

**INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)**  
**INTERNATIONALLY RECOGNISED CORE**  
**LABOUR STANDARDS IN CANADA**

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW**  
**OF THE TRADE POLICIES OF CANADA**  
**(Geneva, 21 and 23 March 2007)**

**EXECUTIVE SUMMARY**

Canada has only ratified five of the eight ILO international core labour standards. It has failed to ratify ILO Convention 98 (1949), the Right to Organise and Collective Bargaining Convention, ILO Convention 138 (1973), the Minimum Age Convention and ILO Convention 29 (1930), the Forced Labour Convention. Further measures are needed in order to comply with the commitments to respect internationally recognised core labour standards that Canada has accepted in various international forums.

Despite the fact that federal law grants workers the right to join and form trade unions, there are significant limitations to trade union and other workers' rights under Canada's provincial laws. Violations take place throughout the country, in different ways depending on the province. The ILO and its supervisory committees have criticised the situation and appealed for the amendment of those provisions limiting the rights defined by these legally binding international instruments.

Canada has generally enforced the provisions of standards regarding discrimination in employment in many respects. Women still receive lower remuneration than men. In addition, there continue to be cases of discrimination towards workers of colour, indigenous populations and workers with disabilities.

Child labour is not a significant problem in Canada.

Trafficking of people, which constitutes a form of forced labour, is a problem and it is estimated that at least 800 people annually are trafficked to the US for purposes of sexual exploitation or the drugs trade.

## **INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN CANADA**

### **INTRODUCTION**

This report on the respect of internationally recognised core labour standards in Canada is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore 9-13 December 1996) and endorsed at the fourth WTO Ministerial Conference (Doha, Qatar, 9-14 November 2001) in which the ministers stated: “We renew our commitment to the observance to the internationally recognised core labour standards”. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

Canada was a founding member of the WTO on the 1<sup>st</sup> of January 1995 and thus became subject to the legal framework of this international body. Canada participated in the Ministerial Conferences mentioned above and accepted the commitments adopted in these global meetings. Canada equally supported the ILO Declaration on Fundamental Principles and Rights at Work in 1998.

The ITUC has four Canadian trade union affiliates - the Canadian Labour Congress/ Congrès du Travail du Canada (CLC-CTC) with 1,500,000 members, the Centrale des Syndicats Démocratiques (CSD) with 70,000 members, the Christian Labour Association of Canada (CLAC) with 38,000 members and the Confédération des Syndicats Nationaux (CSN) with 300,000 members.

The gross domestic product (GDP) of Canada in 2006 was estimated to stand at US \$1,100 billion (34,200 US\$ per capita), composed by 2.3% in agriculture, 29.2% in industry and 68.5% in services. The labour force in Canada amounted to 17.59 million people in 2006.

The main import categories of Canada are machinery and equipment, motor vehicles and parts, crude oil, chemicals, electricity and durable consumer goods, its main import partners being the US, China and Mexico. The main export categories are motor vehicles and parts, industrial machinery, aircraft, telecommunications equipment, chemicals, plastics, fertilizers, wood pulp, timber, crude petroleum, natural gas, electricity and aluminium, its main export partners being the US, Japan and UK. Imports of Canada reached \$353.2 billion and exports \$405 billion in 2006, giving Canada a positive balance of trade.

Canada is a member of the North American Free Trade Agreement (NAFTA) along with the United States and Mexico and has free trade agreements currently in place with Chile, Costa Rica, and Israel. From December 1994, Canada took part in negotiations with the other countries of the Americas, except Cuba, to form a Free Trade Area of the Americas (FTAA). Following disagreements at the last FTAA Summit in January 2005, the negotiations have been interrupted. Canada has entered a phase of exploring or negotiating bilateral free trade agreements with other partners, including with four countries of Central America (El Salvador, Guatemala, Honduras and Nicaragua), the Andean Community countries, the CARICOM (Caribbean

Community and Common Market) and the Dominican Republic. Such initiatives also go beyond the Americas to encompass initiatives with the European Free Trade Association (EFTA), the Republic of Korea and Singapore. The government of Canada has launched trade initiatives with the European Union and Japan and has negotiated other trade, investment and economic agreements such as FIPAS (Foreign Investment Protection and Promotion Agreements) with China, India and Jordan, TICAS (Trade and Investment Cooperation Agreements) with MERCOSUR, South Africa and the Andean Community, and TECAS (Trade and Economic Cooperation Agreements) with Norway, Australia, Switzerland and Iceland.

