also meets s. 2(d)'s purpose of equalizing power imbalances by protecting collective action.

129. This Court has already ruled that the duty to bargain in good faith is the very essence of the procedural right to bargain collectively and interference with this duty is interference with the procedural right. In requiring minimum protection for the duty to bargain in good faith, the Court of Appeal applied settled law from *B.C. Health Services*. The duty to bargain in good faith continues to protect the principle of voluntarism because it only protects the process of bargaining and not the substantive result. The terms that parties agree to through bargaining are voluntary. Nowhere else in Canada does "voluntarism" in labour relations mean that legislation can create conditions where employers have the unilateral power to disregard employees' efforts to bargain collectively.

130. Historically employers' failure to recognize employees' democratically chosen representatives and failure to engage in collective bargaining was met by collective withdrawal of labour through recognition strikes. Since PC 1003, labour legislation in Canada has uniformly protected the duty to bargain in good faith in recognition of the deleterious impact of such strikes. Ontario suggests that in order to secure the right to bargain collectively, unlike all other workers in Canada, farm workers must resort to the "pre-statutory" practice of recognition strikes (even though elsewhere Ontario argues that strikes are not appropriate in the agricultural sector). To suggest that this complies with s. 2(d) turns the clock back generations. It wholly disregards the history of labour relations in Canada and would create conditions for disempowered workers that are already known to foreclose the exercise of their fundamental freedom.

131. In ruling that at a minimum legislation protecting farm workers' right to bargain collectively must contain protection for a dispute resolution mechanism in the event of impasse, the Court of Appeal did not constitutionalize any particular statutory model. The Court of Appeal expressly recognized that there are many different procedural models for resolving bargaining impasse. The right to strike is one mechanism. Mediation, interest arbitration, and final offer selection are only some other mechanisms. All labour legislation

in Canada contains protection for some dispute resolution mechanism. It is for the legislature to choose what mechanism to implement in the circumstances and how to implement it in a way that respects the underlying freedom of association and principles of fairness arising in administrative law.

> *Alberta Labour Reference, supra* per Dickson C.J.C. at 381-386
> *C.U.P.E. v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539 at para. 174-184

132. *B.C. Health Services* ruled that laws which enable employers to disregard the agreement they have reached through bargaining violate s. 2(d). In that case legislation overruled the negotiated provisions. However, that is not the only way the integrity of the bargaining process can be undermined. If the agreement reached through bargaining cannot be effectively enforced, it equally undermines the integrity of the bargaining process. Building on Canadian labour relations experience, Canadian legislation protects the integrity of bargaining by having collective agreements enforced by expert labour arbitrators through a quick, informal and inexpensive grievance process. This is done out of recognition that labour relations disputes require a quick resolution and that the court process has neither the speed nor expertise to provide this. To argue that, unlike all other workers, low paid farm workers must enforce their workplace rights through the courts, again would subject them to lesser protection than all other workers and would carry a strong didactic message about the value of their collective bargaining efforts.

> See, for example, *Toronto (City) Board of Education v. O.S.S.T.F., District 15*, [1997] 1 S.C.R. 487 at para. 35-37

B. Section 15: The Right to Equality

133. While the s. 2(d) analysis highlights the injury to farm workers' freedom of association, the s. 15 equality analysis provides a more complete context that illuminates why this particular group of workers is denied the law's protection for collective bargaining.

134. The state's exclusion of farm workers from the *LRA* and its treatment of them under

the *AEPA* violate the s. 15 right to equality by denying equal protection and benefit of the law. The denial subjects these workers to differential treatment based on their status as agricultural workers and has the substantively discriminatory effect of imposing prejudicial burdens on them, and perpetuating and reinforcing their pre-existing disempowerment, marginalization and disadvantage.

1. Principles of Interpretation

135. Section 15(1) of the *Charter* provides that:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. [emphasis added]

136. Section 15 must be interpreted in a "purposive and contextual manner in order to permit the realization of the provision's strong remedial purpose". The remedial purposes of s. 15 are (a) "to rectify and prevent discrimination against particular groups suffering social, political and legal disadvantage in society"; (b) "the amelioration of the conditions of disadvantaged persons"; and (c) "the promotion of a society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect and consideration."

> *Lovelace v. Ontario (Attorney General)*, [2000] 1 S.C.R. 950 at para. 54, 60
> *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 at para. 54
> *R. v. Kapp*, [2008] 2 S.C.R. 483 at para. 15
> *Andrews v. Law Society of B.C., supra* at 171
> *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 at para. 42-43, 47, 51

137. A s.15 claim must be examined on a "subjective-objective" basis from the perspective of the claimant. The claim must be assessed in the broader social, political, historical and legal context within which the law operates and the claim arises. The "main consideration must be the impact of the law on the group concerned." The analysis of discriminatory impact must be done "with a careful eye to the context of who is affected by

the legislation and how it affects them."

> *Ermineskin Indian Band and Nation v. Canada*, [2009] 1 S.C.R. 222 at para. 193-194
> *Corbière v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203 at para. 63-64, per L'Heureux-Dubé J. [dissenting but not with respect to this comment]
> *Law v. Canada, supra* at para. 59-61
> *R. v. Turpin, supra* at 1331-1332
> *Andrews v. Law Society of B.C., supra* at 165

138. To identify if s. 15 is violated, the analysis focuses on two inquiries: (1) Does the law create a distinction based on an enumerated or analogous ground? (2) Does the distinction create a disadvantage by perpetuating prejudice and stereotype?

> *R. v. Kapp, supra* at para. 14-15, 17-25

2. Differential Treatment Based on Analogous Ground of Status as Agricultural Workers

139. Under the *LRA* and the *AEPA*, agricultural workers are treated differently than other workers in Ontario. This difference results from express distinctions drawn on the face of the laws which give farm workers markedly less protection than is granted to "just about every class of worker in Ontario". Agricultural workers are denied the rights referred to earlier in para. 33 of this factum.

140. Under s. 15, everyone is entitled to equality without discrimination. While s. 15 enumerates the most common grounds of discrimination, the core right is the right to equality without discrimination. The grounds on which discrimination can arise are not closed. To constitute an analogous ground, the claimant is "not required to establish membership in a sociologically recognized group." There is nothing inherent in any "ground" that makes it a basis of discrimination. What makes any ground significant – socially, politically, economically or legally – is whether the ground is employed by those with power, through design or effect, as a mechanism or lever to distribute or withhold rights in a discriminatory way.

Law v. Canada, supra at para. 66
Andrews v. Law Society of British Columbia, supra at 152-153

141. The touchstones to determine if a ground of distinction is "analogous" are "the purpose of s. 15(1), the nature and situation of the individual or group at issue, and the social, political and legal history of Canadian society's treatment of the group." Analogous grounds "serve to advance the fundamental purpose of s. 15(1)" and are based on "characteristics that we cannot change or that the government has no legitimate interest in expecting us to change to receive equal treatment under the law." They will often encompass those "lacking in political power", "vulnerable to having their interests overlooked and their rights to equal concern and respect violated" and "vulnerable to becoming a disadvantaged group".

Corbière v. Canada, supra at para. 11-13
Andrews v. Law Society of British Columbia, supra at 152-153
R. v. Turpin, supra at 1331-1332
Law v. Canada, supra at para. 29, 37, 42-43, 93-94

142. The differential treatment in this case is based on being an agricultural worker. The status of being an agricultural worker is an analogous ground of discrimination for the purposes of s. 15 because (a) work is a fundamental aspect of a person's identity; and (b) being an agricultural worker represents a particular form of disempowerment in Canadian society that is shaped by the convergence of multiple dynamics of discrimination. Agricultural workers are agricultural workers precisely because they are the most marginalized members of the workforce. Historically and continuing to the present, this vulnerability has been perpetuated and reinforced through laws that single out agricultural workers for different and prejudicial treatment.

Law v. Canada, supra at para. 93-94
cf. *Dartmouth/Halifax County Regional Housing Authority v. Sparks* (1993), 101 D.L.R. (4th) 224 (N.S. S.C. A.D.) at 233-234 [public housing tenants as an analogous group]
cf. *Falkiner v. Ontario (Ministry of Community and Social Services)* (2002), 59 O.R. (3d) 481 (C.A.) at para. 83-84 [recognizing multi-dimensional discrimination on sex, marital status and receipt of social assistance]

143. Early *Charter* cases in lower courts mechanically rejected occupational status as an analogous ground on the basis that one's occupation was not a personal characteristic and that the particular groups raising the claims (such as doctors, nurses, teachers, municipal employees and even employers) were not disadvantaged. However, the jurisprudence has evolved to openly question the assumption that work is outside the scope of s. 15 and to affirmatively find that work shares many of the markers of other analogous grounds.

144. First, it is now well-established that for individuals, work is an important defining personal characteristic. It is "one of the most fundamental aspects in a person's life", the means by which most individuals "lay claim to an equal right of respect and of concern from others". Work is "an essential component" of and "fundamental to a person's identity".

> *Alberta Labour Reference, supra* at 368-369, per Dickson C.J.C.
> *McKinley v. B.C. Tel*, [2001] 2 S.C.R. 161 at para. 53-54
> *Slaight Communications v. Davidson*, [1989] 1 S.C.R. 1038 at 1054-1055
> *Newfoundland v. N.A.P.E.*, [2004] 3 S.C.R. 381 at para. 40-41

145. Second, it is also well-established that the work relationship is inherently one of unequal power in which the employee is subordinate. Because of this power imbalance, this Court has recognized that workers in general are vulnerable and their vulnerability is underscored by the importance that our society attaches to the employment relation. This Court has also recognized that different groups of workers are subject to particular disadvantage, are particularly vulnerable to having their interests overlooked by the state, and require the protection of state legislation.

> *Alberta Labour Reference, supra* at 368-369, per Dickson C.J.C.
> *Slaight Communications v. Davidson, supra* at 1051-1052
> *Wallace v. United Grain Growers Ltd.* [1997] 3 S.C.R. 701 at para. 91-94
> *Dunmore v. Ontario, supra* at para. 20-22, 45-46 per Bastarache J.; and
> para. 167 per L'Heureux-Dubé J. [concurring]
> *Delisle v. Canada (Deputy Attorney General)*, [1999] 2 S.C.R. 989 at
> para. 44-45 per Bastarache J.

146. Third, while this Court has previously denied claims by particular workers, it has done so "in view of their particular status in society". It has specifically left it open to find that a specific group of workers constitutes an analogous ground on the appropriate facts.

