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# Toronto Bargaining in the Broader Public Sector Conference

December 12, 2024



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Thursday, December 12, 2024

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## Thursday, December 12, 2024

8:00 a.m.	Breakfast
9:00 a.m.	Introduction
9:05 a.m.	<b>Panel 1</b> <b>Checking the Financial Forecast:</b> Bargaining in Ontario's 2025 economy
10:20 a.m.	Break
10:35 a.m.	<b>Panel 2</b> <b>Rapid Refresher:</b> Experts discuss key decisions and legislation affecting bargaining
11:50 a.m.	Lunch
1:00 p.m.	<b>Panel 3</b> <b>Tech Talks:</b> Addressing technological change, surveillance, monitoring, and AI at the bargaining table
2:20 p.m.	Break
2:35 p.m.	<b>Panel 4</b> <b>Breaking Barriers, Achieving Balance:</b> Addressing retention and EDI at the bargaining table
3:55 p.m.	Closing remarks

## Continuing Professional Development



This program (311188) has been approved for **5.2 Continuing Professional Development (CPD) hours** under Section A of the Continuing Professional Development (CPD) Log of the **Human Resource Professionals Association (HRPA)**.



- Members of the **Law Society of Ontario** may consider counting this program for **5.2 substantive hours; 0 professionalism hours**.

# Panel 1 - Checking the Financial Forecast: Bargaining in Ontario's 2025 economy

December 12, 2024, 9:05 a.m. – 10:20 a.m. ET

## Panelists

**Doug Porter**, Chief Economist and Managing Director, Economics, BMO

**Armine Yalnizyan**, Economist and Atkinson Fellow on the Future of Workers, Atkinson Foundation

**Michele White**, Associate, Bass Associates Ltd.

**Elpis Law**, Negotiator, Labour Relations Officer, Equity Champion, and Trainer, Public Service Alliance of Canada

In this session, expert panelists will explore 2025 economic and fiscal forecasts and their implications for bargaining, focusing on settlements and awards. Specifically, the panel will discuss:

- What short- and long-term economic trends are experts predicting Canadians will experience in 2025 in Ontario? Canada? The United States?
- Are inflation and cost-of-living projected to increase in 2025?
- What impact will raising Ontario's minimum wage to \$17.20 have on bargaining?
- What key non-monetary demands are emerging at the bargaining table in the current climate?
- What measures are governments likely to prioritize in 2025 provincial and federal budgets to promote economic growth and prosperity?

## **Break**

10:20 a.m. – 10:35 a.m. ET

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### Panel 1 - Checking the Fiscal Forecast: Bargaining in Ontario's 2025 economy

#### 1. What short- and long-term economic trends are experts predicting Canadians will experience in 2025 in Ontario? Canada? The United States?

##### Provincial Trends

- 1.1 "Provincial Economic Forecast," *TD Economics*, TD Bank Group, September 19, 2024, online: <https://economics.td.com/provincial-economic-forecast> [Editors' Note: See the heading "Ontario."] [reproduced with permission]
- 1.2 "Chapter 2: Economic Performance and Outlook," *2024 Ontario Budget: Building a Better Ontario*, Government of Ontario, 2024, online: <https://budget.ontario.ca/2024/pdf/2024-ontario-budget-en.pdf> [reproduced with permission]
- 1.3 "Chapter 2: Economic Trends and Projections," *Ontario's Long-Term Report on the Economy 2024–46*, Ministry of Finance Ontario, 2024, online: <https://www.ontario.ca/files/2024-05/mof-long-term-report-book-2024-05-31-en.pdf> [reproduced with permission]
- 1.4 Jay Park et al., "Chapter 2: Economic Outlook," *Economic and Budget Outlook*, Financial Accountability Office of Ontario, Spring 2024, online: <https://www.fao-on.org/web/default/files/publications/EBO%20Spring%202024/EBO-SP2024-EN.pdf> [reproduced with permission]

##### Federal Trends

- 1.5 James Orlando & Thomas Feltmate, "Long-Term Forecast," *TD Economics*, TD Bank Group, June 20, 2024, online: <https://economics.td.com/ca-long-term-forecast> [reproduced with permission]

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See also: Freschia Gonzales, "IMF says Canada's economic forecast shines bright," *Benefits and Pensions Monitor*, July 18, 2024, online: <https://www.benefitsandpensionsmonitor.com/news/industry-news/imf-says-canadas-economic-forecast-shines-bright/387396>

See also: "Monetary Policy Report," *Publications*, Bank of Canada, online: <https://www.bankofcanada.ca/publications/mpr/>

See also: "Economic Forecast for the US Economy," The Conference Board Inc., October 23, 2024, online: <https://www.conference-board.org/research/us-forecast>

See also: Jordan Gowling, "Canada set to be fastest growing economy in G7 in 2025, IMF forecasts," *Financial Post*, July 17, 2024, online: <https://financialpost.com/news/imf-forecasts-canada-fastest-growing-economy-g7-2025>

See also: Tu Nguyen, "Canada's economic outlook: The dawn of recovery," *The Real Economy Blog*, July 8, 2024, online: <https://realeconomy.rsmus.com/canadas-economic-outlook-the-dawn-of-recovery/>

## **2. Are inflation and cost-of-living projected to increase in 2025?**

See document 1.1: "Provincial Economic Forecast," *TD Economics*, TD Bank Group, September 19, 2024, online: <https://economics.td.com/provincial-economic-forecast> [*Editors' Note*: See the heading "Ontario."]

See document 1.2: "Chapter 2: Economic Performance and Outlook," *2024 Ontario Budget: Building a Better Ontario*, Government of Ontario, 2024, online: <https://budget.ontario.ca/2024/pdf/2024-ontario-budget-en.pdf>

See document 1.3: "Chapter 2: Economic Trends and Projections," *Ontario's Long-Term Report on the Economy 2024–46*, Ministry of Finance Ontario, 2024, online: <https://www.ontario.ca/files/2024-05/mof-long-term-report-book-2024-05-31-en.pdf>

See also: Erik Hertzberg & Dana Morgan, "Bank of Canada seen cutting rates deeper, faster over next year," *BNN Bloomberg*, August 26, 2024, online: <https://www.bnnbloomberg.ca/business/economics/2024/08/26/bank-of-canada-seen-cutting-rates-deeper-faster-over-next-year/>

See also: "Canada Inflation Rate," *Trading Economics*, August 20, 2024, online: <https://tradingeconomics.com/canada/inflation-cpi>

See also: Nojoud Al Mallees, "Return to 2% inflation rate could be a bumpy one. Here's why," *Global News*, March 18, 2024, online: <https://globalnews.ca/news/10366951/canada-inflation-feb-2024-preview/>

See also: Hendrik Brakel, "Canada's cost of living questions aren't going away anytime soon," *The Hub*, May 27, 2024, online: <https://thehub.ca/2024/05/27/deepdive-cost-of-living-questions-arent-going-away/>

See also: Taylor Schleich, "2% Inflation in 2025? Why not sooner?," *Market View*, National Bank of Canada, February 22, 2024, online: [https://www.nbc.ca/content/dam/bnc/taux-analyses/analyse-eco/mkt-view/market\\_view\\_240222.pdf](https://www.nbc.ca/content/dam/bnc/taux-analyses/analyse-eco/mkt-view/market_view_240222.pdf)

### **3. What impact will raising Ontario's minimum wage to \$17.20 have on bargaining?**

See: "Announcements," *Collective Bargaining Ontario*, Ministry of Labour Ontario, 2024, online: <https://www.lrs.labour.gov.on.ca/en/announcements.htm> [Editors' Note: See recent collective bargaining updates across the province.]