Canada, the US and Mexico, the three countries that comprise NAFTA, established the Security and Prosperity Partnership of North America (SPP) in March 2005. While not a treaty as such, as it has never been ratified by the legislatures of the three countries, the PSP goes beyond the provisions of NAFTA with regard to economic, military, political and social integration in North America. It entails the adoption of measures such as greater integration of energy markets, harmonised treatment with regard to immigrants, refugees and foreign tourists, and common security policies. It further establishes a strict timetable for harmonising standards regarding health, food security and the environment. It provides an undue and unprecedented role for private companies in defining such policies through meetings of the heads of government with business leaders to discuss economic policies and legislative changes as a basis for the submission of prospective legislative amendments to the respective parliaments.

## **I. Freedom of Association and the Right to Collective Bargaining**

Canada ratified ILO Convention No. 87 (1948), the Freedom of Association and Protection of the Right to Organise Convention on the 23<sup>rd</sup> of March 1972. It has not ratified ILO Convention No. 98 (1949), the Right to Organise and Collective Bargaining Convention.

Under federal legislation, workers in both the public and private sectors have the right to associate in freedom without previous authorisation. Trade unions are independent of the government. Trade union rights are officially guaranteed in federal legislation but each province has its own legislation, setting various limitations on the effective practice of these rights. In several provinces, the law contains restrictions on the right to form a union, to bargain collectively and to strike, particularly in the public sector.

Public and private sector workers have the right to organise and bargain collectively. The law protects collective bargaining, but again there are many limitations which vary from province to province. The law prohibits expressly anti-union discrimination. There are no export processing zones in Canada.

All workers have the right to strike, except for those in the public sector who provide essential services. Replacement labour may be used in industries governed by the Canada Labour Code. If passed, a new Bill C-257 would eliminate the use of replacement workers for those covered under federal legislation.

Even if the law is respected overall, both private sector employers and public authorities take advantage of the existence of the many limitations encountered in the legislation of the provinces. In that regard, provincial governments have many times

used the law to order strikers back to work, while private employers have brought in temporary workers to replace strikers.

In Alberta, several categories of workers, including agricultural and horticultural workers, are excluded from the provincial labour relations' legislation and, therefore, from the protection this legislation provides. For universities, the law authorises the Board of Governors to say which staff members may or may not form a trade union.

The law on labour relations in the civil service ban strikes by all hospital workers in Alberta, including for a whole series of workers who do not fall into the category of essential services. Strikers involved in illegal strikes are liable to receive heavy fines and even prison sentences.

The Labour Relations (Regional Health Authorities Restructuring) Amendment Act, which came into force on 1 April 2003, ended the right to strike for the remaining 10 percent of health care workers in Alberta, who still had that right at the time. It equally banned the right of nurse practitioners to be unionised. The Alberta Labour Relations Board determines which collective agreement applies to all members, thereby effectively negating all other collective agreements.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has taken note of the conclusions and recommendations reached by the ILO Committee on Freedom of Association to the effect that nurse practitioners have been deprived of the right to establish and join organisations of their own choosing by the Labour Relations Amendment Act in the province of Alberta.

Alberta legislation also authorises extensive intervention by the authorities in collective bargaining and allows the employer to bypass the trade union as a bargaining agent, and to use replacement workers in a strike.

