

# A LABOUR RIGHTS & REPORTING HANDBOOK







## **TABLE OF CONTENTS**

| Acknowledgements Introduction  |  |
|--|--|
| PART 1 MEDIA WORKER RIGHTS   |  |
| How to Classify Yourself Volunteer Intern Freelance Employee   | 7                                      |
| Know Your Rights Volunteer Rights Intern Rights Freelance Rights Employee Rights Rights for All Categories of Workers                                      | 15                                     |
| PART 2 LABOUR REPORTING  |  |
| Labour History How to Cover Labour Effectively The Strike Script Labour and the Law Life of a Collective Bargaining Agreement Labour Glossary Reading List | 45<br>46<br>50<br>56<br>59<br>66<br>76 |

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## INTRODUCTION

## WORK MATTERS—IT'S THE MOST IMPORTANT ASPECT OF MOST ADULTS' LIVES

In theory, the average Canadian spends 40 hours a week at their job, not including the time spent commuting to work, thinking about work or talking to colleagues at work-related events.

Yet, when you watch or listen to the news or open up a newspaper, our working lives are rarely discussed.

Dozens of columns are written on any given day about how businesses can improve productivity. Mainstream news coverage includes extensive reports of the annual profits and changing stock value of various companies, but little of that can be considered labour reporting. The nature of work itself and its impacts on our daily lives are rarely the focus of journalists' efforts. Instead, the media have a tendency to view work through the eyes of corporate executives and owners — rarely from the perspective of workers themselves.

At the same time, new technologies are rapidly changing the way people in media industries do their jobs. The shift to digital journalism, changing ownership structures, the commodification of news and a steady decline of newsroom jobs are radically reshaping the ways media workers relate to their employers. If they even have employers — freelance work is on the rise in media industries.

With some exceptions, changes in media industries have had negative implications for media workers. Today's media workers can expect to face layoffs and underemployment, be underpaid or not paid for their work and generally experience forms of exploitation. Even though many media workers and journalists say they love the work they do, many work in difficult conditions.

The Communication Workers of America Canada (CWA Canada) Associate Members Program, the National Campus and Community Radio Association (NCRA) and the Canadian University Press (CUP) have come together to create this guide as a resource for workers in an increasingly precarious industry.

Given the decline of labour reporting in corporate media, this guide also focuses on the student press, campus and community radio stations and other alternative media outlets as places where more in-depth coverage of labour issues can take root.

In the following pages you will find a section on media workers' rights, a starter guide to labour reporting and an index of terms, articles and other resources.

Use this handbook often, share widely, and be sure to value your labour and the labour of others!

Happy Reporting!



## **HOW TO CLASSIFY YOURSELF**

Before you can begin to figure out what rights you have as a worker, you have to know how to classify yourself. Are you a volunteer or an intern? Does that weekly series of articles you write for the local paper make you a self-employed freelancer or a part-time employee? And why does this matter?

Understanding your employment status isn't just a matter of knowing what to put on your business cards. Employers have different responsibilities and obligations to freelancers, volunteers, interns and employees. It doesn't matter what title they've given you. What matters is how you are classified under the law.

If the local supermarket started selling its bananas as "oranges," it wouldn't make the fruits any less yellow and full of potassium. Similarly, if you're doing the work of an employee, your employer could loudly insist that you're a volunteer or an intern, but the courts would still consider you an employee.

A large number of workers in many sectors are misclassified. Sometimes it's just that employers don't understand the law. Other times, their motives may be more self-interested. If you're classified as a freelancer, for instance, your employer doesn't have to make contributions to Employment Insurance (EI) or the Canada Pension Plan (CPP). If you are an employee, you are legally entitled to be paid minimum wage.

So, how do you know what to call yourself and more importantly, what rights you're entitled to under the law?

The first thing to figure out is whether the job you're doing is in a provincially-regulated or a federally-regulated industry. For media workers, this is fairly simple: if you work for a broadcaster, such as the CBC, CTV or a local radio station (be it a campus, community or commercial station), then you're in a federally-regulated industry. If you work in newspapers, magazines or for an online publication, then you will be covered by provincial law.

Workers in federally-regulated industries will find their exact rights and obligations in the Canada Labour Code and the Canadian Human Rights Act. If you work in a provincially regulated industry, you should consult the employment standards, human rights and workplace health and safety legislation in your province.

#### **VOLUNTEER**

The most obvious sign that you're a volunteer is that you don't get paid a wage. But then again, you already knew that. Some volunteers receive honoraria or appreciation gifts from the organization for which they're volunteering. But if you're being paid a wage, it's safe to say you're not a volunteer and you can move on to the next section.



Student newspapers and campus and community radio stations rely on volunteers to produce much of their content. This reflects their lower budgets, but also speaks to their mandates to provide training, offer direct public access to the media and amplify voices and perspectives that are under-represented in corporate media. For example, CFRO-FM Vancouver Co-op Radio has more than 400 volunteers producing more than 120 hours of original programming each week, supported by a staff of four part-time workers.

How do you know if you should be getting a wage for the "volunteer" work that you're doing? The actual definition of who qualifies as a volunteer is very vague in legislation, but there are a number of things to look out for.

First, legitimate volunteer opportunities are rarely found outside of the not-for-profit sector. In most circumstances for-profit companies cannot ask people to volunteer for them.

But even not-for-profits have to abide by labour laws. In general, organizations can't have volunteers carry out duties that were previously done by a paid employee.

Another red flag is if you volunteer more than 5 - 10 hours a week.

If your position is full-time and for an extended period of time (longer than a week or two), it will be difficult for the employer to convince a judge that you're simply a volunteer.

As you might have gathered, there isn't a hard-and-fast definition of what constitutes a volunteer. Instead, you have to eliminate other options.

#### Should either Paula or Arvind be considered volunteers under the law?

- Scenario #1: Paula has been writing articles for her student newspaper, which is a not-for-profit, for the past two months. She usually writes for the sports section, mostly about the school's volleyball teams. Paula isn't paid for her work. She approaches her editor whenever she has some free time to work on an article and it's up to her to decide how often she writes. If her editor asks her to work on a story, but she doesn't have time, she can simply say she is busy and her editor will give the story to another writer. Her responsibilities are limited to the stories that she accepts.
- Scenario #2: Arvind has been writing for Panda Fancy magazine, which is owned by a for-profit company, for the past three months. His editor assigns him five articles every week, for which he isn't paid. Arvind doesn't have a say in which assignments he accepts. He is required to write three pieces every week, regardless of how much time he has. The "volunteer" position lasts for six months and the workload is essentially full-time. Even though he isn't paid, the magazine has a number of staff writers who are paid to do the same work that Arvind is doing.

In this scenario, Paula would most likely be considered to be a volunteer under the law. She determines her own hours and accepts work at her own discretion. Arvind however is doing the work of an employee, despite his title, and mostly likely should be covered by all employment standards.

#### **INTERN**

"Internship" is a slippery term that is used to cover all kinds of positions. Like "volunteer," there isn't a standard definition of what an "intern" actually is. But the primary goal of internships is to provide training for a profession. Federal and provincial legislation determines what is a true internship and what are just illegal exploitative labour practices.

Despite the legislation, if you spend a few minutes flipping through a job postings site, you're likely to come across positions listed as "internships" that are actually illegal because they are misclassified jobs. Unfortunately, the practice is quite common and you may find yourself considering an illegal internship. This section of the guide will help you identify whether the position you're taking on is fair or unfair and what your options are if it is the latter.

For our purposes, internships can be categorized into two broad camps: legal and illegal. If you're working in an illegal internship, this generally means that you should be considered an employee, which would entitle you to at least minimum wage and protections under employment standards legislation. The section below on internships will tell you what to do if you're working in an illegal internship and want to receive the wages that you're entitled to under the law.

Most legal internships are done for credit through a post-secondary institution. Some of these are paid and some are unpaid, but by and large, anything you do through a degree program will be legal. That doesn't mean internships are fair or equitable, but more on that later.

If you've already graduated or if you're not receiving school credit for your unpaid internship, you should probably be considered an employee.

Different provinces have a handful of exceptions to this rule. In Ontario, unpaid internships that are done outside of degree programs are considered legal only if they fulfill six very strict requirements that show that the intern is deriving all the benefit.

#### **DID YOU KNOW?**

IN ONTARIO, THERE ARE ONLY TWO CIRCUMSTANCES IN WHICH UNPAID INTERNSHIPS ARE CONSIDERED LEGAL:

- You are performing work under a program approved by a college or a university.
- If all the following statements are TRUE:
  - 1. Your training is similar to that which is given in a vocational school
  - 2. Your training is for the benefit of the intern. You should receive some benefit from the training, such as new knowledge or skills.
  - 3. Your employer derives little, if any, benefit from the activity of the intern while he or she is being trained?
  - 4. Your training isn't taking away someone else's job
  - 5. Your employer isn't promising you a job at the end of your training
  - 6. You have been told that you will not be paid for your time

In British Columbia, some professions, such as law, architecture, engineering and real estate, are exempt from paying their interns. However, this isn't likely to apply to anyone working in the media.

#### Should either Mel or Ariel be considered interns under the law?

Scenario #1: Mel is enrolled in a four-year broadcasting program at Canadian Polytechnic University. To get their degree, they are required to do a six-week internship at a broadcast institution. The program sets them up with an internship at 95.3 CHAT FM, for which they won't be paid. While at the internship, Mel receives training from some of the producers, helps out with some of the programs and writes copy for the website. When they finish, they receives course credit for the internship.

**Scenario #2:** Ariel graduated with a bachelor's degree in journalism three months ago. She is selected for an unpaid internship at the prestigious literary magazine The Platypus. The internship will last for six months and Ariel will be required to work full-time. While at The Platypus, Ariel is put to work as a copy editor and a fact-checker. Her work is essential to the magazine and content cannot go to print without her revisions.

In this scenario Mel's internship would most likely be considered to be legal, but Ariel's to be illegal. Mel is receiving course credit for their internship, while Ariel is doing the work of an employee but is receiving no compensation.

#### **FREELANCER**

Freelancer may at first glance appear to be a straightforward category. It is someone who sells services or products to one or more employers without a long-term commitment to any of them. But many businesses will call their workers "freelancers" to get around the obligations



they have to employees, such as contributing to the Canadian Pension Plan (CPP) or Employment Insurance (EI) on their behalf. Most likely, if you pitch articles to a newspaper, or if a magazine occasionally hires you for a photo shoot, you're freelancing for them.

Some media workers have regular gigs that take up large portions of their time, and yet are called freelancers. Some of these workers should be classified as employees.

It is important to note that you can be simultaneously working on several assignments under different job classifications. For example, you can be freelancing for a magazine at the same time as working a short-term temporary contract for a radio station or volunteering for a campus newspaper. What matters are the details of the employment relationship in each specific job or "gig".

#### Should either Mariana or Tian be considered a freelancer under the law?

Scenario #1: Mariana is a photographer and videographer who works for a variety of publications. She often works at night, listening to police scanners and heading to crime scenes when something serious happens. She owns her own equipment, uses her own car and pays for gas. She takes photos and video at the crime scenes and then emails her contacts at newspapers and broadcast networks to see if any of them are interested in her content. Sometimes people she has worked with reach out to her for specific assignments, which she can accept or decline at her own choosing.

Scenario #2: Tian works as a production assistant on reality TV shows. He has recently been hired to work for the hit show Sex, Lies and Potato Chips, a behind-the-scenes look at the lives of convenience store workers. Despite the fact that he works on the show full-time, his employer considers him as an independent contractor. Tian only uses equipment that the studio owns and he has to be on set at specific hours. While he's working on the show, he isn't allowed to work on any other productions.

In this scenario, Tian is mostly likely doing the work of an employee for Sex, Lies and Potato Chips and should be compensated as and receive the benefits of an employee. Mariana accepts and declines work at her own discretion, chooses her own hours and uses her own equipment and resources. She is most likely considered as a freelancer.

The chart on Page 14 offers a handy checklist for figuring out whether you're a freelancer or an employee.

