of parliament at Federal and Provincial level to listen to teachers' concerns. Research on the situation of teachers using focus groups and on-line surveys highlighted the challenges that teachers faced to reach their own aspirational teaching goals.<sup>88</sup> Together with Canadian Foundation of Labour Rights and other allies, they organised a conference on "labour rights are human rights" in March 2013 to build momentum to regain and affirm collective bargaining rights. The CTF focus is to work with teachers, parents and students, the progressive school boards and education institutions; and to build strong alliances within the community, progressive business, post-secondary institutions, NGOs, arts and cultural groups as well as the broader labour movement.<sup>89</sup>

### Education expenditure and GDP growth

% GDP spent on education	% public expenditure on education	GDP % Growth
2008: 4.8 %		0.4 %
2009: 5.0 %		-2.5 %
2010:		3.1 %
2011:		2.5 %

Source World Bank/IndexMundi

<sup>88</sup> "Teaching the Way We Aspire to Teach: Now and in the Future"; Canadian Education Association and Canadian Teachers' Federation July 2012.

<sup>89</sup> Fraser Calvin idem