There are more limitations in other provinces of Canada. In 2001, nurses and paramedical professionals in the province of British Columbia lost their right to strike, with the introduction of the Health Care Services Continuation Act, and had a collective agreement imposed on them by the Health Care Services Collective Agreement Act. The Health Statutes Amendment Act excludes nurse practitioners in British Columbia from joining a union. Education was designated an essential service under the Skills Development and Labour Statutes Amendment Act, giving the authorities the power to deny teachers the right to strike too.

Further limitations were introduced in 2002, with the adoption of the following three bills in British Columbia: the Education Service Collective Agreement Act (Bill 27); the Public Education Flexibility and Choice Act (Bill 28), and the Health and Social Services Delivery Improvement Act (Bill 99). The Acts completely eliminated or rewrote provisions in existing collective agreements that had been freely negotiated previously and that afforded protection for workers in the province. Furthermore, the removal of restrictive language gave health care and other employers the right to avoid the terms of binding collective agreements by contracting out to related employers who were not covered by such agreements. The case was submitted to the ILO Committee on Freedom of Association, which urged the government to amend some provisions and review the collective bargaining issues raised.

In 2004, the provincial government passed the Education Services Collective Agreement Amendment Bill (Bill 19) which modified or eliminated numerous provisions of freely negotiated collective agreements in the education sector, undermining the right of teachers' unions to act as bargaining agents for their members. This was followed in 2005 by the Teachers' Collective Agreement Act (Bill 12), imposed while the teachers were involved in the first stages of industrial action following a long attempt to negotiate a new agreement.

The government also introduced the Crown Counsel Agreement Continuation Act (Bill 21) in 2005, rejecting an arbitration award granted under the terms of other legislation governing Crown Counsel and imposing its own salary terms on lawyers working for the Crown. The Act prohibited the withdrawal of services.

There are restrictions on the right to strike in British Columbia. On July 22 2005, the telecommunications company Telus sought and won a court injunction against the Telecommunication Workers' Union (TWU) which barred union members in British Columbia from picketing near its premises or those of its customers in a way that could be perceived as blocking or impeding access. The company flooded the court with video evidence of its view of events. On the same day, Telus blocked its subscribers from two pro-union websites which publicised the union's view of the strike. The stoppage, over job security, had begun the previous day.

Ontario's labour legislation continues to exclude agricultural and horticultural workers, as well as domestic workers, architects, dentists, land surveyors, lawyers and doctors from joining a trade union. People who take part in community activities are also prevented by law from joining a trade union. A ruling by the Supreme Court of Canada in December 2001 declared that the Ontario law prohibiting the unionisation of agricultural workers was unconstitutional. In October 2002, the government of Ontario passed the Agricultural Employees Protection Act which, according to the Ontario Federation of Labour, basically gave agricultural workers the right to join a social club, but still does not provide any rights to join a union or bargain collectively. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has noted that the Agricultural Employees Protection Act, 2002, in force since June 2003, gives agricultural employees the right to form or join an employees' association but does not provide a right to statutory collective bargaining regime and maintains the exclusion of agricultural employees from the generally applicable legislation.

Trade unions in Ontario report that the changes to the labour law brought in by the former conservative government previously made it extremely difficult for Ontario workers to exercise their union rights. Tensions over trade union activity escalated into threats and physical violence, to the extent that workers became afraid to unionise.

Collective bargaining rights are heavily restricted in education in Ontario under the terms of a 1997 law. This excludes school principals and assistant principals from taking part in the teacher's negotiating unit, which can only negotiate working conditions on an informal basis. The Ontario Education Act also establishes a de facto trade union monopoly, by designating the trade union recognised as the bargaining agent by name. If a dispute leads to strike action, arbitration can be imposed after three weeks. The global union federation Education International lodged a complaint with the ILO in October 2003 about legislation adopted by the outgoing government of Ontario that further narrowed the bargaining rights of teachers. It altered the

definition of strikes and expanded the statutorily prescribed duties of teachers. In response to the critical conclusions of the ILO, the new government of Ontario in 2005 said that it was committed to creating fair labour relations in Ontario's schools.