R. v. Généreux, [1992] 1 S.C.R. 259 at 310-311
Delisle v. Canada, supra at para. 44-45 per Bastarache J.; at para. 8 per L'Heureux-Dubé J.
Baier v. Alberta, [2007] 2 S.C.R. 673 at para. 65-66
See also: *R. v. Hy and Zel's* (2005), 77 O.R. (3d) 656 (C.A.) at para. 13, 15,34-36, 41. [The Employer alleged that remedial legislation protecting retail workers discriminated by allowing stores under 7500 square feet to open on holidays but requiring stores over 7500 square feet to close. The Court of Appeal found that where an employee worked, defined by whether the employer could open on a holiday due to its size, was not an analogous ground but that the law did not foreclose the possibility of finding occupational status as an analogous ground in another case.]

147. In *Delisle*, the majority held that being an RCMP officer did not constitute an analogous ground "in view in particular of the status of police officer in society". However, the majority limited its ruling to RCMP officers and "left the door open for the possibility that other occupationally oriented forms of discrimination could fall under the scope of s. 15(1)." In her concurring reasons, Justice L'Heureux-Dubé expressed her belief that while RCMP officers did not meet the s. 15 test, occupational status could, in appropriate circumstances, constitute an analogous ground.

Delisle v. Canada, supra at para. 44-45 per Bastarache J. and at para. 8 per L'Heureux-Dubé J., [concurring]
Dunmore v. Ontario, supra at para. 167-170, per L'Heureux-Dubé J., [concurring]

148. In *Baier v. Alberta*, this Court's most recent ruling on the issue, the Court followed the same approach employed in *Delisle*. The Court did not categorically reject occupational status as a potential analogous ground. It examined the claim contextually, looking at the evidence in the case, the historical and present status of the particular employee group bringing the claim, and whether the specific occupational status at issue had been a constant marker of suspect decision making or potential discrimination. The Court's conclusion was specifically limited to the status of "teachers and other school employees."

Baier v. Alberta, supra at para. 64-66

149. Fourth, this Court has already found that agricultural workers are a distinct and vulnerable group of workers. The ILO has also recognized farm workers' vulnerability and

need for equal protection in international law conventions.

> *Dunmore v. Ontario, supra* at para. 2, 41 and at para. 27
> See also, Fudge Aff. No. 1, AR, Vol. XVII, Tab 64 at 125-126
> Beatty, Putting the Charter to Work, AR, Vol. XX, Tab 64 (Ex. 16) at 143
> Neilson and Christie, "The Agricultural Labourer in Canada: A Legal Point of View", AR, Vol. XX, Tab 64 (Ex. 14) at 132

150. In fact, in *Dunmore*, Justice L'Heureux-Dubé in her concurring reasons specifically found that agricultural workers constituted an analogous ground for s. 15 purposes.

> *Dunmore v. Ontario, supra* at para. 167-170, per L'Heureux-Dubé J. [concurring]

151. Ultimately, whether a particular occupational status is an analogous ground must be determined on a case-by-case basis taking into account the history of the claimant group's treatment in society and in law, the patterns of discrimination that create them as a specific group, and the existence of international human rights instruments that also recognize them as vulnerable groups. A contextual analysis must recognize that, in some circumstances, state regulation that denies equal protection of the law to a group of workers may create, build on or reinforce those workers' particular pre-existing marginalization in society. In some contexts, multiple dynamics of systemic discrimination and disadvantage – such as those based on race, sex, national origin, insecure citizenship status, political vulnerability – intersect to construct a particular group of workers as a socially and legally disadvantaged group. In these circumstances, one's work – and the state's regulation of that work – coincide with and reinforce a distinctive form of social exclusion and legal, political and economic disempowerment and marginalization.

152. The mere fact that labour legislation applies to a single sector does not, in itself, amount to a s. 15 breach. But, in some cases, unlike *B.C. Health Services*, it does not end the analysis to say that legislation applies to a particular segment of the work force. In some situations, differential regulation of a segment of the work force creates a sub-class of workers and is possible because of the political, social and economic marginalization of the people who are doing the work. It is important to look critically at how differential

treatment in law contributes to who is doing the work, how legal regulation and other dynamics of discrimination result in different groups of individuals being disproportionately concentrated in different segments of the work force, and how the marginalization of a particular group facilitates the enactment of laws that reinforce their marginalization.

153. This analysis will not open the floodgates to recognizing any and all work-based distinctions as being analogous grounds. The factual circumstances which could establish the discrete kind of social disempowerment outlined above will be limited. The Respondents submit that the evidence about agricultural workers meets that threshold.

154. The record in this case establishes that Ontario's farm work force is predominated by Canadian workers from the economic margins and a significant unfree migrant labour force. All levels of court have accepted this evidence of vulnerability. The evidence which has been updated since *Dunmore* shows that farm workers' profile of vulnerability has not changed since that time.

> *Dunmore v. Ontario, supra* at 41
> Court of Appeal Decision , AR, Vol. I, Tab 4 at 47-48
> See Respondents factum, *supra* para. 20-28

155. The record also establishes the connection between government action and legislation and the disempowerment of agricultural workers as a group. Creating a sector of work with limited rights shapes the population of workers who do the work. First, agricultural workers' marginalized position has been embedded in and reinforced by law as farm workers have historically and to this day been excluded from many of the statutory rights and benefits provided to workers generally. This has direct consequences in lowering the conditions of their work. The result is that workers who have other options take work other than agricultural work if it is available. The workers who remain are those without other options.

> See Respondents factum, *supra* para. 26-27, 30-33

156. Secondly, since the early 1900s, the state has institutionalized migrant work as a key part of the agricultural work force. Apart from large numbers of Canadian workers recruited from regions with high unemployment, the state has recruited workers whose presence in Canada, on pain of deportation, is conditional on their working in agriculture. Foreign migrant workers make up fully 18% of those engaged in agriculture. Each year more than 16,000 workers come to Ontario from Mexico and the Caribbean on terms by which they are restricted to working on specific farms, must leave the country on completing their work, and can be repatriated without right of appeal.

See Respondents factum, *supra* para. 24-25 and related cites to Record

157. Whether they are domestic or foreign workers, the evidence confirms that agricultural workers are "among the most economically exploited and politically neutralized individual in our society."

Beatty, Putting the Charter to Work, AR, Vol. XX, Tab 64 (Ex. 16) at 143
Dunmore v. Ontario, supra at para. 168, per L'Heureux-Dube J. [concurring]

158. The Respondents submit that recognizing the status of agricultural worker as an analogous ground engages and serves the fundamental purpose of s. 15 in rectifying and preventing discrimination against a group that has long suffered social, political and legal disadvantage in our society. It is well accepted by all levels of court that agricultural workers are a distinct and marginalized group of workers who are lacking in political power and vulnerable to the state overlooking their interests. A century of their exclusion from basic labour protections shows that their status as agricultural workers has been a constant marker of suspect decision making. Finally, the government has no legitimate interest in asking agricultural workers to change their jobs in order to receive equal treatment in law, particularly when they hold mainstream jobs in Ontario's second largest industry. Even if individual farm workers change their jobs, that still leaves agricultural workers as a group with second class status. To require workers to quit to get equal rights reinforces the very vulnerability at issue. It reinforces the reality which was recognized by the 1968 Woods

Task Force and in *Dunmore* that agricultural workers are so marginalized and their interests so disregarded by the state that they "have no recourse to protect their interests aside from the right to quit". A law that supports this disempowerment is surely suspect.

3. The Differential Treatment is Substantively Discriminatory

159. The exclusion of agricultural workers from the *LRA* and their differential treatment under the *AEPA* are substantially discriminatory. First, as the Court of Appeal agreed, the impugned laws perpetuate and reinforce the pre-existing disadvantage and marginalized position of agricultural workers in Ontario. They perpetuate farm workers' long history of exclusion from basic labour protections that are available to other workers. It reinforces their "limited sense of entitlement" as members of Canadian society.

> Court of Appeal Decision, AR, Vol. I, Tab 4 at 61, para. 111
> Beatty, Putting the Charter to Work, AR, Vol. XX, Tab 64 (Ex. 16) at 143
> *Dunmore v. Ontario, supra* at para. 45

160. Second, the impugned laws deny equal protection and benefit of the law in a way that fails to correspond to agricultural workers' needs, capacities and circumstances. They have for decades been seeking the rights to unionize and bargain collectively and the Ontario Labour Relations Board has agreed for decades that "there is no 'industrial relations basis' " for denying farm workers the right to bargain collectively.

> *Wellington Mushroom Farm, supra* at para. 29, also para. 6-18

161. Third, and most importantly, in denying agricultural workers the right to bargain collectively, the impugned laws deny them access to the very collective process by which disempowered workers can act together to rectify their disadvantage. The nature of the rights denied are critical. Collective bargaining is the fundamental mechanism of self-organization, representation and rights-enforcement that empowers workers to remedy their disadvantage and to bring democracy and the rule of law into the workplace.

162. Ontario suggests that any impact of being denied the rights to bargain collectively is offset by the fact that farm workers are entitled to some protections under laws of general application. However, none of these other pieces of legislation protect collective action by workers and so the alleged "mitigation" is inaccurate.

163. Collective bargaining is specifically about creating a participatory forum that evens the imbalance of power at work and facilitates workers' self-determination. In contrast to minimum standards legislation and other individual rights legislation, Wilson J. has described unionization and collective bargaining as securing "the promotion of the self-advancement of working people." Excluding farm workers from this forum of engagement excludes them from a fundamental social institution that is open to other workers. Denying farm workers these rights dispossesses them of their stake in workplace democracy, devalues their interest in participating in shaping the terms and conditions of their work, and deprives them of a remedy for their pre-existing disadvantage.

164. This Court has recognized that the most compelling factor in finding substantive discrimination is when differential and prejudicial treatment is visited upon those experiencing pre-existing disadvantage. That is clearly the case here. Farm workers are subjected to prejudicial burdens not borne by other workers. As has long been recognized by legal scholars, excluding farm workers from labour relations laws means that

> "the legal processes which enable much of the rest of our workforce to be involved in decision-making at the workplace in a realistic way are unavailable to farm workers. Thus a group of workers who are already among the least powerful are given even less opportunity than the rest of us to participate in the formulation and application of the rules governing their working conditions."
>
> Beatty, Putting the Charter to Work, AR, Vol. XX, Tab 64 (Ex. 16) at 144
> *Law v. Canada, supra* at para. 63

165. The Respondents submit that, in all the circumstances, the impugned provisions of the *LRA* and the entirety of *AEPA* violate agricultural workers' right to equal protection and

equal benefit of the law under s. 15 of the *Charter* and are not justified under s. 1

C. Section 1: The Violations of the *Charter* are Not Demonstrably Justified

1. Interpretive Principles

166. To establish that a violation of a substantive *Charter* right is "demonstrably justifiable in a free and democratic society", the Respondent must establish that (1) the objective of the impugned statute is "of sufficient importance to warrant overriding a constitutionally protected right or freedom"; and (2) that the impairment of the right is proportional to the importance of the objective in that (a) the means chosen to implement the objective are rationally connected to the objective; (b) the means chosen impair the Charter right "as little as possible"; and (c) the deleterious effects of the limit on the right are not disproportionate to the beneficial effects of achieving the objective.

