

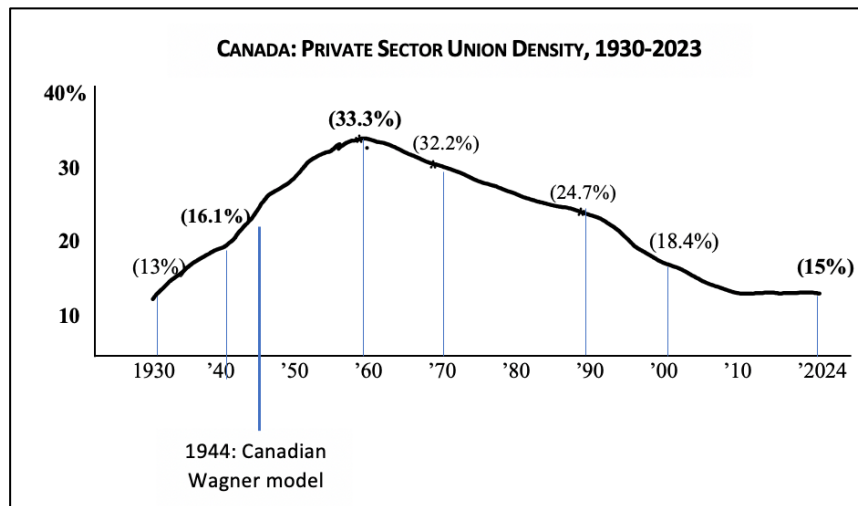
DISCUSSION PAPER

THE ‘ASCENSION’ STRATEGY FOR CANADIAN LABOUR LAW REFORM: OPTIONS FOR BROADER BASED COLLECTIVE BARGAINING

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INTRODUCTION

I have discussed in several papers a conceptual model for thinking about possibilities for twenty-first century labour law reform in Canada.¹ The Canadian “Wagner model” that has shaped collective bargaining in Canada dates to the 1930s and the evidence seems clear that the model is no longer fit for purpose. I will not recount all the evidence that supports this claim again here: it is sufficient to note that private sector collective bargaining coverage in Canada today sits at about 15 percent, lower than in the late 1930s and early 1940s, *before Wagner model collective bargaining legislation was first introduced.*² Collective bargaining is entirely out of reach for the vast majority of Canadian workers employed in the private sector and will continue to be so for as long as we remain wedded to the 20th century Wagner model.



(Source: From statistics in: B. Eiden, *Labor and the Class Idea in the United States and Canada* (Cambridge, 2018), 277-279; Statistics Canada. *Union Status by Industry*, Table 14-10-0132-01, 2024)

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¹ D. Doorey, “Reflecting Back on the Future of Labour Law” (2021) 71 *University of Toronto Law Journal* 165; D. Doorey, “Graduated Freedom of Association: Worker Voice Beyond the Wagner Model” (2013), 38 *Queens Law Journal* 511; D. Doorey, “Back to the Future of Labour Law” (2020) 75(2) *Relations Industrielles/Industrial Relations* 195; D. Doorey, “A Model of Responsive Workplace Law”, (2012) 50 *Osgoode Hall Law Journal* 47; D. Doorey, “Can’t Get There from Here: Thoughts on the Idea of Labour Law Reform in the 21st Century” (January 26, 2024). Available at SSRN: <https://ssrn.com/abstract=4707810>

² This claim is derived from the fact that union density in Canada between 1937 and 1942 ranged from 16.3 to 22.7 percent, according to statistics reported in B. Eiden, *Labor and the Class Idea in the United States and Canada* (Cambridge, 2018), 178, and that public sector collective bargaining during this period was basically non-existent.

It is true that the Wagner model still works relatively well in the sorts of legacy-type workplaces for which it was designed. These workplaces are large, with dozens or hundreds of employees who generally report to a physical worksite at more-or-less predictable times. Think large factories, mines, or large offices, like call-centres, to the extent that type of work is even done in Canada anymore. Public sector collective bargaining has its own challenges, but the Wagner model works great there in terms of employee access to collective bargaining because there are thousands of full-time employees, fewer (if any) competitive market pressures, and employers who, at least compared to their private sector counterparts, tend not to mount sustained anti-union campaigns. Even today, union density in workplaces with over 500 employees is greater than 50 percent and overall public sector union density consistently over 75 percent.³ The fact that the Wager model still works relatively well in large workplaces is an argument in favour of keeping it, even as we consider alternative models that could supplement it. The principle of gradualism in law reform favours an approach that builds upon engrained models rather than trying to develop new models from a clean slate.

