



*Fair, safe and productive workplaces*

# Labour

## Road to settlements in Canada

### Introduction

Collective bargaining is a multi-stage process that employers and employees use to reach an agreement on various working conditions. However, reaching an agreement is not always easy or simple. The first stage is **direct bargaining**, where employees and the employer deal directly with each other to try to reach an agreement. The next stages are **conciliation** and **mediation**, where a third party tries to help the employees and employers reach an agreement. **Arbitration** and **legislation** are used later on if the earlier stages do not produce an agreement, and these final stages will impose a settlement on the parties.

Agreements reached through direct bargaining, conciliation or mediation are considered “self-propelled” settlements because the parties are able to reach an agreement by themselves. Agreements reached through arbitration or legislation are considered “imposed” or “obligatory” because the parties are led to settlement by a third party appointed by government.<sup>1</sup>

Lengthy negotiations often become contentious and expensive, so reaching an agreement early on in the bargaining process is considered an indication of healthy labour relations. Analyzing the stages of negotiations represents a more exhaustive means of understanding the bargaining climate, than using work stoppage as a single indicator. This study uses Workplace Information and Research Division data to analyze the stages bargaining parties went through in major settlements<sup>2</sup> from 2001 to 2014, with a particular focus on the last stage of negotiations.<sup>3</sup>

<sup>1</sup> The bargaining parties can still reach an agreement voluntarily before the arbitrator awards a decision. Appendix A provides descriptions of various bargaining stages.

<sup>2</sup> For this analysis, major settlements are defined as those agreements covering 500 or more employees.

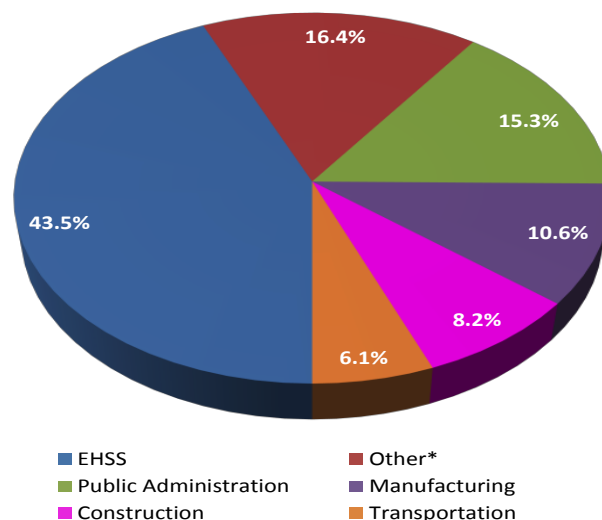
<sup>3</sup> Throughout this analysis, the “last stage” refers to the stage when the negotiation was settled.

## Distribution of settlements

A total of 4,685 major negotiations, covering 11.9 million employees, were settled over the study period. Almost two-thirds of these settlements were in the public sector (65.9%). Figure 1 shows that the concentration of settlements varied across industries. Well over one-third (43.5%) of all agreements were settled in the education, health and social services (EHSS) industry. Public administration accounted for 15.3% and manufacturing for 10.6% of agreements. Construction (8.2%) and transportation (6.1%) also represent significant shares of settlements.

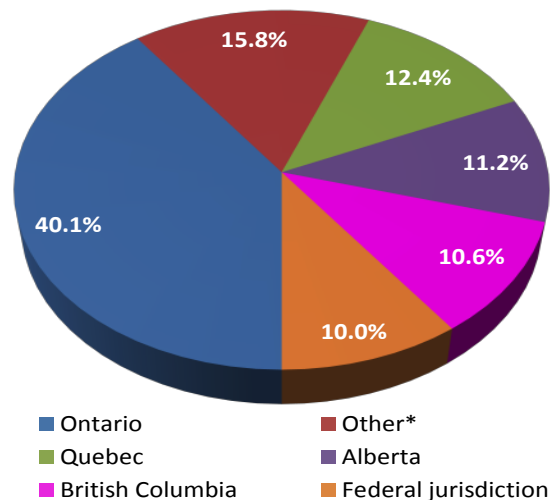
By jurisdiction, Ontario (40.1%) had the most agreements ratified, followed by Quebec (12.4%), Alberta (11.2%), British Columbia (10.6%) and the federal jurisdiction (10.0%) (Figure 2).

**FIGURE 1:** Distribution of settlements by industry



**\*Other:** Wholesale and retail trade: 3.9%; Utilities: 3.6%; Finance and professional services: 2.7%; Information and culture: 2.6%; Entertainment and hospitality: 2.3%; Primary: 1.3%.