> *R. v. Oakes*, [1986] 1 S.C.R. 103 at 138-140
> *Thomson Newspaper Co. v. Canada*, [1998] 1 S.C.R. 877 at para. 123-126
> *Newfoundland v. N.A.P.E., supra* at para. 53

167. In applying this well-established test, the Respondents submit that this Honourable Court must refer to the following key interpretive principles. First, the s. 1 analysis must be conducted contextually. While a contextual analysis assists to determine if the government has met its burden of proof, it does not result in deference which lowers the standard of justification. Second, in order to avoid pre-empting and devaluing substantive *Charter* rights, infringements to *Charter* rights must only be upheld as "exceptions to their general guarantee". It is "important to remember that courts are conducting this inquiry in light of a commitment to uphold the rights and freedoms set out in the other sections of the *Charter*." Third, s. 1 must be interpreted in a manner that is consistent with the substantive values underlying the *Charter* as a whole, including "respect for the inherent dignity of the human person", "commitment to social justice and equality" and "faith in social and political institutions which enhance the participation of individuals and groups in society." Fourth, where legislation violates *Charter* rights and freedoms, "courts should stand ready to intervene" as is appropriate in a constitutional democracy that requires that government

act in conformity with the *Charter.*

> *RJR MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199 at para. 134, 136
> *Thomson Newspapers v. Canada supra* at para. 90
> *R. v. Oakes, supra* at 135-138 [emphasis added]
> *Alberta Labour Reference, supra* at 372-373, quoting Wilson J. in *Singh v. Minister of Employment and Immigrant* [1985] 1 S.C.R. 177 at 218
> *Reference re Secession of Québec*, [1998] 2 S.C.R. 217 at para. 64
> *Vriend v. Alberta, supra* at para. 131-142

168. In *Dunmore* and *Delisle*, this Court held that a contextual analysis of s. 1 did not favour deference to the legislature when examining a law where a group of workers is excluded from collective bargaining. Rather, in *Dunmore* the Court stated that factors in the contextual analysis "on the whole favour a strict application of the minimum impairment test". The need for strict application of s.1 is underscored by the fact that the claim arises in a context where virtually all employees in Ontario and across Canada enjoy very significant and highly developed statutory protection for their right to bargain collectively.

> *Dunmore v. Ontario, supra* at para. 57-58
> See also, *B.C. Health Services, supra* at para. 26

2. Is there a sufficiently pressing and substantial objective?

169. This Court has warned that government must not overstate its objectives under s.1. A law's pressing and substantial objective must be defined precisely in relation to the limit on *Charter* rights: "The objective relevant to the s. 1 analysis is the objective of the infringing measure ... If the objective is stated too broadly its importance may be exaggerated and the analysis compromised."

> *RJR MacDonald Inc. v. Canada, supra* at para. 143-144

170. The Respondents submit that Ontario has defined the objectives of the *AEPA* too broadly. By setting out lengthy lists of objectives, "constraints" and "mitigating factors", Ontario seeks to subsume within the notion of "objectives" and so put beyond scrutiny the policy choices the government made in enacting the law. These are policy choices, not objectives. They must be scrutinized for minimal impairment under the s. 1 analysis.

171. The precise purposes of the *AEPA* that were clearly articulated by the government when the law was enacted and that are apparent on the face of the *AEPA* are (1) to protect the unique characteristics of farming; (2) to protect the family farm; and (3) to protect the economic vulnerability of the agricultural sector.

> Ministry of Labour News Release (20 December 2001), AR, Vol. XXIII, Tab 64 (Ex. 45) at 26
> Ministry of Agriculture and Food News Release (7 October 2002), AR, Vol. XXIII, Tab 64 (Ex. 46) at 39
> Hansard (7 October 2002), AR, Vol. XXIII, Tab 64 (Ex. 47) at 51-53
> Fudge Aff No. 1, AR, Vol. XVII, Tab 64 at 107-108
> *AEPA*, s. 1(1)

172. These same objectives were at issue in *Dunmore.* In that case, this Court accepted that the objectives of "protecting the unique characteristics of the family farm" and "ensuring farm productivity" were objectives that were sufficiently pressing and substantial to pass the first stage of s. 1 scrutiny under the *Charter.*

> *Dunmore v. Ontario, supra* at para. 52, 53

3. Rational Connection

173. In *Dunmore*, this Court held that restricting *Charter* rights to protect the family farm could only meet the rational connection test in strictly limited circumstances. Second, the Court rejected the notion that infringing farm workers' *Charter* rights was rationally connected to the objective of ensuring agricultural productivity.

> *Dunmore v. Ontario, supra* at para. 54-55
> Court of Appeal Decision, AR, Vol. I, Tab 4 at 69-71, para. 128-130

174. The same reasoning applies in the present case. First, there is no rational connection to the objective of protecting the family farm because the *LRA* and *AEPA* are not narrowly tailored to address the situation of the family farm. They deny all collective bargaining, even in large factory farms. This Court has already found that "in cases where the employment relationship is formalized to begin with, preserving 'flexibility and co-operation' in the name of the family farm is not only irrational, it is highly coercive."

Dunmore v. Ontario, supra at para. 54
Court of Appeal Decision, AR, Vol. I, Tab 4 at 32-33, para. 128-129

175. Second, as this Court has found, it is "highly arbitrary" to deny freedom of association on economic grounds for farm workers when these rights are extended to all workers, even in industries where there are thin profit margins and unpredictable production cycles.

Dunmore v. Ontario, supra at para. 55
Court of Appeal Decision, AR, Vol. I, Tab 4 at 69-71, para. 128-130

4. Does the violation impair *Charter* rights as little as possible?

176. The Respondents submit that the impugned statutes do not violate agricultural workers' *Charter* rights as little as possible. First, agricultural workers' exclusion from rights under the *LRA* is not limited to workers employed on family farms. This can be contrasted with Québec and New Brunswick where full labour relations protection is granted to all farm workers except those on farms with less than 3 and 5 employees, respectively.

Fudge Aff No. 1, AR, Vol. XVII, Tab 64 at 104
Wellington Mushroom Farm, supra at para. 20-25, 29
Québec Labour Code, R.S.Q. c. C-27, s. 21
Industrial Relations Act (New Brunswick), R.S.N.B. 1973, c. I-4, s. 1(5)(a)

177. Second, the extent to which agricultural workers must be excluded from the *LRA* to protect the "family farm" is debatable. Not all farmers who operate family farms oppose unionization and collective bargaining. The National Farmers Union passed a resolution supporting farm employees' right to bargain collectively. The Ministry of Food and Agriculture itself promotes formalizing work relations on farms by using clear contracts.

Raper Aff No. 2, AR, Vol. XII, Tab 45 at 125-126
National Farmers Union Resolution, AR, Vol. XI, Tab 45 (Ex. D) at 155
Mawhiney Cr-ex, AR, Vol. IX, Tab 37 at 12-19, QQ 53-91 and Exhibits at AR, Vol. IX, Tab 38(3), (4) and (5) at 66-75

178. Third, the protections for the right to bargain collectively that the Respondents seek are extended to farm workers in all jurisdictions in Canada except Ontario and Alberta.

179. Fourth, the rights to bargain collectively have in fact previously been introduced in Ontario under the *Agricultural Labour Relations Act.*

180. Fifth, the Agricultural Labour Relations Task Force specifically addressed concerns regarding agricultural production processes, economic vulnerability of the sector and the family farm and developed consensus recommendations – endorsed by farm employers, farm labour and government alike – and established a framework for unionization and collective bargaining in Ontario agriculture that accommodated these concerns.

> Task Force on Agricultural Labour Relations Background Studies, Task Force Report (June 1992), Task Force Report (November 1992), AR, Vol. XXIV, Tab 65 (Ex. 5) 84-149, Tab 65 (Ex. 6) at 151-196, and Vol. XXV, Tab 65 (Ex. 7) at 2-29

181. Rather that seeking solutions that preserved farm workers' right to bargain collectively, the government was clear from the outset that collective bargaining for agricultural workers was not an option. Ontario has put forward no evidence that it searched for a solution that sought to minimize the impact on farm workers' rights. Other than the 1992 Task Force Reports, no studies were undertaken and no reports prepared addressing whether collective bargaining could be extended to farm workers. No studies or reports were prepared to address this prior to the enactment of the *AEPA.*

182. Even through the course of this litigation, the government's evidence has not addressed whether it is possible to minimize the impact on farm workers' rights to bargain collectively. Prof. Chaykowski's after-the-fact evidence was solely directed to addressing "the labour economics and labour relations policy rationales for excluding agricultural workers from Ontario legislation the provides workers with the right to bargain collectively with employers." He was not asked to, and did not consider, whether it was possible to include agricultural workers in collective bargaining legislation or to enact modified sectoral-specific legislation that protects collective bargaining for farm workers.

> Respondents' factum, *supra* at para. 121

183. The depth of the incursion on farm workers' rights is in no way needed to protect family farms from "labour disruption" or to protect agricultural production. As a complete denial of collective bargaining rights, without any attempt to minimize the denial, these incursions on *Charter* rights fall outside a range of "reasonable alternatives". The impugned legislation must fail for lack of minimal impairment.

B.C. Health Services, supra at para. 150, 154

5. Deleterious Effects of the Legislation

184. The Respondents submit that there are no salutary effects of the legislation which outweigh the deleterious effect on constitutional rights which are outlined above.

D. The Remedy Ordered by the Court of Appeal

185. The Respondents submit that both s. 3(b.1) of the *Labour Relations Act, 1995* and the entirety of the *AEPA* violate s.2(d) and s.15 of the *Charter*, that the violations cannot be justified under s. 1, and that both the *AEPA* and s. 3(b.1) of the *LRA* should accordingly be of no force and effect.

186. Where underinclusive legislation is in breach of the *Charter*, it is appropriate for the court to make a declaration of invalidity and to order that statutory protection be extended in a manner that complies with the reasons of the court.

