



**COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2008)<sup>1</sup>: CANADA**

***FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)***

<b>REPORTING</b>	<b>Fulfillment of Government's reporting obligations</b>	YES, since the start of the Annual Review (AR) in 2000.	
	<b>Involvement of Employers' and Workers' organizations in the reporting process</b>	YES, according to the Federal Government: Involvement of the Canadian Employers' Council, the Canadian Labour Congress and the Confédération des Syndicats Nationaux through communication of government reports.	
<b>OBSERVATIONS BY THE SOCIAL PARTNERS</b>	<b>Employers' organizations</b>	NIL	
	<b>Workers' organizations</b>	<b>2008 AR:</b> Observations by the International Trade Union Confederation (ITUC). <b>2007 AR:</b> Observations by the International Confederation of Free Trade Unions (ICFTU). <b>2001 AR:</b> Observations by the ICFTU. <b>2000 AR:</b> Observations by the ICFTU.	
<b>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</b>	<b>Ratification</b>	<b>Ratification status</b>	<i>Canada ratified in 1972 the Freedom of Association and the Right to Collective Bargaining Convention, 1948 (No. 87) (C.87). However, it has not yet ratified the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (C.98).</i>
		<b>Ratification intention</b>	<b>Unable to ratify at this time C.98.</b>  <b>2008 AR:</b> The Government indicated that Canada is pursuing discussions with provincial and territorial governments concerning ratification of C.98.  <b>2006 AR:</b> According to the Government: While there is a high degree of conformity with the principle of collective bargaining in Canada, there are some differences between national legislation and specific provisions of C.98 as interpreted by the ILO Committee of Experts.  <b>2001 AR:</b> Based on information in GB.282/LILS/7 and GB.282/8/2 (2002): The Government would continue to examine the Convention in consultation with the provinces and territories.

<sup>1</sup> Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: information provided by the Government under the Declaration Annual Review, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

	<p><b>Recognition of the principle and right (prospect(s), means of action, main legal provisions)</b></p>	<p><b>Constitution</b></p>	<p><b>YES</b>  According to the Government: In the Constitution, the Canadian Charter of Rights and Freedoms provides for freedom of assembly and association. The Charter applies to Parliament, the provincial/territorial legislatures and the federal provincial and territorial governments. Freedom of association is also enshrined in Quebec's <i>Charte des droits et libertés de la personne</i> that applies to the government of Quebec and to the private sector in that province.</p>
<p><b>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</b></p>	<p><b>Recognition of the principle and right (prospect(s), means of action, basic legal provisions)</b></p>	<p><b>Policy, legislation and/or regulations</b></p>	<ul style="list-style-type: none"> <li>• <b>Policy</b>  Government's prospects: Continuing promotion of the principle and rights of the Declaration.</li> </ul> <p><b>2005 AR:</b> The Federal Government stated that ILO technical advisory assistance was valuable during a workshop for federal, provincial and territorial government representatives on issues pertaining to Canada's international labour obligations and the ILO's supervisory mechanisms and the Declaration of Fundamental Principles and Rights at Work held in February 2003.</p> <p><b>2003 AR:</b> The Government expressed interest in exploring the use of ILO communication products for the promotion of the 1998 <i>ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up</i>.</p> <ul style="list-style-type: none"> <li>• <b>Legislation</b>  The Canadian Charter of Rights and Freedoms as well as federal, provincial and territorial labour relations legislation to the principle and right (PR):</li> </ul> <p><b>2000-2005 ARs:</b> According to the Government: All Canadian governments have adopted labour legislation, which recognizes and provides a framework for collective bargaining for employees and employers within their respective jurisdictions.</p>