**FIGURE 2:** Distribution of Settlements by Jurisdiction

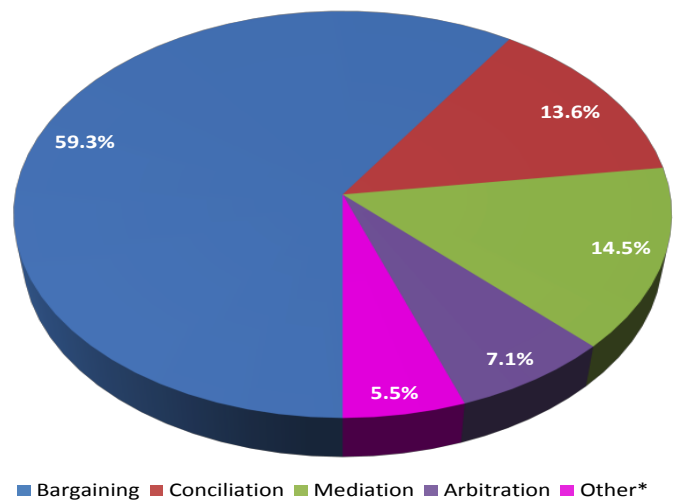


**\*Other:** Manitoba: 4.8%; Nova Scotia: 3.3%; Saskatchewan: 2.9%; New Brunswick: 1.9%; Newfoundland and Labrador: 1.5%; Prince Edward Island: 0.8%; and territories: 0.4%.

### Settlements by the last stage of negotiations

A clear majority (59.3%) of all negotiations were settled through direct bargaining, while 13.6% were settled through conciliation or post-conciliation bargaining and 14.5% through mediation or post-mediation bargaining (Figure 3). Arbitration and other legislative mechanisms were used in settling the rest of the negotiations (12.6%).

**FIGURE 3:** Distribution of settlements by the last stage of negotiation

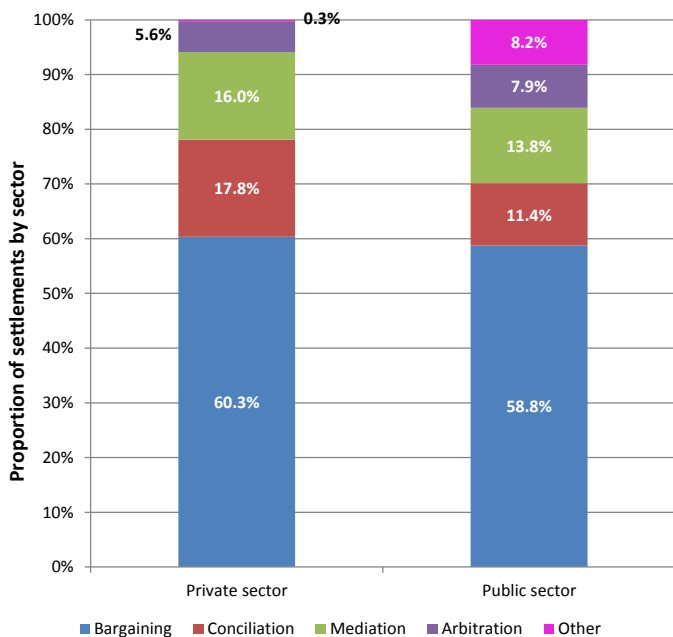


\*Other: Legislation: 4.7%; Industrial Inquiry Commission: 0.5%; Conciliation Board: 0.3%.

### Last stage of negotiations by sector

While both public and private sectors have comparable proportions of negotiations settled through direct bargaining (60.3% in the private and 58.8% in the public), a higher proportion of private-sector negotiations involved conciliation and mediation (33.8%) compared to those in the public sector (25.2%). This implies only 5.9% of negotiations in the private sector involved imposed or obligatory settlements (arbitration and other legislative mechanisms), whereas such interventions were required to settle 16.1% of the public-sector negotiations. Governments might have enforced arbitration or legislation more frequently to settle negotiations in the public sector than in the private sector.

