

OVERVIEW OF BILL C-19'S AMENDMENTS TO THE CANADA LABOUR CODE

by AMANDA PASK

I. INTRODUCTION

Bill C-19 came into force on January 1, 1999. The Bill contains amendments to Part I of the *Canada Labour Code*, which deals with industrial relations. It represents the Government's legislative response to *Seeking a Balance*, the report of the Task Force appointed to review and make recommendations for changes to the *Canada Labour Code*. The review's focus was limited to collective bargaining relationships as defined by the existing regime. It was not designed to study the advantages or disadvantages of the current system or to study different models of employee representation. The primary objective of the review was "... to ensure that Part I of the *Canada Labour Code* remains an efficient instrument for promoting effective collective labour relations, based on exclusive trade union representation and decentralized collective bargaining."

Within that framework, the Report made a number of recommendations for significant changes, both to processes

and to substantive rights and obligations under the *Code*. Bill C-19 seeks in large measure to implement these recommendations. Thus, while the amendments do not alter the fundamental nature of the collective bargaining regime in the federal sector, they do result in a number of important changes.

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Many of these changes reflect a move in the direction of more regulation with, at the same time, more accountability to the parties and the community. Thus, for example, under the amended *Code* the Board includes members representing employers and employees, and there is a new provision requiring the Minister to meet from time to time to discuss industrial

relations issues with a group consisting of the experts in industrial relations and representatives of employers and of trade unions [s.104.1].

This paper outlines the major amendments to the Code introduced by Bill C-19.

II. THE CANADA INDUSTRIAL RELATIONS BOARD

Serious problems with the functioning of the Canada Labour Relations Board have been a major issue in recent years. The Task Force was deeply troubled by the extent of the Board's dysfunction, noting that in recent years the Board became virtually paralyzed by internal conflicts.

Labour relations boards are typically structured on a tri-partite representational model which provides for "neutral" chairpersons and vice-chairpersons, and equal numbers of members representing labour and management. When the *Code* was last overhauled in 1972, the representational model was abandoned and since then the Board has been constituted on a non-representational basis.

The Task Force was careful not to lay blame for the Board's problems with any particular individual or structure. However, the Report made a number of recommendations relating to the structure, composition and powers of the Board and its Chairperson, many of which are reflected in Bill C-19.

a. Structure and Composition

Bill C-19 restores the tri-partite representational model. It even gives the Board a new name, the Canada Industrial Relations Board, symbolizing the acknowledged need for a new and fresh start. In addition to the full-time chairperson, there will be at least two full-time vice-chairpersons (any others to be part-time) and two to six other full-time members, with equal numbers representative of labour and management [s.9(1), (2); 12.02(2)]. The Chair may appoint part-time members as necessary. Terms of office have also been reduced: for the chair and full-time vice-chairs, from 10 to 5 years; for other members, from 5 to 3 years [s.10(1),(2)]. Part-time vice-chairs will now be prohibited from holding any other employment or office in respect of which they receive any remuneration if it is inconsistent with their duties under the *Code* [s.11(2)].

b. Qualifications for Appointment / Removal

The amendments do not simply reconfigure the structure of the board. Bill C-19 also contains somewhat unusual provisions regulating both the appointments process and the removal process.

All full-time members may now be either permanent residents or Canadian citizens [s.10(4)]. The chair and vice-chairs must, in addition, have experience and expertise in industrial relations [s.10(5)]. The representative members are to be appointed on the recommendation of the Minister, after consultation with

organizations representative of employees or employers that the Minister considers appropriate [s.10(2)].

Such provisions regulating appointment are unusual, not simply for labour tribunals but for administrative tribunals generally. The premise behind the creation of such quasi-judicial bodies is that the persons appointed to them will have some form of experience or expertise in the area regulated by the statute. This expectation in large measure underlies the policy of judicial deference on judicial review to the decisions of administrative tribunals. The inclusion of express provisions requiring appropriate qualifications is particularly rare for a long-standing tribunal and suggests that the Government may in some cases at least have failed to respect this principle in making appointments to the Board.

Bill C-19 also contains somewhat novel provisions for removing members from the Board. The Chair will now have the power to ask the Minister to decide whether any member of the Board should be subject to remedial or disciplinary measures [s.12.06] by alleging that the member:

- ▶ has become incapacitated from the proper execution of that office by reason of infirmity [s.12.14(2)(a)],
- ▶ has been guilty of misconduct [s.12.14(2)(b)],
- ▶ has failed in the proper execution of that office [s.12.14(2)(c)], or

- ▶ has been placed, by conduct or otherwise, in a position that is incompatible with the due execution of that office [s.12.14(2)(d)].