		<p><b>Basic legal provisions</b></p>	<p>-Canadian Charter of Rights and Freedoms          -Federal legislation: (i) Canada Labour Code (Part I); (ii) Public Service Staff Relations Act; (iii) Status of the Artist Act.          -Provincial and territorial legislation:  <i>Alberta:</i> Labour Relations Code (LRC) ; Public Service Employee Relations Act (PSERA); Police Officers Collective Bargaining Act (POCBA).  <i>British Columbia:</i> Labour Relations Code; Public Service Labour Relations Act.  <i>Manitoba:</i> Labour Relations Act; Civil Service Act (certain sections); Public Schools Act; Fire Departments Arbitration Act.  <i>New Brunswick:</i> Industrial Relations Act; Public Service Labour Relations Act;  <i>Newfoundland:</i> Labour Relations Act; Public Service Collective Bargaining Act; Interns and Residences Act; Newfoundland Teachers Collective Bargaining Act; Fishing Industry Collective Bargaining Act; Royal Newfoundland Constabulary Act; St. John's Firefighters Act.  <i>Nova Scotia:</i> Trade Union Act; Teachers' Collective Bargaining Act; Corrections Act; Civil Service Collective Bargaining Act; Highway Workers' Collective Bargaining Act.  <i>Ontario:</i> Labour Relations Act, 1995 (LRA); School Boards and Teachers Collective Negotiations Act, 1993; Crown Employees Collective Bargaining Act; Public Service Act; Colleges Collective Bargaining Act; Hospital Labour Disputes Arbitration Act; Police Services Act; Fire Protection and Prevention Act, 1997; Public Sector Transition Stability Act, 1997.  <i>Prince Edward Island:</i> Labour Act; Civil Service Act and Regulations; School Act.  <i>Quebec:</i> Code du travail (LRQ, c. C-27) (Labour Code) ; <i>Loi sur le régime de négociations des conventions collectives dans les secteurs public et parapublic</i> (Act in respect of the process for negotiating collective agreements in the public and parastatal sectors) ; <i>Loi sur les relations de travail, la formation professionnelle et la gestion de la main-d'œuvre dans l'industrie de la construction</i> (LRQ, c. R-20) (Act in respect of labour relations, vocational training and manpower management in the construction industry) ; <i>Loi assurant le maintien des services essentiels dans le secteur de la santé et des services sociaux</i> (Act to ensure that essential services are maintained in the health and social services sector) ; <i>Loi sur le statut professionnel et les conditions d'engagement des artistes de la scène, du disque et du cinéma</i> (LRQ, c. S-32.1) (Act concerning the professional status and conditions of engagement for performing artists, recording and film artists) ; <i>Loi sur le statut professionnel des artistes des arts visuels, des métiers d'art et de la littérature et sur leurs contrats avec les diffuseurs</i> (LRQ, c. S-32.01) (Act in respect of the professional status of artists in the visual arts and crafts and literature and their contracts with promoters).  <i>Saskatchewan:</i> Trade Union Act; Police Act; Fire Departments Platoon Act; Construction Industry Labour Relations Act.  <i>Northwest Territories and Nunavut:</i> Public Service Act.  <i>Yukon:</i> Education Act; Public Service Staff Relations Act.</p>		
		<p><b>Judicial decisions</b></p>	<p><b>2008 AR:</b> a decision of June 2007 by the Supreme Court has considered that the workers' right to associate in order to achieve workplace goals through a process of collective bargaining is protected under Article 2(d) of the Canadian Charter of Rights and Freedoms. The Government reported that since this overturns the Court's prior jurisprudence, this decision could have significant implication for industrial relations in the country.</p>		
	<p><b>Exercise of the principle and right</b></p>	<p><b>At national level (enterprise, sector/industry, national)</b></p>	<table border="1"> <tr> <td data-bbox="1008 1300 1198 1428"> <p><b>For Employers</b></p> </td> <td data-bbox="1198 1300 2067 1428"> <p><b>2000-2003 ARs:</b> All categories of employers may engage in collective bargaining either under legislation or on a voluntary basis.</p> </td> </tr> </table>	<p><b>For Employers</b></p>	<p><b>2000-2003 ARs:</b> All categories of employers may engage in collective bargaining either under legislation or on a voluntary basis.</p>
<p><b>For Employers</b></p>	<p><b>2000-2003 ARs:</b> All categories of employers may engage in collective bargaining either under legislation or on a voluntary basis.</p>				