See also: Andrew Stevens, "Minimum wage increases are important, but workers deserve more," *The Conversation*, September 10, 2024, online: <https://theconversation.com/minimum-wage-increases-are-important-but-workers-deserve-more-237849>

See also: "ILO reaches agreement on the issue of living wages," International Labour Organization, March 15, 2024, online: <https://www.ilo.org/resource/news/ilo-reaches-agreement-issue-living-wages>

### **4. What key non-monetary demands are emerging at the bargaining table in the current climate?**

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See also: "LCBO strike to end Monday after workers ratify tentative agreement," *CBC News*, July 21, 2024, online: <https://www.cbc.ca/news/canada/toronto/lcbo-workers-ratification-1.7270704>

See also: "65,000 Ontario hospital workers awarded 6% wage increase, benefit improvements in new contract," Canadian Union of Public Employees (CUPE), April 19, 2024, online: <https://cupe.ca/65000-ontario-hospital-workers-awarded-6-wage-increase-benefit-improvements-new-contract>

See also: "York Region long-term care workers picket to stop 12-hour shifts," Canadian Union of Public Employees (CUPE), July 31, 2024, online: <https://cupe.ca/york-region-long-term-care-workers-picket-stop-12-hour-shifts>

See also: "'Save our hospital care:' Health care workers to rally for higher staffing levels and quality patient care," Unifor, February 5, 2024, online: <https://www.unifor.org/news/all-news/save-our-hospital-care-health-care-workers-rally-higher-staffing-levels-and-quality>

## **5. What measures are governments likely to prioritize in 2025 provincial and federal budgets to promote economic growth and prosperity?**

See: "Pre-Budget Consultations in Advance of the 2025 Budget," Parliament of Canada, June 19, 2024, online:

<https://www.ourcommons.ca/committees/en/FINA/StudyActivity?studyActivityId=12835898>

See also: "Budget 2024: Fairness for every generation," Government of Canada, April 16, 2024, online: <https://budget.canada.ca/2024/home-accueil-en.html>

See also: "ICTC's Submission to Canada's Pre-Budget Consultations for Budget 2025," *Policy Brief*, The Information and Communications Technology Council (ICTC), August 23, 2024, online: <https://ictc-ctic.ca/reports/ictcs-submission-canadas-pre-budget-consultations-budget-2025>

See also: Nick Schiavo & Michelle Ehinlaiye, "CCI's 2025 Federal Pre-Budget Recommendations," Council of Canadian Innovators (CCI), August 14, 2024, online: <https://www.canadianinnovators.org/content/a-blueprint-for-canadas-future-how-ccis-pre-budget-submission-can-revitalize-innovation-and-economic-growth>

See also: "Engineers Canada submits recommendations for 2025 federal budget," *Engineering Matters*, Engineers Canada, August 15, 2024, online: <https://engineerscanada.ca/news-and-events/news/engineers-canada-submits-recommendations-for-2025-federal-budget>

See also: "Read CFA's submission for the 2025 Federal Budget," *Federal Budget 2025*, Canadian Federation of Agriculture (CFA), August 9, 2024, online: <https://www.cfa-fca.ca/issues/federal-budget-2025/>

See also: "2025 Pre-Budget Submission," *Reports*, Clean Energy Canada, August 6, 2024, online: <https://cleanenergycanada.org/report/2025-pre-budget-submission/>

See also: "IIAC outlines key priorities for 2025 federal budget," Investment Industry Association of Canada via *Cision*, August 6, 2024, online: <https://www.newswire.ca/news-releases/iiac-outlines-key-priorities-for-2025-federal-budget-890679698.html>

See also: "2025 pre-budget submission: Invest in universities to build a stronger Canada," Universities Canada, August 2, 2024, online: <https://univcan.ca/media-room/publications/2025-pre-budget-submission/>

See also: "Calgary Chamber encourages economic-focused Federal Budget 2025," Calgary Chamber of Commerce, July 31, 2024, online: <https://calgarychamber.com/calgary-chamber-encourages-economic-focused-federal-budget-2025>

See also: "Fintechs Canada submits 2025 pre-budget submission to federal government," *News*, Fintechs of Canada, July 30, 2024, online: <https://fintechscanada.ca/resources/fintechs-canada-submits-2025-pre-budget-submission-to-federal-government/>

## **Panel 2 - Rapid Refresher: Experts discuss key decisions and legislation affecting bargaining**

December 12, 2024, 10:35 a.m. – 11:50 a.m. ET

### **Panelists**

**Deanna Webb**, Arbitrator, Mediator, and Workplace Investigator, DW Workplace Resolutions

**Edward Snetsinger**, Employer Counsel, Sherrard Kuzz LLP

**Jorge Hurtado**, Union Counsel, Morrison Watts Hurtado & Buchner

In this session, panelists will examine recent decisions, legislative changes, and other developments impacting bargaining in the public sector. Final topics will be selected in the weeks prior to the conference to ensure coverage of the latest and most important developments. However, items currently under consideration include:

- Recent court, labour arbitration, and labour board decisions addressing:
  - Freedom of association and government involvement in collective bargaining
  - Unfair labour practices and violations of statutory freeze provisions
  - Key issues at interest arbitration, including inflation and staffing and recruitment issues
- Recent legislative initiatives including:
  - Federal legislation to ban the use of strike replacement workers
  - Provincial legislation amending the *Employment Standards Act*, *Occupational Health and Safety Act*, and the *Workplace Safety and Insurance Act*
- Recent noteworthy collective agreements and strike actions
- Current labour relations trends, including artificial intelligence, remote work, and the right to disconnect

### **Lunch**

11:50 a.m. – 1:00 p.m. ET

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#### 1. Wages

- 1.1 "After Ontario's wage restraint legislation declared unconstitutional, board of arbitration confirms jurisdiction to re-open wages," *CLAC v. Holland Christian Homes*, 2023 CanLII 91031 (ON LA), Lancaster's *Collective Bargaining*, eAlert No. 146
- 1.2 "Recognizing a crisis in Ontario hospitals, arbitrator awards nursing staff 3.5% and 3.0% salary increases, and 4% increase to the wage grid," *Ontario Nurses' Association v. Participating Hospitals (represented by the Ontario Hospital Association)*, 2023 CanLII 65431, Lancaster's *Collective Bargaining*, eAlert No. 146

See also: "New Restrictions on 'Low-wage' Stream of Temporary Foreign Workers Program," *Briefing Notes*, Sherrard Kuzz LLP, August 28, 2024, online:

<https://www.sherrardkuzz.com/newsblast/new-restrictions-on-low-wage-stream-of-temporary-foreign-workers-program/>

See also: "Majority of Court of Appeal for Ontario Upholds Lower Court Decision – Finds Bill 124 Unconstitutional," *Briefing Notes*, Sherrard Kuzz LLP, February 14, 2024, online:

<https://www.sherrardkuzz.com/newsblast/majority-of-court-of-appeal-for-ontario-upholds-lower-court-decision-finds-bill-124-unconstitutional/>

See also: "Announcements," *Collective Bargaining Ontario*, Government of Ontario, online:

<https://www.lrs.labour.gov.on.ca/en/announcements.htm>

See also: "Major wage settlements by sector and year," Employment and Social Development Canada, Government of Canada, September 30, 2024, online:

<https://www.canada.ca/en/employment-social-development/services/collective-bargaining-data/wages/wages-year-sector.html>

See also: Emily Elder, "Bill 124 Wage Reopener Award: Another Significant Increase in Public Sector Wages," *Labour & Employment Law Insights*, Fillion Wakely Thorup Angeletti LLP, January 26, 2024, online: <https://fillion.on.ca/insights/bill-124-wage-reopener-award-another-significant-increase-in-public-sector-wages/>

See also: "Wages and Inflation," *Economy at Work*, Canadian Union of Public Employees (CUPE), December 12, 2023, online: <https://cupe.ca/wages-and-inflation>

## **2. Vaccination**

- 2.1 "Arbitrator upholds mandatory vaccination requirement, but finds automatic termination for non-compliance is unreasonable," *Ontario Nurses Association v. Quinte Health*, 2024 CanLII 14991 (ON LA), Lancaster's *Health and Safety/Workers' Compensation Law*, eAlert No. 280
- 2.2 "Arbitrator upholds discipline for non-compliance with mandatory vaccine policy, but rules that appropriateness of termination is an issue for individual grievance arbitration," *CUPE, Local 966 v. Central West Local Health Integration Network*, 2023 CanLII 58388 (ON LA), Lancaster's *Labour Arbitration*, eAlert No. 338

See also: Aicha Raeburn-Cherradi, "Vaccines, Masks, and Human Rights: A Singular Belief is not a Protected 'Creed' or 'Religion'," *Newsletters*, Sherrard Kuzz LLP, August 2, 2023, online: <https://www.sherrardkuzz.com/newsletter/vaccines-masks-and-human-rights-a-singular-belief-is-not-a-protected-creed-or-religion/>

See also: Erin Kuzz & Zack Lebane, "Arbitrator Upholds Termination of Employment for Failure to Comply with Mandatory COVID-19 Vaccination Policy," *Briefing Notes*, Sherrard Kuzz LLP, April 26, 2023, online: <https://www.sherrardkuzz.com/newsblast/arbitrator-upholds-termination-of-employment-for-failure-to-comply-with-mandatory-covid-19-vaccination-policy/>

## **3. Artificial Intelligence**

See: Aicha Raeburn-Cherradi & Sophia Adey, "Bill C-27: The Digital Charter Implementation Act Proposed Legislation to Modernize Canadian Privacy Law," *Briefing Notes*, Sherrard Kuzz LLP, August 6, 2024, online: <https://www.sherrardkuzz.com/newsblast/bill-c-27-the-digital-charter-implementation-act-proposed-legislation-to-modernize-canadian-privacy-law/>

See also: Andre Ripla, "How AI impacts Collective Bargaining," LinkedIn Digital Insights, July 15, 2024, online: <https://www.linkedin.com/pulse/how-ai-impacts-collective-bargaining-industrial-andre-ripla-pgcert-pkjme/>

See also: "Understanding artificial intelligence: A guide for CUPE members," Canadian Union of Public Employees (CUPE), July 11, 2024, online: <https://cupe.ca/understanding-artificial-intelligence-guide-cupe-members>

See also: Robert Richler, "The Impact of AI on Labour Law Practices," Bernardi Human Resource Law LLP, May 22, 2024, online: <https://hrlawyers.ca/2024/05/22/the-impact-of-ai-on-labour-law-practices/>

See also: "Ontario Passes Fourth Working for Workers Act: Legislative changes to ESA employment standards and WSIB coverage," *Briefing Notes*, Sherrard Kuzz LLP, March 21, 2024, online: <https://www.sherrardkuzz.com/newsblast/ontario-passes-fourth-working-for-workers-act-legislative-changes-to-esa-employment-standards-and-wsib-coverage/>

#### **4. Charter**

See: "Ontario Public School Boards are Bound by the Charter Teachers are protected from unreasonable search and seizure in the workplace," *Briefing Notes*, Sherrard Kuzz LLP, July 18, 2024, online: <https://www.sherrardkuzz.com/newsblast/ontario-public-school-boards-are-bound-by-the-charter-teachers-are-protected-from-unreasonable-search-and-seizure-in-the-workplace/>

See also: Danika Winkel, "Ontario Court Declares Back-to-Work Legislation in College Sector Constitutional," *Case In Point*, Hicks Morley Hamilton Stewart Storie LLP, July 11, 2024, online: <https://hicksmorley.com/2024/07/11/ontario-court-declares-back-to-work-legislation-in-college-sector-constitutional/>

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See also: Donya Tamehi, "The Clashing of Wage Restraint Legislation with s. 2(d) Collective Bargaining Rights," *TheCourt.ca*, Osgoode Hall Law School, July 19, 2024, online: <http://www.thecourt.ca/the-clashing-of-wage-restraint-legislation-with-s-2d-collective-bargaining-rights/>

See also: "Supreme Court of Canada holds Québec's exclusion of first-line managers from statutory collective bargaining regime constitutional," Sherrard Kuzz, April 22, 2024, online: <https://www.sherrardkuzz.com/newsblast/supreme-court-of-canada-holds-quebecs-exclusion-of-first-line-managers-from-statutory-collective-bargaining-regime-constitutional/>

See also: *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22 (CanLII), online: <https://canlii.ca/t/k5cq6> [*Editors' Note*: Ontario teachers protected by *Charter* from unreasonable search and seizure of their information on school computers.]

See also: *Amalgamated Transit Union, Local 113 v. Ontario*, 2024 ONCA 407 (CanLII), online: <https://canlii.ca/t/k4sms> [*Editors' Note*: Ontario Court of Appeal declares Act eliminating transit workers' right to strike is in violation of the *Charter*.]

## 5. Legislation

- 5.1 "Ontario Government introduces *Working for Workers Five Act, 2024*," Bill 190, *Working for Workers Five Act, 2024*, 1st Sess., 43rd Parl., Ontario, 2024 (assented to October 28, 2024), Lancaster's *Labour Law News*, eAlert No. 524
- 5.2 "Ontario public sector wage cap legislation (Bill 124) violates *Charter* rights of unionized employees, appeal court holds," *Ontario English Catholic Teachers Association v. Ontario (Attorney General)*, 2024 ONCA 101 (CanLII), Lancaster's *Collective Bargaining*, eAlert No. 147
- 5.3 "Federal legislation requiring disclosure of measures to prevent forced labour and child labour in supply chains in force as of January 1, 2024," Bill S-211, *Fighting Against Forced Labour and Child Labour in Supply Chain Act*, Lancaster's *Labour Law News*, eAlert No. 521

See also: "Working for Workers Five Act Receives Royal Assent," *Briefing Notes*, Sherrard Kuzz LLP, October 30, 2024, online: <https://www.sherrardkuzz.com/newsblast/working-for-workers-five-act-receives-royal-assent/>

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See also: Edward Snetsinger, "Bill C-58 to Amend Canada Labour Code – Will limit use of replacement workers and expedite process for maintenance of activities agreements," *Briefing Notes*, Sherrard Kuzz LLP, July 8, 2024, online: <https://www.sherrardkuzz.com/newsblast/bill-c-58-to-amend-canada-labour-code-will-limit-use-of-replacement-workers-and-expedite-process-for-maintenance-of-activities-agreements/>

See also: Nicole Nowoselski, "Certain *Employment Standards Act, 2000*, Amendments Take Effect June 21, 2024," *Human Resources Legislative Update*, Hicks Morley Hamilton Stewart Storie LLP, June 11, 2024, online: <https://hicksmorley.com/2024/06/11/certain-em-employment-standards-act-2000-em-amendments-take-effect-june-21-2024/>

