



Public Service Alliance of Canada  
Alliance de la Fonction publique du Canada

Collective Bargaining under the new  
*Public Service Labour Relations Act*  
(*PSLRA*):  
**A Brief Introduction**

# Introduction

- The new *Public Service Labour Relations Act* came into effect April 1, 2005
- It will significantly affect the next round of collective bargaining with TB and the Agencies
- Today we are going to talk about ***10 Things You Ought to Know*** about the new law.

**No. 1**

**The Basic Framework for  
Collective Bargaining Remains  
Unchanged**

- We still serve notice to bargain in advance of expiry date (s. 105) – though it is now 4 months instead of 3 months.
- Parties still obliged to bargain in good faith (s. 106).
- Collective agreement remains in force after expiry date – freeze period (s. 107).
- Like the old *PSSRA*, we still cannot bargain staffing, pensions, or anything which requires legislative change.

- Union still has a choice between two methods of dispute resolution in the event of an impasse: arbitration, or conciliation with the right to strike (s. 103). Once we serve Notice to Bargain, we cannot change our choice.

## **No. 2**

**The “Public Interest” is  
paramount in this new Labour  
Relations Act**

- The Preamble to the new *PSLRA* states:  
*“the public service labour-management regime must operate in a context where protection of the public interest is paramount.”*
- Preambles are optional components of legislation. They set out the broad purpose. Parliament chose to include a preamble for this legislation. It helps us interpret the purpose of some of the changes made to the Act.
- For example, the new legislation replaces the former Conciliation Boards with “**Public Interest Commissions,**” or PICs.

- The basic structure of the PICs is very similar to Conciliation Boards (normally a chair, and one nominee from both employer and union).
- But, there is a new name, a new mandate, and a role for the “Minister” responsible for the Public Service Labour Relations Board (PSLRB).

## **No. 3**

**Arbitration Boards have an  
expanded list of factors to  
consider**

- In making an arbitral award, Arbitration Boards must take into account a number of factors, such as comparisons to outside employers, comparisons within the federal public service, etc.

(s. 148).

- There have been several few minor changes to the factors, but the biggest change is the addition of this factor:

*“the state of the Canadian economy and the Government of Canada’s fiscal circumstances.”*

- Most of the other aspects of Arbitration Boards remain unchanged.
- Units on this route do not have the right to strike, and the report of the Arbitration Board is final and binding upon the parties.



## **No. 4**

**Now, PICs also have a list of factors they must consider**

- The old *PSSRA* had a list of factors to be considered by Arbitration Boards, but it did not set out a similar list for Conciliation Boards.
- Under the new *PSLRA*, in making its recommendations the PICs must consider a set of factors identical to those given Arbitration Boards (s. 175).
- So, the new list of factors mandatory for PICs includes:  
*“the state of the Canadian economy and the Government of Canada’s fiscal circumstances.”*

- PICs are structured very similarly to Conciliation Boards.
- Chairperson of the PIC chosen from a list pre-established by the Board, following consultation with the parties.
- PICs still make recommendations which the parties may or may not use to try and reach a deal.
- PICs now have 30 days to complete their report (increased from 14 days under the old *PSSRA*) (s. 176).
- No legal strike action allowed until 7 days have elapsed (unchanged).

# No. 5

**Strike Votes are now governed  
by the law  
(s. 184)**



- The old *PSSRA* was silent on the conduct of strike votes.
- The new *PSLRA* requires “a vote by secret ballot among all of the employees in the bargaining unit.”
- An employee may challenge the results of a strike vote. An employee may ask the PSLRB to declare the vote invalid.
- The Board may dismiss the application or may order a new vote.

# No. 6

**The strike vote in the legislation  
has a “best before” date**

**(s. 194 1 r ii)**

- Like the *Canada Labour Code*, the new *PSLRA* now governs when we take our strike vote.
- Strike action is only legal if it commences within 60 clear days of the strike vote. If we pass 60 clear days, we ask the employer for an extension.
- What qualifies as a strike? Strike action is a concerted effort to cease work or slow down work by more than one person.



# **No. 7**

**The new Act contains an  
Employer “free speech” clause**

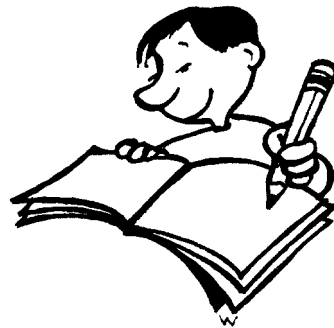
**(s. 186 (5))**

- This is a new provision. It provides that the employer or a person does not commit an unfair labour practice  
*“by reason only that the employer or person expresses their point of view so long as they do not use coercion, intimidation, threats, promises or undue influence.”*
- This strengthens the ability of the employer to put out information during the negotiation process.

**No. 8**

# **Essential Services Agreements**

**(s. 118)**



- Essential Services Agreements (ESAs) replace the designations process.
- Components/locals are currently working on ESAs with departments.
- ESAs remain in effect unless amended in subsequent bargaining round.
- If the employer and union cannot agree on the ESAs, the dispute is referred to the PSLRB.
- Strike action is prohibited until the ESA is signed (or ordered into effect by the Board), and 30 clear days have passed.

**No. 9**

**Strike prohibitions re: Essential  
Services**

**(s. 199)**

- It is an offence to:

*”impede or prevent or attempt to impede or prevent an employee from entering or leaving an employer’s place of work if the employee occupies a position that is necessary under an essential services agreement.”*

- Offences carry fines for employees, employee organizations, officers and representatives of employee organizations.

