

## FTR Now

# Elimination of Federal Card Check Union Certification and a Lower Threshold for Union Decertification Votes

**Date:** December 18, 2014

Effective June 16, 2015, significant reforms to the existing federal union certification and decertification processes will come into effect as a result of key amendments to the *Canada Labour Code*, the *Parliamentary Employee and Staff Relations Act* and the *Public Service Labour Relations Act*. These amendments were enacted by [Bill C-525, Employees' Voting Rights Act](#). Private Member legislation that received Royal Assent on December 16, 2014.

In this *FTR Now*, we focus on those amendments under the *Canada Labour Code* of particular interest to federally regulated employers.

## THE CURRENT “CARD CHECK” SYSTEM

In order to be certified by the Canadian Industrial Relations Board (“Board”) under the current *Canada Labour Code* (“Code”) regime, a union must demonstrate support from a majority of the employees in a proposed unit. Unlike the Ontario system, however, federal certification can and usually does occur without a vote of the members of the proposed bargaining unit.

Under the current federal system, an Application for Certification must contain sufficient membership evidence comprised of signed union cards, and proof that each employee paid \$5.00. Under this so-called “card check” system, if more than 50% of the employees in the proposed unit have signed cards and paid, the Board will automatically certify the union, without a secret ballot vote. If the union’s membership evidence shows support of between 35% and 50%, the Board will order a vote and require majority support of those who vote before certification will be granted. If less than 35% of the employees have signed cards, the application is dismissed.

The card check system has permitted unions the advantage of gathering sufficient evidence of support (i.e. 50% + 1) prior to filing an Application for Certification, thereby securing bargaining rights automatically. This has led to real or perceived unfairness, as the submitted cards are, by virtue of section 35 of the *Regulations* under the *Code*, not subject to any public scrutiny. Furthermore, the ability of employers to educate employees about the decision to join a union and to respond effectively has often been limited to those situations where only 35% to 50% support is established.

## THE NEW FEDERAL REGIME

Two key changes to the *Code* come into effect on June 16, 2015.

### 1. NO MORE “CARD CHECK” CERTIFICATION

The automatic “card check” certification process will be eliminated. The *Code* amendments will require a secret ballot certification vote in all cases, which is what occurs presently in other jurisdictions such as Ontario. The union will be required to demonstrate membership evidence of support by 40% of the bargaining unit employees to trigger the secret ballot vote.

### 2. REDUCED THRESHOLD FOR DECERTIFICATION

The Bill C-525 amendments reduce the threshold of evidence required to trigger a secret ballot decertification vote from a

50% +1 majority, to 40% of employees in the bargaining unit no longer wishing to have the union represent them.

In both instances, a majority of votes cast in the secret ballot vote will be required to either certify or decertify the union as bargaining agent. The *Code*, in section 31, requires that a minimum of 35% of eligible employees actually participate in the vote for the vote to be valid. So, for example, if there are 100 employees, at least 35 must vote for the ballot to count and therefore, at a minimum, 18 people out of 100 may make the determination.

## **IMPACT ON FEDERALLY REGULATED EMPLOYERS**

The changes outlined above reform the federal labour framework, and put federally regulated employers on a more equal footing with employers in British Columbia, Alberta, Nova Scotia, Saskatchewan and Ontario, particularly in the context of union organizing drives. Employers confronted with a union campaign will have greater opportunity to respond to educate and to present employees with a more balanced and informed choice.

If you would like more information on how these changes might impact your organization, please contact [Henry Y. Dinsdale](#), [Jodi Gallagher Healy](#), [Simon E. Mortimer](#), [Craig S. Rix](#) or your [regular Hicks Morley lawyer](#).

The articles in this Client Update provide general information and should not be relied on as legal advice or opinion. This publication is copyrighted by Hicks Morley Hamilton Stewart Storie LLP and may not be photocopied or reproduced in any form, in whole or in part, without the express permission of Hicks Morley Hamilton Stewart Storie LLP. ©