#### **EMPLOYEE**

Employee is the default relationship between worker and the person or business that they work for or provide services to. As with every other category, the exact definition varies from province to province.

Employees can be part-time, full-time, short-term or permanent. Some employees are part of a union while others are not.



## **KNOW YOUR RIGHTS**

Now that you know what kind of worker you are, it is important to learn what rights you have. These rights can be governed by both federal and provincial legislation in Canada.





## THERE ARE 3 MAIN TYPES OF LAWS IN EACH PROVINCE THAT GIVE WORKERS PROTECTION:

#### EMPLOYMENT STANDARDS ACTS

Provides the minimum standards for working in a province and sets out rights and responsibilities of employees and employers.

#### HUMAN RIGHTS CODES

Prohibits discrimination based on grounds such as age, race, place of origin, sex, sexual orientation, gender identity, dis/ability and family and marital status.

## OCCUPATIONAL HEALTH & SAFETY

Sets out the rights and duties of all parties in the workplace. It establishes procedures for dealing with workplace hazards and it provides for enforcement of the law where compliance has not been achieved voluntarily by workplace parties.

### WORKERS IN FEDERALLY-REGULATED INDUSTRIES HAVE THEIR RIGHTS OUTLINED IN:

#### CANADA LABOUR CODE

Provides the employment and health and safety standards for working in federally-regulated organizations. These include, banks, mobile network operators, broadcasters, airlines, and the federal government. It also outlines health and safety standards.

#### CANADA HUMAN RIGHTS COMMISSION

Prohibits discrimination based on grounds such as age, race, place of origin, sex, sexual orientation, gender identity, dis/ability, and family and marital status.

#### **VOLUNTEER RIGHTS**

So you've decided to volunteer at a media organization. Perhaps it's for your campus newspaper, the local community radio station or a small magazine read by knitting enthusiasts. You'll be providing them with your talents, your insight and, of course, your valuable time.

Good for you. Many media organizations, especially small, not-for-profit enterprises, would collapse without the aid of volunteers. In addition, volunteering can help you hone your skills and build a portfolio you can use to land paid work. Volunteering can also help ensure that issues that you care about get out to the public.

But what sort of rights do you have as a volunteer?

The first thing to know is that volunteers aren't entitled to the same protections that employees have. Beyond that, things get murkier—the legislation and case law is often inconclusive.

in general, it's accepted that volunteers are covered under the various human rights codes across the country. What that means is that volunteers can't be discriminated against because of their race, gender, age, disability, sexual orientation, place of origin, or non-relevant criminal convictions.

These protections begin at the application process. For instance, if you're interviewing for a volunteer position, the interviewer cannot ask you about your sexual orientation.

However, protections against discrimination do not necessarily apply to organizations with a legitimate interest in recruiting people from specific groups. A domestic violence shelter may decide to only recruit women as volunteers, for example. A radio show that tells stories relevant to people with disabilities has good reason for seeking out volunteers who have experience living with a disability.

If you believe that you've been unfairly discriminated against while volunteering, you can seek redress with the human rights tribunal in your province. If you were volunteering at a broadcaster, which is governed by federal law, you can apply to the Canadian Human Rights Tribunal.

Along with an environment free from discrimination, any organization that you volunteer for is also obligated to keep you safe, inform you of any potential hazards and provide you with necessary protective equipment.

## Volunteering at not-for-profit media organizations - Profile of Shameless Magazine

It is important for not-for-profit community media organizations with little or no money to treat their workers and volunteers fairly even if they are casual contributors.

Nicole Cohen, co-founder and former editor of Shameless magazine, writes in a chapter in the book Alternative Media in Canada that writers often chose to contribute to Shameless to gain access to a "space to pursue feminist ideas and satisfying work relationships" (p.224).

In the chapter, Cohen describes how media workers, with varied levels of experience, often engage in alternative media for training, experience or as a means of doing advocacy and activism. Under the banner of student, volunteer, freelancer or activist, hours of unpaid media work are completed every day by folks attempting to gain entry into the increasingly inaccessible and glamorized media industry or to subvert its often homogenous messaging.

Shameless Magazine is a print and online publication for teen girls and queer and trans youth with progressive, critical and feminist content.

The magazine, initially run exclusively by the two founders, Melinda Mattos and Nicole Cohen, has grown to a staff of about twenty-five and has a large contributor base of writers, editors, artists, events volunteers and bloggers.



© Wesley Fok

All are volunteers.

Sheila Sampath, current editorial and art director for Shameless, discusses how the magazine maintains a structure of accountability and respect for all volunteers.

"Shameless kind of operates the way a zine would but it's a magazine. Very very grassroots, very small," says Sampath. The print magazine is published three times per year and the online blog and community is regularly updated and maintained. Magazine staff hold events and also engage with popular education tools.

Sampath explains how the magazine strives to meet deadlines and treat volunteers and contributors fairly and respectfully.

"Trying to take from the efficiency of a capitalist hierarchical structure but then combining it with the spirit, understanding and communication style of a collective structure has been really really positive for us," she says.

Sampath explains that the magazine has a relatively conventional editorial hierarchy, but uses a mix of collective dialogue, online tools and friendship to ensure a positive working environment for all staff and contributors. "Because we don't pay," Sampath says, "one of the things we give each other is a sense of friendship and camaraderie and community."

The magazine hopes to one day have enough money to be able to pay people for their work.

"We sort of made the decision that if and when we have money we are going to start with honoraria for writers and artists and then move over to our volunteer staff," Sampath says.

Sampath explains that no one's work is valued more than another's. "I think a part of why people are willing to write for free or draw for free or whatever is because we're not profiting off of their labour. We're using the money from the magazine to support the magazine." Everyone, from an events volunteer, to a writer, to Sampath herself, is valuable "because all of that work contributes to the publication."

Sampath believes that having more money might actually make things more complicated.

"I think that one thing that's helpful to talk about is the importance of talking about what you're going to do with money once you get money. Define ways of making sure that you don't fall into the claws of capitalism and then suddenly switch to a model that's oppressive once you actually have resources."

So why come up with a plan to pay writers and artists who contribute the magazine's content before the staff?

Sampath says that because they are the most distanced from the operation of the magazine, casual contributors don't necessarily get the benefit of the positive and progressive work environment. Nor do they get the benefit of job titles that can be used to gain access to paid work with other organizations.

"Using capital as a way to rebalance ownership is kind of a nice thing and it was great to have our staff all agree that our contributors, who have the least ownership of Shameless should get paid first."

At the moment, Sampath is happy with the structure of the magazine's operation. "I don't feel bad about the unpaid labour right now," she explains, "because none of us are profiting off of it."

#### **INTERN RIGHTS**

Internships only appear in legislation in a handful of provinces, and it is not always clear what rights interns are entitled to.

In many cases, unpaid internships are illegal.

These interns are misclassified employees who are entitled to minimum wage and all other employment standards.

*Is it okay to do an illegal internship?* 

THE CBC HAS A COOL
INTERACTIVE MAP ON INTERN
RIGHTS ACROSS CANADA:

HTTP://WWW.CBC.CA/NEWS2/ INTERACTIVES/INTERNSHIP-LEGISLATION/

All work has value and all media workers deserve to be paid fairly for their work. However, there are some circumstances where one might willingly choose to do an unpaid internship. If you need the experience and you have the means to support yourself, then it's your choice. The worker who is doing an unpaid internship isn't at any fault—it's the employer that's breaking the law. Advocates for fair internships stress that it's up to employers to understand the law and to ensure their positions are legal and fair.

If you do decide to do an unpaid internship, make sure that it's worthwhile for you and that you're getting something out of the relationship. Under the law, an internship should benefit the person doing the internship more than the company.

Before you accept an offer, ask the employer what sort of training they provide. Ask what kind of work you'll be doing as well and whether it's something you'll find useful. Will other employees be mentoring you or will you be stuck doing grunt work by yourself?

You can always ask an employer about payment, even though this feels very difficult for many people. If you don't think you can ask for minimum wage, you might want to suggest that an employer at least cover some of your costs, such as a transit pass to get to work and an honorarium for lunches.

Many start-up media organizations, especially those online, look for unpaid interns to do work that should be performed by paid employees. If you get one of these positions, you could ask the owners to give you a small equity stake in lieu of pay.

That way, you're at least a part-owner in the new enterprise.

If you don't want to do an unpaid internship but still need to get experience, there are other options. Volunteering at a student or community newspaper or a community radio station can provide excellent experience while giving you more ownership over your own time and the kind of work you get to do. Finding an established journalist to mentor you can be a great way to make industry connections while learning the ropes.

If you believe you have the necessary media skills but want to beef up your portfolio, freelancing is also a great option.

#### SO YOU'VE DECIDED TO ACCEPT AN INTERNSHIP. NOW WHAT?

As with all forms of work, you should get a written agreement between you and your employer that outlines the responsibilities of both parties and the details of the internship, such as your tasks and hours of work. If you aren't offered a contract, you can follow up with an email outlining and confirming what you agreed to verbally. And remember, you have the right to at least try to negotiate for working conditions that you think are fair.

#### Here's what to cover in an email or contract:

- 1. The scope of the internship: Outline your responsibilities, what tasks you will perform, and the skills and experience you will gain.
- 2. Expected hours of work and length of contract: How many hours will you work per day or week, and what is the end date of the contract.
- 3. Who your mentor will be: Who will train you, answer your questions, and share daily guidance and constructive feedback.
- 4. Exit interview: Make sure you have an opportunity to give and receive feedback at the end of your contract.
- 5. Training on safety and harassment in the workplace: Your employer has a legal obligation to deliver safety training to all workers, including unpaid interns.
- 6. Compensation: You may not be getting an hourly wage, but there are other forms of compensation you can negotiate for, including honoraria, work expenses, per diems, transit pass, software licenses, a reference letter, etc.
- 7. Acknowledging contribution and credit: Your name should appear on any work that you help produce.

I think I'm doing an illegal unpaid internship. What should I do?

If you've found yourself doing an illegal unpaid internship, you have three options: leave, stay or ask to be paid.

Regardless of which you choose, you're entitled to back wages for the work that you've done up until that point. Even if you choose to not report the illegal internship to the government, you should do a number of things to protect yourself in case your situation changes.

First, make sure you have a copy of the original job posting and any descriptions of your responsibilities. If you signed a contract, ensure that you have a copy of it at home.

While you're actually doing your internship, keep a diary of the work you're doing. This should include the hours and dates you work and what tasks you carried out.

Forward any email correspondence between your employers and yourself to a non-company email so that you have access to them when your job is done.

THE CANADIAN INTERN ASSOCIATION HAS A SECTION ON THEIR WEBSITE THAT EXPLAINS HOW TO FILE FOR BACKPAY:

HTTP://WWW.INTERNASSOCIATION.CA/CLAIM-BACK-YOUR-PAY/

## Q&A WITH CLAIRE SEABORN, FOUNDER AND PRESIDENT OF THE CANADIAN INTERNSHIP ASSOCIATION



Why did you found the Canadian Internship Association? Why did you found the Canadian Internship Association?

I wanted to stand up for the value of young people in the workplace and I think that internships, by and large, devalue the skills and abilities of young people.



What does the organization do? What does the organization do? What does the organization do?

We do a lot of things, primarily education and law reform and promoting research around the rights of interns. I would say those are the three big categories. We also try to educate the public through our wall of shame and wall of fame where we publicly shame companies that we think are running illegal and/or problematic internships. The law reform part is that we lobby provincial and federal governments to improve their laws regarding interns.

We've had some really great success already. The Ontario Occupational Health and Safety Act was amended in October 2014 and now covers students and interns, which is great. We've had quite a few private member's bills that we've worked really closely with the MPs and MPPs on, which has been really exciting. We've worked with some masters students at the University of Victoria, we've worked with some professors at McMaster University and at Wilfrid Laurier University. Academics have an interest in this issue and we want to promote that because there isn't enough research or data on issues that affect interns.



What makes an internship problematic? What makes an internship problematic?