**FIGURE 4:** Last stage of negotiation by sector

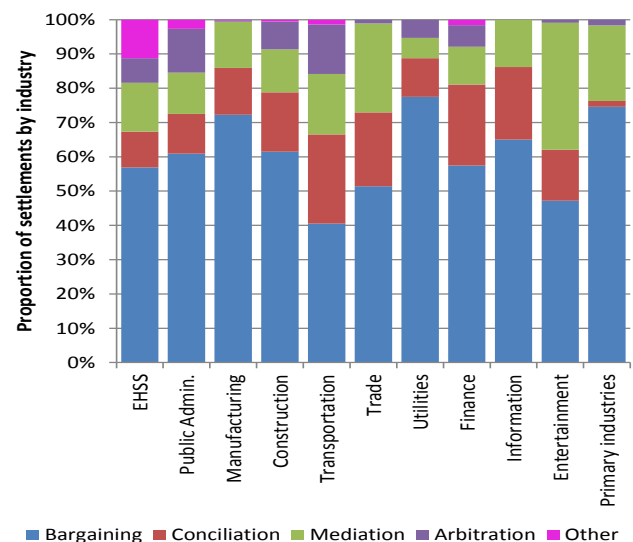


\* Data labels signify proportion of settlements **within** each sector.

## Last stage of negotiations by industry

Negotiations varied widely across industries (Figure 5). In EHSS—the industry with the largest share of settlements—81.6% of the negotiations were settled either through direct bargaining, conciliation or mediation. The remaining 19.4% of negotiations had to be settled through arbitration or legislation. Among other major industries, manufacturing (99.4%), entertainment and hospitality (99.1%) and wholesale and retail trade (98.9%) had the highest proportion of negotiations concluded without arbitration or enforcement of legislation. Among industries with small shares of agreements in our sample, utilities had the highest percentage of negotiations (77.5%) settled through direct bargaining.

FIGURE 5: Last stage of negotiation by industry

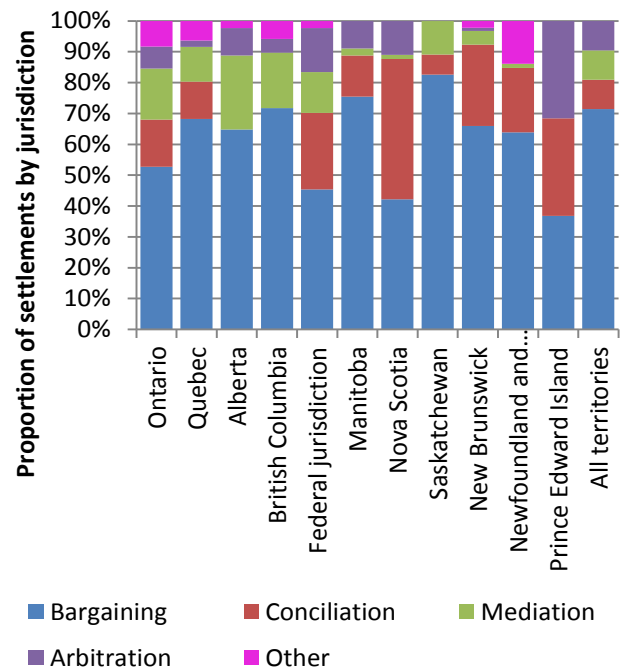


\*Note: Please refer to Figure 1 for each industry's share in the sample.

## Last stage of negotiations by jurisdiction

In the federal jurisdiction, 45.4% of negotiations were settled through direct bargaining, while another 38.0% were concluded through conciliation or mediation (Figure 6). One in every six negotiations (16.6%) in this jurisdiction was settled through either arbitration or legislation. In Ontario, 52.7% of agreements were settled through direct bargaining, 15.3% through conciliation and another 16.5% through mediation. Among all jurisdictions, Saskatchewan (82.6%) and Manitoba (75.5%) had the highest proportion of negotiations settled through direct bargaining. In contrast, Prince Edward Island had 36.8% and Nova Scotia had 42.2% settled through direct bargaining. Negotiations in Prince Edward Island were settled through arbitration (31.6%) more frequently than in any other jurisdiction.

FIGURE 6: Last stage of negotiation by jurisdiction



\* Please refer to Figure 2 for each jurisdiction's share in the sample.