However, the Wagner model was never designed to facilitate collective bargaining in smaller workplaces or in fragmented business structures, such as giant companies that operate through large numbers of small branches (think banks) or stores (think retail) or franchise (think fast food) arrangements. Nor did the architects of the Wagner model envision collective bargaining in platform-based “gig” work (think Uber and SkipTheDishes), which today represents a small but potentially growing segment of the economy. Collective bargaining under the Wagner model has never reached the vast majority of Canada’s most precarious workers: less than 3 percent of (mostly racialized) agricultural workers, 5.8 percent of (mostly women and racialized) workers employed in accommodation and food services, and just 7.4 percent of workers employed in finance, insurance, and real estate are covered by collective agreements.⁴ Racialized workers in Canada have a 30 percent lower unionization rate (21.8 percent) than non-racialized workers (28.4 percent). Young workers (15-24, 16.8 percent) are significantly less likely to be covered by a collective agreement than older workers (55 and older, 32.9 percent), even though surveys suggest young people are interested in collective bargaining.⁵

By any sensible measure, the Wagner model has failed as a policy platform to expand the reach of collective bargaining to those workers who could most benefit from it. However, recognizing that the Wagner model shows serious signs of strain is the easy part. Deciding on a way forward towards a new 20th century collective bargaining model is a much more difficult task. Canadian governments have been very cautious on labour law reform. Rarely are reform ideas that move beyond mere tinkering with the Wagner model taken

³ Statistics Canada. *Union Status by Industry*, Table 14-10-0132-01, 2024: <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410013201>

⁴ Ibid.

⁵ See S. Lipset & N. Meltz, *The Paradox of American Unionism: Why Americans Like Unions More Than Canadians Do But Join Much Less* (2004) at 99 (nearly 60% of Canadian workers aged 15-24 would vote to unionize if given the opportunity, when actual unionization rate for this age group was 10.7%. In comparison, 37% of workers aged 25+ would vote to unionize when 35.7% of workers in this age group were unionized).

seriously by governments, even in the rare cases where labour law reform commission reports have proposed novel ideas. Most employers and their political allies staunchly resist any proposal designed to resurrect collective bargaining in Canada’s private sector. Although some unions have in recent years expressed support for more fundamental forms of labour law reform than mere tinkering with the Wagner model, there remains little consensus on what precisely should be done.

My conceptual model for thinking seriously about labour law reform can be represented as a three-level nabla (See Figure 1). In the middle of the nabla is the Wagner model. This is where most labour law reform debates have been focused for the past 40 years. The sorts of reforms that are debated within the green box are so well-worn that I describe them as the *Standard Reform Playbook*:

- card-check versus mandatory ballot as the means for measuring employee support levels;
- strengthening and weakening labour board enforcement powers;
- permitting or prohibiting the use of replacement workers;
- legislating more or less union access to workers during organizing campaigns.

And so on. Debates over reforms to the Wagner model itself will continue for as long as the model remains on the books, but none of those reforms will fundamentally reverse the general downward trajectory that has characterized private sector collective bargaining coverage in Canada over the past thirty years.