Dunmore v. Ontario, supra at para. 66-67

187. The Respondents submit that the Court of Appeal correctly declared the *AEPA* unconstitutional and correctly provided guidance on the minimum legislative supports that are required in order to ensure that statutory protection complies with the *Charter*. The Court of Appeal suspended that declaration for 12 months so that appropriate legislation could be enacted. The Respondents submit that this approach is consistent with the separation of powers and is a good example of the constitutional dialogue between the courts and the legislature. While the Court of Appeal identified the substantive protections

that are necessary to ensure compliance with s. 2(d) in the particular circumstances dealing with farm workers, the Court of Appeal left it to the Legislature to determine how those supportive mechanisms would be implemented. The Court of Appeal wrote:

> This is not a situation where there is only one appropriate response to this decision. It is up to the legislature to assess the options, taking into account constitutional, labour relations and other factors, and to design a constitutionally acceptable model.
>
> Court of Appeal Decision, AR, Vol. I, Tab 4 at 73, para. 139

188. The Respondents submit that declaring s. 3(b.1) of the *LRA* unconstitutional equally flows from the reasoning of the Court of Appeal's decision and is an appropriate remedy.

PART IV: SUBMISSIONS ON COSTS

189. The Respondents submit that the underlying issues and the fundamental principles at stake in this appeal are not novel as suggested by Ontario. The fundamental principles were established in *Dunmore* and *B.C. Health Services*. Beginning with *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, [1991] 2 S.C.R. 5, and continuing through *Dunmore* and *B.C. Health Services*, this litigation represents the fourth time that UFCW Canada and its members have come before this Court seeking to protect farm workers rights to unionize and bargain collectively. The Respondents respectfully request their costs on this appeal and in the courts below.

PART V: ORDERS SOUGHT

190. The Respondents respectfully request that this appeal be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 12th DAY OF OCTOBER 2009.

Paul J.J. Cavalluzzo **Fay C. Faraday**

Counsel for the Respondents Fraser, UFCW Canada, Liu, McGorman and Church

PART VI: TABLE OF AUTHORITIES

Cases

Tab	Description	Cited in Factum (Paragraph numbers)
1.	*Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143	72, 136-137, 140-141
2.	*Baier v. Alberta*, [2007] 2 S.C.R. 673	69, 146, 148
3.	*British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3	74, 76
4.	*Corbière v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203	137, 141
5.	*Cuddy Chicks Ltd.*, [1988] OLRB Rep May 468	17-18
6.	*Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, [1991] 2 S.C.R. 5	189
7.	*C.U.P.E. v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539	131
8.	*Dartmouth/Halifax County Regional Housing Authority v. Sparks* (1993), 101 D.L.R. (4th) 224 (N.S. S.C. A.D.)	142
9.	*Delisle v. Canada (Deputy Attorney General)*, [1999] 2 S.C.R. 989	145-147
10.	*Dunmore v. Ontario (Attorney General)* [2001] 3 S.C.R. 1016	6, 12, 15, 29, 40, 65-71, 73, 77, 86-87, 93, 95, 98, 115, 125-126, 145, 147, 149-150, 154, 157, 159, 168, 172-175, 186
11.	*Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624	136
12.	*Ermineskin Indian Band and Nation v. Canada*, [2009] 1 S.C.R. 222	137
13.	*Falkiner v. Ontario (Ministry of Community and Social Services)* (2002), 59 O.R. (3d) 481 (C.A.)	142

Reports, Texts and Articles

PART VII: STATUTORY PROVISIONS

(Relevant Provisions of Statutes, Regulations and By-Laws)

A. *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A, excerpts from s. 1(1), 3, 7, 15, 17-21, 27, 35, 40, 43, 45, 47, 48, 56, 57, 58, 59, 70, 87, 96(1)-(3), 110, 119, 128.1

B. *Agricultural Employees Protection Act*, 2002, S.O. 2002, c. 16

C. *Agricultural Labour Relations Act*, S.O. 1994, c. 6

D. *Employment Standards Act, 2000*, S.O. 2000, c. 41, Parts VII, VIII, IX, X, XI

E. Exemptions, Special Rules and Establishment of Minimum Wage - O. Reg. 285/01 made under the *Employment Standards Act, 2000*, sections 2(2), 4(3), 8, 9, 24-27

F. Farming Operations - O. Reg. 414/05 made under the *Occupational Health and Safety Act*

G. *Ministry of Agriculture, Food and Rural Affairs Act*, R.S.O. 1990, c. M.16, s. 14(1.2)-(1.4)

H. Table of Correspondence between *Labour Relations Act, 1995* and Other Ontario Collective Bargaining Statutes

I. List of Canadian Collective Bargaining Statutes that apply to Agricultural Workers

J. *Québec Labour Code*, R.S.Q. c C-27, s. 21

K. *Industrial Relations Act (New Brunswick)*, R.S.N.B. 1973, c. I-4, s. 1(5)(a)

A ***Labour Relations Act, 1995*, s. 1(1), 3, 7, 15, 17-21, 27, 35, 40, 43, 45, 47, 48, 56, 57, 58, 59, 70, 87, 96(1)-(3), 110, 119, 128.1**

Definitions

1. (1) In this Act,

> "agriculture" includes farming in all its branches, including dairying, beekeeping, aquaculture, the raising of livestock including non-traditional livestock, furbearing animals and poultry, the production, cultivation, growing and harvesting of agricultural commodities, including eggs, maple products, mushrooms and tobacco, and any practices performed as an integral part of an agricultural operation, but does not include anything that was not or would not have been determined to be agriculture under section 2 of the predecessor to this Act as it read on June 22, 1994;

. . . . .

Non-application

3. This Act does not apply,

(a) to a domestic employed in a private home;
(b) to a person employed in hunting or trapping;
(b.1) to an employee within the meaning of the Agricultural Employees Protection Act, 2002;
(c) to a person, other than an employee of a municipality or a person employed in silviculture, who is employed in horticulture by an employer whose primary business is agriculture or horticulture;
(d) to a member of a police force within the meaning of the Police Services Act;
(e) except as provided in Part IX of the Fire Protection and Prevention Act, 1997, to a person who is a firefighter within the meaning of subsection 41 (1) of that Act;
(f) to a member of a teachers' bargaining unit established by Part X.1 of the Education Act, except as provided by that Part, or to a supervisory officer, a principal or a vice-principal;
(g) to a member of the Ontario Provincial Police Force;
(h) to an employee within the meaning of the Colleges Collective Bargaining Act;
(i) to a provincial judge; or
(j) to a person employed as a labour mediator or labour conciliator.

. . . . .

Application for certification

7. (1) Where no trade union has been certified as bargaining agent of the employees of an employer in a unit that a trade union claims to be appropriate for collective bargaining and the employees in the unit are not bound by a collective agreement, a trade union may apply at any time to the Board for certification as bargaining agent of the employees in the unit.

(2) Where a trade union has been certified as bargaining agent of the employees of an employer in a bargaining unit and has not entered into a collective agreement with the employer and no declaration has been made by the Board that the trade union no longer represents the employees in the bargaining unit, another trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit determined in the certificate only after the expiration of one year from the date of the certificate.

(3) Where an employer and a trade union agree that the employer recognizes the trade union as the exclusive bargaining agent of the employees in a defined bargaining unit and the agreement is in writing signed by the parties and the parties have not entered into a collective agreement and the Board has not made a declaration under section 66, another trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the recognition agreement only after the expiration of one year from the date that the recognition agreement was entered into.

(4) Where a collective agreement is for a term of not more than three years, a trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the commencement of the last three months of its operation.

(5) Where a collective agreement is for a term of more than three years, a trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the commencement of the 34th month of its operation and before the commencement of the 37th month of its operation and during the three-month period immediately preceding the end of each year that the agreement continues to operate thereafter or after the commencement of the last three months of its operation, as the case may be.

(6) Where a collective agreement referred to in subsection (4) or (5) provides that it will continue to operate for a further term or successive terms if either party fails to give to the other notice of termination or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement, a trade union may apply to the Board for

certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement during the further term or successive terms only during the last three months of each year that it so continues to operate, or after the commencement of the last three months of its operation, as the case may be.

(7) The right of a trade union to apply for certification under this section is subject to subsections 10 (3) and 11.1 (4), section 67, subsections 128.1 (10), (15), (21), (22) and (23) and subsection 160 (3).

(8) An application for certification may be withdrawn by the applicant upon such conditions as the Board may determine.

(9) Subject to subsection (9.1), if the trade union withdraws the application before a representation vote is taken, the Board may refuse to consider another application for certification by the trade union as the bargaining agent of the employees in the proposed bargaining unit until one year or such shorter period as the Board considers appropriate has elapsed after the application is withdrawn.

(9.1) If the trade union withdraws the application before a representation vote is taken, and that trade union had withdrawn a previous application under this section not more than six months earlier, the Board shall not consider another application for certification by any trade union as the bargaining agent of any employee that was in the bargaining unit proposed in the original application until one year has elapsed after the second application was withdrawn.

(9.2) Subsection (9.1) does not apply if the trade union that withdrew the application is a trade union that the Board is prohibited from certifying under section 15.

(9.3) Despite subsection (9.1), the Board may consider an application for certification by a trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

(a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and

(b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made.

(10) If the trade union withdraws the application after the representation vote is taken, the Board shall not consider another application for certification by any

trade union as the bargaining agent of any employee that was in the bargaining unit proposed in the original application until one year after the original application is withdrawn.

(10.1) Despite subsection (10), the Board may consider an application for certification by a trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

(a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and

(b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made.

(10.2) Subsection (10) does not apply if the trade union that withdrew the application is a trade union that the Board is prohibited from certifying under section 15.

(11) The trade union shall deliver a copy of the application for certification to the employer by such time as is required under the rules made by the Board and, if there is no rule, not later than the day on which the application is filed with the Board.

(12) The application for certification shall include a written description of the proposed bargaining unit including an estimate of the number of individuals in the unit.

(13) The application for certification shall be accompanied by a list of the names of the union members in the proposed bargaining unit and evidence of their status as union members, but the trade union shall not give this information to the employer.

(14) If the employer disagrees with the description of the proposed bargaining unit, the employer may give the Board a written description of the bargaining unit that the employer proposes and shall do so within two days (excluding Saturdays, Sundays and holidays) after the day on which the employer receives the application for certification.

.....

What unions not to be certified

15. The Board shall not certify a trade union if any employer or any employers' organization has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person because of

any ground of discrimination prohibited by the Human Rights Code or the Canadian Charter of Rights and Freedoms.

. . . . .