Well the first thing is the law, whether it's legal or illegal. Then I just hear a lot of really blatant examples of racial discrimination, gender discrimination, dangerous health and safety situations. I hear a lot of promises that aren't kept by employers, like, "there's going to be all of these opportunities, you're going to have a chance for a job at the end of it." Just employers not being up front.

And then there's interns that are completely replacing the work of paid staff members and it's very obvious that would be a paid position if it was not for the unpaid intern. At the other end of the spectrum there are interns who are doing really, really menial tasks and they're not receiving any training or education. On that end of things it's problematic too because you should be having a paid staff member refilling your photocopier paper, not someone unpaid.



## If somebody wants to take action but is concerned about repercussions, what advice do you have?

I understand that concern but I think it's becoming less and less of a concern. Over the past two and a half years I've seen a huge cultural shift in the way that unpaid internships are perceived. There are a lot of employers who think they're really problematic and a lot of young people that think they're problematic.

#### Supporting freelance, intern and emerging media workers

With the growing shift in media work towards self-employment, short-term contracts and low pay (or no pay) jobs, the Communications Workers of America (CWA) Canada, an all-media labour union, and its largest local, the Canadian Media Guild (CMG), have been figuring out ways to adapt and provide effective supports to these new types of media workers.

#### **CWA CANADA ASSOCIATE MEMBERS**

We are a community dedicated to connecting student, volunteer and precarious (intern, temporary, part-time) media workers to each other, and to the resources they need to realize their creative and career goals.

We offer training and networking opportunities, we raise awareness about workplace rights, and we advocate for all media work to be valued and respected.

Check out our free supports at www. emergingmediaworkers.ca

Have questions about your rights at work? Contact us at: 416-795-8598



#### **CMG FREELANCE**

We know you and your work thrive best with a balance of personal, professional and community well-being.

We offer supports that help you ensure your health, safety and work capacity, as well as your productivity, professional development, opportunities for networking and collaboration. Although we're not a hiring hall that gets you gigs, we do offer services and resources to get you 90% there.

Check them out at www.cmgfreelance.ca Have questions about freelance contracts? Contact us at: 1-800-465-4149



#### FREELANCER RIGHTS



Carlos Delgado © 00

As a freelancer it can be especially difficult to be aware of and defend your rights because it may seem like you have no one backing you.

Without the protection of employment standards, who do you turn to to ensure you are paid on time and treated fairly?

The answer is you. As a freelancer you are running your own business. You are the Human Resources department, the Finances department and Client Relations. It is up to you to ensure you are effectively managing your time and meeting deadlines that you are getting paid on time and appropriately, and you are being treated fairly as a worker.

THERE IS A HEALTH BENEFITS PROGRAM FOR FREELANCE WRITERS AND OTHER INDEPENDENT MEDIA WORKERS IN ARTS AND ENTERTAINMENT IN CANADA. FIND OUT MORE AT: HTTP://WRITERSCOALITION.CA/ & CMGFREELANCE.CA/EN/HEALTH-AND-INSURANCE-BENEFITS/

This may seem daunting, but as long as you equip yourself with the knowledge of your rights as a freelance worker and of the resources available to you, you will be putting yourself in the best possible position to succeed.

## FREELANCER PROFILE: DENISE BALKISSOON

Denise Balkissoon is a full-time freelance journalist in Toronto. She has contributed to the Globe and Mail, The Walrus, Toronto Life, the Toronto Star, Chatelaine and The Grid.

While this article was written, Denise was on contract at the Globe and Mail as an editor in the Life section, but she has worked almost exclusively as a freelancer throughout her career. After completing post-secondary studies in journalism at Carleton University in Ottawa, Balkissoon took a paid internship at Toronto Life, which led to a permanent job there. She stayed at the magazine for five years before choosing to go freelance.

"It was a choice that I made. I really wanted to do more writing than editing. I loved working at Toronto Life but there was no opportunity to be a staff writer there. So that's when I went to freelance."

Balkissoon says there are advantages to working freelance. "I can write for a whole bunch of different people, you can have a chance to use different voices. You don't have to let your stories die as much. If it doesn't fit with the publication that you're working for because you can pitch it somewhere else."

"The hard part," she explains, "is you don't have one boss and your editors don't care what you have to do for other publications. That doesn't matter to them so that can be a bit hectic in terms of prioritizing."

One of the most frequently mentioned challenges to working successfully as a freelancer is the need for outstanding organization skills, both in completing your work and managing your income.

"There are definitely highs and lows in terms of when there is work and when there isn't. You have to be pretty good at discipline and budgeting," explains Balkissoon.

That said, the current climate makes it a lot harder for freelancers to balance all the work necessary to make ends meet. "I personally don't believe that writing web content for fifteen or twenty dollars is going to help people's careers very much. I'm glad that

### FREELANCER PROFILE: DENISE BALKISSOON

It's hard for new media workers to make a living from freelancing.

"I would say if you're starting out and money is an issue I would say that it's much more productive to have a job that is not journalism - whether it's waiting tables or whether it's corporate writing jobs - and if possible do that part time and do more substantial journalism which will pay better and also help you build your portfolio better."

Balkissoon's advice represents the reality of both the industry and how some freelancers are navigating it, it is important to recognize that having to take on other work to compensate for the precariousness, inconsistency and lack of standardized protection for freelancers may be a temporary solution for an individual budget. It is also a reflection of the lack of effective and comprehensive labour legislation.

Another concern Balkissoon identified is in the navigating of freelance contracts. Many publications are presenting freelancers with problematic contracts that demand increasing rights to writers' works without additional compensation. "I don't freelance for The Star because I don't like their agreement. It's not per article, it's not even annual; they just want their freelancers to sign one agreement now, forever, for every single piece and it doesn't cover libel and that's just unacceptable." As independent contractors, freelancers are more vulnerable than media organizations in the case of a lawsuit.

### DENISE BALKISSOON TALKS MORE ABOUT FREELANCERS WITH JESSE BROWN ON CANADALAND.

Link to podcast: http://canadalandshow.com/podcast/short-cuts-4ghomeshirehtaehferguson

A final piece of advice from Balkissoon: reach out to editors you want to pitch to. Whether it's to grab a coffee or at a networking event, if you meet an editor in person you can get a better sense of what they're looking for.

"Be friendly and have good ideas," she says. "If you're going to talk to someone, have your number one idea that you're going to pitch them. Have your elevator speech ready."

## YOU'VE SIGNED A CONTRACT, PRODUCED SOME GREAT CONTENT AND NOW YOU WANT TO GET PAID. WHAT GOES IN YOUR INVOICE?

- A professional header: This should have your full name and contact information including mailing address, phone number, email address, and website.
- O The client's contact info: Below your header should be the information on the recipient of the invoice. Include their name, address, telephone number and email address.
- O Invoice details: Every invoice should include an invoice number, the date it's prepared and the payment due date (this could be "due upon receipt" of the invoice or within a certain timeframe).
- A breakdown of services: This should include a) a description of the work or services, b) quantity (in hours, word count, etc.), c) the rate and d) the date. Each line should include a subtotal.
- Payment options: Finally, be sure to specify if you prefer to be paid by cheque, cash, credit card or an Electronic Funds Transfer service.

Source: "How to create your first invoice as a freelancer," October 7, 2013, http://thewritelife.com/how-to-create-your-first-invoice-as-a-freelancer/

#### TAX TIPS FOR FREELANCERS:

- 1. Set aside 20 percent for taxes if no one is withholding tax for you. But that's an estimate, and every situation is unique.
- 2. Register for the HST. Harmonized Sales Tax registrants always get to keep more money than non-registrants.
- 3. Even if you can't pay on time, file your tax return on time. The penalties for filing your tax return late can be hefty. You can always worry about paying it later.
- 4. Bonus: self-employed people and their spouses get an extra six weeks to file!
- 5. Even if you're late, you may be able to avoid the late filing penalty. You can look into filing under the Volunteer Disclosure Program: http://www.cra-arc.gc.ca/voluntarydisclosures/.
- 6. Always read Canada Revenue Agency (CRA)'s letters. Sometimes a disaster can be avoided with an easy action, if you respond quickly enough.

Most importantly: Don't panic!

Courtesy of Sunny Widerman at Personal Tax Advisors, www.personaltaxadvisors.ca.

#### FREELANCE CONTRACTS 101

You should always get a written contact before you start work, and the terms of this contract should be negotiated fairly between you and the company. Employers/ engagers often present contracts like they are not a choice, but you always have the option of at least asking questions and suggesting changes.

If you don't get a written contract before you start, at the very least send an email to the person who hired you confirming the details you agreed to verbally to give them the opportunity to correct any misunderstandings and you some comfort in knowing the basic terms of your employment

#### Here's what to include:

- 1. Money: Including your rate of pay, when will you get paid, late fees (will you get late fees if they don't pay you within 30 days?), and kill fee (how much you will be paid if the project you're working on gets cancelled?).
- 2. Length of contract or deadline for freelance piece.
- **3. Scope:** It is important to outline the exact tasks and deliverables, and to be as specific as possible, to avoid "scope creep." This is when the employer suddenly asks you for tweets, a blog post and a video on top of the article you originally agreed to. If what you agreed to is clearly outlined in your contract, it will be easier for you to ask for extra money for doing extra work.
- **4. Liability:** Warranty and indemnity clauses are common but such a clause should not leave you on the hook for liability if you've done everything you need to avoid legal challenges. Sample language: "The Freelancer warrants the work(s) submitted is/are original and, to the best of their knowledge, do(es) not compromise anyone else's rights. In the event of a claim against the work, the freelancer will co-operate in investigating and defending against the claim."
- **5. Rights:** Look out for language that tries to grab your copyright and moral rights. Freelancers need these rights to repurpose their work and research into additional income. Ideally, you want to retain as much ownership and control over your work as possible, without tying the engager's hands too much.
  - **Copyright** the Copyright Act is clear that the creator of a work owns that work. If you have copyright you have the right to resell your work. More importantly, you own all the research and raw tape. You are free to recut and reuse that material.

- **Licensing** this refers to how the engager gets to use the piece of work. Often engagers don't need copyright, they need a license that's as unrestricted as possible. From a business point of view it's easier for them to pay you one fee up front for an unlimited unrestricted license so they can reuse it whenever they want.
- **Moral rights** this refers to your right to have your name associated with a piece of work. It also refers to the right to the integrity of the work the right to not have your work altered.

Before you sign a contract, take time to consider which clauses you might want to get changed, ask someone else to take a look at it and sleep on it. Don't feel rushed into signing something that you are not comfortable with!

Source: "Freelance contracts: what to look for," December 6, 2013, http://www.thestoryboard.ca/

freelance-contracts-what-to-look-for/

## Negotiating a fair rate of pay: What questions should you be asking?

The four numbers you need to keep in your head when negotiating your rate for a freelance project, according to Canadian Media Guild Staff Representative Keith Maskell, are:

1

What's going to make it worth getting out of bed to do this piece of work?

What amount will cover your expenses, factoring in equipment, your rent, your health care costs, etc.

So what happens when you take a stand on a contract? You feel good about yourself. You know you've done the right thing and that you have avoided compromising your principles or your integrity. And you haven't made things worse for the next writer who sits down at the negotiating table. That final point—not making things worse for other writers—counts as a victory in my books."

Ann Douglas, a long-time freelancer who decided to walk away from her regular column at the Toronto Star when they asked her to sign a non-negotiable contract

7

#### What's the going rate for this sort of work?

Talk to your freelance peers, or consult resources put together by professional organization, such as the Professional Writers Association of Canada or Society of Graphic Designers of Canada.

You can also get in touch with CMG Freelance about this.

3

#### How much would you really like to get for this piece?

Put another way: what do you think your work on this project is worth? If the item involved more research than would normally be the case, or you're writing on a subject that you know exceptionally well, you can and should attach greater value to your work. You can also consider the engager's "ability to pay"; it's not unreasonable to expect a well-known, high-circulation magazine to pay better than a community newspaper.

4

#### How much are you actually going to ask for?

Keeping these four numbers in mind will help give you some idea of what your time and your expertise are worth.