After the election of the new government in Ontario, the requirement to post workplace documents on the process to terminate bargaining rights was repealed. The Ontario Labour Relations Act was amended to empower the Ontario Labour Relations Board to certify union elections without a vote when the employer has grossly violated the law and intimidated the employees. The labour movement has equally gained the right to interim reinstatement for those fired during organising campaigns.

Domestic workers, architects, dentists, land surveyors, lawyers and doctors in Ontario are excluded from the scope of the labour relations and the CEACR has stated that these categories of workers do not have access to a statutory collective bargaining regime.

In Manitoba, the Labour Relations Act stipulates that if a dispute lasts for more than 60 days, one of the parties may ask the Manitoba Labour Board to determine the content of a new collective agreement. The Public School Act bans teachers from going on strike and contains heavy fines for breaches of this legislation. It also provides for compulsory arbitration at the request of one of the parties if a dispute lasts more than 90 days.

In Prince Edward Island, the law effectively imposes a trade union monopoly by naming a bargaining agent in the Civil Service Act. The same rule applies to Nova Scotia, where the bargaining agent is named in the Civic Service Collective Bargaining Act and in the Teachers' Collective Bargaining Act. In Newfoundland, the Public Service Act confers broad powers on the employer with regard to the procedure for the designation of essential employees.

There are cases of anti-union discrimination in Newfoundland. George Crocker, the President of the Amalgamated Transit Union Local 1462, was sacked by the St John's Transportation Commission (Newfoundland) on 2 November 2005. He was dismissed after 21 years in the job after he made public statements criticising the commission's handling of assaults on Metrobus operators and for complaining that the commission had violated the agreement that had put an end to a 19 day strike the previous November. In his letter of dismissal, he was accused of being disrespectful of management and not following the chain of command in representing his members.

In New Brunswick, agricultural and horticultural workers are excluded from the protection provided by the province's labour relations legislation. Casual workers in the public sector cannot affiliate to organisations of their choice and therefore cannot enjoy the corresponding rights such as collective bargaining.

In 2003, the provincial government of Quebec adopted (by suspending parliamentary rules) Bill No. 7 and Bill No. 8 amending the *Loi sur les services de santé et les services sociaux* (the "Act on health and social services") and the *Loi sur les centres de la petite enfance et autres services de garde à l'enfance* (the "Act on early childhood centres and other early childhood care services"), which withdrew the definition of salaried employee from some 25,000 workers taking care, in their homes, of severely disabled adults or of children, on the grounds that they were performing a job outside the workplace. Since under the Quebec labour code only employees enjoy the right to form unions, by redefining them as independent workers the amendments deprived them of their previously recognised right to organise. Those unions that had

been set up had their union status revoked, with retrospective effect because the two laws contained provisions stipulating their applicability even to administrative or judicial decisions taken before their adoption. The great majority of the workers concerned were women.

In March 2006, the ILO Committee on Freedom of Association condemned the government of Quebec, ruling that Bill No. 7 and Bill No. 8 deprived thousands of workers of their right to be considered a salaried employee under the Labour Code by imposing the status of self-employed worker on them instead. The ILO concluded that “the situation in reality is that existing certifications will be revoked through legislation, which is contrary to the principles of freedom of association.... The workers in this complaint should therefore be able to enjoy the provisions of the Labour Code as other workers in Quebec, or enjoy genuinely equivalent rights.” The ILO called on the government of Quebec to amend the new legislative provisions, but it has not yet responded.

At the end of 2005, Quebec’s government imposed a further decree, Bill No. 142, unilaterally imposing new terms and conditions of employment on public sector workers, using the pretext that negotiations with unions had failed even though negotiations were still underway at the time and the right to strike in the public and parastatal sectors was covered by the *Loi sur les services essentiels* (the “Act on Essential Services”). The new *Loi concernant les conditions de travail dans le secteur public* (“Act on public sector working conditions”) determined public sector wages for a period of 6 years and 9 months. Public sector workers are to receive a total salary increase of 8%, barely above 1% a year, and have no right to collective bargaining until 2010. The Act included repressive measures covering workers’ actions and forbid any reduction or quantitative or qualitative change in those activities, however legitimate the reasons, and stipulated heavy penalties and fines for individuals and groups seeking to take collective action to express a disagreement with their employers’ position.