Obligation to bargain

17. The parties shall meet within 15 days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.

Appointment of conciliation officer

18. (1) Where notice has been given under section 16 or 59, the Minister, upon the request of either party, shall appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

(2) Despite the failure of a trade union to give written notice under section 16 or the failure of either party to give written notice under sections 59 and 131, where the parties have met and bargained, the Minister, upon the request of either party, may appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

(3) Where an employer and a trade union agree that the employer recognizes the trade union as the exclusive bargaining agent of the employees in a defined bargaining unit and the agreement is in writing signed by the parties, the Minister may, upon the request of either party, appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

(4) Despite anything in this Act, where the Minister has appointed a conciliation officer or a mediator and the parties have failed to enter into a collective agreement within 15 months from the date of such appointment, the Minister may, upon the joint request of the parties, again appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement, and, upon the appointment being made, sections 19 to 36 and 79 to 86 apply, but the appointment is not a bar to an application for certification or for a declaration that the trade union no longer represents the employees in the bargaining unit.

Appointment of mediator

19. (1) Where the Minister is required or authorized to appoint a conciliation officer, the Minister may, on the request in writing of the parties, appoint a mediator selected by them jointly before he or she has appointed a conciliation board or has informed the parties that he or she does not consider it advisable to

appoint a conciliation board.

(2) Where the Minister has appointed a mediator after a conciliation officer has been appointed, the appointment of the conciliation officer is thereby terminated.

Duties and report of conciliation officer

20. (1) Where a conciliation officer is appointed, he or she shall confer with the parties and endeavour to effect a collective agreement and he or she shall, within 14 days from his or her appointment, report the result of his or her endeavour to the Minister.

(2) The period mentioned in subsection (1) may be extended by agreement of the parties or by the Minister upon the advice of the conciliation officer that a collective agreement may be made within a reasonable time if the period is extended.

(3) Where the conciliation officer reports to the Minister that the differences between the parties concerning the terms of a collective agreement have been settled, the Minister shall forthwith by notice in writing inform the parties of the report.

Conciliation board, appointment of members

21. If the conciliation officer is unable to effect a collective agreement within the time allowed under section 20,

(a) the Minister shall forthwith by notice in writing request each of the parties, within five days of the receipt of the notice, to recommend one person to be a member of a conciliation board, and upon the receipt of the recommendations or upon the expiration of the five-day period he or she shall appoint two members who in his or her opinion represent the points of view of the respective parties, and the two members so appointed may, within three days after they are appointed, jointly recommend a third person to be a member and chair of the board, and upon the receipt of the recommendation or upon the expiration of the three-day period, he or she shall appoint a third person to be a member and chair of the board; or

(b) the Minister shall forthwith by notice in writing inform each of the parties that he or she does not consider it advisable to appoint a conciliation board.

.....

Duties

27. As soon as a conciliation board is established, it shall endeavour to effect agreement between the parties on the matters referred to it.

. . . . .

Mediator

35. (1) Where a mediator is appointed, he or she shall confer with the parties and endeavour to effect a collective agreement.

(2) A mediator has all the powers of a conciliation board under section 33.

(3) Sections 30 and 34 apply with necessary modifications to a mediator.

(4) The report of a mediator has the same effect as the report of a conciliation board.

. . . . .

Voluntary arbitration

40. (1) Despite any other provision of this Act, the parties may at any time following the giving of notice of desire to bargain under section 16 or 59, irrevocably agree in writing to refer all matters remaining in dispute between them to an arbitrator or a board of arbitration for final and binding determination.

(2) The agreement to arbitrate shall supersede all other dispute settlement provisions of this Act, including those provisions relating to conciliation, mediation, strike and lock-out, and the provisions of subsections 48 (7), (8), (11), (12) and (18) to (20) apply with necessary modifications to the proceedings before the arbitrator or board of arbitration and to its decision under this section.

(3) For the purposes of section 67 and section 132, an irrevocable agreement in writing referred to in subsection (1) shall have the same effect as a collective agreement.

. . . . .

First agreement arbitration

43. (1) Where the parties are unable to effect a first collective agreement and the Minister has released a notice that it is not considered advisable to appoint a conciliation board or the Minister has released the report of a conciliation board, either party may apply to the Board to direct the settlement of a first collective agreement by arbitration.

. . .

Recognition provisions

45. (1) Every collective agreement shall be deemed to provide that the trade union that is a party thereto is recognized as the exclusive bargaining agent of the employees in the bargaining unit defined therein.

. . . . .

Deduction and remittance of union dues

47. (1) Except in the construction industry and subject to section 52, where a trade union that is the bargaining agent for employees in a bargaining unit so requests, there shall be included in the collective agreement between the trade union and the employer of the employees a provision requiring the employer to deduct from the wages of each employee in the unit affected by the collective agreement, whether or not the employee is a member of the union, the amount of the regular union dues and to remit the amount to the trade union, forthwith.

. . .

Arbitration

48. (1) Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

(2) If a collective agreement does not contain a provision that is mentioned in subsection (1), it shall be deemed to contain a provision to the following effect:

> Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties may after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration and the notice shall contain the name of the first party's appointee to an arbitration board.

The recipient of the notice shall within five days inform the other party of the name of its appointee to the arbitration board. The two appointees so selected shall, within five days of the appointment of the second of them, appoint a third person who shall be the chair. If the recipient of the notice fails to appoint an arbitrator, or if the two appointees fail to agree upon a chair within the time limited, the appointment shall be made by the Minister of Labour for Ontario upon the request of either party. The arbitration board shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it. The decision of a majority is the decision of the arbitration board, but if there is no majority the decision of the chair governs.

(3) If, in the opinion of the Board, any part of the arbitration provision, including the method of appointment of the arbitrator or arbitration board, is inadequate, or if the provision set out in subsection (2) is alleged by either party to be unsuitable, the Board may, on the request of either party, modify the provision so long as it conforms with subsection (1), but, until so modified, the arbitration provision in the collective agreement or in subsection (2), as the case may be, applies.

(4) Despite subsection (3), if there is failure to appoint an arbitrator or to constitute a board of arbitration under a collective agreement, the Minister, upon the request of either party, may appoint the arbitrator or make the appointments that are necessary to constitute the board of arbitration, as the case may be, and any person so appointed by the Minister shall be deemed to have been appointed in accordance with the collective agreement.

(5) On the request of either party, the Minister may appoint a settlement officer to endeavour to effect a settlement before the arbitrator or arbitration board appointed under subsection (4) begins to hear the arbitration. However, no appointment shall be made if the other party objects.

(6) Where the Minister has appointed an arbitrator or the chair of a board of arbitration under subsection (4), each of the parties shall pay one-half the remuneration and expenses of the person appointed, and, where the Minister has appointed a member of a board of arbitration under subsection (4) on failure of one of the parties to make the appointment, that party shall pay the remuneration and expenses of the person appointed.

...

(18) The decision of an arbitrator or of an arbitration board is binding,
(a) upon the parties;

(b) in the case of a collective agreement between a trade union and an employers' organization, upon the employers covered by the agreement who are affected by the decision;

(c) in the case of a collective agreement between a council of trade unions and an employer or an employers' organization, upon the members or affiliates of the council and the employer or the employers covered by the agreement, as the case may be, who are affected by the decision; and

(d) upon the employees covered by the agreement who are affected by the decision,

and the parties, employers, trade unions and employees shall do or abstain from doing anything required of them by the decision.

(19) Where a party, employer, trade union or employee has failed to comply with any of the terms of the decision of an arbitrator or arbitration board, any party, employer, trade union or employee affected by the decision may file in the Superior Court of Justice a copy of the decision, exclusive of the reasons therefor, in the prescribed form, whereupon the decision shall be entered in the same way as a judgment or order of that court and is enforceable as such.

. . .

. . . . .

Binding effect of collective agreements on employers, trade unions and employees

56. A collective agreement is, subject to and for the purposes of this Act, binding upon the employer and upon the trade union that is a party to the agreement whether or not the trade union is certified and upon the employees in the bargaining unit defined in the agreement.

Binding effect of collective agreements: other

57. (1) A collective agreement between an employers' organization and a trade union or council of trade unions is, subject to and for the purposes of this Act, binding upon the employers' organization and each person who was a member of the employers' organization at the time the agreement was entered into and on whose behalf the employers' organization bargained with the trade union or council of trade unions as if it was made between each of such persons and the trade union or council of trade unions and upon the employees in the bargaining unit defined in the agreement, and, if any such

person ceases to be a member of the employers' organization during the term of operation of the agreement, the person shall, for the remainder of the term of operation of the agreement, be deemed to be a party to a like agreement with the trade union or council of trade unions.

(2) When an employers' organization commences to bargain with a trade union or council of trade unions, it shall deliver to the trade union, or council of trade unions a list of the names of the employers on whose behalf it is bargaining and, in default of so doing, it shall be deemed to bargain for all members of the employers' organization for whose employees the trade union or council of trade unions is entitled to bargain and to make a collective agreement at that time, except an employer who, either alone or through the employers' organization, has notified the trade union or council of trade unions in writing before the agreement was entered into that the employer will not be bound by a collective agreement between the employers' organization and the trade union or council of trade unions.

(3) A collective agreement between a certified council of trade unions and an employer is, subject to and for the purposes of this Act, binding upon each trade union that is a constituent union of such a council as if it had been made between each of such trade unions and the employer.

(4) A collective agreement between a council of trade unions, other than a certified council of trade unions, and an employer or an employers' organization is, subject to and for the purposes of this Act, binding upon the council of trade unions and each trade union that was a member of or affiliated with the council of trade unions at the time the agreement was entered into and on whose behalf the council of trade unions bargained with the employer or employers' organization as if it was made between each of such trade unions and the employer or employers' organization, and upon the employees in the bargaining unit defined in the agreement and, if any such trade union ceases to be a member of or affiliated with the council of trade unions during the term of operation of the agreement, it shall, for the remainder of the term of operation of the agreement, be deemed to be a party to a like agreement with the employer or employers' organization, as the case may be.

(5) Where a council of trade unions, other than a certified council of trade unions, commences to bargain with an employer or an employers' organization, it shall deliver to the employer or employers' organization a list of the names of the trade unions on whose behalf it is bargaining and, in default of so doing, it shall be deemed to bargain for all members or affiliates of the council of trade unions for whose employees the respective trade unions are entitled to bargain and to make a collective agreement at that time with the employer or the employers' organization, except a trade union that, either by itself or through the council of trade unions, has notified the

employer or employer's organization in writing before the agreement is entered into that it will not be bound by a collective agreement between the council of trade unions and the employer or employers' organization.

Minimum term of collective agreements

58. (1) If a collective agreement does not provide for its term of operation or provides for its operation for an unspecified term or for a term of less than one year, it shall be deemed to provide for its operation for a term of one year from the date that it commenced to operate.

(2) Despite subsection (1), the parties may, in a collective agreement or otherwise and before or after the collective agreement has ceased to operate, agree to continue the operation of the collective agreement or any of its provisions for a period of less than one year while they are bargaining for its renewal with or without modifications or for a new agreement, but such continued operation does not bar an application for certification or for a declaration that the trade union no longer represents the employees in the bargaining unit and the continuation of the collective agreement may be terminated by either party upon 30 days notice to the other party.