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See also: "Further Regulatory Amendments to Ontario's Temporary Help Agency and Recruiter Licensing Regime," *Briefing Notes*, Sherrard Kuzz LLP, May 1, 2024, online: <https://www.sherrardkuzz.com/newsblast/further-regulatory-amendments-to-ontarios-temporary-help-agency-and-recruiter-licensing-regime/>

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## **Panel 3 - Tech Talks: Addressing technological change, surveillance, monitoring, and AI at the bargaining table**

December 12, 2024, 1:00 p.m. – 2:20 p.m. ET

### Panelists

**Dr. Peter Lewis**, Canada Research Chair in Trustworthy Artificial Intelligence; Associate Professor, Computer Science, Ontario Tech University

**Alan McCallum**, Employer Counsel, PooranLaw

**Nicole Gauthier**, Executive Officer and Chief Negotiator, Ontario Secondary School Teachers' Federation (OSSTF) Toronto

In this session, expert panelists will provide guidance, through collective bargaining, on rapidly progressing technology and expanding monitoring and surveillance capabilities. Panelists will address questions including:

- Are concerns about the impact of artificial intelligence (AI) on work overblown? Is this technological advance different from previous technological revolutions that raised concerns about mass unemployment and dehumanization of work?
- What aspects of work in the broader public sector are most likely to be affected by AI?
- Does existing federal or provincial legislation set any limits on the use of AI in the workplace? What legislative initiatives are currently undergoing debate and how may they impact workplace parties if passed?
- What key impacts resulting from the use of AI in workplaces should be addressed through collective bargaining? Are concerns about AI adequately addressed by standard "technological change" provisions?
- How should employers and unions address the potential use of algorithmic management, e.g. delegating to algorithms certain managerial tasks such as filtering through applications for employment, assessing employee performance, or even making decisions regarding termination of employment under collective agreements?
- How have arbitrators treated the use of emerging monitoring and surveillance technologies intended to measure employee productivity or performance, such as biometric scanning, wearables, GPS tracking, and keystroke monitoring software? What

lessons can be learned from these decisions when negotiating collective agreement language?

- How can parties address concerns about work intensification related to AI, monitoring, and surveillance through collective bargaining? Would standard "workload provisions" help? What about psychological health and safety provisions?
- Are employees entitled to information about how their employer is using AI and monitoring and surveillance technologies? Can this be addressed through collective bargaining?

**Break**

2:20 p.m. – 2:35 p.m. ET

# Toronto Bargaining in the Broader Public Sector Conference

Thursday, December 12, 2024



LancasterHouse

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#### 1. Introduction

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## **5. How should employers and unions address the potential use of algorithmic management, e.g. delegating to algorithms certain managerial tasks such as filtering through applications for employment, assessing employee performance, or even making decisions regarding termination of employment under collective agreements?**

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**6. How have arbitrators treated the use of emerging monitoring and surveillance technologies intended to measure employee productivity or performance, such as biometric scanning, wearables, GPS tracking, and keystroke monitoring software? What lessons can be learned from these decisions when negotiating collective agreement language?**

- 6.1 Excerpts from: Mort Mitchnick & Brian Etherington, *Leading Cases on Labour Arbitration Online*, 2<sup>nd</sup> ed. (Toronto: Lancaster House, 2024, online), Employer Rules Affecting Privacy (14.2)
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- 6.3 "Use of surveillance footage from correctional facilities to monitor employee performance violated collective agreement, arbitrator holds," *Ontario Public Service Employees Union v. Ontario (Solicitor General)*, 2021 CanLII 95740 (ON GSB), Lancaster's *Workplace Privacy Law*, eAlert No. 44
- 6.4 "Electronic timesheet system that required daily 'selfie' photos and GPS tracking on employees' personal devices was unreasonable infringement on employees' privacy rights, arbitrator holds," *International Union of Operating Engineers, Local 793 & Labourers' International Union of North America, Local 183 v. Earth Boring Company Limited*, 2021 CanLII 42419 (ON LA), Lancaster's *Workplace Privacy Law*, eAlert No. 40
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## **7. How can parties address concerns about work intensification related to AI, monitoring, and surveillance through collective bargaining? Would standard "workload provisions" help? What about psychological health and safety provisions?**

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See also: Lisa Kresge, "Union Collective Bargaining Agreement Strategies in Response to Technology," *Working Paper, Technology and Work Program*, UC Berkeley Labor Center, November 2020, online: <https://laborcenter.berkeley.edu/wp-content/uploads/2020/12/Working-Paper-Union-Collective-Bargaining-Agreement-Strategies-in-Response-to-Technology.pdf> [Editors' Note: Note that this is a U.S. resource and thus the clauses listed should be considered in context with the laws of the reader's respective jurisdiction. Clicking on this link may download a PDF document to the reader's device.]

## **8. Are employees entitled to information about how their employer is using AI and monitoring and surveillance technologies? Can this be addressed through collective bargaining?**

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## **Panel 4 - Breaking Barriers, Achieving Balance: Addressing retention and EDI at the bargaining table**

December 12, 2024, 2:35 p.m. – 3:55 p.m. ET

### **Panelists**

**Anne Musacchio**, Manager of Human Resources, City of Vaughan

**Sundeep Gokhale**, Employer Counsel, Sherrard Kuzz LLP

**Marilynn Dee**, Manager Negotiations, Ontario Nurses' Association (ONA)

**Jesse Gutman**, Legal Counsel, Ontario Secondary School Teachers' Federation (OSSTF)

Employees thrive in inclusive, psychologically safe workplaces. Employers and unions can use the bargaining process to address equity, diversity, and inclusion (EDI) under a collective agreement to nurture a forward-thinking workplace that promotes employee wellness, belonging, and retention. In this panel, experts will examine:

- How can unions and employers best negotiate provisions under a collective agreement to create an inclusive workplace? What are specific examples of collective agreement provisions that prioritize EDI?
- What areas of EDI should employers and unions address in the bargaining process to help promote employee retention?
- What collective agreement language was found to be discriminatory? Not discriminatory?
- What measures are effective as a remedy for discrimination harassment, or other forms of misconduct?

### **Closing remarks**

3:55 p.m. – 4:00 p.m. ET

# Toronto Bargaining in the Broader Public Sector Conference

Thursday, December 12, 2024



LancasterHouse

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### Panel 4 – Breaking Barriers, Achieving Balance: Addressing retention and EDI at the bargaining table

#### 1. How can unions and employers best negotiate provisions under a collective agreement to create an inclusive workplace? What are specific examples of collective agreement provisions that prioritize EDI?

1.1 Jeffrey Sack & Peter Neumann, *Unionized Workplaces in Canada: Labour Laws and Contract Clauses* (Toronto: Lancaster House, 2024, online), Human Rights and Workplace Privacy (19)

- Protection against Discrimination (19.1)
- Sexual Harassment (19.2.1)
- Workplace Harassment (19.2.2)

#### a) Anti-racism and religious diversity

See: "Bringing anti-racism to the bargaining table," Canadian Union of Public Employees (CUPE), October 20, 2021, online: <https://cupe.ca/bringing-anti-racism-bargaining-table>

See also: "Agreement between the Treasury Board and Public Service Alliance of Canada (Education and Library Science) – Expiry date: June 30, 2025," Government of Canada, online: <https://www.tbs-sct.canada.ca/agreements-conventions/view-visualiser-eng.aspx?id=8> [Editors'

Note: See Appendix "I", Memorandum of Understanding Between the Treasury Board and the Public Service Alliance of Canada With Respect To A Joint Review on Employment Equity, Diversity and Inclusion Training and Information Conflict Management Systems. Note that similar commitments were negotiated in other federal public sector agreements.]