The Minister has a number of options in respect of such a request, ranging from not taking any further measures, or obtaining further information or requesting a formal inquiry [12.07]. An elaborate procedural code is set out to govern any inquiry which is held at the Minister's request [ss.12.08-12.15].

These disciplinary provisions give the Chair an extremely powerful control tool. While these provisions undoubtedly respond to the difficulties experienced by the Board over the past few years, this power should not be inappropriately used so as to compromise independence in the adjudicative process. It is hoped that efforts will be concentrated at the front end of the process to achieve a well-constituted board which will function well of its own accord and not because its members fear the threat of the disciplinary powers.

c. Role of the Chair

The *Code* does not currently legislatively vest administrative and executive authority for the Chair. Bill C-19 includes new provisions explicitly recognizing the Chair as the chief executive officer of the Board, having supervisory and directive authority over the work of the Board including [s.12.01(1)]:

- ▶ assigning and reassigning matters to panels
- ▶ composition of panels and assigning vice-chairs to preside over panels
- ▶ determining date, time and place of hearing
- ▶ conduct of the work of the Board
- ▶ management of the Board's internal affairs
- ▶ duties of staff of the Board.

All these areas of authority may be delegated by the Chair to a Vice-chair; the Chair's authority in respect of managing the Board's internal affairs and duties of staff may be delegated to a staff member [s.12.01(2),(3)]. The Chair is also specifically directed by Bill C-19 to convene and preside over any meeting of the Board concerning the management of its internal affairs or the making of regulations [s.12.02(1)]. Quorum for such meetings is set at 5 persons - the Chair, two Vice-chairs and two other members, one each representing labour and management; where labour and management are unequally represented, the Chair must designate an equal number of members authorized to vote [s.12.02(2),(3)].

The Chair's power to invoke the statutory-based disciplinary process discussed

above is a very strong legislative recognition of the Chair's authority. Nevertheless, real change will best be measured not by the exercise of this authority but by constituting the Board so as to make it unnecessary for this power to be invoked.

d. Panels vs. Single Members

Currently, only uncontested matters may be heard by a single member sitting alone. Bill C-19 expands the Board's ability to have matters disposed by a single member which, under the new representational model, must be either the Chair or a Vice-Chair. The list now includes not only uncontested applications or questions [s.14(3)(a)] but also:

- ▶ a question referred to in para. s.16(p), i.e. employer status, employee status, trade union membership status, organizational status of employer organization, trade union or council of trade unions, appropriate bargaining unit, existence of collective agreement [s.14(3)(b)]
- ▶ complaints under subsection 97(1) dealing with alleged contraventions of section 37 or 69 or any of paragraphs 95(f) to (l): i.e. duty of fair representation and referral, improper conduct by trade unions [s.14(3)(c)]
- ▶ requests for extensions of time to institute a proceeding [s.14(3)(d)],

- ▶ a preliminary proceeding [s.14(3)(e)], or
- ▶ any other matter which the Chair determines is appropriate because of the possibility of prejudice to a party, such as undue delay, or which the parties consent to having determined by the Chair or a Vice-Chair [s.14(3)(f)].

Only the Chair, Vice-Chairs and specifically appointed part-time members will now have authority to deal with references or complaints under Part III [s.156(1)].

Where a matter is heard by a panel, the panel must include at least one “neutral”, who will be the chairperson of the panel, and equal numbers of members representing labour and management [s.14(1),(2)]. A decision of a panel will be either the decision of the majority or of the panel’s chairperson where there is no majority [s.14.2(1)]. Bill C-19 requires panel decisions to be rendered within 90 days unless a later deadline is fixed by the Chair [s.14.2(2)].

II. POWERS OF THE BOARD

Bill C-19 introduces a number of provisions which give the Board more procedural flexibility, more procedural control, and greater ability to deal with the substance of matters in dispute.

In addition to the specific additional powers discussed below, Bill C-19 includes two new general provisions which have the

potential to be used creatively to explore flexible dispute-resolution processes:

- ▶ where the parties agree, the Board or any member of employee of the Board may assist the parties in resolving any issues in dispute at any stage of a proceeding and by any means that the Board considers appropriate, without prejudice to the Board’s power to determine issues that have not been settled [s.15.1(1)]
- ▶ on application by an employer or a trade union, the Board may give declaratory opinions [s.15.1(2)].