# No. 10

**Legal Strike Action – it's all in the timing**



- Under the old PSSRA, we had to go through a step-by-step process to get to a legal strike position:

1) Complete the Designations Process



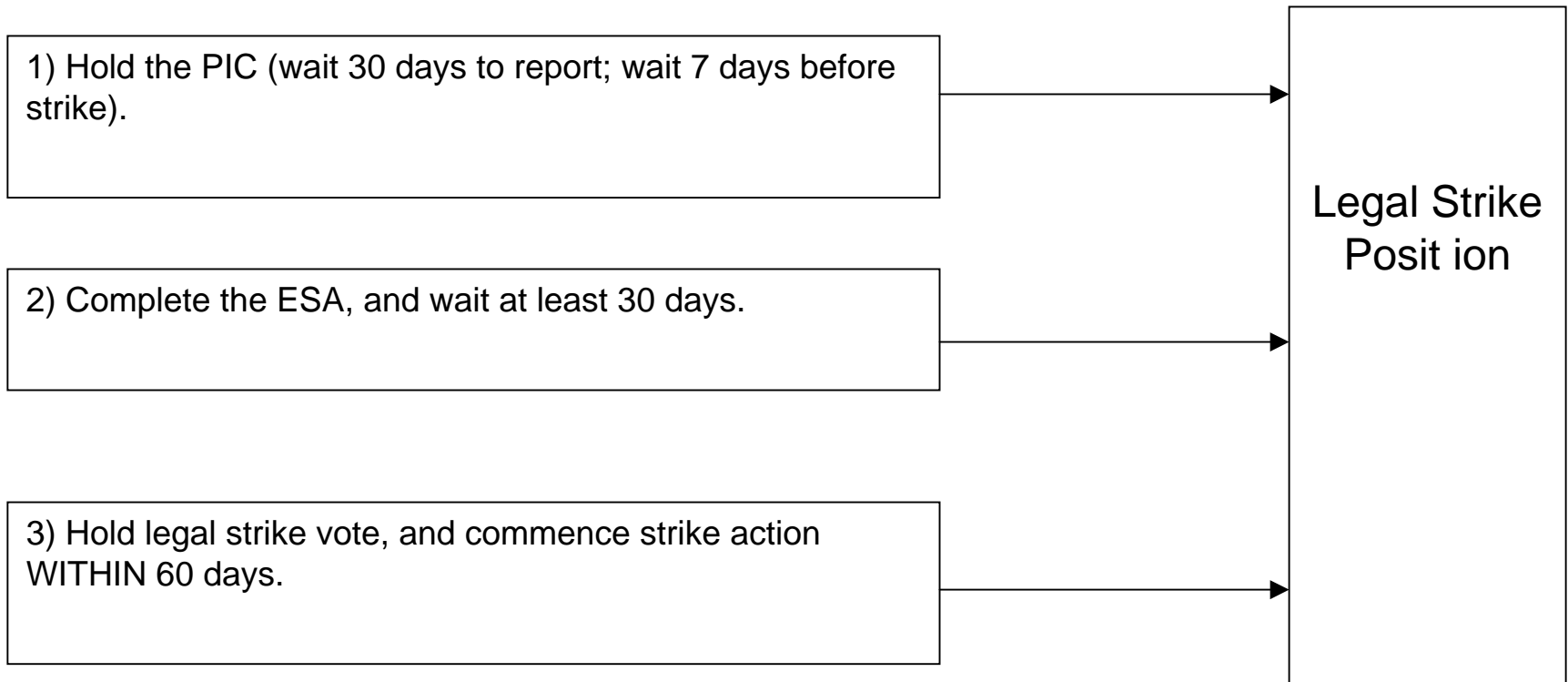
2) Hold the Conciliation Board (wait 14 days for report, and a further 7 days)



Legal Strike Position

- Because the old *Act* did not govern the strike votes, we could hold the strike vote at the time we wanted.
- The new *Act* has a significant impact on the planning of our strike vote and the start of strike action. The timing of the vote becomes a more technical process.
- Remember that in order to complete a strike vote across the country, it takes us 4-6 weeks.

- Under the new *PSLRA*, 3 separate conditions must be simultaneously met before we are in a legal strike position:



- SO: This means we need to plan on the basis that we should not start our strike vote until AFTER the PIC has been fully established.
- We also should not start our strike vote until AFTER the ESA is finalized.
- This means that we will hold strike votes much later in the process than has been our practice in the last several rounds of TB and Agency negotiations.

# Conclusions

- We are starting this round of bargaining under the new *Public Service Labour Relations Act*.
- Today we talked about “**10 Things You Ought to Know**” about the new law.
  - 1) The basic framework remains unchanged.
  - 2) The new Act emphasizes “the public interest.”
  - 3) There are new factors which Arbitration Boards must consider, including an “ability-to-pay” clause.

## Conclusions

- 4) Conciliation Boards are replaced by Public Interest Commissions, which must also consider the same factors.
- 5) The conduct of strike votes is now governed by the law.
- 6) The strike vote has a “best before” date (60 days).
- 7) The Employer has a “free speech clause.”
- 8) Designations are gone, replaced by “Essential Services Agreements.”
- 9) Prohibitions against impeding ESA workers.
- 10) Planning strike vote timing and strike vote commencement more complex.

## Conclusions

- The new Act presents us with new challenges.. but they are not insurmountable challenges. We've always negotiated under restrictive legislation!
- To meet the challenge, it is important that you as leaders in the collective bargaining process become familiar with the legislation.
- The legislation is available on-line at:
  - PSLRB web site
  - Justice Canada legislative site
  - Parliament of Canada legislative site.