See also: "2022-2025 Ambulance Paramedics and Ambulance Dispatchers Bargaining Association Collective Agreement: Summary of Collective Agreement Changes," Health Employers Association of BC (HEABC), January 2023, online: [https://www.heabc.bc.ca/public/CAs/APAD/APADSoC\\_2022-2025.pdf](https://www.heabc.bc.ca/public/CAs/APAD/APADSoC_2022-2025.pdf) [Editors' Note: Clicking this link may download a PDF to your device. See Memorandum of Agreement – Diversity, Equity, and Inclusion Group (pp. 52-53).]

See also: "2022-2025 Health Science Professionals Sector Collective Agreement: Summary of Changes," Health Employers Association of BC (HEABC), January 2023, online: [https://www.heabc.bc.ca/public/CAs/HSP/SummaryofChanges\\_NoInterps2022.pdf](https://www.heabc.bc.ca/public/CAs/HSP/SummaryofChanges_NoInterps2022.pdf) [Editors' Note: Clicking this link may download a PDF to your device. See Memorandum of Agreement Re: Days of Cultural or Religious Significance Pilot Project Working Group (p. 68).]

See also: "2020 – 2022 Collective Agreement between the Vancouver Public Library Board and the Canadian Union of Public Employees, Local 391," online: <https://www.vpl.ca/sites/default/files/VPL-CUPE-391-Collective-Agreement-2020-2022.pdf> [Editors' Note: Clicking this link may download a PDF to your device. See s. 11.10 ("Cultural/Religious Diversity").]

See also: "Anti-Racism Collective Bargaining Guide," United Food and Commercial Workers Canada (UFCW), online: <https://www.ufcw.ca/templates/ufcwcanada/images/media/posters/Anti-Oppression/UFCW-Anti-Racism-Bargaining-Guide-2022-EN-V7.pdf> [Editors' Note: Clicking on this link may download a PDF to your device. See pp. 3-12.]

## **b) Indigenization and decolonization**

See: *OPSEU (College Academic Employees) v. College Employer Council*, 2022 CanLII 86598 (ON LA), online: <https://canlii.ca/t/js1pz> [Editors' Note: See Article 4:03 (EDI), Article 11.02 (B 2), LOU re: Costs of Attendance for Indigenous Support Person at WMG or Grievance Meeting, Article 11.02 C2, Article 32.02, Article 32.03 B, LOU re: Indigenous Arbitrators, Job Classification Plans, LOU re: Indigenous Knowledge Definition, Class Definition Counsellor, Note that this was an interest arbitration award rather than a negotiated collective agreement.]

See also: "Truth and Reconciliation: CUPE Taking Action Through Collective Bargaining," Canadian Union of Public Employees (CUPE), March 16, 2022, online: <https://cupe.ca/cupe-launches-truth-and-reconciliation-bargaining-guide>

See also: Spy Dénomme-Welch & Larry Savage, "Indigenization through collective bargaining: Lessons and ideas for academic staff associations," *Academic Matters*, The Ontario Confederation of University Faculty Associations (OCUFA), January 7, 2021, online: <https://academicmatters.ca/indigenization-through-collective-bargaining-lessons-and-ideas-for-academic-staff-associations/> [Editors' Note: See, in particular, the heading "Outcomes".]

See also: "UFCW Canada Our Commitment to Reconciliation 2021," United Food and Commercial Workers (UFCW) Canada, 2021, online: [https://ufcw.ca/templates/ufcwcanda/images/media/posters/Indigenous\\_Downloads/UFCW-Canada-Commitment-to-Reconciliation-2021-V2.pdf](https://ufcw.ca/templates/ufcwcanda/images/media/posters/Indigenous_Downloads/UFCW-Canada-Commitment-to-Reconciliation-2021-V2.pdf) [Editors' Note: Clicking on this link may download a PDF to your device. See "What You Can Do at the Bargaining Table," pp. 14-15.]

See also: "6 Steps to Create an Inclusive Environment for Indigenous Workers," Indigenous Corporate Training Inc., June 5, 2020, online: <https://www.ictinc.ca/blog/6-steps-to-create-an-inclusive-environment-for-indigenous-workers>

See also: "Bargaining for Indigenization of the Academy," *CAUT Bargaining Advisory*, Canadian Association of University Teachers (CAUT), January 2020, online: [https://www.caut.ca/sites/default/files/caut-bargaining-advisory-bargaining-for-indigenization-of-the-academy\\_2020-01.pdf](https://www.caut.ca/sites/default/files/caut-bargaining-advisory-bargaining-for-indigenization-of-the-academy_2020-01.pdf) [Editors' Note: Clicking on this link may download a PDF to your device.]

See also: "United Steelworkers Bargaining Guide for Advancing Indigenous Rights," United Steelworkers, July 20, 2017 (updated June 2022), online: <https://usw.ca/wp-content/uploads/2024/03/BargainingGuide-AdvIndigenousRights-2022-EN.pdf> [Editors' Note: Clicking on this link may download a PDF to your device.]

See also: "Indigenous Retention Strategies and Cultural Leave," Indigenous Corporate Training Inc., January 26, 2015, online: <https://www.ictinc.ca/blog/indigenous-retention-strategies>

See also: "Collective Agreement between the Parks Canada Agency and the Public Service Alliance of Canada – Expiry Date: August 4, 2025," Parks Canada, online: [https://psacunion.ca/sites/psac/files/2023-09-26\\_collective\\_agreement.pdf](https://psacunion.ca/sites/psac/files/2023-09-26_collective_agreement.pdf) [Editors' Note: Clicking this link may download a PDF to your device. See, in particular, s. 51 ("Leave for Traditional Indigenous Practices" (pp. 73-74). Similar provisions were negotiated in other federal public sector collective agreements.)]

See also: "Collective Agreement between CUPE Local 2348 and Indigenous Women's Healing Centre Inc. – Term of Agreement: June 1, 2021 to May 31, 2024," online: <https://cupe.ca/local/cupe-2348-indigenous-womens-healing-centre>

See also: "2022-2025 Ambulance Paramedics and Ambulance Dispatchers Bargaining Association Collective Agreement: Summary of Collective Agreement Changes," Health Employers Association of BC (HEABC), January 2023, online: [https://www.heabc.bc.ca/public/CAs/APAD/APADSoC\\_2022-2025.pdf](https://www.heabc.bc.ca/public/CAs/APAD/APADSoC_2022-2025.pdf) [Editors' Note: Clicking on this link may download a PDF to your device. See the updated preamble (p. 6), 21.02 Leave for Full-Time Union Duties, Public Duties, or Indigenous Governing Entities (p. 20), Article – Ceremonial, cultural, spiritual, and bereavement leave for Indigenous employees (p. 35), Memorandum of Agreement – Declaration of Rights of Indigenous Peoples and Eliminating Indigenous Specific Racism in Healthcare (pp. 50-51), and Memorandum of Agreement –

Recruitment and Retention of Indigenous Workers (p. 64). Similar provisions were negotiated in other HEABC recent agreements.]