#### **EMPLOYEE RIGHTS**

The foundation of worker rights in Canada is the employee-employer relationship. Employment and labour laws across the country were designed with this relationship.

in mind and most worker protections are aimed at making sure employees can expect some minimum standards of fairness.



©Carsten Reisinger

Volunteers, interns and freelancers lack many of the rights and protections of this relationship, which is why it can be in the interest of an employer to use incorrect classifications for a position and why unfair working standards have become such a pervasive problem.

Employees are also generally the only workers that can join a union, another reason that employers can be wary of actually using employees.

The specific rights that employees have vary from province to province. To find out the exact rights you have, consult the Employment Standards Act for your province. If you work in a federally regulated industry such as broadcast, consult the Canada Labour Code.

Though the rights vary, in general, employees are entitled to a number of things. See the chart on Page 33 for details.

#### Fixed-term Worker vs. Permanent

If you signed on to do a job for a limited period of time, such as four months or a year, then you're a fixed-term employee. Some paid "internship" programs, such as the summer internships at the Globe and Mail or the Toronto Star, are actually fixed-term employee positions.

Fixed-term employees are entitled to the same benefits as permanent employees, except that your employer doesn't have to give you a termination notice when your contract runs out.

#### **Basic Employment Standards**

Though the specific details vary slightly from province to province, basic employment standards exist for employees working in any jurisdiction across Canada. The examples below are from Ontario. At the end of this section you can find links to other federal and provincial standards.

NOTE: Interns, students and volunteers are not considered workers under labour law. Contractors are not considered employees. Many workers called interns or contractors should be treated as employees.

#### **Ontario Employment Standards**

| RULES                      | EMPLOYEES   | SELF-EMPLOYED<br>CONTRACTORS | INTERNS VOLUNTEERS STUDENT PLACEMENTS |
|----------------------------|---|------------------------------|---------------------------------------|
| LIMITS ON HOURS<br>OF WORK | An employee cannot be required to work more than 48 hours per week. This limit can be increased to 60 hours per week, but only if the employee has signed an agreement with the employer and the employer has formal approval from the Ontario Ministry of Labour.  | *                            | *                                     |
| MINIMUM WAGE               | \$11.00 an hour.  | ×                            | ×                                     |
| OVERTIME PAY               | An employee must be paid overtime pay of at least 1.5 times the regular rate of pay for each hour of work over 44 hours in a work week.   | *                            | *                                     |
| BENEFITS                   | Employers must pay Employment<br>Insurance and Canadian Pension Plan<br>premiums on behalf of employees.  | ×                            | ×                                     |
| PUBLIC HOLIDAYS            | An employee is entitled to receive a public holiday off from work and be paid for that day. An employee who agrees to work on a public holiday is entitled to either 1) another day off from work or 2) public holiday pay for the day worked plus premium pay (calculated at 1.5 times the employee's regular wage rate) for each hour worked on the public holiday. Public holidays are New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day, and Boxing Day. | *                            | *                                     |

#### An employee is entitled to at least two weeks of vacation per year. If **VACATION TIME** you don't get vacation time, you are AND PAY entitled to vacation pay of at least 4% of your wages. An employee who has worked for an employer for more than three months is entitled to at least one week's notice of termination or **NOTICE** X termination pay in lieu of notice; the amount increases by one week per year of service up to a maximum of 8 weeks. Employer must provide safety equipment, protective devices necessary for the job; information, instruction and supervision to protect safety of worker; acquaint worker or supervisors with any hazard in the work. Employer must **SAFETY** have a workplace violence and harassment program and review it annually. Workers have the right to refuse dangerous work and cannot be disciplined, fired or coerced for refusing (Ontario Occupational Health & Safety Act). Employees have the right to equal treatment without discrimination or harassment in the workplace. Prohibited grounds of discrimination **HUMAN RIGHTS** include age, race, place of origin, sex, sexual orientation, gender identity, dis/ability, and family and marital status.

## **PAYING A LIVING WAGE**

### PROFILE OF BURNABY'S CJSF-FM

Simon Fraser University's (SFU) radio station, CJSF-FM provides its four core staff members a living wage and benefits, according to Maegan Thomas, Talk Department Coordinator with CJSF-FM. They also have volunteer executives who receive honoraria. Members of the CJSF team, staff and non-staff put together a documentary called Living Wages and Equity for Media Works.

"We were already receiving living wages, but there had been a living wage campaign called 'Living Wage SFU' and we talk about it a little in our doc Living Wages and Equity that was researching and investigating the way that people were paid and how much people were paid at SFU, specifically focusing on workers who were doing food service and janitorial work who, as they found, were some of the lowest paid."

This campaign came to the attention of CJSF station manager Magnus Thyvold who, according to Thomas, "became interested in how this was a framework for explaining and for describing wage equity for the work that we were doing: media work."

"He was inspired to bring this to the NCRA to kind of reformulate how we approach wages."

The living wage movement has been on the SFU campus for two to three years now, but a living wage has been paid to CJSF staff for about five years.

"People just couldn't afford to be part-time staff at thirteen dollars an hour, for long term. That leads to is a high turnover and a slowing of cultural development at a station. It's not sustainable over the long term and so [volunteers] are either forced to move on to something that pays more or to lose focus on the actual production at the station. It also means those skills leave instead of being recommitted back into the station. So you get a lot of passionate, talented people moving on."

Thomas acknowledges that folks don't enter community media for the money but that doesn't mean you shouldn't be allowed to do this work and also live with dignity.

"It's a passion-driven choice. It's a choice driven by love of what you're doing. A living wage is something that allows people to do that in a way that doesn't necessarily hurt them."

Check out CJSF-FM's documentary, Living Wages and Equity in British Columbia at www.ncra.ca

### **HOW TO UNIONIZE YOUR WORKPLACE**

Unions are democratic organizations funded and run by members. They are independent of both employers and government and exist to represent the needs and interests of workers. A union gives employees a collective voice to make improvements in the workplace. These improvements might include better pay and working hours, benefits, greater safety, a say in how the work gets done, protection from getting fired for no reason, and a process to resolve disputes.

So how does unionization work?

If a majority of employees in an organization decide they want to be represented by a union, they have a right to join one. Employees organizing a union in their workplace are legally protected from getting fired or disciplined by their employer for doing so.

If you are interested in forming a union for your workplace, the first step is to talk to co-workers you respect and trust to find out if they support the idea. If there is a kernel of support, you can reach out to a union for help with the next steps. A union organizer will provide union cards for workers to sign and will help develop a plan to get the support of a majority of your co-workers. Sometimes, workers will ask to hear a pitch from more than one union before deciding which union to join.

Once enough workers have signed a union card, the union will put in an application to the labour board for a bargaining certificate. The board will organize a secret ballot vote for all employees who would be included in the new union. If a majority vote for the Yes side, you have a union. The next step is to negotiate a collective agreement.

The employer never finds out who signed a union card or how individual employees voted. Joining a union is your right.

#### RIGHTS FOR ALL CATEGORIES OF WORKERS

#### **Health and Safety**

All workers in Canada, whether freelancers, employees, or interns, are entitled to a safe work environment and are covered by health and safety regulations set out by federal or provincial governments.



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For a full list of
Occupational Health
and Safety contact
information by province,
check out the Canadian
Centre for Occupational
Health and Safety
website: http://www.
ccohs.ca/oshanswers/
information/govt.html

The company you work for has the ultimate responsibility for ensuring your safety. By law, the company needs to have and follow a Health and Safety policy and clear reporting lines as ways of avoiding accidents, injuries and death.

As the Ontario Ministry of Labour puts it, "If the employer knows about a hazard and doesn't take steps to eliminate or control it, as well as make sure the workers are told about how to deal with it, that employer is not doing what the law requires."

#### Employers must:

- Alert workers to hazards
- Respond to workers' concerns about hazards
- Show workers how to work safely and follow procedures and laws
- Make sure they use protective equipment required by the company and by law
- Plan the work so it can be done safely
- Report any incidents or concerns to their superior (executive producer or VP of production).

#### Workers must:

- Follow the policies and procedures set out by the company
- Use and wear protective gear required by the company and by law
- Act in a way that won't hurt themselves or anyone else
- Report anything unsafe to their supervisor or employer.

Workers cannot be fired for following their duties under the law.

Check the health and safety regulations in your province to make sure your workplace is within the law.

#### Harassment and discrimination

Harassment and discrimination are against the law. Unfortunately, we know they happen in our workplaces, and can fester when freelancers, employees, interns or volunteers don't feel they have the ability to speak out due to lack of job security.

Harassment includes unwanted touching

or homophobic stereotypes, unwanted sexual suggestions or requests, or unwanted comments about a person's body.

and staring, "jokes" based on racist, sexist

According to the B.C. Ministry of the Attorney General, "Harassment is harmful because it attacks the dignity and self-respect of the victim. In the workplace, it may negatively affect both the victim's ability to perform their duties and the work environment as a whole."

Discrimination includes unequal treatment based on gender, race, sexuality, ability and other grounds protected in the human rights code. It is illegal for an employer to deny you a job or promotion because you have children or because of your race, age or sexuality, for example.

Harassment and discrimination in a workplace create a toxic environment for everyone.

#### ANONYMOUS WORKPLACE SAFETY REPORTING IN ONTARIO

If you're working in Ontario and you practices, you can make an anonymous Ontario is 1-877-202-0008.

That's why it's so important for workers to support each other and make it clear that harassing and discriminatory behaviour is unwelcome and should not be tolerated by anyone, against anyone.

If the source of harassment or discrimination is a colleague or a supervisor, the employer has an obligation to put a stop to it. You should let the boss know it is happening and ask him or her to make it stop.

If it persists and is creating an unhealthy workplace, you can contact your provincial human rights commission for advice and to file a formal report.

66 The best way to make

suggests, is together

NICOLE COHEN, MEDIA

world, history

and not alone."

## Working collectively

Media workers the world over have a long history of coming together to improve their working and living conditions.

Here are a few recent examples:

• Interns at The Nation magazine in New York
City, wanting to make the program more
accessible to journalists from historicallymarginalized backgrounds, collectively fought for and won minimum wage.

- Students Against Internship Scams, Canadian Intern Association, and other groups undertook an advocacy campaign that led the Ontario Ministry of Labour to do an enforcement blitz in the spring of 2014. Many magazines using unpaid interns were found to be in violation of employment standards, and were told to start paying their workers the minimum wage.
- CMG Freelance and 11 other organizations worked with freelancers to put pressure on TC Media to retract a freelance contract that would have made it impossible for freelancers to earn a decent living. To learn more about this victory, read Errol Salamon's Media Works piece at www.media-works.ca.

When facing problems or obstacles at work, your best bet is to speak with your colleagues and approach your employer as a group.

While it can feel impossible to have your voice heard or to create change alone, media workers can improve their working conditions by joining together! Get in touch with CWA Canada for guidance and support.