(3) A collective agreement shall not be terminated by the parties before it ceases to operate in accordance with its provisions or this Act without the consent of the Board on the joint application of the parties.

(4) Despite anything in this section, where an employer joins an employers' organization that is a party to a collective agreement with a trade union or council of trade unions and the employer agrees with the trade union or council of trade unions to be bound by the collective agreement between the trade union or council of trade unions and the employers' organization, the agreement ceases to be binding upon the employer and the trade union or council of trade unions at the same time as the agreement between the employers' organization and the trade union or council of trade unions ceases to be binding.

(5) Nothing in this section prevents the revision by mutual consent of the parties at any time of any provision of a collective agreement other than a provision relating to its term of operation.

Notice of desire to bargain for new collective agreement

59. (1) Either party to a collective agreement may, within the period of 90 days before the agreement ceases to operate, give notice in writing to the other party of its desire to bargain with a view to the renewal, with or without modifications, of the agreement then in operation or to the making of a new agreement.

. . .

. . . . .

Employers, etc., not to interfere with unions

70. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

. . . . .

Protection of witnesses rights

87. (1) No employer, employers' organization or person acting on behalf of an employer or employers' organization shall,

(a) refuse to employ or continue to employ a person;

(b) threaten dismissal or otherwise threaten a person;

(c) discriminate against a person in regard to employment or a term or condition of employment; or

(d) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that the person may testify in a proceeding under this Act or because the person has made or is about to make a disclosure that may be required in a proceeding under this Act or because the person has made an application or filed a complaint under this Act or has participated in or is about to participate in a proceeding under this Act.

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Inquiry, alleged contravention

96. (1) The Board may authorize a labour relations officer to inquire into any complaint alleging a contravention of this Act.

(2) The labour relations officer shall forthwith inquire into the complaint and endeavour to effect a settlement of the matter complained of.

(3) The labour relations officer shall report the results of his or her inquiry and endeavours to the Board.

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Board

110. (1) The board known as the Ontario Labour Relations Board is continued under the name Ontario Labour Relations Board in English and Commission des relations de travail de l'Ontario in French.

(2) The Board shall be composed of a chair, one or more vice-chairs and as many members equal in number representative of employers and employees respectively as the Lieutenant Governor in Council considers proper, all of whom shall be appointed by the Lieutenant Governor in Council.

. . .

(5) One of the divisions of the Board shall be designated by the chair as the construction industry division, and it shall exercise the powers of the Board under this Act in proceedings to which sections 126 to 168 apply, but nothing in this subsection impairs the authority of any other division to exercise such powers.

. . .

(9) The chair or a vice-chair, one member representative of employers and one member representative of employees constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Board.

. . .

(16) The Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings to present their evidence and to make their submissions.

(17) The chair may make rules governing the Board's practice and procedure and the exercise of its powers and prescribing such forms as the chair considers advisable.

(18) The chair may make rules to expedite proceedings to which the following provisions apply:

0.1 Section 8.1 (Disagreement by employer with union's estimate).
1. Section 13 (right of access) or 98 (interim orders).
2. Section 99 (jurisdictional, etc., disputes).
3. Subsection 114 (2) (status as employee or guard).
4. Sections 126 to 168 (construction industry).
5. Such other provisions as the Lieutenant Governor in Council may by regulation designate.

(19) Rules made under subsection (18) come into force on such dates as the Lieutenant Governor in Council may by order determine.

(20) Rules made under subsection (18),

(a) may provide that the Board is not required to hold a hearing;

(b) may limit the extent to which the Board is required to give full opportunity to the parties to present their evidence and to make their submissions; and

(c) may authorize the Board to make or cause to be made such examination of records and such other inquiries as it considers necessary in the circumstances.

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Secrecy

119. (1) The records of a trade union relating to membership or any records that may disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union produced in a proceeding before the Board is for the exclusive use of the Board and its officers and shall not, except with the consent of the Board, be disclosed, and no person shall, except with the consent of the Board, be compelled to disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union.

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CONSTRUCTION INDUSTRY

Application for certification without a vote

Election

128.1 (1) A trade union applying for certification as bargaining agent of the employees of an employer may elect to have its application dealt with under this section rather than under section 8.

. . .

(13) If the Board is satisfied that more than 55 per cent of the employees in the bargaining unit are members of the trade union on the date the application is filed, it may,

(a) certify the trade union as the bargaining agent of the employees in the bargaining unit; or

(b) direct that a representation vote be taken.

1. *LOI DE 1995 SUR LES RELATIONS DE TRAVAIL*, s. 1(1), 3, 7, 15, 17-21, 27, 35, 40, 43, 45, 47, 48, 56, 57, 58, 59, 70, 87, 96(1)-(3), 110, 119, 128.1

Définitions

1. (1) Les définitions qui suivent s'appliquent à la présente loi.

«agriculture» S'entend de tous ses domaines d'activité, notamment la production laitière, l'apiculture, l'aquiculture, l'élevage du bétail, dont l'élevage non traditionnel, l'élevage des animaux à fourrure et de la volaille, la production, la culture et la récolte de produits agricoles, y compris les œufs, les produits de l'érable, les champignons et le tabac, et toutes les pratiques qui font partie intégrante d'une exploitation agricole. La présente définition exclut toutefois tout ce qui n'a pas ou n'aurait pas été établi comme étant de l'agriculture aux termes de l'article 2 de la Loi que la présente loi remplace telle qu'elle existait au 22 juin 1994. («agriculture»)

Non-application

3. La présente loi ne s'applique pas, selon le cas :

a) au domestique employé dans un foyer privé;

b) à la personne qui est employée à la chasse ou au piégeage;

b.1) à l'employé au sens de la Loi de 2002 sur la protection des employés agricoles;

c) à la personne qui est employée dans l'horticulture par un employeur dont l'entreprise principale est l'agriculture ou l'horticulture, sauf si elle est au service d'une municipalité ou employée en sylviculture;

d) au membre d'un corps de police au sens de la Loi sur les services policiers;

e) sauf disposition contraire de la partie IX de la Loi de 1997 sur la prévention et la protection contre l'incendie, à la personne qui est un pompier au sens du paragraphe 41 (1) de cette loi;

f) au membre d'une unité de négociation d'enseignants constituée par la partie X.1 de la Loi sur l'éducation, sauf disposition contraire de cette partie, ni à l'agent de supervision, au directeur d'école ou au directeur adjoint;

g) Abrogé : 2006, chap. 35, annexe C, par. 57 (2).

h) à l'employé d'un collège d'arts appliqués et de technologie;

i) au juge provincial;

j) à la personne employée comme médiateur ou conciliateur en matière de relations de travail. 1995, chap. 1, annexe A, art. 3; 1997, chap. 4, art. 83; 1997, chap. 31, art. 151; 2002, chap. 16, art. 20; 2006, chap. 35, annexe C, par. 57 (2).

Requête en accréditation

7. (1) Si aucun syndicat n'a été accrédité comme agent négociateur pour les employés d'un même employeur compris dans une unité que le syndicat prétend appropriée pour négocier collectivement, et que ces employés ne sont pas liés par une convention collective, un syndicat peut demander à la Commission par voie de requête de l'accréditer comme leur agent négociateur. 1995, chap. 1, annexe A, par. 7 (1).

(2) Si un syndicat qui est accrédité comme agent négociateur des employés d'un même employeur compris dans une unité de négociation n'a pas conclu de convention collective avec ce dernier et que la Commission n'a pas déclaré qu'il ne représente plus ces employés, un autre syndicat peut, s'il s'est écoulé un délai d'un an à compter de la date de l'accréditation, demander à la Commission par voie de requête de l'accréditer comme agent négociateur de tous les employés ou de quelques-uns d'entre eux compris dans l'unité de négociation décrite dans le certificat d'accréditation. 1995, chap. 1, annexe A, par. 7 (2).

(3) Si l'employeur et le syndicat, dans un accord écrit signé par eux, reconnaissent le syndicat comme étant l'unique agent négociateur des employés compris dans une unité de négociation définie, qu'ils n'ont pas conclu de convention collective et que la Commission n'a pas fait la déclaration prévue à l'article 66, un autre syndicat peut, s'il s'est écoulé un délai d'un an à compter de la date de l'accord, demander à la Commission par voie de requête de l'accréditer comme agent négociateur de tous les employés ou de quelques-uns d'entre eux compris dans l'unité de négociation définie par l'accord. 1995, chap. 1, annexe A, par. 7 (3).

(4) Si la durée de la convention collective n'excède pas trois ans, ce n'est qu'après le début des trois derniers mois de son application qu'un syndicat peut demander à la Commission par voie de requête de l'accréditer comme agent négociateur de tous les employés ou de quelques-uns d'entre eux compris dans l'unité de négociation définie par la convention. 1995, chap. 1, annexe A, par. 7 (4); 2000, chap. 38, par. 2 (1).

(5) Si la durée de la convention collective excède trois ans, ce n'est qu'après le début du 34e mois de son application et avant le début du 37e mois de son application, et, ensuite, pendant les trois mois qui précèdent immédiatement la fin de chaque année pendant laquelle elle continue de s'appliquer ou après le début des trois derniers mois de son application, selon le cas, qu'un syndicat peut demander à la Commission de l'accréditer comme agent négociateur de tous les employés ou de quelques-uns d'entre eux compris dans l'unité de négociation définie par la convention. 2000, chap. 38, par. 2 (2).

(6) Si la convention collective visée au paragraphe (4) ou (5) prévoit sa reconduction tacite pour une autre période ou pour des périodes successives, à défaut par une partie de donner à l'autre un avis de dénonciation ou un avis de son intention de négocier en vue de son renouvellement, sous réserve ou non de modifications, ou de son remplacement, ce n'est que pendant les trois derniers mois de chaque année de sa reconduction ou après le début des trois derniers mois de son application, selon le cas, qu'un syndicat peut demander à la Commission de l'accréditer comme agent négociateur de tous les employés ou quelques-uns d'entre eux compris dans l'unité de

négociation définie par la convention pour l'autre période ou les périodes successives. 1995, chap. 1, annexe A, par. 7 (6); 2000, chap. 38, par. 2 (3).

Restriction

(7) Le droit qu'a un syndicat de présenter une requête en accréditation aux termes du présent article est assujetti aux paragraphes 10 (3) et 11.1 (4), à l'article 67, aux paragraphes 128.1 (10), (15), (21), (22) et (23) et au paragraphe 160 (3). 2005, chap. 15, art. 1.