Mediators appointed on the Minister’s initiative or at the request of the parties will also now have the power, at the request of the parties or of the Minister, to make recommendations for settlement of the dispute or difference [s.105(2)].

In addition to the current protection against giving evidence, Bill C-19 confers additional privilege on all processes under the *Code* by protecting notes, draft orders or decision of the Board, any of its members or notes or draft reports of a person appointed by the Minister or the Board under this Act from disclosure without the consent of the person who made them [s.119.1].

a. Procedural Powers

The Board will have additional regulation-making powers in a number of areas which

may contribute to greater procedural efficiency:

- ▶ rules of procedure for pre-hearing proceedings as well for hearings [s.15(a)],
 - ▶ means of telecommunication that permit the parties and the Board or its members to communicate simultaneously for pre-hearing conferences, hearings and Board meetings [s.15(a.1)],
 - ▶ an expeditious procedure and matters that may be determined under that procedure [s.15(g.1)],
 - ▶ conditions for valid strike or lock-out votes [s.15(o.1)]
 - ▶ the authority of any person to act on behalf of the Board, including the authority of an employee of the Board to make decisions on uncontested applications or questions [s.15(p)].
- The Board's powers in relation to proceedings have been similarly updated and revised to include the power:
- ▶ to order pre-hearing procedures, including pre-hearing conferences that are held in private and to direct the time and place of such these procedures [s.16(a.1)],
 - ▶ to order that a hearing or a pre-hearing conference be conducted using a means of telecommunication that permits the parties and the Board to communicate with each other simultaneously s.16(a.2)]
 - ▶ to compel provision of information or production of documents and things that may be relevant, after providing the parties the opportunity to make representations [s.16(f.1)]
 - ▶ to require the employer to post or transmit by electronic means notices to employees [s.16(g)],
 - ▶ to defer matters to arbitration or an alternate method of resolution [s.16(l.1)]
 - ▶ to abridge or extend the time for doing any act, filing any document or presenting any evidence in connection with a proceeding [s.16(m)],
 - ▶ to extend the time limits set out in Part I for instituting a proceeding [s.16(m.1)]
 - ▶ to summarily refuse to hear, or dismiss, a matter for want of jurisdiction or lack of evidence [s.16(o.1)].

Bill C-19 expressly gives the Board the power to decide **any matter** before it without holding an oral hearing [s.16.1]. With respect to technological change matters and applications relating to alleged unlawful strikes or lock-outs, Bill C-19 replaces the requirement that the parties be afforded an opportunity to “be heard” with an opportunity to “make representations” before the Board makes an order [s.53(2), 91(2), 92]. With respect to complaints concerning disciplinary action taken by a trade union against a member that has not been presented as a grievance or appeal to the trade union, the Board may now “determine” instead of “hear” the matter [s.97(5)]. With respect to unfair labour practice complaints, the Board’s obligation to “hear and determine” them has been replaced with an obligation simply to “determine” them [s.98(1)].

The Board will now have power to file its orders in the provincial superior courts as well as in the Federal Court [s.23.1].

b. Interim orders

Bill C-19 gives the Board a new and unrestricted power to make any “any interim order that the Board considers appropriate for the purpose of ensuring the fulfilment of the objectives” of Part I on application by a trade union, an employer or an affected employee [s.19.1]. The power to make interim orders can be effective in a variety of ways and can be extremely important where key players are

disciplined or discharged during an organizing campaign.

III. Representation Rights

a. Certification Applications

Bill C-19 makes a number of changes to certification provisions which reflect a legislative commitment to encouraging and facilitating access to representation rights.

i. Communication with off-site workers

On application by a trade union, the Board may require an employer to give an authorized representative of the trade union the names and addresses of off-site employees, may authorize the trade union to communicate with those employees, by electronic means or otherwise, and may order an employer to allow a trade union to use any electronic communications system that the employer uses to communicate with the employees [s.109.1(1), (2)(b)]. Before making such an order, the Board must be of the opinion that such communication is required for purposes relating to soliciting trade union memberships, the negotiation or administration of a collective agreement, the processing of a grievance or the provision of a trade union service to employees [s.109.1.(1)]. In addition to other terms and conditions the Board may impose, the order must specify the method of communication, the times of day during which it is authorized and its duration