## **Employment Resources: Contacts by Province**

| JURISDICTION        | EMPLOYMENT<br>STANDARDS  | HUMAN RIGHTS   | HEALTH AND SAFETY  |
|---------------------|--|--|--|
| BRITISH<br>COLUMBIA | www.labour.gov.bc.ca/<br>esb/<br>1-800-663-7867                            | http://www.bchrt.bc.ca/<br>1-888-440-8844  | http://www.worksafebc.com/<br>1-888-621-7233                                 |
| ALBERTA             | http://work.alberta.<br>ca/employment-<br>standards.html<br>1 877 427 3731 | http://www.<br>albertahumanrights.ab.ca/<br>Northern AB: 780-427-7661<br>Southern AB: 403-297-6571 | http://work.alberta.ca/<br>occupational-health-safety.html<br>1-866-415-8690 |

| SASKATCHEWAN  | https://www.<br>saskatchewan.ca/<br>work/employment-<br>standards<br>306-933-5042  | http:// sassaskatchewanhumanrights. ca/ 1-800-667-9249             | http://www.saskatchewan.ca/<br>work/safety-in-the-workplace<br>306-787-4496 |
|---------------|--|--|---|
| MANITOBA      | http://www.gov.<br>mb.ca/labour/<br>standards/<br>1-800-821-4307   | http://www.<br>manitobahumanrights.ca/<br>1-888-884-8681           | http://www.gov.mb.ca/labour/<br>safety/<br>1-855-957-7233                   |
| ONTARIO       | https://www.labour.<br>gov.on.ca/english/es/<br>1-800-531-5551   | http://www.hrto.ca/hrto/<br>1-866-598-0322                         | https://www.labour.gov.on.ca/<br>english/hs/<br>1-877-202-0008              |
| QUEBEC        | http://www.cnt.gouv.<br>qc.ca/en/<br>1-800-265-1414  | http://www.cdpdj.qc.ca/en/<br>Pages/default.aspx<br>1-800-361-6477 | http://www.csst.qc.ca<br>1-866-302-2778                                     |
| NEW BRUNSWICK | http://www2.gnb. ca/content/gnb/en/ departments/post- secondary_education_ training_and_labour/ People/content/ EmploymentStandards. html 1-888-452-2687 | http://www.gnb.ca/hrc-cdp/index-e.asp<br>506-453-2301              | http://www.worksafenb.ca/<br>1-800-222-9775                                 |
| NOVA SCOTIA   | http://novascotia.ca/<br>lae/employmentrights/<br>1-888-315-0110   | http://humanrights.gov.<br>ns.ca/<br>1-877-269-7699                | http://novascotia.ca/lae/<br>healthandsafety/<br>1-800-952-2687             |

#### A LABOUR RIGHTS AND REPORTING HANDBOOK

| PRINCE EDWARD<br>ISLAND      | http://www.gov.<br>pe.ca/labour/index.<br>php3?number=1004723⟨=E<br>1-800-333-4362         | http://www.gov.pe.ca/<br>humanrights/<br>1-800-237-5031                  | http://www.wcb.<br>pe.ca/Workplace/<br>OHSActAndRegulations<br>1-800-237-5049           |
|------------------------------|--|--|---|
| NEWFOUNDLAND<br>AND LABRADOR | http://www.gov.nl.ca/lra/index.<br>html<br>1-877-563-1063                                  | http://www.justice.gov.<br>nl.ca/hrc/index.html<br>1-800-563-5808        | http://www.servicenl.gov.<br>nl.ca/ohs/<br>1-800-563-5471                               |
| YUKON                        | http://www.community.gov.yk.ca/<br>es.html<br>1-800-661-0408 local 5944                    | http://www.yhrc.yk.ca/<br>1-800-661-0535                                 | http://www.<br>healthandsafety.gov.yk.ca/<br>867-667-8144                               |
| NORTHWEST<br>TERRITORIES     | http://www.ece.gov.nt.ca/<br>advanced-education/employment-<br>standards<br>1-888-700-5707 | http://nwthumanrights.<br>ca/<br>1-888-669-5575                          | http://www.hr.gov.nt.ca/<br>resources/workplace-<br>health-and-safety<br>1-866-475-8162 |
| NUNAVUT                      | www.justice.gov.nu.ca/i18n/<br>english/<br>1-877-806-8402                                  | http://www.nhrt.<br>ca/english/general_<br>information<br>1-866-413-6478 | www.justice.gov.nu.ca/<br>i18n/english/<br>1-877-806-8402                               |
| FEDERAL                      | http://www.labour.gc.ca/eng/<br>standards_equity/st/<br>1-800-641-4049                     | http://www.chrc-ccdp.<br>ca/eng<br>1-888-214-1090                        | http://www.ccohs.ca/<br>1-800-668-4284  |



# INTRODUCTION TO LABOUR REPORTING

Damien HR

While the traditional definition of labour reporting focuses on unions and their negotiations with employers, the scope of labour reporting is much broader than that.

Any sort of journalism that deals with workers and the nature of work falls within the bounds of labour reporting. White-collar or blue-collar, highly paid or scraping by on minimum wage, urban or rural, labour reporting covers them all.

Working conditions have broader social, economic and political impacts. For example, if you're reporting on changes to the federal Temporary Foreign Worker Program or the rights of agricultural migrant workers, then you are reporting on labour. Freedom from race-based discrimination in the hiring process, or the use of gender-inclusive washrooms in the workplace, are labour issues because they affect workers.

In addition to understanding that many stories can be told from a labour perspective, it is also important for journalists to investigate the social and political issues that intersect with their labour story. For instance, if a major company is downsizing to a smaller office with fewer ramps or elevators, who is affected? If a company has no infrastructure for feedback or complaints, how likely is it that workplace harassment or discrimination will go unreported? If a company frequently employs workers with precarious status, how likely is it that their poor workplace safety standards will be addressed?

Labour reporting has been in decline for years. Since the 1960s, the number of reporters assigned to the labour beat has steadily dropped to the point where a few news organizations have full-time labour reporters. This reporting has been replaced with business coverage and "workplace" journalism that generally covers how white-collar workers can improve their productivity and how managers can wring more out of their employees. Nonetheless, every beat has a labour component and this is an often untapped source of story ideas.

#### **LABOUR HISTORY**

Throughout Canadian history, most workers haven't belonged to a union. Despite this, unions have been the primary vehicle through which workers' rights have been secured.

While some strikes took place in the 18th century, organized labour has its roots in the 19th century, when Canada was rapidly industrializing and urbanizing.

#### 1870s

In 1872, a strike by the Toronto Typographical Union led to large-scale demonstrations and the imprisonment of strike organizers. In response to public backlash, the government passed the Trade Unions Act, which legalized unions for the first time. However, employers didn't have to recognize unions and could still implore the government to violently put down any job actions.

Early 20th Century

The economic troubles of the 1910s, alongside the draft, saw the rise of a revolutionary industrial unionism, which sought to bring all workers together to reshape the economic system. The culmination of this movement was the creation of the One Big Union and the Winnipeg General Strike in 1919. Police and federal troops put the strike down violently and arrested its leaders.

The labour movement at this time was progressive about workers rights, but regressive in many other areas. The Trades and Labour Congress strongly opposed immigration of poor Europeans and East Asians. And the domination by American unions led to a disregard of the unique needs of Canadians, especially Franco-Canadians.

Mid 20th Century

A federal unemployment insurance program was passed in 1940.

In 1946, Supreme Court Justice Ivan Rand arbitrated a strike at the Ford Motor Company. His decision set out the Rand Formula, which mandates that all workers in a bargaining unit who benefit from a union bargaining on their behalf should have to pay union dues. The Rand Formula, now a cornerstone of Canadian labour law, gave unions the financial stability that had eluded them for years. Some argue that it also bureaucratized unions.

The post-war period saw major increases in union membership and improvements in the working conditions and wages for many workers. However, public sector workers still did not have full labour rights. This changed after the 1965 wildcat postal strike, which proved to be a watershed moment for public sector workers. A number of important public sector unions were born during this time, including CUPE and PSAC. This was also an important development for the feminization of the labour movement, which until then was generally dominated by men.

Late 20th Century

The 1970s, '80s and '90s saw a backlash against the labour movement. Essential service legislation was introduced in many jurisdictions and the right to collectively bargain was chipped away on many fronts. Deregulation and free trade further degraded many labour rights. Nonetheless, the union movement made some inroads in the retail sector, organizing workers at major Canadian companies like CIBC and Eaton's.

In 1987, the Supreme Court of Canada ruled that the right to collectively bargain and to strike are not protected under the freedom of association clause of the Charter of Rights and Freedoms.

21st Century

The 2000s have generally been a difficult time for labour. Union density continues to decline, while governments have been very liberal in the use of back-to-work legislation and in restricting bargaining rights. In 2011 the Supreme Court upheld an Ontario ban on a farmworkers' union, a major setback for labour rights.

However, things could be shifting for labour in Canada. In 2013, the CAW and the Communications, Energy and Paperworkers Union of Canada merged to form Unifor, now the largest private-sector union in the country. At the start of 2015, the Supreme Court found that RCMP officers have a right to unionize, something denied to them until now. That same month, it confirmed that the right to strike is indeed protected by the Charter.

#### **HOW TO COVER LABOUR EFFECTIVELY:**

#### TIPS FROM REBECCA BURNS AND ROD MICKLEBURGH

# 1

## Understand the potential of impact of good labour reporting.

"Labour reporting for a long time has been on the decline. But historically it's played a really important role in giving voice to whistleblowers, folks in dangerous and corrupt industries but also folks who aren't happy with the directions there unions are taking and that's a really important way to ensure there is democracy in the workplace and that health and safety issues, wage theft, other issues, are getting addressed as they should be." - Rebecca Burns

# 2

## Understand your role as a labour reporter.

"I think the role of labour reporting is to dig into the peculiarity of increasingly complex and at the same time increasingly exploitative working arrangements that people have and try and figure out what's really going on and who can be held accountable." - Rebecca Burns

3

Being a labour reporter doesn't always mean siding with the union, or against the union. If you're covering a labour issue consider all sides of the debate or dispute. Sometimes labour issues are within unions or in a situation where there is no union at all.

"Consider that labour isn't a monolith. There are a lot of different perspectives within labour. That's one of the really important things that I think has been lost with a loss of labour reporters. People who are doing rank-and-file organizing campaigns and campaigns that aren't sort of sanctioned by larger unions tend to get much less coverage. Important debates within unions and between union members and union officials also drop off of the radar. I think those are all things that are part of a healthly, vibrant labour movement that reporters who want to follow labour should especially be looking for." - Rebecca Burns



## Ultimately, you should consider how the workers are being impacted.

"The ordinary people in the union who are hurt by financial decisions, get to know them. Don't always just speak to the union leader. It's much more effective to

make it a human story by speaking to union members, the people on the picket lines. Get their story and how this affects them personally and that way you make people care about the story and care about their struggle rather than just talking to the major spokespeople on both sides." - Rod Mickleburgh

5

When labour stories are relegated to the Business section, bring them to the forefront by finding the part in the story that everyday folks can connect to.

"I don't like to see labour stories ghettoized in the business section where ordinary people don't normally go for their news. The best labour stories are ones with human interest in them, in which you have workers trying to improve their lot or to hang on to what they already have against huge well-heeled corporations that just want to make more money and deliver more for their shareholders." - *Rod Mickleburgh* 



The risk of allowing labour stories run or air alongside business stories is that they will end up becoming business stories. Labour is not about the bottom line, labour is about the workers.

"What happened to labour reporting, is the labour stories got put in the financial section. And gradually, they didn't want labour reporters to do them; they wanted business reporters to do them and so union stories disappeared from the regular section of the newspaper. It's a very unfortunate trend." - Rod Mickleburgh

Rod Mickleburgh is a veteran Canadian labour reporter based in British Columbia. He was a Globe and Mail correspondent for 22 years, and he now works freelance.

Rebecca Burns is a freelance writer and Assistant Editor for American magazine In These Times an independent, non-profit magazine, with a focus on democracy and economic justice."

#### **PUBLIC SECTOR VERSUS PRIVATE SECTOR:**

# WHAT TO KEEP IN MIND WHEN THE EMPLOYER IS THE GOVERNMENT IN A LABOUR DISPUTE



Tulane Public Relations 📵 🛈

In Canada, there has been a large shift in the relationship between the public and private sectors in respect to labour disputes. Private sector strikes were once very effective because they had a huge impact on the local economy and that gave striking workers leverage.

Rod Mickleburgh explains the change. "In the old days when the IWA (International Woodworkers of America) in BC went on strike they had 50,000 members and it was a huge blow to the economy because forestry provided about 50 cents of every dollar. Now there are about 10-12,000 members."

Nowadays private sector strikes often fly under the radar. "That's one reason there are fewer labour reporters, strikes in the private sector -- which used to be huge --

there are so few of them that it just doesn't have the impact on the economy that is used to have."

Currently, labour coverage is dedicated to public sector strikes, where public opinion can play a huge role in the success of either the

**DID YOU KNOW?** 

www.strategiccorporateresearch.org is a great free resource for journalists doing in-depth research on companies, not-for-profits or the public sector.

employer or the union. This is where labour reporting can have a significant impact on the outcome of a labour dispute.