On 29 April 2005 the retail giant Wal-Mart closed its store in Jonquière, Quebec on the grounds that it was no longer profitable, leaving 190 people out of work. The store had been the first Wal-Mart in North America to have a trade union. Subsequently, the workers at the Saint-Hyacinth store also managed to unionise. The redundant workers in Jonquière had been trying from the time they established the trade union in August 2004 to negotiate their first collective agreement with Wal-Mart. After the union had asked the Minister to name an arbitration officer because the negotiations were not succeeding and the Minister had accepted, Wal-Mart announced that it would close the store. Some months afterwards, the Quebec labour relations board ruled that some of the dismissed workers had lost their jobs as a result of their trade union activities.

In the Northwest Territories of Canada, striking workers employed by the multinational company VHP Billiton at Canada’s first diamond mine, BHP Ekati, went on strike in defence of their right to negotiate a fair and reasonable first collective agreement. Striking workers, many from surrounding Aboriginal communities, received letters from the employer in which BHP threatened to take disciplinary actions against them, even though they were participating in a legal strike.

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the ILO has emphasised that workers in agriculture

and horticulture in the provinces of Alberta, Ontario and New Brunswick are excluded from the coverage of labour relations legislation and thereby deprived of protection concerning the right to organise and collective bargaining.

The Committee has recalled that all workers without distinction whatsoever have the right to organise under the fundamental ILO conventions. It has highlighted the need to amend the legislative texts in different provinces with a view to guaranteeing the full application of the conventions in relation to the effective right of association in agriculture, which has suffered from restrictions for many years.

The CEACR has taken note equally of the serious problems that remain in Prince Edward Island, Nova Scotia and Ontario with regard to the specific reference to the trade union recognised as the bargaining agent in the law of these provinces. According to the CEACR, a trade union monopoly established or maintained by the explicit designation by name of a trade union organisation in the law is in violation of the convention 87.

### ***Conclusions:***

*Despite the fact that federal law grants workers in both public and private sectors the right to join and form trade unions, the existence of different legal regimes in the provinces results in many restrictions of trade union rights throughout the country. Violations in British Columbia, Ontario, Quebec and New Brunswick have resulted in criticism by the ILO and its supervisory committees.*

## **II. Discrimination and Equal Remuneration**

Canada ratified ILO Convention No. 111 (1958), Elimination of Discrimination in respect of Employment and Occupation on the 26<sup>th</sup> of November, 1964 and ILO Convention No. 100 (1951), the Equal Remuneration Convention on the 16<sup>th</sup> of November, 1972.

Women are generally well represented in the labour force, including business and the professions. Employment equity laws and regulations cover federal employees in all but the security and defence services.

However, female remuneration remains lower than that of men. According to the OECD, male median earnings are more than 20% higher than those of women in Korea, Japan, Germany, Switzerland, Canada and the United States. The Canadian national statistics agency reports that women's average hourly wage rate is about 84% - 89% of men's average. A majority of provinces have adopted laws seeking to redress wage discrimination against women, including in Manitoba (1985), Ontario (1988), Nova Scotia (1988), Prince Edward Island (1988), New Brunswick (1990) and Quebec (1996). However, the government of Canada continues to refuse to adopt such legislation at the federal level.

Indigenous people, people of colour and people with disabilities remain underrepresented in the workforce. Women from visible minorities and indigenous women receive lower average wages than white women.

There is no legal discrimination against persons with disabilities in employment, education, access to health care, or in the provision of other state services. The law mandates access to buildings for persons with disabilities, and the government has generally but not always enforced these provisions in practice.