			<p><b>For Workers</b></p> <p><b>Special attention to particular situations</b></p> <p><b>Information/Data collection and dissemination</b></p>	<p><b>2003 AR:</b> The right to collective bargaining, with a few exceptions, applies to «employees», defined as workers who have an employment relationship and who are not employed in a confidential capacity with respect to labour relations or do not exercise management functions. In some jurisdictions, some or all of the following categories of workers may be excluded from collective bargaining legislation, but are nevertheless entitled to negotiate with their employers on a voluntary basis: agricultural workers, domestic workers, and members of the medical, dental, architectural, legal and engineering professions, when employed in their professional capacity.</p> <p>NIL</p> <p><b>2000-2003 ARs:</b> According to the Government: The Federal Government and the provinces gather and disseminate a wide range of information and data on issues related to trade unions and collective bargaining.</p>
		<b>At international level</b>	C.87 is ratified.	
<b>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</b>	<b>Monitoring, enforcement and sanctions mechanisms</b>	<p><b>2000-2003 ARs:</b> According to the Government: Each Canadian jurisdiction has established an independent quasi-judicial labour relations board that includes worker and employer members, to administer its collective bargaining laws. These boards determine appropriate bargaining units, certify bargaining agents and determine various unfair labour practice complaints, such as interference, dismissal or discipline for union activity and failure to bargain in good faith, and may also rule on the legality of strikes or lockouts. Many boards also assist the parties in resolving labour relations issues in the workplace. Monitoring and enforcement mechanisms exist to ensure the implementation of the PR. Labour boards in each jurisdiction can issue orders providing a wide range of remedies and, typically, the orders may be filed with the appropriate Court and then become enforceable as orders of the Court. The Canadian Courts have the authority to determine whether federal, provincial or territorial legislation infringes on the PR under the Charter and may declare such legislation unconstitutional. In instances where the PR is not respected, the boards can order a party to comply with the statutory duty to bargain in good faith. A number of boards also have the authority to arbitrate first-agreement bargaining disputes. All jurisdictions provide conciliation and mediation assistance to the parties to assist them in concluding collective agreements.</p>		
	<b>Involvement of the social partners</b>	<p><b>2003-2004 ARs:</b> According to the Government: Employers' and workers' organizations have been involved in: (i) labour-management conferences such as the biennial conferences organized by the Federal Mediation and Conciliation Service (FMCS) that address diverse subjects including best practices in industrial relations and collective bargaining and ways to improve labour-management relations; (ii) preventive mediation training programmes; (iii) projects funded by the Labour Management Partnerships Program that support the development of co-operative labour-management relations in Canada.</p>		

	<p style="text-align: center;"><b>Promotional activities</b></p>	<p><b>2008 AR:</b> According to the Government: During fiscal year 2006-2007, the Federal Mediation and Conciliation Service (FMCS) Preventive Mediation Program (PMP) provided training and assistance in the building of co-operative industrial relations across Canada and in joint labour-management committee effectiveness, interest based bargaining, grievance mediation, relationship building, and the facilitation of collective bargaining. There were also 23 active projects under the Labour-Management Partnerships Program (LMPP), which provided funding to support and promote the development of co-operative labour-management relations in the country. In September 2007, FMCS will hold its biennial conference where government and employers' and workers' representatives from across the country discussed best practices in industrial relations and collective bargaining and ways to improve labour-management relations. The Government of Canada supported ILO research on public sector collective bargaining.</p> <p><b>2007 AR:</b> According to the Government: In September 2005, the Federal Mediation and Conciliation Service (FMCS) biennial conference was attended by over 200 representatives of unions, employers and governments from across the country who discussed best practices in industrial relations and collective bargaining and ways to improve labour-management relations.</p> <p>-During fiscal year 2005-2006, FMCS's Preventive Mediation Program provided training and assistance in the building of co-operative industrial relations across Canada and internationally; training and assistance were provided in joint labour-management committee effectiveness, interest based bargaining, grievance mediation, relationship building, and the facilitation of collective bargaining in more than 61 instances throughout Canada; efforts are also being made to renew the Program and develop new modules that will address emerging issues in the workplace that impact on labour-management relations.</p> <p>-During the year, there were 35 active projects under the Labour-Management Partnerships Program (LMPP), which provides seed funding to support and promote the development of co-operative labour-management relations in Canada.</p> <p>-In March 2006, the International Labour Affairs hosted a workshop on ILO issues that was attended by representatives of Canadian federal, provincial and territorial governments. The purpose of the workshop was to generate dialogue on ILO issues, with a focus on the principle of freedom of association and collective bargaining. Representatives of the Canadian Labour Congress and the Canadian Employers Council participated in a tripartite panel discussion on Canada's priorities in the ILO. A noted Canadian academic addressed the issue of «The Challenges of Collective Bargaining in the Canadian Public and Parapublic Sectors». A panel of provincial government representatives shared their jurisdictions' practices with respect to coverage of collective bargaining legislation. There was also a presentation and discussion concerning follow-up to CFA decisions.</p> <p><b>2006 AR:</b> According to the Government: A number of workshops on topics such as committee effectiveness training, interest-based negotiations, negotiation facilitation, conflict resolution training and relationship-by-objective training were held. Funding assistance was provided to 30 projects to assist efforts by unions and employers to improve labour-management relations. FMCS's 2005 conference brought key people involved in labour relations in Canada together to discuss critical industrial relations issues. The first phase of a project to assist the Chilean Ministry of Labour and Social Security to strengthen the institutional capacities of its mediation and conciliation services was completed.</p> <p><b>2002-2005 ARs:</b> According to the Government: The following measures have been implemented to realize and promote the PR: (i) the training of government officials and social partners in the labour field; (ii) the negotiation of labour cooperation agreements; (iii) tripartite dialogue, national conferences, training, workshops and seminars; and (iv) international workshops.</p>
	<p style="text-align: center;"><b>Special initiatives/Progress</b></p>	<p>NIL</p>