See also: "Comprehensive Report on the tentative agreement reached between the Health Services and Support Facilities Subsector Bargaining Association of Unions (Facilities Bargaining Association or "FBA") and the Health Employers Association of British Columbia ("HEABC"), Hospital Employees' Union (HEU), September 2022, online:

<https://www.heu.org/sites/default/files/2022-09/HEU-comprehensive-report-Sept-21-2022.pdf>

[*Editors' Note*: For the final collective agreement, see "2022-2025 Collective Agreement Between Facilities Bargaining Association and HEABC," online:

[https://www.heabc.bc.ca/public/CAs/FBA/FBA\\_CA\\_2022-2025.pdf](https://www.heabc.bc.ca/public/CAs/FBA/FBA_CA_2022-2025.pdf). Clicking these links may

download a PDF to your device.] [*Editors' Note*: See s. 11 (Reconciliation in action) and s. 12 (diversity and inclusion).]

See also: "2020 – 2022 Collective Agreement between the Vancouver Public Library Board and the Canadian Union of Public Employees, Local 391," online:

<https://www.vpl.ca/sites/default/files/VPL-CUPE-391-Collective-Agreement-2020-2022.pdf>

[*Editors' Note*: Clicking this link may download a PDF document to your device. See s. 8.15, Indigenous Elder Representation (p. 14).]

### **c) Gender equity and 2SLGBTQIA+ rights**

See: "Bargaining 2SLGBTQI+ rights: A checklist for collective agreement language," Canadian Union of Public Employees (CUPE), March 8, 2023, online: <https://cupe.ca/bargaining-2slgbtqi-rights-checklist-collective-agreement-language>

See also: *OPSEU (College Academic Employees) v. College Employer Council*, 2022 CanLII 86598 (ON LA), online: <https://canlii.ca/t/js1pz> [*Editors' Note*: See the inclusion of "chosen family" in Article 21.04 (Bereavement Leave). Note that this was an interest arbitration award rather than a negotiated collective agreement.]

See also page 17: "Bargaining Beyond the Binary: A Negotiating Guide for Trans Inclusion and Gender Diversity," Canadian Union of Public Employees (CUPE), July 2022, online:

<https://cupe.ca/orders/bargaining-beyond-binary-negotiating-guide-trans-inclusion-and-gender-diversity>

See also: "Tips for Negotiating Gender Inclusive Language into Collective Bargaining Agreements (CBA)," United Food and Commercial Workers Canada (UFCW), 2021, online:

[https://ufcw.ca/templates/ufcwcanada/images/media/posters/LGBTQ\\_ActionCard\\_V4\\_2021/UF-CW-LGBTQ-Action-card\\_V4\\_EN\\_2021\\_edie.pdf](https://ufcw.ca/templates/ufcwcanada/images/media/posters/LGBTQ_ActionCard_V4_2021/UF-CW-LGBTQ-Action-card_V4_EN_2021_edie.pdf) [*Editors' Note*: Clicking on this link may

download a PDF to your device.]

See also: "Workers in transition: A practical guide for union representatives and trans union members," Canada Labour Congress, 2019, pp. 19 and 27, online:

<https://canadianlabour.ca/wp-content/uploads/2021/02/WorkersInTransition-Guide-EN.pdf>

[*Editors' Note*: Clicking this link may download a PDF to your device. See, in particular, pp. 19 and 27.]

See also: "Building trans-inclusive workplaces: A guide for managers, unions and workers," Public Service Alliance of Canada (PSAC), December 6, 2018, online:

<https://psacunion.ca/building-trans-inclusive-workplaces> [*Editors' Note*: See pp. 10-13.]

See also: "Closing the gender pay gap," Canadian Labour Congress, March 15, 2015, online:

<https://canadianlabour.ca/research/issues-research-closing-gender-pay-gap/#:~:text=Collective%20bargaining%20and%20pay%20equity,their%20skills%2C%20education%20and%20responsibilities>

See also: "Collective bargaining," *Domestic violence at work resource centre*, Canadian Labour Congress (CLC), online: <https://canadianlabour.ca/domestic-violence-work/collective-bargaining/>

See also: "Model language for collective agreements," *Domestic violence at work resource centre*, Canadian Labour Congress (CLC), online: <https://canadianlabour.ca/domestic-violence-work/model-language/>

See also: "2022-2025 Health Services and Support – Community Subsector Collective Agreement: Summary of Collective Agreement Changes," Health Employers Association of BC (HEABC), February 2023, online:

[https://www.heabc.bc.ca/public/CAs/CBA/SummaryofChanges\\_2022-2025\\_NoInterps.pdf](https://www.heabc.bc.ca/public/CAs/CBA/SummaryofChanges_2022-2025_NoInterps.pdf)

[*Editors' Note*: Clicking on this link may download a PDF document to your device. See I 9 Trans Inclusion (p. 21), Memorandum of Agreement (new) – Trans Inclusion (p. 87-88), and Memorandum of Agreement (new) – Employee Data, Membership Cards and Seniority List Working Group (p. 108).]

See also: "Agreement between the Treasury Board and Public Service Alliance of Canada (Education and Library Science) – Expiry date: June 30, 2025," online: <https://www.tbs-sct.canada.ca/agreements-conventions/view-visualiser-eng.aspx?id=8> [*Editors' Note*: See

Appendix "F", "Memorandum of Understanding Between the Treasury Board and the Public Service Alliance of Canada With Respect [*sic*] Gender-Inclusive Language." Note that similar commitments were negotiated in other federal agreements.]

See also: "2020 – 2022 Collective Agreement between the Vancouver Public Library Board and the Canadian Union of Public Employees, Local 391," online:

<https://www.vpl.ca/sites/default/files/VPL-CUPE-391-Collective-Agreement-2020-2022.pdf>

[*Editors' Note*: Clicking this link may download a PDF to your device. See s. 11.6, "Trans-Affirming Care" (p. 25).]

#### **d) Disability inclusion and mental health**

1.2 Jeffrey Sack & Peter Neumann, *Unionized Workplaces in Canada: Labour Laws and Contract Clauses* (Toronto: Lancaster House, 2024, online), Job Rights of Disabled Employees (19.4.1)

See also: "Mental health at work: The role of unions in creating healthier workplaces,"

Teamsters Canada Local 987 of Alberta, September 1, 2021, online:

<https://teamsters987.com/mental-health-at-work-the-role-of-unions-in-creating-healthier-workplaces/>

See also: Troy Winters, "Bargaining for Mental Health," CUPE Health and Safety, September 24, 2020, online: <https://cupe.ca/bargaining-mental-health>

See also: Sandrine Cazes et al., "Facing the future of work: How to make the most of collective bargaining," Chapter 5 of *Negotiating Our Way Up: Collecting Bargaining in a Changing World of Work*, OECD iLibrary, 2019, online: <https://www.oecd-ilibrary.org/sites/f312cb04-en/index.html?itemId=/content/component/f312cb04-en>

See also: "Working mental-health related proposals into our bargaining packages," Manitoba Government Employees' Union (MGEU), online:

<https://www.healthymindsatwork.ca/advocacy/collective-agreements/building-proposals>

See also: "Why mental health matters to unions," Canadian Labour Congress, online

<https://canadianlabour.ca/mental-health-work/>

See: "2022-2025 Health Services and Support – Community Subsector Collective Agreement: Summary of Collective Agreement Changes," Health Employers Association of BC (HEABC), February 2023, online: [https://www.heabc.bc.ca/public/CAs/CBA/SummaryofChanges\\_2022-2025\\_NoInterps.pdf](https://www.heabc.bc.ca/public/CAs/CBA/SummaryofChanges_2022-2025_NoInterps.pdf) [Editors' Note: Clicking on this link may download a PDF to your device.