"Generally a strike in the public sector affects the public, inconveniences the public and is often describes as a strike against the public."

Few people go unaffected when teachers, transit workers, postal workers or garbage collectors go on strike. For that reason, effective coverage of labour disputes is essential.

"They are different," Mickleburgh says of public sector strikes, "Because it's different in the public realm. There's way more interest in a public sector strike [...] and when a public sector union goes out, often the public is inconvenienced so public opinion is crucial, really, because that's the only thing that can pressure the government to belly up to the bargaining team and maybe make a fairer deal."

"On the other side public opinion can really make it difficult when it's against the union. It can make it very very difficult for the union to achieve what it wants to in a strike and often unions will strike just to hold on to what they have. Many strikes now are not about advancing and gaining more. They're about hanging on to what you have when governments try to chip away at rights you've already won."

In order to ensure public pressure is put on the employer and to promote solidarity between the union and the general public, it is important to present the details of the dispute in an accessible way. Your story can help your audience connect with the workers who they might be predisposed to criticize because they have been inconvenienced.

"There is of course a lot of resentment towards the public sector," explains Mickleburgh, "because there's a perception that they're well off and pampered and have great benefits and pensions and a lot of people are struggling and they tend to resent public sector workers. Wrongly, but there's that perception out there."

Inconvenience mixed with resentment leads to little solidarity for striking workers. As a labour reporter you should be conscious of the role of public opinion in public sector labour disputes.

# THE STRIKE SCRIPT: TROPES IN COVERAGE OF LABOUR DISPUTES AND HOW TO AVOID THEM

Strikes and lockouts are in some ways the perfect media events. They are two-sided conflicts with emotions running high. The visuals are compelling, the rhetoric makes for great quotes and often a large percentage of your audience will be affected, especially if the work stoppage is in the public sector.

However, much academic research demonstrates that the media follow a conventional script when covering labour disputes. This perpetuates myths about unions and labour organizing, often to the benefit of the employer.

Researchers have identified a number of common tropes in Canadian and American reporting over the years. Here's an overview of some of these tropes and how to counter them in the pursuit of fairer and more in-depth reporting.

# 1

### Trope: Labour reporting begins when there's a strike or a lockout.

The decline of the labour beat means that most labour reporting revolves around strikes and lockouts. But a labour story doesn't begin when collective bargaining reaches an impasse. The issues facing workers and employers arise throughout the life of a collective bargaining agreement.

Many unfortunate consequences arise when reporters parachute into a labour story just as a job action starts. Research shows that the public increasingly associates unions with strikes, even though 95 percent of collective bargaining ends without a job action and the number of days lost to work stoppages has been decreasing. Often, the story becomes only about the strike with little in-depth consideration of the issues that led to it.



Ensure that your story includes background and context. What is the history of the relationship between the employer, the union and workers? Have there been strikes or lockouts in the past? What led to this work stoppage?



Get to know workers, labour leaders and managers before a job action begins to get a feel for the issues.

# 2

## Trope: Not all work stoppages are strikes

There's a general perception that if employees aren't at work, it's because they're on strike. That is not necessarily the case.

A lockout occurs when the employer suspends work during a labour dispute, preventing workers from doing their jobs. When workers collectively agree to stop work, that is a strike.



If you're covering a lockout, take time to explain what that is, since the public is much more familiar with a strike.

# **Trope: Events matter more than issues**

A strike or a lockout makes for a fantastic news hook: it's dramatic, it's timely and it's often visual. But when reporters cover strikes and lockouts as if they're protests, there's a tendency to ignore or minimize the underlying issues.

During a two-week wildcat B.C. teachers' strike in 2005, Global's News Hour devoted 1% of its coverage to classroom conditions, identified by the teachers as the key issue, according to Shane Gunster's article in the Canadian Journal of Communication. By contrast, 18% of the coverage was about law-and-order issues related to the strike, 16% about the role of labour unions and 22% about the disruption to parents and students.

This style of reporting generally favours the employer. Downplaying the issues also deprives audiences of the complete picture. This can be especially problematic in public sector strikes, since public opinion may already be against the workers who are causing what is perceived as a disruption.



Make sure to spend some time away from the picket line and the bargaining table so you can do research on the issues.

# 4

## Trope: Its all about consumers, parents, patients, fans or taxpayers

Reporters and editors often decide how to shape their reporting based on what they believe will most affect their audience. When it comes to a strike or lockout, they generally concentrate on how it will affect consumers, parents, patients or taxpayers.

Many studies have shown that if there's a single, pervasive theme to job action coverage, it's the almost obsessive focus on how anyone but the workers and the employers are affected. If teachers go on strike, expect to read story after story about how parents are inconvenienced, or how Grade 12 students are worrying about graduating. If sanitation workers are locked out, expect to see endless TV footage of rotting piles of garbage.

Because the public associates work stoppages with unions, this framing is often tacitly pro-management. Both the public and managers just want to get back to business, but the stubborn union is getting in the way—or so the thinking goes. Of course, the multi-faceted impact of work stoppages — including how the public is affected — should be reported with vigour and depth. But so should the people at the centre of the dispute.



Keep in mind that the parties most affected by a work stoppage, and the conditions that led up to it, are workers and employers.

## Trope: Strategy and tactics matter most

A common complaint about political journalism is an excessive focus on "horserace coverage" – stories about polls and perceptions of who's ahead rather than about policy. This kind of coverage often stems from a dearth of reporters with specialized policy knowledge and a desire on behalf of journalists to stay objective. Political reporters who focus on personality, tactics and polling are less likely to be accused of bias towards a party.

It's easy for labour reporters to fall into a similar trap. Reporters may be more likely to ask if a job action will succeed or fail than to examine the merits of the two positions.

This dynamic is even worse when it comes to public service work stoppages. Here, the coverage inevitably turns into a discussion of how the dispute will affect the governing party's polling numbers.



Focus on the issues behind the dispute as well as the broader economic, social and political implications.

## Trope: Audiences care about what workers earn, not employers

When reporters examine the merits of a labour dispute, they often focus on what the workers earn. Comparing their wages to those in non-unionized environments is common, as is examining how much the workers' pay has increased over the past few collective bargaining agreements.

This is a completely normal part of reporting. However, managers and employers generally aren't put under the same microscope.

How much has compensation increased for managers? Has there been an expansion in the number of managers? What kind of job protections do executives have (i.e., if an executive who is terminated entitled to a "golden parachute?") These questions aren't given the same kind of attention as the demands workers are making.

Beyond that, the corporation's financial picture is also often overlooked. It's not uncommon for a company cut wages or jobs while simultaneously increasing a dividend to its shareholders, or engaging in a share buyback program. While this is

a legitimate business practice, it deserves scrutiny in the context of a labour dispute.

The gulf between how workers and employers are covered is starkest in professional sports. The lavish lifestyles of players with multi-million-dollar contracts will be picked apart, while team owners, who are much, much wealthier, receive less scrutiny.



Contextualize a wage dispute by including information about the earnings of the company, management, or other workers in the same sector.

# Trope: Everyone should "just be reasonable"

There's often a temptation to infantilize labour disputes by arguing that both sides are being intransigent and unreasonable. If only actual adults were in charge, this line of thinking goes, the work stoppage wouldn't have happened.

Reporting that fits into this frame obscures the actual issues involved in the dispute. It's a way of not taking it seriously.

In addition, there often isn't an "optimal" solution that will satisfy both sides.



Focus on what is really at stake in the negotiations and why an employer or union bargaining might hold fast to a particular condition or demand. This may allow you to shed light on labour trends in that sector, region or industry.

# Trope: Unions are mean!

Much of the research around media coverage of labour disputes focuses on the language reporters use to describe unions and employers. It turns out that journalists use much more aggressive language to describe workers and unions than management.

Unions make "threats" and "demands;" management makes "offers." Unions contemplate using "tougher tactics" and to "intimidate" managers and strikebreakers; managers do not. Unions are also more likely to be characterized as "militant" or "radical." (A "militant" employer is an entirely consistent concept, but you'll never see those words side-by-side.)

Similarly, if workers use illegal methods, such as property damage, against employers, their actions will get a lot of coverage. When employers engage in illegal reprisals, such as blacklisting, they rarely get the same level of coverage.



Be conscious of the language you are using to describe both the union and the employer. Keep in mind that a term like "union boss" gives the wrong impression of unions, which are democratic organizations.

# Trope: Business matters the most to the larger economy

A common theme in business and economic reporting is that the overall well-being of the economy is tied to how well businesses are doing. This is despite the fact that there has been a gradual decoupling between the returns on capital and the gains for average workers since the 1970s.

But good jobs are part of a good economy. Exclusively examining the profit margins of companies fails to take into account the larger issues at stake during labour disputes, including workplace safety, the quality of public education, a living wage, pay equity or parental leave policy.



Focus on what the dispute means to people, not profits. Financial journalism is not labour reporting.

For more examples of labour reporting consider subscribing to publications that emphasize labour stories, not financial stories, like Our Times Magazine, rabble.ca, The Tyee, rankandfile.ca or In These Times.



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#### LABOUR AND THE LAW

Labour reporters are sure to encounter many thorny legal issues. This is a brief primer on understanding labour, work and the law.

#### **Jurisdiction**

The federal government regulates certain industries that have nationwide scope or significance in Canada. Provincial laws regulate all other industries.

The federally regulated industries are:

- Banking
- Marine shipping, ferries and port services
- Airlines and airports
- Railways and road transportation that crosses provincial or international borders
- Telecommunications
- Broadcasting
- Grain elevators
- Uranium mining
- First Nation activities
- Federal crown corporations

In order for an organization to be federally regulated, the majority of its work must relate to one of the above-mentioned industries. Around 90% of all Canadian employees fall under the jurisdiction of provincial law.

#### The Laws

In general, there are three separate fields of law that govern the relationship between employers and employees: labour law, employment and human rights law. Labour law deals with collective rights, while employment and human rights law deal with individual rights.

# WHERE CAN YOU FIND LABOUR DECISIONS ONLINE?

CanLII is a not-for-profit organization managed by the Federation of Law Societies of Canada. CanLII's goal is to make Canadian law accessible for free on the Internet. This website provides access to court judgments, tribunal decisions, statutes and regulations from all Canadian jurisdictions. http://www.canlii.org/

#### Labour Law

Labour law deals with the rights and obligations of unions, workers and employers in unionized workplaces.

For federally-regulated industries, the Canada Labour Code, particularly Section 1, is the governing legislation. Every province also has its own labour code which applies to provincially-regulated industries.

Much of labour law deals with issues around certification of unions, who can belong to a union, the collective bargaining process and the permissibility of job actions and work stoppages.

While the majority of unionized employees are covered by the basic labour codes in every jurisdiction, the federal government and all of the provinces also have separate laws that govern public sector unions. For the federal government, this is the Public Service Labour Relations Act.

Many other groups, such as domestic workers, agricultural workers and people in the fishery industry, also are excluded from the primary labour codes in some jurisdictions. In most, but not all, cases, there are separate pieces of legislation for these industries.

Some professions are also not allowed to unionize and thus do not have access to protections under labour law. RCMP officers have been denied the right to unionize, although a recent Supreme Court of Canada ruling has confirmed that they are entitled to that right. In Ontario and Alberta, self-regulating professions such as lawyers, architects, engineers, doctors and dentists also do not have the right to unionize.

Agricultural workers in Alberta, Ontario and New Brunswick also do not have the right to unionize.

#### OTHER WORKER ORGANIZATIONS

Unions, while the largest, aren't the only organizations that advocate for workers' rights. Community groups play an important role in putting pressure on employers and governments to make changes on issues that often impact the most marginalized workers in Canada

#### Some examples:

- Justicia for Migrant Workers: www.justicia4migrantworkers.org/
- Workers' Action Centre: www.workersactioncentre.org
- Ontario Network of Injured Workers Groups: www.injuredworkersonline.org

#### **Employment Law**

Employment law governs the rights and obligations of workers and employers in non-unionized environments.