I. THE THREE-LEVEL FRAMEWORK FOR CONCEPTUALIZING LABOUR LAW REFORM IN THE 21ST CENTURY

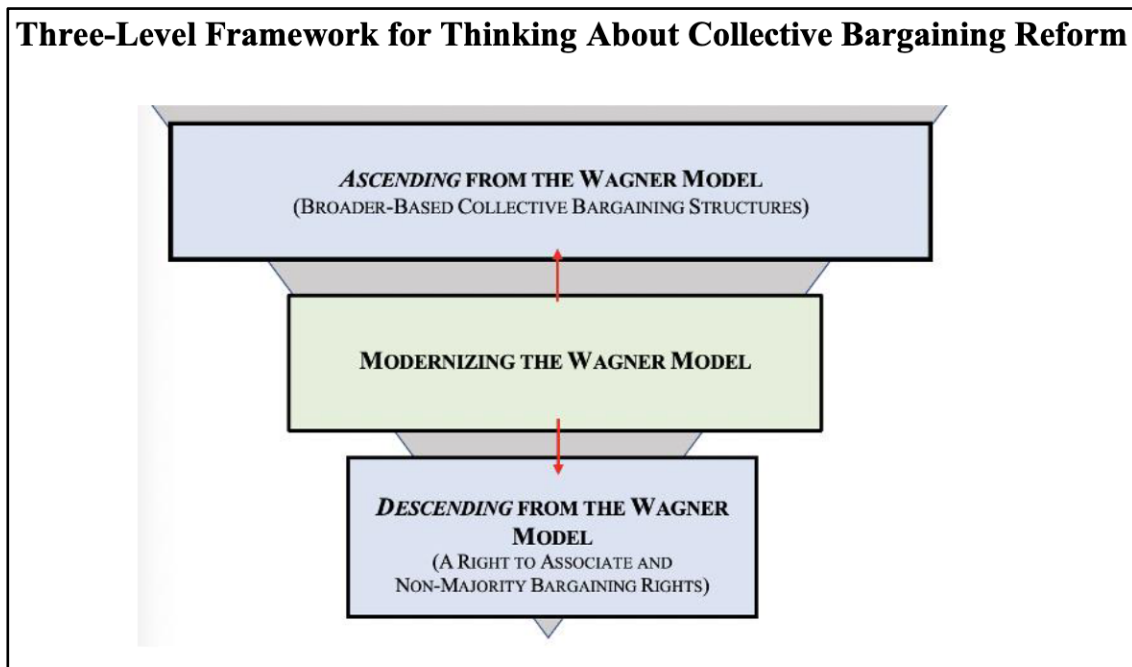
The more interesting labour law debates are to be found in what I have referred to as *descension* and *ascension* reform strategies. *Descension strategies* involve reforms that extend freedom of association and the right to act collectively at work alongside one’s coworkers *downwards* from the Wagner model’s focus on majority, exclusive trade unionism. Canada’s labour laws do not protect a right to collective bargaining or to associate *per se*. Rather, they protect one distinct form of collective action: *majority trade unionism*. Canadian collective bargaining legislation protects a “right to join a trade union” and to “engage in lawful trade union activities”, and the right to collective bargaining and to strike are made conditional on evidence establishing that a majority of workers in a “bargaining unit” support a trade union.⁶ This narrow focus on *majority trade unionism* means that other forms of worker collective action largely fall outside of the legislative collective bargaining model in Canada.

For example, non-union workers in the United States who engage in collective action, such as a one-day strike, to draw attention to low wages (recall the Fight for \$15 campaign) are protected by the *National*

⁶ I have developed this point in several other articles. See e.g. Doorey, *Reflecting Back on the Future of Labour Law*, *supra* note 1; Doorey, *Graduated Freedom of Association*, *supra* note 1.

Labor Relations Act's right to engage in "concerted action." If non-union workers in Canada engaged in the same form of collective action, they are breaching their employment contracts and no law protects them. Canadian labour laws were not designed to protect this sort of collective action by non-unionized workers. They were designed to channel collective worker action into a very narrow, tightly regulated zone of tolerance: only if workers follow the rules and join a trade union that obtains majority support would the state provide protections for collective bargaining and a right to strike. Otherwise, workers who act collectively to try and improve their working conditions are acting outside of the law and are subject to economic risk (in the form of job loss) and sometimes even legal risk (conspiracy).

Figure 1: Three-Level Framework for Thinking About Collective Bargaining Reform



Therefore, *descension strategies* focus attention on ways that labour law reform can strengthen the right of workers to associate outside of--or *below* the level of--formal, majority, exclusive trade unionism. This includes the introduction of a statutory "right to association" and to "act collectively" alongside coworkers towards trying to improve working conditions. The Americans call this a "right to engage in concerted activities for mutual aid and protection", which forms the foundation of U.S. labour law.⁷ The full content of what such a right in Canada would look like can be debated, but it would presumably include at least a right of workers to come together as a group to present workplace related concerns without fear of reprisals and perhaps some form of protection for a right to strike for non-unionized workers in some circumstances.