See Article 22 – Occupational Health and Safety (pp. 61-63) and 22.14 Psychological Health and Safety (p. 65). Provisions addressing the same topic were negotiated in other recent HEABC agreements.]

See also: "Collective Agreement Between: The Liquor Control Board of Ontario and the Ontario Public Service Employees Union," April 1, 2021 – March 31, 2024, online: <https://opseu.org/wp-content/uploads/2022/11/LBED-Collective-Agreement-April-1-2021-March-31-2024-Final.pdf>

[Editors' Note: Clicking on this link may download a PDF to your device. See Preamble paragraph 3 (p. 8), Letter of Agreement – Re: Employment Equity (p. 152), and Letter of Agreement – Re: Mental Health (p. 164).]

See also: "Duty to accommodate: A checklist for collective agreement language," Canadian Union of Public Employees (CUPE), October 19, 2015, online: <https://cupe.ca/duty-accommodate-checklist-collective-agreement-language>

## 2. What areas of EDI should employers and unions address in the bargaining process to help promote employee retention?

### a) Human rights, intersectionality, and anti-discrimination

See **Document 1.1**: Jeffrey Sack & Peter Neumann, *Unionized Workplaces in Canada: Labour Laws and Contract Clauses* (Toronto: Lancaster House, 2024, online).

- Protection against Discrimination (19.1)
- Sexual Harassment (19.2.1)
- Workplace Harassment (19.2.2)

See also **Document 1.2**: Jeffrey Sack & Peter Neumann, *Unionized Workplaces in Canada: Labour Laws and Contract Clauses* (Toronto: Lancaster House, 2024, online), Job Rights of Disabled Employees (19.4.1)

See also: "The importance of unions in reducing racial inequality," Centre for Future Work, August 13, 2024, online: <https://centreforfuturework.ca/2024/08/13/the-importance-of-unions-in-reducing-racial-inequality/> [Editors' Note: The full report is available here: <https://centreforfuturework.ca/wp-content/uploads/2024/08/Union-Advantage-for-Racialized-Workers.pdf> Clicking on this link may download a PDF to your device.]

See also: "IV. Human rights issues at all stages in employment," *Human Rights at Work 2008 – Third Edition*, Ontario Human Rights Commission, online: <https://www3.ohrc.on.ca/en/human-rights-work-2008-third-edition/iv-human-rights-issues-all-stages-employment>

See also: "An introduction to the intersectional approach," Ontario Human Rights Commission, online: <https://www3.ohrc.on.ca/en/intersectional-approach-discrimination-addressing-multiple-grounds-human-rights-claims/introduction-intersectional-approach>

See also: "How does the intersectionality of gender and labor affect union-management relations?" Women Tech Network, online: <https://www.womentech.net/en-us/how-to/how-does-intersectionality-gender-and-labor-affect-union-management-relations> [Editors' Note: This is an American source but contains relevant insights.]

### b) Flexible/remote work and work-life balance

2.6 Jeffrey Sack & Peter Neumann, *Unionized Workplaces in Canada: Labour Laws and Contract Clauses* (Toronto: Lancaster House, 2024, online), Telework (16.7)

See also: "Collective bargaining must improve gender equality in remote work," Uni Global Union Europa, June 25, 2024, online: <https://www.uni-europa.org/news/collective-bargaining-must-address-gender-equality-in-remote-work/> [Editors Note: This is a European source but contains relevant insights.]

See also: "Telework is the new frontier in workers rights," Public Service Alliance of Canada (PSAC), June 20, 2024, online: <https://psacunion.ca/telework-new-frontier-workers-rights>

See also: Kathryn May, "The public service's biggest disruption in decades : hybrid work," Policy Options, September 27, 2022, online:

<https://policyoptions.irpp.org/magazines/september-2022/public-service-hybrid-disruption/>

See also: "Alternative Hours of Work Directive," Government of Alberta, June 3, 2022, online:

<https://www.alberta.ca/alternative-hours-of-work-directive#:~:text=A%20FHA%20is%20required%20any,if%20applicable%2C%20a%20review%20date>

See also: "Negotiating 'work from home' language at the bargaining table," Canadian Union of Public Employees, July 13, 2021, online: <https://cupe.ca/negotiating-work-home-language-bargaining-table>

See also: "Key Trade Union Principles for Ensuring Workers' Rights When Working Remotely," UNI Global Union, February 23, 2021, online:

[https://opencorporationblog.s3.amazonaws.com/uploads/2021/03/UNI-Remote-Work-Guidelines-Report\\_compressed.pdf](https://opencorporationblog.s3.amazonaws.com/uploads/2021/03/UNI-Remote-Work-Guidelines-Report_compressed.pdf)

See also: Alex Bryson & John Forth, "Three crucial ways that unions improve employees' work-life balance," *The Conversation*, November 7, 2017, online: <https://theconversation.com/three-crucial-ways-that-unions-improve-employees-work-life-balance-86436>

See also: "Workplace flexibility rights advance during the pandemic," Peter A. McSherry Employment Lawyer, online: <https://petermcsberry.ca/workplace-flexibility-rights-advance-during-the-pandemic/>

### **c) Holistic equity, diversity, inclusion, and accessibility**

See: "Equity and inclusion toolkit," Canadian Federation of Nurses Unions, June 6, 2019, updated January 6, 2024, online: <https://nursesunions.ca/research/equity/>

See also: "CUPE, MUNSU ratify new 4-year collective agreement," Canadian Union of Public Employees (CUPE), July 21, 2023, online: <https://cupe.ca/cupe-munsu-ratify-new-4-year-collective-agreement>

See also: "Digital bargaining hub," Public Services International, April 26, 2023, online: <https://publicservices.international/digital-bargaining-hub/2-equity-diversity-and-inclusion?id=13170> [*Editors' Note*: See in particular s. 2 on equity, diversity, and inclusion.]

See also: "How to improve workplace equity: Evidence-based actions for employers," Employment and Social Development Canada, March 15, 2023, online:

<https://www.canada.ca/en/employment-social-development/corporate/portfolio/labour/programs/employment-equity/reports/employers-improve-workplace.html>

See also: Eckhard Voss, "Collective Bargaining and Digitalization: A Global Survey of Union Use of Collective Bargaining to Increase Worker Control over Digitalization," (July 2022), 34:1 *New England Journal of Public Policy* 1-36, online:

<https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1822&context=nejpp>

See also: "Collective Bargaining Preparation," The HR Hub, August 17, 2021, online:

<https://www.youtube.com/watch?v=xjYdcfcDVbM>

See also: Megan McRobert, "Bargaining surveys: know your member priorities before negotiations," Unit Workers, May 3, 2021, online: <https://guide.unitworkers.com/bargaining-surveys-know-your-member-priorities-before-negotiations/>

See also: "Promoting and supporting equity through collective bargaining," Public Service Alliance of Canada (PSAC), December 8, 2020, online: <https://psacunion.ca/equity-through-collective-bargaining-OUV-Fall2020>

See also: Ken Green, "How collective bargaining agreements can encourage workplace diversity," Union Track Blog, March 9, 2020, online: <https://uniontrack.com/blog/workplace-diversity> [*Editors Note*: This is an American source but contains relevant insights.]