Retrait de la requête

(8) La requête en accréditation peut être retirée par le requérant aux conditions que fixe la Commission. 1995, chap. 1, annexe A, par. 7 (8).

Interdiction

(9) Sous réserve du paragraphe (9.1), si le syndicat retire la requête avant que ne soit tenu un scrutin de représentation, la Commission peut refuser d'examiner une autre requête en accréditation du syndicat comme agent négociateur des employés compris dans l'unité de négociation proposée tant qu'il ne s'est pas écoulé un an ou la période plus courte que la Commission juge appropriée après le retrait de la requête. 1995, chap. 1, annexe A, par. 7 (9); 2000, chap. 38, par. 2 (4).

Interdiction obligatoire

(9.1) Si le syndicat retire la requête avant la tenue d'un scrutin de représentation et qu'il a déjà retiré une requête prévue au présent article dans les six mois qui précèdent, la Commission ne peut examiner aucune autre requête en accréditation de n'importe quel syndicat comme agent négociateur de tout employé qui était compris dans l'unité de négociation proposée dans la requête initiale tant qu'il ne s'est pas écoulé un an après le retrait de la deuxième requête. 2000, chap. 38, par. 2 (5).

Exception

(9.2) Le paragraphe (9.1) ne s'applique pas s'il est interdit à la Commission, aux termes de l'article 15, d'accréditer le syndicat qui a retiré la requête. 2000, chap. 38, par. 2 (5).

(9.3) Malgré le paragraphe (9.1), la Commission peut examiner une requête en accréditation d'un syndicat comme agent négociateur des employés compris dans une unité de négociation qui compte un employé qui était compris dans l'unité de négociation proposée dans la requête initiale si :

a) d'une part, le poste qu'occupait l'employé au moment de la présentation de la requête initiale est différent de celui qu'il occupe au moment de la présentation de la nouvelle requête;

b) d'autre part, l'employé ne serait pas compris dans l'unité de négociation proposée dans la nouvelle requête s'il occupait toujours son poste initial au moment de la présentation de celle-ci. 2000, chap. 38, par. 2 (5).

(10) Si le syndicat retire la requête après la tenue du scrutin de représentation, la Commission ne peut examiner aucune autre requête en accréditation de n'importe quel syndicat comme agent négociateur de tout employé qui était compris dans l'unité de négociation proposée dans la requête initiale tant qu'il ne s'est pas écoulé un an après le retrait de celle-ci. 2000, chap. 38, par. 2 (6).

(10.1) Malgré le paragraphe (10), la Commission peut examiner une requête en accréditation d'un syndicat comme agent négociateur des employés compris dans une unité de négociation qui compte un employé qui était compris dans l'unité de négociation proposée dans la requête initiale si :

a) d'une part, le poste qu'occupait l'employé au moment de la présentation de la requête initiale est différent de celui qu'il occupe au moment de la présentation de la nouvelle requête;

b) d'autre part, l'employé ne serait pas compris dans l'unité de négociation proposée dans la nouvelle requête s'il occupait toujours son poste initial au moment de la présentation de celle-ci. 2000, chap. 38, par. 2 (6).

Exception

(10.2) Le paragraphe (10) ne s'applique pas s'il est interdit à la Commission, aux termes de l'article 15, d'accréditer le syndicat qui a retiré la requête. 2000, chap. 38, par. 2 (6).

Avis à l'employeur

(11) Le syndicat remet une copie de la requête en accréditation à l'employeur dans les délais prévus par les règles établies par la Commission et, en l'absence de règles, au plus tard le jour où la requête est déposée auprès de la Commission. 1995, chap. 1, annexe A, par. 7 (11).

Unité de négociation proposée

(12) La requête en accréditation contient une description écrite de l'unité de négociation proposée, notamment une estimation du nombre de particuliers compris dans l'unité. 1995, chap. 1, annexe A, par. 7 (12).

Preuve

(13) La requête en accréditation est accompagnée d'une liste des noms des membres

du syndicat compris dans l'unité de négociation proposée et d'une preuve de leur qualité de membres du syndicat, mais le syndicat ne doit pas fournir ces renseignements à l'employeur. 1995, chap. 1, annexe A, par. 7 (13).

(14) Si l'employeur n'est pas d'accord en ce qui concerne la description de l'unité de négociation proposée, il peut donner à la Commission, dans les deux jours, exception faite des samedis, des dimanches et des jours fériés, qui suivent le jour où il reçoit la requête en accréditation, une description écrite de l'unité de négociation qu'il propose. 1995, chap. 1, annexe A, par. 7 (14).

Motifs de refuser l'accréditation

15. La Commission n'accrédite pas un syndicat si un employeur ou une association patronale a participé à sa formation ou à son administration ou lui a fourni de l'aide financière ou autre, ni si le syndicat pratique une discrimination fondée sur une base de discrimination qui est interdite aux termes du Code des droits de la personne ou de la Charte canadienne des droits et libertés. 1995, chap. 1, annexe A, art. 15.

Obligation de négocier

17. Les parties se rencontrent dans les 15 jours de la date de l'avis ou dans le délai plus long dont elles conviennent. Elles négocient de bonne foi et font des efforts raisonnables afin de parvenir à une convention collective. 1995, chap. 1, annexe A, art. 17.

Désignation d'un conciliateur

18. (1) À la demande de l'une ou l'autre partie après que l'avis prévu à l'article 16 ou 59 a été donné, le ministre désigne un conciliateur pour s'entretenir avec les parties et s'efforcer de parvenir à une convention collective.

Idem, cas où l'avis n'est pas donné

(2) À la demande de l'une ou l'autre partie, après qu'elles se sont rencontrées et ont négocié, même si le syndicat n'a pas donné l'avis prévu à l'article 16 ou si l'une ou l'autre des parties n'a pas donné l'avis prévu aux articles 59 et 131, le ministre peut désigner un conciliateur pour s'entretenir avec les parties et s'efforcer de parvenir à une convention collective.

Idem, reconnaissance volontaire

(3) Si un employeur et un syndicat conviennent que l'employeur reconnaît le syndicat comme seul agent négociateur des employés d'une unité de négociation définie, et que l'accord a été conclu par écrit et signé par les parties, le ministre peut, à la demande de l'une ou l'autre, désigner un conciliateur pour s'entretenir avec les parties et s'efforcer de parvenir à une convention collective.

Seconde conciliation

(4) Malgré toute disposition de la présente loi, si le ministre a désigné un conciliateur ou un médiateur et que les parties ne sont pas parvenues à une convention collective dans les 15 mois de cette désignation, le ministre peut, à la demande commune des parties, désigner un autre conciliateur pour s'entretenir avec elles et s'efforcer de parvenir à une convention collective. Les articles 19 à 36 et 79 à 86 s'appliquent après cette désignation, mais celle-ci ne fait pas obstacle à une requête en accréditation ni à une requête en vue d'obtenir une déclaration selon laquelle le syndicat ne représente plus les employés dans l'unité de négociation. 1995, chap. 1, annexe A, art. 18.

Désignation du médiateur

19. (1) Lorsque le ministre doit ou peut désigner un conciliateur, il peut, à la demande écrite des parties, désigner le médiateur qu'elles choisissent d'un commun accord avant de constituer une commission de conciliation ou d'informer les parties qu'il ne juge pas opportun d'en désigner une.

(2) La désignation d'un médiateur après qu'un conciliateur a été désigné met fin au mandat de ce dernier. 1995, chap. 1, annexe A, art. 19.

Obligations et rapport du conciliateur

20. (1) Le conciliateur s'entretient avec les parties et s'efforce de parvenir à une convention collective. Dans les 14 jours de sa désignation, il fait rapport au ministre du résultat de ses efforts.

Prorogation du délai de 14 jours

(2) Le délai prévu au paragraphe (1) peut être prorogé de l'accord des parties ou par le ministre, si le conciliateur est d'avis que la prorogation permettra de conclure une convention collective dans un délai raisonnable.

Rapport sur l'entente

(3) Dès que le conciliateur a fait rapport au ministre que les différends entre les parties au sujet des conditions d'une convention collective ont été réglés, le ministre, sans délai, par avis écrit, informe les parties du contenu du rapport. 1995, chap. 1, annexe A, art. 20.

Désignation des membres d'une commission de conciliation

21. Si le conciliateur ne parvient pas à conclure une convention collective dans le délai prévu à l'article 20, le ministre, sans délai, par avis écrit, prend l'une ou l'autre des mesures suivantes:

a) il demande à chacune des parties de recommander, dans les cinq jours de la réception de l'avis, le nom d'une personne appelée à faire partie d'une commission de conciliation et, à la réception des recommandations qui lui sont faites ou à la fin du délai

de cinq jours, il désigne deux membres de la commission qui, à son avis, représentent les points de vue respectifs des parties. Les deux membres ainsi désignés, dans les trois jours de leur désignation, peuvent recommander d'un commun accord une troisième personne à titre de membre et de président de la commission. À la réception de cette recommandation ou à la fin du délai de trois jours, le ministre désigne un troisième membre à la présidence de la commission;

b) il informe chaque partie qu'il ne juge pas opportun de constituer une commission de conciliation. 1995, chap. 1, annexe A, art. 21.

Obligations

27. Dès sa constitution, la commission de conciliation s'efforce de parvenir à un accord entre les parties sur les questions qui lui sont soumises. 1995, chap. 1, annexe A, art. 27.

Médiateur

35. (1) Dès sa désignation, le médiateur s'entretient avec les parties et s'efforce de parvenir à une convention collective.

Pouvoirs

(2) Le médiateur possède tous les pouvoirs que l'article 33 confère à une commission de conciliation.

Champ d'application des art. 30 et 34

(3) Les articles 30 et 34 s'appliquent au médiateur avec les adaptations nécessaires.

Accord d'arbitrage

40. (1) Malgré toute autre disposition de la présente loi, les parties peuvent, en tout temps après avoir donné l'avis de leur intention de négocier prévu à l'article 16 ou 59, convenir irrévocablement par écrit de soumettre toutes les questions encore en litige à un arbitre ou à un conseil d'arbitrage dont la décision a force de chose jugée.

Pouvoirs de l'arbitre ou du conseil d'arbitrage

(2) Cet accord d'arbitrage remplace toute disposition de la présente loi relative au règlement des différends, y compris celles qui se rapportent à la conciliation, à la médiation, à la grève ou au lock-out. Les dispositions des paragraphes 48 (7), (8), (11), (12) et (18) à (20) s'appliquent, avec les adaptations nécessaires, aux instances tenues devant l'arbitre ou le conseil d'arbitrage et à la décision rendue en vertu du présent article.

Effet de l'accord d'arbitrage

(3) Pour l'application des articles 67 et 132, l'accord d'arbitrage écrit et irrévocable visé

au paragraphe (1) a la même valeur qu'une convention collective. 1995, chap. 1, annexe A, art. 40.