Building upwards from a foundational right to associate, *descension strategies* might also include reforms such as mandatory workplace committees in workplaces without a majority trade union that engage in consultations and collective dialogue. There can be other descension-based reforms, many of which have been

⁷ NLRA, Section 7.

advocated by labour law scholars for many years.⁸ The point of the conceptual idea of *descension* is to focus attention on ways that law could better protect collective worker activities where majority, exclusive trade unionism under the Wagner model is not a realistic possibility for workers.

II. ASCENDING FROM THE DECENTRALIZED WAGNER MODEL TOWARDS BROADER-BASED BARGAINING

The above provides just a quick summary of descension strategies to strengthen collective bargaining rights in Canada from the foundation upwards. The focus of this working paper is on what I call *ascension* strategies. An *ascension strategy* focuses on reforms that facilitate collective bargaining *above the level of the individual workplace*. It is a strategy to move beyond the decentralized structure of enterprise bargaining that is the bread and butter of the Wagner model towards broader-based bargaining (BBB) models that require multi-employer collective bargaining or bargaining at the industry or sector level. The idea of BBB has attracted considerable attention in recent years in countries with predominately decentralized collective bargaining models, including in Canada, Australia, Britain, New Zealand, and the U.S.⁹ Common arguments in favour of BBB models include the following:

- Enterprise-level collective bargaining in the Anglo-American tradition has failed to reach the least-advantaged and most vulnerable workers. Union density in low-wage service sector jobs such as food and hospitality services, retail, homework, agriculture, and cleaning services is among the lowest in nations with decentralized models. Countries with more centralized collective bargaining models have considerably higher collective bargaining coverage (ILO, 2017).¹⁰ For example, collective bargaining coverage in countries with industry level bargaining models is on average 67 percent compared to just 13 percent in countries with decentralized models.¹¹

⁸ There have been many proposals over the years for some form of employee representation committees in workplaces where no certified exclusive trade union represents workers. See e.g. Weiler, P. (1990). *Governing the Workplace: The Future of Labor and Employment Law* (Harvard University Press, 1990); Sachs, B. & Block, S. (2020). *Clean Slate for Worker Power: Building a Just Economy and Democracy*. Harvard LWP. <https://clje.law.harvard.edu/clean-slate/>; Adell, B. (1984). Establishing a Collective Employee Voice in the Workplace: How Can the Obstacles Be Lowered. In *Essays in Labour Relations Law: Papers Presented at the Conference on Government and Labour Relations: The Death of Voluntarism*. CCH; Adams, R. (2016). Bringing Canada's Wagner Act Regime into Compliance with International Human Rights Law and the Charter. *Canadian Labour & Employment Law Journal*, 19(2), 365; Doorey, "Graduated Freedom of Association, supra note 1.

⁹ See e.g. Sachs, B. & Block, S. (2020). *Clean Slate for Worker Power: Building a Just Economy and Democracy*. Harvard LWP. <https://clje.law.harvard.edu/clean-slate/>; Ewing, K., Hendy, J. & Jones, C. (2016). *A Manifesto for Labour Law: Towards a Comprehensive Revision of Workers' Rights*. Institute of Employment Rights, London; Slinn, S. (2020). Broader-based and Sectoral Bargaining Proposals in Collective Bargaining Law Reform: A Historical Review. *Labour/Le Travail*, 85(1), 1-39; Madland, D. (2021). *Re-Union: How Bold Labor Reforms Can Repair, Revitalize, and Reunite the United States*. ILR Press, Cornell; Ellem, B. et al, "Worker Representation and Collective Bargaining" in *Work and Industrial Relations Policy in Australia* (Bristol U. Press, 2025); D. Peetz, "Multi-Employer Bargaining in New Zealand Within the Rise and Fall of Labour Market Liberalism: (2024) 48 New Zealand J. of Employment Relations 1; L. Harrison & A. Forsyth, "Two Years of Multi-Employer Bargaining: A Work in Progress" (2025) 38 Aust. J. Labour Law 239.