[s.109.1(2)] and must include conditions to ensure the protection of the privacy and safety of affected employees and to prevent abusive use of information [109.1(2)(a)]. If the Board believes that the privacy and safety of employees cannot otherwise be protected it can give each employee an opportunity to refuse release of their name and address or transmit the information that the union wishes to communicate to the employees in the manner it considers appropriate [s.109.1(3)].

ii. **Unfair Labour Practice Certification**

The *Code* will now permit the Board to certify a trade union despite a lack of evidence of majority support if there is employer interference and the Board is of the opinion that, but for the unfair labour practice, the trade union could reasonably have been expected to have had the support of a majority of the employees in the unit [s.99.1].

It should be noted that the unfair labour practice provisions have also been amended to exclude employer expressions of “a personal point of view, so long as the employer does not use coercion, intimidation, threats” [s.94(2)(c)].

iii. **No Applications During Strike or Lock-Out**

Prior to the passage of Bill C-19 applications for certification or decertification were prohibited only during

the first six months of a strike or lock-out. Bill C-19 amends this restriction by prohibiting any such applications during the entire period of strike or lock-out, except with the consent of the Board [s.24(3), 38(5)].

iv. **Voluntary Recognition**

Bill C-19 expressly excludes voluntary recognition relationships from the open period restrictions on applications for certification where the application is in respect of the unit or substantially the same unit to which the collective agreement applies [s.24.1].

b. **Review of Bargaining Unit Structures**

The Board has conducted a number of bargaining unit structure reviews pursuant to a general power to review any previous order or decision. Bill C-19 adds a new provision dealing specifically with bargaining unit structure reviews which will apply also in connection with single employer and sale of business declarations. The provision prescribes the following procedural and substantive powers:

- ▶ On application by a trade union or employer the Board can alter the structure of the bargaining units if it is satisfied that the bargaining units are no longer appropriate for collective bargaining [s.18.1(1),

- ▶ where a bargaining unit structure review is conducted:
 - ▶ the Board must allow the parties to come to an agreement, within a period that the Board considers reasonable, with respect to the determination of bargaining units and any questions arising from the review and may make any orders it considers appropriate to implement any agreement. [s.18.1(2)(a), (b)],
 - ▶ if the Board is of the opinion that the agreement reached by the parties would not lead to the creation of units appropriate for collective bargaining or if the parties do not agree on certain issues within the period that the Board considers reasonable, the Board will determine any question that arises and will make any orders it considers appropriate in the circumstances [s.18.1(3)], including:
 - ▶ determining which trade union shall be the bargaining agent for the employees in each bargaining unit
- ▶ that results from the review [s.18.1(4)(a)],
- ▶ amending any certification order or description of a bargaining unit contained in any collective agreement [s.18.1(4)(b)],
- ▶ if more than one collective agreement applies to employees in a bargaining unit, decide which collective agreement is in force [s.18.1(4)(c)],
- ▶ amending any collective agreement to the extent that the Board considers necessary, including expiry dates and provisions respecting seniority rights [s.18.1(4)(d)],
- ▶ if the conditions for a legal strike or lock-out have been met with respect to some of the employees in a bargaining unit, decide which terms and conditions of employment apply to those employees until the time that a collective agreement becomes applicable to the unit or the conditions for legal strike or

lock-out are met with respect to the unit [s.18.1(4)(e), and

- ▶ authorize a party to a collective agreement to give notice to bargain collectively [s.18.1(4)(f)].

c. Single Employer Declarations

The single employer provision is amended to specifically allow trade unions and employers to make application for such a declaration, and also to require an opportunity for both trade unions and employers to make representations [s.35(1)]. Where a declaration is made, the Board will also have express power to determine whether the employees affected constitute one or more units appropriate for collective bargaining [s.35(2)].

As noted above, the additional powers now conferred upon the Board in connection with bargaining unit structure reviews can be invoked in connection with a common employer declaration. The Board's new powers, and in particular its power to determine seniority questions and collective agreement application issues, will obviate the need for separate proceedings to determine consequential issues arising from a common employer declaration.

d. Sale of Business

The Board's current powers in relation to intermingling of employees where a sale occurs have been replaced by the powers

in connection with bargaining unit structure reviews described above.

