

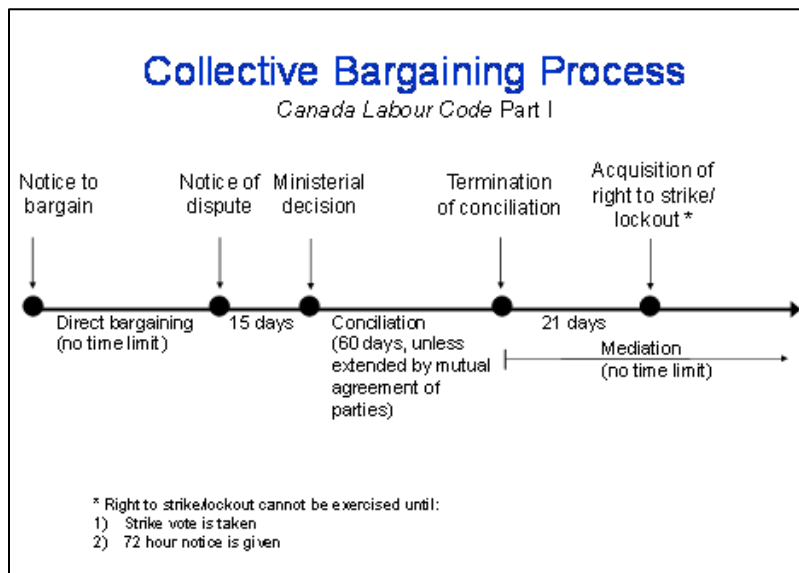
# Primer on Good Faith versus Bad Faith Collective Bargaining

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## The Context of Collective Bargaining

Mandated through the Canada Labour Code, collective bargaining is a process where unions and employers negotiate wages, working hours, and working conditions. Under the Labour Relations Code, the employer and union have a **duty to negotiate in good faith** as soon as a written notice of collective bargaining is initiated.<sup>1</sup> The collective bargaining process aims to reach a “collective agreement” setting out the terms and conditions of work and the relationship between the employer and the union. Collective bargaining involves the union and employer negotiating to reach a tentative agreement, the union taking the agreement to the members, and the members voting to accept or reject the agreement (Labour Board, 2019).

The right to strike in Canada is enshrined in the Constitution (Government of Canada, 1982; Saint Cyr and Catenacci, 2015). **Figure 1** shows the steps that must be followed before a legal strike or lockout can take place. Strikes and lockouts constitute a last resort, taken when parties are not able to reach an agreement in collective bargaining.



**Figure 1. Collective bargaining process.**

Source: Government of Canada (2019).

<sup>1</sup>The MSVU Faculty Association filed their Notice to Bargain with the Mount’s Board of Governors on May 12, 2023.

In Nova Scotia, the rules that regulate the relationships between unions and employers fall under the Trade Union Act. According to the Labour Board (2019), these rules augment:

- Other laws that employers and employers' associations must follow, and
- Organization-specific constitutions and rules.

The Trade Union Act also outlines the rights and responsibilities (Labour Board, 2019) of:

- Employees who belong or want to belong to unions;
- Unions, representing one voice for a group of employees;
- Employers.

## What is good faith bargaining?

Sect. 50(a) of the Canada Labour Code states,

Where notice to bargain collectively has been given under this Part, the bargaining agent and the employer, without delay, but in any case within twenty days after the notice was given unless the parties otherwise agree, shall (i) meet and commence, or cause authorized representatives on their behalf to meet and commence, to ***bargain collectively in good faith*** [emphasis added], and (ii) make every reasonable effort to enter into a collective agreement. (Revised Statutes of Canada, 1985, c. L-2)

The Labour Board defines good faith bargaining as “both parties in a bargaining process mak[ing] every reasonable effort to reach a collective agreement” (2019, pg. 25). Debate over the dimensions of this concept (Palmer, 1966) notwithstanding, bargaining collectively in good faith has been understood to require the following on the part of the union and the employer (Atherton, Jefcoat, & Ouatu, 2020; B.C. Labour Relations, 2023; Bemmels, Fisher, & Nyland, 1986; Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia, 2007):

- Meeting with each other to exchange proposals for a collective agreement;
- Engaging in meaningful negotiations;
- Making a sincere attempt to reach an agreement;
- Acting honestly, avoiding making false or misleading statements;
- Knowing and articulating their broad goals for the collective agreement; and,
- Being prepared to compromise during negotiations, including both sides making concessions with the common goal of reaching a deal, where appropriate.

In the context of negotiations more broadly, courts and scholars have often defined good faith as the absence of bad faith (Bristow & Seth, 2000).

## What is bad faith bargaining?

The Labour Board of Nova Scotia defines failure to bargain, referred to as bargaining in bad faith, as when “a union or employer refuses to bargain or improperly slows down a collective bargaining process or does not make a real effort to reach an agreement” (2019, pg. 24). This includes, but is not limited to, “actions that are based on ill-will, hostility, or revenge toward a member of a bargaining unit” (pg. 26). Moreover, adopting a deliberate strategy on the part of the union or the employer to prevent reaching an agreement (B.C. Labour Relations, 2023) may be considered a breach of the duty to bargain in good faith. For example, the Supreme Court of Canada in *Canadian Artists’ Representation v. National Gallery of Canada* (2014) upheld the ruling by the Canadian Artists and Producers Professional Relations Tribunal that “taking a rigid stance which it should be known the other party could never accept” was a “breach of the duty to bargain in good faith” (See also Torrance, 2014).

## What if bargaining is not happening in good faith?

When bargaining in good faith fails to happen, a party may file a **complaint of failure to bargain** (i.e., bargaining in bad faith) with the Minister of Labour and Advanced Education. As per the Trade Union Act, Section 36, the Labour Board of Nova Scotia has the authority to investigate and decide on complaints of failure to bargain when directed by the Minister of Labour and Advanced Education. While "bad faith" bargaining is recognized in the Act, there are no legal consequences. When parties reach an impasse, whether there is bad faith or good faith bargaining, measures to move negotiations forward may include conciliation, mediation, and/or arbitration.

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