**Conclusions:**

*The government of Canada has enforced, in general, the provisions of the international labour standards on discrimination. More efforts are needed, in particular, to redress the discrimination indigenous people experience.*

**III. Child Labour**

Canada ratified ILO Convention No. 182 (1999), the Worst Forms of Child Labour Convention the 6<sup>th</sup> of June 2000. It has not ratified ILO Convention No. 138 (1973), the Minimum Age Convention.

Education is free and compulsory nationwide, up to the age of 15 or 16 depending on the province. The UN Children's Fund (UNICEF) has reported that 100 percent of elementary-age children attended school.

Federal and provincial regulations protect children from abuse, overwork, and discrimination and penalise perpetrators of such offences. However, recent changes to provincial legislation on the minimum age of employment in British Columbia and Alberta are a growing concern. There are cases of children being exploited sexually.

**Conclusions:**

*Apart from isolated cases, child labour is not a significant problem in Canada. However, recent changes to certain provincial legislations on the minimum age of employment are of growing concern.*

**IV. Forced Labour**

Canada ratified ILO Convention No. 105 (1957), the Abolition of Forced Labour Convention the 14<sup>th</sup> of July 1959. It has not ratified ILO Convention No. 29 (1930), the Forced Labour Convention.

The law prohibits forced or compulsory labour, including by children; however, there are reports that such practices occur.

The country is a destination and a transit point to the United States for women, children, and men trafficked for purposes of sexual exploitation, labour, and the drug trade. 800 people are estimated to be trafficked annually into the US. These persons came primarily from East Asia (China, Korea and Malaysia mainly), Central and South Asia, Eastern Europe, Russia, Latin America and the Caribbean, and South Africa. Many pay large sums to be smuggled to the country, are indentured to their

traffickers upon arrival, work at lower than minimum wage, and use most of their salaries to pay down their debt at exorbitant interest rates.

The traffickers normally use violence to ensure that their clients pay and they do not inform the police. Asian women and girls who are smuggled into the country often are forced into prostitution. Traffickers use intimidation and violence, as well as the illegal immigrants' inability to speak English, to keep victims from running away or informing the police.

**Conclusions:**

*Despite the fact that the law expressly bans forced or compulsory labour, this practice still persists. There are estimates that 800 people are trafficked annually into the US for sexual exploitation, labour or the drugs trade.*

## CONCLUSIONS AND RECOMMENDATIONS

1. The government of Canada must ratify ILO Convention No. 98 (1949), the Right to Organise and Collective Bargaining Convention.
2. The government of Canada must ensure that the principles emanating from the ILO international core labour standards and the federal law take supremacy over the legal systems of the provinces of the country.
3. Measures are needed to prevent provincial governments and private employers taking advantage of the duality of the legal system to obstruct trade union rights.
4. Special attention must be given to the violation of trade union rights in the provinces of British Columbia, Ontario, Quebec and New Brunswick. The ILO Committee of Experts on the Application of Conventions and Recommendations has stated that the legal system in these provinces violate the principles emanating from the international core labour standards. These violations concern the right to unionise, the right to strike and the right to collective bargaining.
5. The government of Canada must ensure that all companies in the country, including multinationals, provide effective practice of trade union rights for their workers. In that regard, new measures are needed given that some multinationals obstruct the right to strike or have workers dismissed for being a member of a union.
6. Further measures are needed to address the lower remuneration of women workers.
7. Positive action measures need to be implemented to tackle discrimination regarding indigenous people.
8. The government of Canada must ratify ILO Convention No. 138 (1973), the Minimum Age Convention.
9. The government of Canada must ratify ILO Convention No. 29 (1930), the Forced Labour Convention. It must implement new measures and strengthen the existing ones to tackle the problem of trafficking of people. More resources are needed to prosecute traffickers, and funding for assisting trafficking victims should be increased.
10. In line with the commitments accepted by Canada at the Singapore and Doha WTO Ministerial Conference and its obligations as a member of the ILO, the government of Canada must therefore provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
11. The WTO should draw to the attention of the authorities of Canada the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. The WTO should request the ILO to intensify its work with the government of Canada in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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