## Last stage of negotiations by bargaining unit size<sup>4</sup>

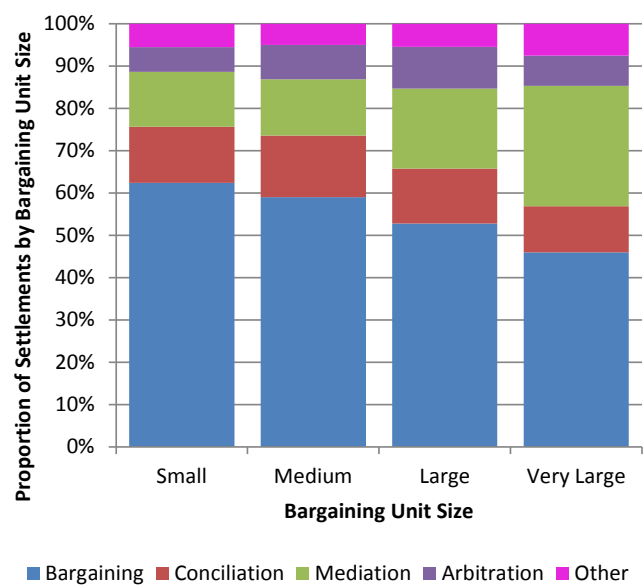
The agreements in our sample are divided into four groups—small, medium, large and very large—based on the number of employees represented by the bargaining units. Table 1 shows the share of each group of settlements in the sample.

**TABLE 1:** Share of agreements by bargaining unit size (number of employees)

Small (500–999)	Medium (1,000–2,999)	Large (3,000–9,999)	Very Large (10,000+)
50.2%	32.5%	12.8%	4.5%

Figure 7 reveals significant differences across these four groups of bargaining units. Smaller bargaining units reached settlement through direct bargaining and conciliation more frequently than larger units. Larger bargaining units settled their disputes more frequently through arbitration and legislation compared to the smaller ones. This could indicate a relation between bargaining power and the size of the bargaining unit. Negotiations that involve intervention by a third party are costly, and smaller units might have chosen to avoid that route whenever possible.

**FIGURE 7:** Last stage of negotiation by bargaining unit size



## Key findings

- Negotiations in the public sector involved arbitration or legislation more frequently than in the private sector.
- Among the industries with significant shares of agreements (EHSS, transportation, manufacturing, construction, public administration), manufacturing had the largest proportion of negotiations settled through direct bargaining (72.2%), while transportation had the smallest (40.5%).
- Negotiations in the EHSS industry were settled through arbitration or legislation more frequently than in any other major industry.
- In the federal jurisdiction, 45.4% of settlements (with 500 or more employees) were concluded at the direct bargaining stage, while another 38.0% were settled through conciliation or mediation.
- Negotiations involving smaller bargaining units were settled more frequently through direct bargaining than those involving larger units.

<sup>4</sup> The Labour Program does not monitor negotiations covering less than 500 employees under provincial jurisdictions, so they are not included in our analysis. However, the Program does monitor negotiations covering 100 or more employees in the federal jurisdiction. A total of 978 of these negotiations were settled during the study period, with 93.1% settled through direct bargaining, conciliation or mediation. This is consistent with the results in Figure 7.

## APPENDIX

### ***Direct Bargaining***

During this stage, negotiations occur directly between the parties: the employer and the bargaining unit. Reaching an agreement at this stage is seen as healthy labour relations and it establishes stronger rapport between the bargaining parties.

### ***Conciliation***

When the parties cannot reach an agreement by themselves through direct bargaining, a government-appointed third party attempts to bring together the parties to reconcile their differences. The conciliator is appointed at the request of either one or both parties or at the discretion of the Minister of Labour (federal or provincial). The conciliator, who is usually a government employee, does not participate in bargaining but attempts to capture the parties' 'real' issues. Conciliation is most often seen as the necessary first step before more interventions are made to resolve the issues.

### ***Mediation***

Mediation is a more intensive form of third-party intervention than conciliation. It is a process whereby disputing parties choose voluntarily to reconcile their differences through a third party. The mediator usually proactively participates in the actual bargaining process, meeting jointly and separately with the parties during bargaining sessions. A mediator is appointed at the request of one or both parties, or at the initiative of the Minister of Labour

### ***Arbitration***

Arbitration can be requested by either or both parties when bargaining reaches an impasse, or it can be imposed if the government considers the continuation of a work stoppage intolerable and temporarily suspends the right to strike and lockout. The Minister of Labour appoints an individual or a three-member panel as arbitrator and a formal hearing is held. The arbitrator sets some or all of the terms and conditions of the collective agreement, and the arbitrator's decision is binding.

### ***Back to work legislation***

Governments can use 'back to work legislation' or access the courts to end disputes. Most jurisdictions have legislation that restricts or forbids workers in essential services from striking. A service is considered 'essential' when its withdrawal would cause a threat to public safety or health e.g. police officers.

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