Bill C-19 also expands the sale of business protection by extending coverage to transfers from provincial to federal jurisdiction. In connection with such transfers, the amendments provide that:

- ▶ the trade union which obtained bargaining rights pursuant to the provincial law continues to be the bargaining agent for the purposes of Part I [s.44(3)(a)],
- ▶ a collective agreement that applied to employees employed in the provincial business at the time of the change or sale continues to apply and is binding on the employer or on the person to whom the business is sold [s.44(3)(b),
- ▶ any proceeding before the labour relations board or other person or authority continues as a proceeding under Part I, with such modifications as are required and, where applicable, with the person to whom the provincial business is sold as a party [s.44(3)(c), and
- ▶ any grievance that at the time of the change or sale was before an arbitrator or arbitration board continues to be processed under Part I, with such modifications as the circumstances require and, where applicable, with the person to

whom the provincial business is sold as a party [s.44(3)(d)].

e. Successive Contractors

Bill C-19 contains a new provision protecting compensation levels in respect of successive contracts for services in the air transport industry and any other designated industry. This provision will apply where contracted services are moved from a unionized to a non-unionized contractor. The successor contractor will be required to provide its employees with remuneration which is at least equal to remuneration which employees who provided the same or substantially similar services received under a collective agreement to which Part I applies [s.47.3].

f. Employer Organizations

The Board will have authority to recognize additions to and removals from employers' organizations [s.33(1.1)] The Board will also be able to appoint a new employer representative in the long-shoring and other designated industries [s.34(4.1)].

IV. COLLECTIVE BARGAINING

a. Notice to Bargain For Renewal

The statutory period for notice to bargain has been increased from 3 to 4 months prior to the expiry of the collective agreement [s.49(1)].

b. Just Cause Protection

Bill C-19 establishes statutory just cause protection for discipline and discharge in the period between certification and entering the first collective agreement [s.36.1(1)]. Disagreements relating to discipline and discharge during this period may be submitted to an arbitrator for final settlement as if it were a collective agreement grievance [s.36.1(2)].

c. Conciliation

The Federal Mediation and Conciliation Service is formally recognized as the body which will advise the Minister of Labour on industrial relations and will assist the parties with the collective bargaining process [s.70.1(1)].

Bill C-19 eliminates the current two-step process (conciliation officer followed by a commissioner or board) and replaces it with a one-step process which limits the Minister to choosing only one of the available conciliation options [s.72(3)]. The amendments further attempt to shorten the conciliation process by requiring that it be completed within 60 days unless the parties agree to a longer period [s.75].

d. First Contracts

The statutory minimum term for first contracts settled by the Board has been increased from one to two years [s.80(4)].

e. Interest Arbitration

Bill C-19 introduces a new provision expressly permitting the bargaining agent

and the employer to agree in writing, as part of a collective agreement or otherwise, to refer any matter respecting the renewal or revision of a collective agreement or the entering into of a new collective agreement to a person or body for final and binding determination [s.79(1)]. Such an agreement suspends the right to strike or lockout and constitutes an undertaking to implement the determination [s.79(2)].

f. Remedy for Failure to Bargain in Good Faith

Where the Board finds a contravention of the duty to bargain in good faith, it will now have the power to require the employer or trade union to modify a bargaining position to include or withdraw specific terms, or direct a binding method of resolving those terms, if the Board considers that this order is necessary to remedy the contravention or counteract its effects [s.99(1)(b.1)].

IV. STRIKES AND LOCKOUTS

Bill C-19 makes a number of significant amendments to the legal preconditions for a strike and lock-out, including the introduction of “essential services” requirements, and adds a number of protections for employees.

a. Essential Services

In a move which is unusual for private sector legislation of general application, Bill C-19 introduces essential services requirements which must be complied with

before the preconditions for a legal strike or lock-out can be met.

The employer, trade union and bargaining unit employees will be required to continue the supply of services, operation of facilities or production of goods to the extent necessary to prevent an immediate and serious danger to the safety or health of the public during a legal strike or lock-out [s.87.4(1)]. The trade union or employer may give notice to the other party specifying the supply of services, operation of facilities or production of goods that, in its opinion, must be continued in the event of a strike or a lockout and the approximate number of employees in the bargaining unit that would in its opinion be required for that purpose, no later than fifteen days after notice to bargain collectively has been given [s.87.4(2)]. Where the trade union and the employer reach agreement on this matter, either party may file a copy of the agreement with the Board whereby it has the same effect as an order of the Board [s.87.4(3)].