¹⁰ International Labour Organization. (2017). *Trends in Collective Bargaining Coverage: Stability, Erosion or Decline?* <https://www.ilo.org/publications/trends-collective-bargaining-coverage-stability-erosion-or-decline>

¹¹ Hayter, S. & Visser, J. (2021). Making Collective Bargaining More Inclusive: The Role of Extension. *International Labour Review*, 160(2), 169; D. Doorey, "Comparative Collective Bargaining Law" in *Oxford Handbook of the Law of Work* (OUP, 2024)

- The absence of centralized collective bargaining incentivizes employers to compete based on low wages and substandard working conditions. BBB can eliminate or reduce the “race to the bottom” by standardizing key working conditions, resulting in a system in which businesses compete based on other grounds, including efficiency, productivity, and quality.
- BBB does a better job of protecting workers down through fragmented or “fissured” work arrangements, such as subcontracting. BBB can ensure that lead companies that play a significant role in setting the conditions under which terms of employment are determined are at the bargaining table.¹²
- BBB allows for great flexibility and adaptability in industry standard-setting than fixed statutory standards.

A major obstacle in building sustainable collective bargaining in Canada is the Wagner model’s structural preference for workplace-level bargaining units. I have an old strike placard in my office with “*On Strike Against Eatons*” emblazoned on it. That placard serves as a reminder of the days when I worked for RWDSU in the period immediately following a failed strike campaign against the legendary Canadian retailer in the 1980s. The union represented some 1000 Eaton’s employees spread over 6 locations, but that number amounted to less than 4 percent of the company’s overall workforce. Each store had been organized separately and the OLRB certified 14 different bargaining units spread out of the 6 stores! Eaton’s insisted on separate bargaining for each of 6 certified stores rather than agree to the union’s proposal to bargain a single Master Collective Agreement covering all unionized employees. The company also rejected most of the union’s proposals that would have left unionized employees in a better position than the non-union Eaton’s employees.

Eaton’s “hard bargaining” position was perfectly lawful. The duty to bargain is largely procedural and does not prohibit a party from exercising its bargaining power to insist upon a deal that makes sense to that party.¹³ Faced with an employer that would not budge, RWDSU was left with the options of accepting an inferior collective agreement for each of the 6 stores or striking to pressure Eaton’s to improve the deal. The workers struck, but the strike had little impact on Eaton’s. The stores remained open during the strikes, staffed by managers, replacement workers hired for busy holiday season, and some bargaining unit employees who crossed the picket line.¹⁴ Eventually, the Eaton’s workers decertified as the union was unable to secure sufficient benefits through collective bargaining.

The Eaton’s story is indicative of most attempts to organize large service sector companies that operate through many smaller stores or branches. Canadian collective bargaining history is littered with skeletons of single location bargaining units of large corporations that were certified only later to be de-certified after the union was unable to bargain sufficient gains to maintain employee support. Coffee shops, retail stores, hotels, restaurants, cleaning service providers, care workers: workers unionize only to then de-certify due to the inability of unions to bargain sustainable collective agreements in individual workplaces. This is the story that largely explains the failure of collective bargaining to take hold in Canada’s service sector.

Ascension strategies aim to move the level of bargaining up above the individual workplace level. As with the descension strategy, there are layers of possible reforms within the ascension strategy. In my conceptual model, the Wagner model remains in place for workers who are able to, and choose to, organize into traditional workplace-level bargaining units. However, the model envisages broader-based bargaining

¹² D. Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (Harvard U. Press, 2014).

¹³ *Retail, Wholesale & Department Store Union v. T. Eaton Company Limited*, 1985 CanLII 933 (ON LRB)

¹⁴ See Forrest, A. (1988). Organizing Eaton’s: Do the Old Laws Still Work? *Windson Yearbook of Access to Justice*, 10(2), 184-190.