See also: "Building the Canada we need," *Our Union Voice*, Public Service Alliance of Canada, 2020, online: [https://psacunion.ca/sites/psac/files/2020-12\\_our-union-voice\\_en.pdf](https://psacunion.ca/sites/psac/files/2020-12_our-union-voice_en.pdf) [*Editors' Note*: Clicking on this link may download a PDF to your device.]

See also: "Equity and Inclusion," *Union Steward Handbook*, Canadian Labour Congress, 2019, pp. 28–37, online: <https://canadianlabour.ca/who-we-are/labour-education/union-stewards-handbook/> See also: Jojo Geronimo, "Tools for Equity," *A Leader's Guide To Strengthen Unions: Moving Beyond Diversity... Towards Inclusion and Equity*, Toronto & York Region Labour Council, September 2014, pp. 17–25, online: [https://d3n8a8pro7vhmx.cloudfront.net/torontoyorklabour/pages/80/attachments/original/1550092276/equity\\_handbook.pdf](https://d3n8a8pro7vhmx.cloudfront.net/torontoyorklabour/pages/80/attachments/original/1550092276/equity_handbook.pdf) [*Editors' Note*: Clicking on this link may download a PDF to your device.]

See also: "Promoting diversity and inclusion through workplace adjustments: A practical guide," International Labour Organization, 2016, online: [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed\\_norm/@declaration/document/publication/wcms\\_536630.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@declaration/document/publication/wcms_536630.pdf) [*Editors' Note*: Clicking on this link may download a PDF to your device.]

See also: "Section 2: Engagement and equity," Canadian Labour Congress, October 28, 2015, online: <https://canadianlabour.ca/uncategorized/section-2-engagement-and-equity/>

See also: "Equity Matters at Queen's University," The Queen's University Equity Office, February 2013, online:

[https://www.queensu.ca/hreo/sites/hreowww/files/uploaded\\_files/Publications/Equity%20Matters%20Newsletter/EQM\\_Issue\\_5\\_2013.pdf](https://www.queensu.ca/hreo/sites/hreowww/files/uploaded_files/Publications/Equity%20Matters%20Newsletter/EQM_Issue_5_2013.pdf) [Editors' Note: Clicking on this link may download a PDF to your device.]

See also: "Bargaining and equity," Public Service Alliance of Canada, online: <https://old.psa-ncr.com/bargaining-equity>

See also: "Why bargain for equity?" Canadian Association of University Teachers (CAUT), online: <https://www.caut.ca/equity-toolkit/article/bargaining-equity>

See also: "Auditing a collective agreement for equity: A checklist for academic staff associations," Canadian Association of University Teachers (CAUT), online: [https://www.caut.ca/sites/default/files/auditing\\_a\\_collective\\_agreement\\_for\\_equity-en-final.pdf](https://www.caut.ca/sites/default/files/auditing_a_collective_agreement_for_equity-en-final.pdf) [Editors' Note: Clicking on this link may download a PDF to your device.]

### **3. What collective agreement language was found to be discriminatory? Not discriminatory?**

#### **a) Collective agreement language found to be discriminatory**

- 3.1 "Vacation rescheduling provision of collective agreement requiring proof of hospitalization or home care discriminated against employees with mental illness, arbitrator rules," *Halton Regional Police Association v. Halton Regional Police Service Board*, 2024 CanLII 3402 (ON LA), Lancaster's *Labour Arbitration*, eAlert No. 338
- 3.5 "Pension contribution provisions in collective agreement discriminated on the basis of age," *Ontario Public Service Employees Union v. Ontario (Government and Consumer Services)*, 2021 CanLII 19542 (ON GSB), Lancaster's *Pension and Benefit Law*, eAlert No. 183

See also: *Calgary (Corporation of the City) v. Calgary Firefighters Association, Local 255*, 2023 CanLII 13705 (AB GAA), online: <https://canlii.ca/t/jvt1d> [Editors' Note: The Board held that the City of Calgary's practices were consistent with the provisions of the Collective Agreement but discriminated against members in temporary modified duties.]

See also: *Fortisbc Energy Inc. v Moveup – Canadian Office and Professional Employees' Union*, 2021 CanLII 141081 (BC LA), online: <https://canlii.ca/t/jm2tx> [Editors' Note: A B.C. arbitrator allowed a union's policy grievances challenging as discriminatory the employer's interpretation of a sick leave provision that required employees to return to "active duty" as a condition of having their entitlement to paid sick leave reinstated.]

#### **b) Collective agreement language found not to be discriminatory**

- 3.6 "Employer's interpretation of the collective agreement as requiring certain leaves to be taken in full rather than half days was both correct and non-discriminatory, arbitrator rules," *BCTF/Delta Teachers' Association v. BCPESEA/The Board of Education of School District No.37 (Delta)*, 2023 CanLII 54536 (BC LA), *Lancaster's Labour Arbitration*, eAlert No. 333
- 3.7 Ontario Human Rights Code exemption permitting discontinuation of disability income benefits at age 65 is constitutional, arbitrator holds," *Unifor, Locals 256 and 89 v. Rayonier*, 2022 CanLII 75226 (ON LA), *Lancaster's Human Rights in Employment*, eAlert No. 373

See also: *Windsor Professional Fire Fighters Association v. City of Windsor*, 2021 CanLII 34197 (ON LA), online: <https://canlii.ca/t/jflb6> [Editors' Note: An arbitrator dismissed a grievance alleging that the City of Windsor's practice of pro-rating vacation entitlements for firefighters who were absent from work due to a compensable injury was discriminatory.]

#### **4. What measures are effective as a remedy for discrimination, harassment, or other forms of misconduct?**

- 4.1 Mort Mitchnick & Brian Etherington, *Leading Cases on Labour Arbitration, 2nd ed.* (Toronto: Lancaster House, 2024, online),
- Damages In Lieu Of Reinstatement (7.2.1)
  - Human Rights Remedies (15.3.11)
- 4.2 "Employee, dismissed after asking to work from home to meet family care obligations, awarded \$25,000 by Tribunal for discrimination based on family status and reprisal," *Cosentino v. Octapharma Canada Inc.*, 2024 HRTO 860 (CanLII), *Lancaster's Gender, Equity, and Work-Life Balance*, eAlert No. 185
- 4.3 "Employee awarded \$15,000 in damages for reprisal and poisoned work environment resulting from co-worker's single use of racial slur," *Labourers' International Union of North America, Local 183 v. Iron Forming Inc.*, 2023 CanLII 39143 (ON LA), *Lancaster's Human Rights in Employment*, eAlert No. 381
- 4.4 "Tribunal's acceptance of testimony of sexual assault survivor despite faulty memory was reasonable, court rules, endorsing record-setting damages award," *Joe Singer Shoes Limited v. A.B.*, 2019 ONSC 5628 (CanLII), *Lancaster's Human Rights in Employment*, eAlert No. 339

See also: "Harassment and discrimination prevention and response policy," *University Secretariat and Legal Counsel*, Queen's University, revised September 29, 2023, online: <https://www.queensu.ca/secretariat/harassment-and-discrimination-prevention-and-response-policy>

See also: "Preventing and resolving harassment in the workplace – A guide for managers," Government of Canada, online: <https://www.canada.ca/en/government/publicservice/wellness-inclusion-diversity-public-service/harassment-violence/preventing-resolving-harassment-workplace-guide-managers.html>

See also: See also: "IV. Human rights issues at all stages in employment," *Human Rights at Work 2008 – Third Edition*, Ontario Human Rights Commission, online: <https://www3.ohrc.on.ca/en/human-rights-work-2008-third-edition/iv-human-rights-issues-all-stages-employment>

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