Where no agreement is made, either party may apply to the Board, no later than fifteen days after notice of dispute has been given, to determine any question with respect to the essential services requirement [s.87.4(4)]. The Minister may also, at any time after notice of dispute has been given, refer to the Board any question with respect to the application of subsection (1) or any question with respect to whether an agreement entered is sufficient to ensure that subsection (1) is complied with [s.87.4(5)].

Where the Board is of the opinion that a strike or lockout could pose an immediate and serious danger to the safety or health of the public it may, after providing the parties an opportunity to agree, by order:

- ▶ designate the supply of those services, the operation of those facilities and the production of those goods that it considers necessary to continue in order to prevent an immediate and serious danger to the safety or health of the public,
- ▶ specify the manner and extent to which the employer, the trade union and the employees in the bargaining unit must continue that supply, operation and production, and
 - ▶ impose any measure that it considers appropriate [s.87.4(6)].

Where the Board has received an application or referral, the employer cannot alter the rates of pay or any other term or condition of employment or any right or privilege of the employees in the bargaining unit, or any right or privilege of the bargaining agent, without the consent of the bargaining agent, until either the Board's determination is made or the parties are in a legal position to strike or lock-out [s.87.5(1)]. Unless the parties otherwise agree, the rates of pay or any other term or condition of employment, and any rights, duties or privileges of the employees, the employer or the trade union

in effect before the parties are in a legal strike and lock-out position, continue to apply with respect to members of the bargaining unit who have been assigned to perform essential services [s.87.5(2)]. Where a violation of these requirements is established, the Board has remedial power to require an employer to pay compensation which should have been paid [s.99(1)(a)].

A strike or lock-out will not be legal unless an essential services agreement has been reached by the parties (where notice concerning essential services has been given under s.87.42) or the Board has determined an application by the parties or a referral by the Minister [s.89(1)(e)].

During the course of a strike or lock-out, the Board may review and confirm, amend or cancel an agreement, determination or order and make any orders that it considers appropriate, on application by the trade union or employer or referral by the Minister [s.87.4(7)]. The Board may also direct a binding method of resolving the issues in dispute where, on application by the trade union or employer or referral by the Minister, the Board is satisfied that the level of activity to be continued renders ineffective the exercise of the right to strike or lockout [s.87.4(8)]. A strike or lock-out in effect is not suspended by an application or Ministerial referral [s.87.5(3)].

Similar but separate provisions are also made to ensure movement of grain and continuation of ferry service between Nova Scotia and Newfoundland [s.87.7, 87.8].

b. Waiting and Notice Periods

The waiting period following conciliation has been increased from seven to twenty-one days [s.89(1)(d)].

Bargaining agents and employers will now be required to give at least 72 hours' advance notice of the date on which a strike or lock-out will occur, with a copy to the Minister [s. 87.2(1),(2)]. Unless the parties agree otherwise, new notice of at least 72 hours will have to be given if a strike or lock-out does not occur on the date indicated in the original notice [s.87.2(3)].

c. Strike and Lock-Out Votes

A strike will not be legally declared or authorized unless a secret ballot strike vote was conducted within the previous 60 days and received majority support [s.87.3(1)]. A similar vote must be held by an employers' organization prior to a legal lock-out [s.87.3(2)]. The votes must be conducted so as to ensure that those employees or employers who are eligible to vote are given a reasonable opportunity to participate in the vote and to be informed of the results [s.87.3(3)]. The Board will have power to make general regulations concerning the conditions for valid strike or lockout votes [s.15(o.1)];

A bargaining unit member may apply no later than 10 days after the results have been announced to have a strike vote declared invalid for irregularities in conduct; a similar application may be by an

employer member of an employers' organization [s.87.3(4), (4.1)]. Such applications may be summarily dismissed by the Board if it is satisfied that, even if the alleged irregularities were proven, the outcome of the vote would not be different [s.87.3(5)]. Where a vote is declared invalid, the Board may order that a new vote be held in accordance with specified conditions [s.87.3(6)].

d. Replacement Workers

Bill C-19 implements the majority Task Force recommendation for a minimal level of protection against the use of replacement workers. Thus, employers will only be prohibited from using replacement workers "for the demonstrated purpose of undermining a trade union's representational capacity" [s.94(2.1)]. The scope of this prohibition will probably be tested in litigation before the Board at an early date.