<b>CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT</b>	<b>According to the social partners</b>	<b>Employers' organizations</b>	NIL
		<b>Workers' organizations</b>	<b>2000-2001 and 2008 ARs:</b> The ICFTU raised the following issues: (i) the legislation in several Canadian provinces/territories do not comply with C.98 and no willingness of these provinces to harmonize their laws with the ILO Conventions; (ii) some categories of workers are excluded from the legal framework on the PR (members of the medical, dental, architectural, legal and engineering professions, when employed in their professional capacity, agricultural workers and privately employed domestics); (iii) there is an excessive government intervention in collective bargaining in the private sector, which provides ways for the employer to bypass the union as collective bargaining agent and (iv) restrictions still persist on the right to form a union, bargain collectively and to strike, particularly in the public sector.
<b>CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT</b>	<b>According to the Government</b>	<p><b>2007 AR:</b> In response to the ICFTU's observations, the Federal Government made the following additional observations: (i) since 2005, there have been a number of amendments to labour laws in Ontario that strengthen protection for the exercise of collective bargain rights, (ii) in British Columbia, the province is enjoying an unprecedented level of labour peace thanks to the recent success of this year's public sector bargaining that saw the conclusion of 139 collective agreements (as of December 11, 2006). Furthermore, the British Columbia government is continuing an industrial Inquiry Commission review to examine the bargaining structure and to build on the success on the latest round of bargaining to ensure that negotiated settlements are reach in future rounds of bargaining.</p> <p><b>2001 and 2007 ARs:</b> In response to the ICFTU's observations, the Federal Government made the following observations: (i) the PR is respected and promoted in Canada; (ii) in each province, there are labour laws promoting and regulating collective bargaining and there are independent labour relations boards in charge of administering the legislation; (iii) the legislation encourages the parties to engage in meaningful bargaining; (iv) the importance of conciliation and mediation as a means of helping the parties to come to an agreement voluntarily is recognized across Canada; (v) Canadian legislation generally does not restrict the right of employers and workers to participate in collective bargaining; (vi) groups such as members of the medical, dental, architectural, legal and engineering professions, when employed in their professional capacity, agricultural workers and privately employed domestics are excluded from coverage under the legislation in some jurisdictions, but are nevertheless entitled to negotiate with their employers on a voluntary basis; (viii) in the determination of who is an employee for the purpose of collective bargaining, jurisdictions generally exclude workers who exercise managerial functions or who act in a confidential capacity in matters relating to industrial relations, so as to avoid conflict of interest or domination of unions, (ix) all jurisdictions ensure the right to negotiate collective agreements and promote good faith bargaining between the parties.</p> <p><b>2000 and 2007 ARs:</b> In response to the ICFTU's observations, the Federal Government referred to GB.274/2 which described the Declaration follow-up and suggested that a number of the questions raised by the ICFTU would fall outside the scope of the Declaration follow-up. The Government further indicated that it was not able to respond to a number of other ICFTU comments as they contained inaccuracies that made them unclear. The Government referred the Office to Canada's report on the principles of freedom of association and the right to collective bargaining, which provides complete and accurate information with respect to collective bargaining legislation in Canada, including protections against employers' interference and other unfair labour practices.</p>	
<b>TECHNICAL COOPERATION</b>	<b>Request</b>	<b>2003 AR:</b> The Federal Government would be interested in the use of ILO communication products for the promotion of the 1998 ILO Declaration.	
	<b>Offer</b>	NIL	

<b>EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS</b>	<b>2008 AR:</b> The ILO Declaration Expert-Advisers (IDEAs) encouraged Canada to initiate the necessary labour law reforms to remove the obstacles to ratification of C.98. They acknowledged the high number of promotional activities concerning the realization of the PR in Canada (and some other countries), and encouraged the Office to maintain its support to these activities. They also noted the decision adopted by the Supreme Court of Canada, which includes the right to collective bargaining under the Canadian Charter (Cf. Paragraphs 32, 34 and 35 of the 2008 AR Introduction – ILO: GB.301/3).
<b>GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS</b>	NIL