The Canada Labour Code, particularly Part III, governs employment law for federally-regulated industries. In the provinces, employment law is derived from provincial employment standards acts.

Under employment law, workers and employers negotiate their own contracts. However, the various statutes set out the minimum conditions that employees are entitled too. Any contract that breaches those minimum standards is void - workers can't sign away their right to minimum employment standards.

# <u>Human Rights</u>

There are three areas from which Canadian human rights law is derived: the Charter of Rights and Freedoms, the Canadian Human Rights Act and various provincial and territorial human rights codes.

The Charter applies to laws and actions of the federal, provincial and municipal governments. Depending on the circumstance, public bodies such as universities and public hospitals can also be covered under the Charter. Charter rights are enforced through the court system.

The Canadian Human Rights Act applies to federal employees and federally-

regulated industries. All other private industries are governed according to provincial and territorial human rights law. The Canadian Human Rights Commission investigates complaints under the Canadian Human Rights Act. The Commission can then refer cases to the Canadian Human Rights Tribunal for a decision. A similar process applies in most provinces and territories, although there is some variance.

#### THE LIFE OF A COLLECTIVE BARGAINING AGREEMENT

Three things to consider in covering negotiations for a collective bargaining agreement:

- 1. Always talk to a union representative to see what they're seeking in the bargaining process.
- 2. Look at previous agreements -- what has changed?
- 3. Compare the agreement to industry norms.

# Pre-Certification

This refers to the time before a union exists in a workplace. This is when workers are making up their minds about whether or not they want to organize for the purpose of collective bargaining.

Workers who want to unionize can either attempt to create their own union or join an existing union.

During this phase, workers start an organizing drive. The purpose of the drive is to get workers to sign union cards, which declare their support for unionization.

Employers can communicate their opinions about unionization to employees, but labour law dictates what they can and cannot say. Employers cannot deliberately lie to employees about the effect of unionization. They can't threaten job losses, cuts to wages or benefits if a union certifies. They can't make promises premised on workers rejecting a union or instruct employees to not sign union cards.

And most importantly, employers can't engage in any sort of reprisals against workers who are pro-union or are trying to organize a workplace.

2

#### Certification

The goal of an organizing drive is to convince the labour board to certify a union. In order to do this, a union must convince the labour board that it has the support of workers in the proposed bargaining unit.

First, the union will collect as many union cards as it can. Once this is done, the union will file a certification application to the labour board. The application lays out which group of workers the union is seeking to represent and which workers have signed union cards.

The labour board then decides if there is majority support for a union in the workplace. Depending on the jurisdiction, labour boards do this through one of two methods:

- 1. If the labour board is in a card-check jurisdiction, then it can certify a union if a majority of workers have signed union cards. In some jurisdictions, a union can be certified solely by getting enough workers, generally over 50% of them, to sign union cards (this applies to federally regulated industries and the provinces of Quebec, New Brunswick, Newfoundland and Labrador, Manitoba, PEI and the territories). If they reach a lower threshold, then a secret ballot vote will be held.
- 2. In British Columbia, Alberta, Saskatchewan, Ontario and Nova Scotia, a union can only be certified through both a card check and a secret ballot vote. If the labour board is in a mandatory ballot jurisdiction, then the union must first get a certain percentage of workers to have signed union cards (generally less than a majority) and then must get the support of a majority of workers through a secret ballot.

If the union can clear these thresholds, then it will be certified as the sole bargaining agent for that group of workers.

3

# Collective bargaining

Collective bargaining must begin shortly after a union is certified, generally within days.

Both parties are required to bargain in good faith. This means there can't be excessive delays, both parties have to provide each other information relevant to

the bargaining processing, employers can't seek to bargain with individual employees and the negotiators at the bargaining table have to be informed.

Most jurisdictions have special protections set in place as the union and employer collectively bargain for the first time. This generally includes a freeze on wage increases or decreases and on disciplining employees for a certain period of time after the union has been certified or until an agreement has been reached.

The first collective bargaining agreement is generally the most difficult to reach. Most Canadian jurisdictions have some legislation that permits the labour board to impose a CBA the first time around if the two sides can't come to an agreement. This is generally done once the union has voted to strike or the employer has locked out workers. The labour board will then appoint an arbitrator that will impose an agreement.



### Collective bargaining agreement

Once a collective bargaining agreement has been reached or has been imposed by a labour board, then both parties must abide by what it sets out. Neither the union nor the employer is allowed to engage in any form of work stoppage, such as a strike or a lockout, while the collective bargaining agreement is in force.

Generally, a collective bargaining agreement must last at least a year, but most last longer than that.

# 5

## Collective bargaining agreement comes to an end

Once the term of a collective bargaining agreement is about to come to a close, both sides must return to the bargaining table.

If a collective bargaining agreement expires before the two sides have been able to reach a new agreement, the terms of the previous agreement remain in force. This continues until a new agreement is ratified or until a strike or a lockout takes place.

Labour boards have a number of ways to encourage the two sides to come to a deal, including bringing in mediators or, if both sides agree, an arbitrator. If a deal can't be reached, then either side can utilize job actions or work stoppages.

6

#### **Job Actions**

Strikes and lockouts are highly regulated under Canadian law. A strike or lockout notice has to be given to the other side to inform them that a work stoppage will be occurring ahead of time.

Depending on the jurisdiction, employers may or may not bring in replacement workers for the duration of a strike.

Employees are allowed to picket at the location where they would have normally been working. A 2002 Supreme Court decision ruled that secondary picketing is legal if no criminal or tortious conduct is involved.

A strike or a lockout is a way for a union or an employer to put pressure on the other to make them more amenable to a collectively bargained agreement that favours the other.

The goal of a strike or a lockout is to bring the other side back to the bargaining table and agree to a collective bargaining agreement. If the bargaining committees are able to reach an agreement, it must then be ratified by the membership of the union and the employers governing bodies.

7

#### Decertification

Just as employees have the right to join a union, they also have the right to leave one. A certain percentage of employees, depending on the jurisdiction, must sign an application to decertify and then submit it to the labour board. Generally a vote will then be held, and if a majority of workers vote against the union, it will be decertified.

# Q&A WITH AMERICAN LABOUR REPORTING VETERAN, STEVEN GREENHOUSE



## How long have you been reporting on labour?

SG: I was the New York Times labour and workplace reporter for 19 years -- from late 1995 through December 2014, when I took a voluntary buyout from the Times. But I am continuing to freelance about labour issues, and I'm writing a book, my second one, about the state of American workers.



Who have you worked for/what publications have you contributed to?

SG: I worked at the New York Times for 31 years as a reporter. Since I left the Times in December, I've been freelancing for the Times, the Guardian and the Atlantic.



# What compelled you to cover labour stories specifically?

SG: Nothing compelled me to cover labour stories. Immediately before I began the labour beat, I was based in Washington covering the State Department and diplomacy. I liked that beat, but after doing it for two years, I wanted a beat in which I would write more frequently about flesh-and-blood human beings. The labour beat was open and I applied for it. I have long been interested in issues involving workers and labour unions. Indeed, there are many fascinating issues on the beat — how farm workers are treated, the future of manufacturing, can labour unions reverse their decline, what new types of worker advocacy groups are there, what are the employers out there that do an exemplary job in how they pay and treat their workers.



# What have you learned is essential to comprehensive and effective labour reporting?

SG: It's important that labour reporters have a good understanding of labour markets and labour economics — trends involving, for instance, unemployment, wages, part-time work, etc. It's also important for journalists who write about labour to understand employment laws and regulations — in the United States that would mean the National Labour Relations Act, the laws barring discrimination by race, sex, religion or nationality, the Family Medical Leave Act, laws protecting pensions, etc.

It's also essential for labour reporters to be able to develop a rapport with workers, with labour unions, with employers, with human resources executives, with academics in the field. To be a good reporter, it helps not just to be a good writer, but to be a people person.

# What tips do you have for newer labour reporters?

SG: My advice to new labour reporters is to push hard to develop sources quickly. They could be the head of an immigrant group who works with many exploited workers or a union organizer involved in an interesting organizing drive or a priest, minister, rabbi or imam in a working-class neighborhood who has stories to share from congregants or a vice president for human resources at a company that has adopted some innovative practices, perhaps on scheduling or pay or design of employee workspaces.



# Tell me about your book?

SG: My book, "The Big Squeeze: Tough Times for the American Worker," was published in 2008. I set out to write it in 2005 because I saw a disconcerting disconnect in the U.S. economy, and I wanted to bring attention to that disconnect — the stock market, corporate profits and employee productivity had all climbed to

record levels, yet workers' wages were essentially flat, while health and pension benefits were steadily growing worse. The book — which was published just as the Great Recession hit — analyzes at length why things were turning worse for American workers, discussing such issues as globalization, the decline of labour unions and corporate America's more aggressive push to maximize profits (and often cut labour costs). In the book, I discussed many groups of workers, among them hugely exploited immigrant workers, long-time temp employees and young blue-collar workers on the bottom tier of two-tier wage system. The book won the annual Sydney Hillman Prize for NonFiction for advancing social justice.



Can you explain what is meant by "the social contract" you refer to in your book?

SG: The social contract is a term that was commonly used in the 1950s, 1960s and 1970s to describe an unspoken accord reached by management and labour, an accord that workers, in exchange for working hard and being loyal, would receive not just wages, but good benefits, including health coverage, pensions and paid vacation. In addition, that social contract implied that employees would receive fair, respectful treatment and have relative job stability, unless there was a bad recession or the employee proved lazy or incompetent. But that social contract has broken down, as many employers have thrown job security to the wind, have treated workers more and more like replaceable cogs and have pushed to cut or even eliminate health coverage and pensions.



What specific topics or subjects (under or related to the umbrella of labour issues) are you focused on now?

SG: Among the labour issues I am watching closely now are whether the tightening labour market in the United States will translate into real wage increases or whether wages will continue to stagnate. Another interesting development I'm watching is the progress of the Fight for Fifteen movement in which fast-food workers and some other low-wage workers are demanding a base wage of \$15. Also interesting is the Fair Workweek Initiative that is being pushed by various worker advocacy groups to encourage lawmakers and employers to do what they can to bring about more worker-friendly, less stressful work schedules. Among the proposals are to require employers to give three weeks' advance notice of one's work schedule – too many employees learn their next week's work schedule just one or two days in advance.

#### LABOUR GLOSSARY



Brodie Frehlich © 2015

**Arbitration:** An alternative dispute resolution process in which a neutral third party, either an individual or a panel, hears evidence from a union and an employer and issues a binding decision.

**Back-to-Work Legislation:** Legislation that requires workers who are engaging in job action to return to work and forbidding further job action until a collective bargaining agreement is reached. Governments will generally employ it in the context of public sector bargaining, arguing that certain workers, such as air traffic controllers or postal employees, are essential to the functioning of the economy.

**Bargaining Committee:** A group of people elected by a bargaining unit's membership to negotiate with an employer during collective bargaining. The employer will also appoint a bargaining committee.

**Bargaining Unit:** A group of workers who have their own collective bargaining agreement. There can be multiple bargaining units within a union local. The appropriate composition of a bargaining unit is determined by local labour law, but will exclude managers and members of certain professions.

"Bargaining Through the Media": A derisive phrase used by both unions and employers that refers to the use of media coverage as a strategy to sway public opinion on a labour dispute which can affect bargaining. Bargaining through the media is not considered bargaining in good faith.

**Blacklist:** A list of union sympathizers that is circulated to employers in order to make sure that they aren't hired and can't organize a union. This is an illegal practice.

**Boycott:** In a labour context, referring to a decision by sympathetic parties to not buy products or engage services from an employer that is viewed as mistreating its employees or is subject to a job action.

**Byline Strike:** A form of job action used by print journalists in which writers will refuse to affix their names to stories that are being published.

**Card Check:** One method by which a union can demonstrate that it has the support of a group of workers that it is trying to certify. During the organizing process, workers may sign union cards to demonstrate their support of unionization.