Where a violation of this prohibition is established, the Board has remedial authority to require the employer to stop using the services of "any" replacement worker for the duration of the dispute [s.99(1)(b.3)].

e. Continuation of Benefits

The *Code* will now require the employer to maintain benefit coverage during a strike or lock-out provided the bargaining agent tenders or attempts to tender the required

premiums [s.94(3)(d.1)]. Similarly, employers will be prohibited from denying or threatening to deny benefits under a plan during a strike or lock-out provided the bargaining agent has tendered or attempted to tender to the employer payments or premiums sufficient to continue the insurance plan [s.94(3)(d.2)]. Where these provisions are violated, the Board has the power to require the employer to, respectively, reinstate the insurance plan or pay any benefits to which the employee was entitled under a plan [s.99(1)(c.1)].

f. Just Cause Protection

Bill C-19 has amended the Code to clarify that dismissal and discipline can be grieved after the expiry of the collective agreement (which occurs twenty-one days after the close of the conciliation process [s.89(1)(a) - (d)]). Bargaining agents can now submit disagreements concerning discipline to arbitration in accordance with the grievance provisions of the expired collective agreement [s.67(6)].

g. Reinstatement after strike or lockout

Some reinstatement protection for striking/locked-out bargaining unit members will be provided by requiring employers to reinstate employees in the bargaining unit who were on strike or locked-out in preference to any person who was not an employee in the bargaining unit on the date on which notice to bargain collectively was given and was hired or

assigned after that date to perform all or part of the duties of an employee in the unit on strike or locked-out [s. 87.6] The Board will have remedial power to remedy violations by requiring an employer to reinstate and to pay compensation that would have been paid but for the failure to reinstate [s.99(1)(b.2)].

IV. COLLECTIVE AGREEMENT ADMINISTRATION

Bill C-19 introduces a number of amendments to statutory powers conferred upon grievance arbitrators. Some of these powers have already existed in provincial statutes for some time. Others are similar to amendments made to the Ontario Act by the NDP Government, not all of which have been repealed by the Conservative Government.

In the Ontario context, some debate took place over the extent to which similar amendments simply codify existing practice or actually increase arbitrators' powers. At a minimum, these amendments should confirm and reinforce arbitrators' authority to exercise control over grievance arbitrations in a manner which both streamlines the process and deals comprehensively with issues in dispute.

The new powers in Bill C-19 include:

- ▶ powers conferred on the Board by paragraphs 16(a), (b), (c) and (f.1): powers relating to witnesses,

receipt of evidence and production of documents [s.60(1)(a)],

- ▶ power to interpret, apply and give relief in accordance with employment-related statutes, whether or not there is conflict between the statute and the collective agreement [s.60(1) (a.1)],
- ▶ power to make interim orders that the arbitrator or arbitration board considers appropriate [s.60(1)(a.2)],
- ▶ power to consider submissions provided in the form that the arbitrator or the arbitration board considers appropriate or to which the parties agree [s.60(1)(a.3)],
- ▶ power to expedite proceedings and to prevent abuse of the arbitration process by making the orders or giving the directions that the arbitrator or arbitration board considers appropriate for those purposes [s.60(1)(a.4)],
- ▶ power to extend the time for taking any step in the grievance process or arbitration procedure set out in a collective agreement, even after the expiration of the time, if the arbitrator, or arbitration board is satisfied that there are reasonable grounds for the extension and that the other party would not be unduly

prejudiced by the extension [s.60(1.1)].

Bill C-19 also expressly allows for alternative dispute resolution methods by permitting an arbitrator or arbitration board, with the agreement of the parties, to assist them at any stage of a proceeding in resolving the difference at issue without prejudice to the power to continue the arbitration with respect to the issues that have not been resolved [s.60(1.2)].

V. TRANSITIONAL PROVISIONS

Proceedings that were before the Canada Labour Relations Board as of January 1, 1999 are transferred to the new Canada Industrial Relations Board, and are to be “disposed of by the new Board in accordance with the new Act” [s.88(1) Bill C-19]. Bill C-19 also contains provisions that allow the Chairperson of the new Board to ask members of the former Board that are already hearing a case to continue to do so. Members of the old Board who continue to hear a case after January 1, 1999 “shall exercise the powers of the new Board” for the purposes of that case [s.88(4) Bill C-19].