Arbitrage de la première convention

43. (1) Si les parties ne sont pas en mesure de conclure une première convention collective et que le ministre a donné avis qu'il n'était pas opportun de constituer une commission de conciliation ou s'il a communiqué le rapport de celle-ci, l'une ou l'autre des parties peut demander à la Commission par voie de requête de confier à l'arbitrage le règlement d'une première convention collective. 1995, chap. 1, annexe A, par. 43 (1).

Stipulations sur la reconnaissance

45. (1) Chaque convention collective est réputée stipuler que le syndicat partie à la convention est reconnu comme le seul agent négociateur des employés compris dans l'unité de négociation qui y est définie.

Retenue et remise des cotisations syndicales

47. (1) Sauf s'il s'agit de l'industrie de la construction et sous réserve de l'article 52, lorsqu'un syndicat, qui est l'agent négociateur des employés compris dans une unité de négociation, en fait la demande, la convention entre celui-ci et leur employeur contient une stipulation obligeant ce dernier à retenir du salaire de chacun de ces employés qui est visé par la convention collective, qu'ils soient ou non membres du syndicat, le montant des cotisations syndicales ordinaires et à les remettre sans délai au syndicat.

Arbitrage

48. (1) Chaque convention collective contient une disposition sur le règlement, par voie de décision arbitrale définitive et sans interruption du travail, de tous les différends entre les parties que soulèvent l'interprétation, l'application, l'administration ou une prétendue violation de la convention collective, y compris la question de savoir s'il y a matière à arbitrage. 1995, chap. 1, annexe A, par. 48 (1).

(2) La convention collective qui ne contient pas la disposition visée au paragraphe (1) est réputée inclure une disposition à l'effet suivant :

En cas de différend entre les parties relativement à l'interprétation, à l'application ou à l'administration de la présente convention, y compris sur la question de savoir s'il y a matière à arbitrage, ou d'allégation portant qu'il y a eu violation de la présente convention, une partie peut, après avoir épuisé la procédure de grief établie par la présente convention, aviser l'autre partie par écrit de son intention de soumettre le différend ou l'allégation à l'arbitrage. L'avis contient le nom de la personne que l'expéditeur désigne au conseil d'arbitrage. Dans les cinq jours, le destinataire informe l'expéditeur du nom de la personne qu'il désigne au conseil d'arbitrage. Les deux personnes ainsi choisies, dans les cinq jours de la seconde désignation, désignent une troisième personne à la présidence. Si le destinataire ne fait pas de désignation ou que les deux personnes désignées ne s'entendent pas sur le choix du président dans le

délai imparti, le ministre du Travail de l'Ontario, à la demande de l'une ou de l'autre partie, désigne le président. Le conseil d'arbitrage entend et règle le différend ou l'allégation et rend une décision qui est définitive et qui lie les parties et les employés ou employeurs visés. La décision de la majorité constitue la décision du conseil d'arbitrage. S'il n'y a pas de majorité, la voix du président est prépondérante. 1995, chap. 1, annexe A, par. 48 (2).

Cas où la disposition sur l'arbitrage est inadéquate

(3) Si, de l'avis de la Commission, un élément de la disposition relative à l'arbitrage, et notamment la modalité prévue pour désigner un arbitre ou constituer le conseil d'arbitrage, est inadéquate, ou si l'une ou l'autre partie prétend que la disposition énoncée au paragraphe (2) ne convient pas, la Commission peut, à la demande de l'une d'elles, la modifier, dans les limites du paragraphe (1). Tant qu'elle n'a pas été ainsi modifiée, cette disposition ou celle qui est prévue au paragraphe (2), selon le cas, s'applique. 1995, chap. 1, annexe A, par. 48 (3).

Désignation d'un arbitre par le ministre

(4) Malgré le paragraphe (3), s'il y a défaut de désigner un arbitre ou de constituer un conseil d'arbitrage aux termes d'une convention collective, le ministre, à la demande d'une partie, peut, selon le cas, désigner l'arbitre ou constituer le conseil d'arbitrage. Les personnes désignées par le ministre sont réputées l'avoir été conformément à la convention collective. 1995, chap. 1, annexe A, par. 48 (4).

Désignation d'un agent de règlement

(5) À la demande de l'une ou l'autre partie, le ministre peut désigner un agent de règlement pour s'efforcer de parvenir à un règlement avant que ne débute l'audition de l'arbitrage par l'arbitre ou le conseil d'arbitrage désigné en vertu du paragraphe (4). Toutefois, aucune désignation ne doit être faite si l'autre partie s'y oppose. 1995, chap. 1, annexe A, par. 48 (5); 1998, chap. 8, art. 7.

Rémunération des arbitres

(6) Si le ministre a désigné un arbitre ou le président d'un conseil d'arbitrage en vertu du paragraphe (4), chaque partie verse la moitié de la rémunération et des indemnités auxquelles la personne désignée a droit. Si le ministre a désigné un membre du conseil d'arbitrage en vertu du paragraphe (4) à la suite du défaut d'une partie de procéder à cette désignation, la partie en défaut verse la rémunération et les indemnités auxquelles la personne désignée a droit. 1995, chap. 1, annexe A, par. 48 (6).

(18) La décision de l'arbitre ou du conseil d'arbitrage lie :

a) les parties;

b) dans le cas d'une convention collective entre un syndicat et une association patronale, les employeurs à qui s'applique la convention collective et qui sont

visés par la décision;

c) dans le cas d'une convention collective entre un conseil de syndicats et un employeur ou une association patronale, les membres ou les affiliés du conseil et l'employeur ou les employeurs, selon le cas, à qui s'applique la convention collective et qui sont visés par la décision;

d) les employés à qui s'applique la convention et qui sont visés par la décision,

et ces parties, employeurs, syndicats et employés se conforment à la décision. 1995, chap. 1, annexe A, par. 48 (18).

(19) Si la partie, l'employeur, le syndicat ou l'employé ne s'est pas conformé à une condition de la décision rendue par l'arbitre ou le conseil d'arbitrage, la partie, l'employeur, le syndicat ou l'employé visé par la décision peut déposer, dans la forme prescrite, à la Cour supérieure de justice, une copie du dispositif de la décision. À compter du dépôt, la décision est consignée de la même façon qu'un jugement ou une ordonnance de cette Cour et devient exécutoire au même titre. 1995, chap. 1, annexe A, par. 48 (19); 2000, chap. 38, art. 7.

Force obligatoire – employeurs, syndicats et employés

56. La convention collective, sous réserve et pour l'application de la présente loi, lie l'employeur et le syndicat qui est partie à la convention, que ce dernier soit accrédité ou non. La convention lie aussi les employés compris dans l'unité de négociation qui y est définie. 1995, chap. 1, annexe A, art. 56.

Force obligatoire – autres personnes et organismes

57. (1) Sous réserve et pour l'application de la présente loi, une convention collective conclue entre une association patronale et un syndicat ou un conseil de syndicats lie l'association patronale et chaque employeur qui en était membre à la date de sa conclusion et pour le compte de laquelle l'association a négocié, de la même façon que si la convention avait été conclue entre chaque employeur et le syndicat ou le conseil de syndicats. Cette convention lie aussi tous les employés compris dans l'unité de négociation qui y est définie. L'employeur qui cesse d'être membre de l'association patronale pendant que la convention est toujours en vigueur est réputé, jusqu'à l'expiration de celle-ci, partie à une convention identique conclue entre lui et le syndicat ou le conseil de syndicats.

Obligation de divulguer les noms des mandants

(2) Lorsqu'une association patronale entreprend de négocier avec un syndicat ou un conseil de syndicats, elle lui remet une liste des employeurs pour le compte desquels elle négocie. À défaut, elle est réputée négocier pour tous les membres de l'association ayant des employés pour lesquels, à cette date, le syndicat ou le conseil de syndicats ont le droit de négocier et de conclure une convention collective. Toutefois un membre peut, avant que la convention ne soit conclue, valablement aviser le syndicat ou le

conseil de syndicats, qu'il ne sera pas lié par une convention collective entre l'association patronale et le syndicat ou le conseil de syndicats. L'avis est écrit et communiqué soit directement soit par l'intermédiaire de l'association patronale.

Force obligatoire – membres des conseils accrédités

(3) Sous réserve et pour l'application de la présente loi, une convention collective conclue entre un conseil de syndicats accrédité et un employeur lie chaque syndicat qui fait partie du conseil, de la même façon que si elle avait été conclue entre chacun de ces syndicats et l'employeur.

Force obligatoire – membres des conseils non accrédités

(4) Sous réserve et pour l'application de la présente loi, une convention collective conclue entre un conseil de syndicats non accrédité et un employeur ou une association patronale lie le conseil et chaque syndicat qui au moment de sa conclusion était membre ou affilié du conseil et pour le compte desquels il a négocié comme si elle était conclue entre chacun de ces syndicats et l'employeur ou l'association patronale. La convention lie aussi tous les employés compris dans l'unité de négociation qui y est définie. Le syndicat qui cesse d'être membre du conseil ou d'y être affilié pendant que la convention est en vigueur est réputé, jusqu'à l'expiration de celle-ci, partie à une convention identique conclue entre le syndicat et l'employeur ou l'association patronale, selon le cas.

Obligation de divulguer les noms des mandants

(5) Si un conseil de syndicats non accrédité entreprend de négocier avec un employeur ou une association patronale, il lui remet une liste des noms des syndicats pour le compte desquels il négocie. À défaut de ce faire, il est réputé négocier pour tous les membres ou syndicats affiliés du conseil qui ont qualité, à cette date, pour négocier et conclure une convention collective avec l'employeur ou l'association patronale pour le compte des employés de ceux-ci. Toutefois, un syndicat peut, avant que la convention ne soit conclue, valablement aviser par écrit l'employeur ou l'association patronale, soit directement soit par l'intermédiaire du conseil de syndicats, qu'il ne sera pas lié par une convention collective entre le conseil de syndicats et l'employeur ou l'association patronale. 1995, chap. 1, annexe A, art. 57.

Durée minimale d'une convention collective

58. (1) Si la convention collective ne prévoit pas de durée, ou prévoit qu'elle s'applique pour une durée indéterminée ou pour moins d'un an, la convention est réputée prévoir une durée d'un an à compter de la date à laquelle elle est entrée en vigueur.

Prorogation d'une convention collective

(2) Malgré le paragraphe (1), les parties peuvent, dans une convention collective ou d'une autre façon, même après son expiration, s'entendre pour la proroger ou en proroger une partie pour moins d'un an pendant qu'elles négocient son renouvellement,