**Certification:** The process through which a union becomes the sole representative of a group of workers to collectively bargain with an employer. Workers may choose to create their own union or to be represented by an existing union. The union must file a certification application with the relevant labour relations board and prove that they have the support of a certain percentage of workers. The union must prove this through either a card check or a secret ballot vote, or both, depending on the jurisdiction.

**Closed Shop:** A workplace in which all workers must belong to the union. This is accomplished by an employer either hiring only union members or having newly hired employees automatically join the union.

**Collective Bargaining:** A formalized negotiating process through which an employer and a union come to an agreement about wages, benefits and working conditions. The final agreement is known as a collective bargaining agreement.

**Collective Bargaining Agreement (CBA):** An agreement made between a union and an employer that determines the rights and responsibilities of workers and the employer. A CBA is enforceable for a set period of time, with the idea that it will be renegotiated at the end of the time period.

**Cost-of-Living Allowance:** A wage increase that is meant to make income stay on par with rising living costs due to inflation.

**Craft Union:** A union that represents workers who perform similar tasks within an industry. Distinct from an industrial union which represents workers within a certain industry regardless of the type of labour they engage in.

"Crossing the Picket Line": When workers go to work for an employer that is the subject of a job action. These workers are sometimes members of the union engaging in the job action or come from outside of it.

**Decertification:** The process through which a union is dropped as the representative of a group of workers for collective bargaining purposes.

**Duty of Fair Representation:** A responsibility of a union to not act in a way that is arbitrary, discriminatory or in bad faith when representing a worker. This duty applies to every action that a union may undertake on behalf of workers. Workers who feel that their union has not fulfilled their duty of fair representation may file a complaint with a labour relations board.

**Employment Equity:** Referring to federal legislation that requires employers to make efforts to employ people from four designated under-represented groups: women, visible minorities, aboriginal people and people with disabilities. While the Employment Equity Act is only applicable to federally-regulated workplaces, "employment equity" is used to also describe similar provincial programs.

**Essential Services:** A legislative designation that limits the type of job action certain groups of workers can undertake because their services are deemed essential to the functioning of the economy, the safety of the public or the functioning of the courts. Hospital workers, firefighters and police officers are the most likely groups to fall under the essential services designation. While being deemed an essential service does not take away the right to strike, workers can't engage in total work stoppages.

**General Strike:** A strike that encompasses a large proportion of workers within a city, province or country. General strikes are generally aimed at forcing governments into making some sort of political change. General strikes, while once common in industrialized countries, are now rare. Examples include the Vancouver General Strike of 1918 and the Winnipeg General Strike in 1919.

**Grievance:** A workplace complaint raised by one or more workers that is resolved through a mechanism set out in a collective bargaining agreement or employee contract.

Industrial Union: See "craft union".

**International Union:** A union that has branches in more than one country. In Canada, most international unions are headquartered in the United States with branches north of the border.

**Job Action:** An action taken by workers in order to increase their leverage with employers. The point of a job action is usually two-fold: to force employers to pay some sort of economic cost and to garner public support for employees. While strikes are the most visible form of job action, they came in a variety of forms.

**"Local":** Short for local union. A local is a basic unit of union organization. Each local can have it's own bylaws that govern it under the parent union's constitution and elect their own officers. Local unions often encompass multiple bargaining units.

**Lockout:** A tactic used by employers in which employees are not allowed to work. While a lockout is similar to a strike, in that they are both work stoppages, lockouts are instigated by employers, generally to pressure workers during a collective bargaining negotiation.

**Mediation:** A form of alternative dispute resolution in which a mediator is brought in to help settle a dispute. Mediation is generally non-binding.

"No-strike" clause: A clause in a collective bargaining agreement in which a union agrees to not engage in a strike while the collective bargaining agreement is in force, as long as the employer also maintains its side of the CBA.

**Notice to Bargain:** A notice that starts the collective bargaining process. Either the union or the employer may send out a notice to bargain once a CBA is coming to the close of its term.

**Picketing:** A form of protest in which workers gather outside of a workplace that is subject to a work stoppage. Picketing is a highly regulated activity in Canada and only certain forms of picketing are legal.

"Raiding": A term used to describe one union attempting to convince members of another union to switch. Labour legislation throughout Canada allows a specific time during the year (an "open period") when union members are allowed to change which union represents them.

Rand Formula: A Canadian legal norm and a form of union security in which all workers in a bargaining unit are required to pay union dues whether or not they belong to the union. The purpose of the Rand Formula is to ensure no "free ridership" for workers that benefit collective bargaining without supporting the union that does this on their behalf. Developed in 1946 by Supreme Court of Canada Justice Ivan Rand, the Rand Formula is in some way a part of all labour codes in every Canadian jurisdiction.

"Rank and file": The individual members of a union. Often used to distinguish from the union leadership.

**Ratification:** The process through which a collective bargaining agreement is approved by the members of a bargaining unit and the employer's owners, officers or directors.

"Right-to-work" legislation: Legislation, popular in the United States, that limits the right of unions to enter into agreements with employers requiring employees to join a union and pay dues.

**Rotating job action:** When subsets of employees within a bargaining unit engage in a job action at different times. Rotating job actions are often used as an escalating tactic by unions during a collective bargaining negotiation.

"Sickout": A form of job action in which a group of workers coordinate to all call in sick, thus effectively creating a work stoppage.

**Sit-Down Strike:** A form of job action in which workers occupy a workplace while not doing work. Sit-down strikes are often employed to ensure that strikebreakers cannot be brought in to resume work.

**Shop Steward:** A union representative elected by members of a bargaining unit to represent their interests to an employer. Shop stewards are current employees that take on the role as a volunteer responsibility.

**Slowdown:** A form of job action in which workers continue working but use a variety of tactics to reduce their productivity. Slowdowns allow workers to continue being paid while putting pressure on an employer. "Work-by-rule" is a form of slowdown.

**Strike:** A form of job action in which employees withhold their labour as a form of protest. Strikes are generally considered to be a last-resort form of job action. While most strikes are directed at the employer of the striking workers as part of the breakdown of collective bargaining, some strikes are conducted to support other striking workers (see: sympathy strike), to demand political change (see: general strike) or social change (e.g., LGBTQ equity).

**Strike Fund:** A reserve fund put aside by unions that can be used to pay workers in the event of a strike. Generally collected through union dues.

**Strike Pay:** Payments made by a union to striking workers through a strike fund.

**Strike Vote:** A vote taken by union membership that authorizes the union leadership to begin a strike within a certain timeframe. The strike vote itself generally does not mean the beginning of a strike. A strike vote may be called during regular negotiations or in the event of a legislation or policy change or as a result of an unaddressed issue like poor working conditions or health and safety violations.

**Strikebreaker (Scab):** Workers who continue to do work despite a job action. Strikebreakers can be outside replacements that are brought in or current workers who cross a picket line to continue working. The use of strikebreakers is highly

regulated throughout Canada. Some Canadian provinces do not allow the use of strikebreakers.

**Successorship:** The process through which the rights of a union are preserved even as a business is sold off or split up.

**Temporary Foreign Worker:** A migrant worker brought in to ostensibly fill in a short-term labour gap for an organization and is then sent back to their home country. Temporary foreign workers in Canada are denied many of the rights that other workers are entitled to.

**Tentative Agreement:** A provisional agreement reached between the bargaining committee of a union and an employer. The agreement must still be ratified by the membership of the bargaining unit and also possibly by the governing body of the employer.

**Trusteeship:** When a parent union takes over the management of one of its member locals, often due to mismanagement, corruption or criminality.

**Union:** An organization of workers that come together to collectively negotiate with their employer.

**Union Busting:** A derogatory term indicating actions taken by employers, governments or other groups to undermine the formation of labour unions. Union busting can take legal or illegal forms. While violent methods were common in the past, modern-day union busting is more likely to take the form pressure tactics applied to workers.

**Union Density:** A term referring to the percentage of a jurisdiction's workers belong to a union. Union density has been in decline. According to the Globe and Mail's Stephen Gordon in "What does shift in union membership mean for Canada?" union membership peaked at 38.6% in 1982 and dropped to 27.5% in 2010. Union density is significantly higher in the public sector than in the private.

**Union Dues:** Fees that are paid regularly to a union by its membership in order to sustain union activities.

**Union Recognition:** The process through which an employer acknowledges a union's right to exclusively represent a group of employees in collective bargaining. This process is determined by local labour law.

**Union shop:** A workplace in which only workers belonging to a specific union are allowed to work. This is accomplished by either all employees that are hired automatically becoming union members or by the employer only hiring workers from the authorized union.

"Wildcat" Strike: A strike that is undertaken by workers without the permission or support of the union's leadership or outside the bounds of established procedures. Wildcat strikes are often illegal and sometimes occur amongst workers who do not have the legal right to strike.

**Work-In:** A form of job action where workers who are under threat of termination continue occupy a workplace and continue to do their jobs. It is generally an attempt to demonstrate that their jobs are still viable.

**Work-to-rule:** A form of job action in which workers will do the exact minimum amount of work required of them under their contracts and assiduously follow safety regulations in an effort to slowdown work.

#### **Business Euphemisms**

One of the worst traps to fall into when reporting on business and labour is to adopt type of consultant-speak that is often found in shareholder letters and TED Talks.

How do I lay thee off? Let me count the ways

Business has more words for "a bunch of people don't have jobs anymore" than Inuit people have words for snow (actually it's much more since the latter is a myth).

Some of the worst publicity that an organization can get is when they put people out of work, so the euphemisms have piled up. This is especially the case since layoffs are often a result of what organizations want to spin as good news stories (Look at our big merger! We're balancing the budget!)

If you're reporting on layoffs or firings, don't let corporate doublespeak obscure the truth.

People lost their livelihoods, this is probably one of the worst days in their life; they deserve to have that reflected in any media coverage.

A lot of the euphemisms utilize passive language to obscure the fact that an employer is doing something active and negative to their employees.

Instead, use words like "fired" "laid off" and "terminated," depending on what actually happened.

Here's what to avoid:

**Downsizing:** One of the most pervasive examples of obfuscating corporate speech. Just think about the word itself. In what other context is "sizing" used as a verb? (Possible movie title: Honey, I Downsized the Kids)

**Rightsizing:** "Down seems like such a sad word. How can we make this sound better?"

Smartsizing: You're kidding, right?

**Finding efficiencies:** "Finding efficiencies" is similar to Columbus "finding" the New World. You didn't actually "find" anything and by the time you're done, there are a lot fewer people there than when you started.

**Reducing headcount:** What do management consultants and French revolutionaries have in common? Wherever they go, they reduce the headcount.

**Streamlining:** In which executives believe their company to be a plane, yacht or something else that rich people have that goes really fast.

**Staffing adjustments:** In which executives are chiropractors, ever so gently adjusting the spines of their employees, leaving them without lower-back pain or jobs.

Re-alignment: See above for chiropractic joke.

**Let-go:** In which employees are Leonardo Di Caprio desperately holding on to a plank of wood after the Titanic sinks and executives are Kate Winslet, making the heartrending decision to let them drift to oblivion even though there was enough room on that plank for both of them.

**Delayering:** You see, businesses are like onions. When you peel them, people end up crying? Okay, this metaphor isn't really working.

**Reducing redundancies:** Richard reduced redundancies by restructuring and rightsizing.

Other euphemisms for lay-offs: Workforce optimization, restructuring, deleveraging, reducing costs.

More euphemisms and jargon:

**Team members:** Unless your co-workers all come together to play ultimate frisbee on Tuesdays, you're employees not team members.

**Union boss:** Unless you're also using the words "robber baron" to talk about an employer, stay away from union boss. Union leader will suffice.

"Right-to-work" legislation: Anti-union legislation.

**High-net worth individuals:** Rich people.

**Job flexibility:** Job insecurity.

**Taxpayer:** Depending on the context, this can refer to citizens or be used as political

rhetoric to connect to the every -day person. It should be noted that every person living or working in Canada, regardless of immigration or socioeconomic status is paying taxes.

**Job seeker:** Unemployed person.



Roberto Ferrari @ 00

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