(BBB) models that operate “above” the level of a single workplace as well, bargaining framework agreements that apply to multiple workplaces or sectors. I categorize BBB proposals into three models:

- (1) the *Consolidation Model* (Single Employer/Multiple Workplaces; Multiple Employers)
- (2) the *Umbrella Model*;
- (3) the *Top-Down Model*.¹⁵

The *Consolidation Model* involves empowering labour boards to consolidate multiple smaller bargaining units into single larger units over time as unions organize more workplaces. The *Umbrella Model*, on the other hand, focuses on “sectoral” bargaining that brings together employers and unions to bargain agreements that will ultimately apply to an entire sector or occupation. I label this latter approach the Umbrella Model because unions initiate the process by organizing a segment of the employees in a sector, which then “opens up” the collective bargaining scope to cover all employees in the sector/occupation. A *Top-Down Model* is instigated by the state and imposed on the parties by legislative reform and tight supervision. Let’s consider each model in turn.

A. The Consolidation Model

1. Consolidating Multiple Locations of a Single Employer

The first step upwards from workplace level bargaining is a law that permits consolidation of multiple bargaining units into a single “*all employees*” unit of the *same employer*. The idea behind enabling multiple units of the same employer to be consolidated is that unions could feasibly grow the bargaining unit over time by organising new stores and then having them swept into an existing collective agreement.¹⁶ Consolidation makes sense from an efficiency perspective for both parties: one round of bargaining is far more efficient than 6 rounds of bargaining that leads to 6 collective agreements of almost identical substance. The option of consolidating bargaining units may not have saved RWDSU at Eaton’s because the union represented such a small percentage of employees. However, had the union kept organizing more stores, under a model enabling consolidation it would have been feasible for the union to build a stronger unit over time, one store at a time. Imagine a campaign to organize Starbucks in which each newly organized restaurant is swept into the pre-existing collective agreement rather than the parties being required to bargain a new first agreement in each case.¹⁷

Unions and employers in Canada can already voluntarily agree to consolidate multiple bargaining units to streamline bargaining and there are lots of examples of multi-location bargaining units that came together based on voluntary agreement of the parties. The United Food and Commercial Workers’ collective agreements with Metro and Loblaws are examples, which cover many stores scattered across broad geographic areas.

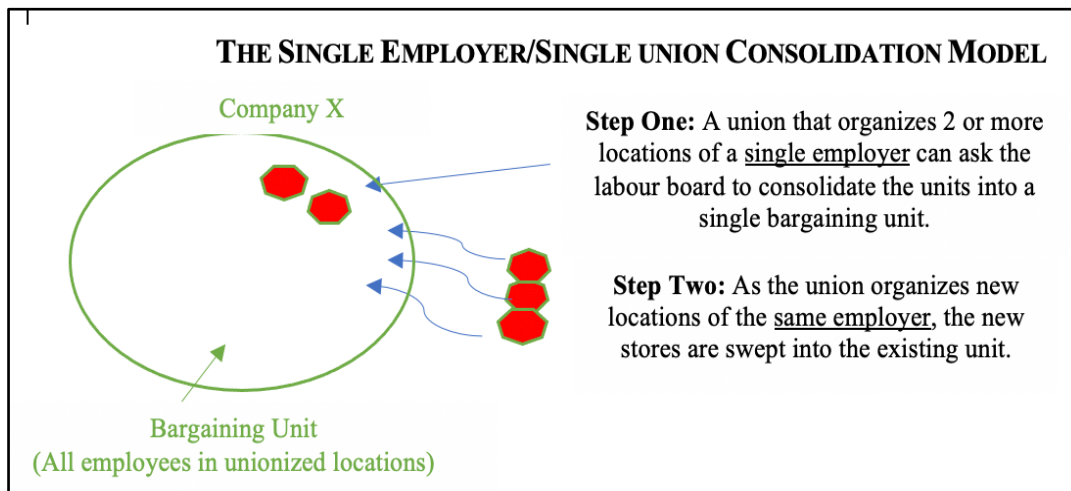
¹⁵ There are other approaches, including collective agreement extension or “decree” models that extend coverage of a collective agreement(s) bargaining within a sector to all employees in that sector. Space considerations prevent a full exploration of these models. See S. Slinn, Workers’ Boards: Sectoral Bargaining and Standard-Setting Mechanisms for the New Gilded Age. *Employee Rights and Employment Policy Journal*, 26(2), 1-33; Bergeron, J.G. & Veilleux, D. (1996). The Québec *Collective Agreement Decrees Act*: A Unique Model of Collective Bargaining. *Queens Law Journal*, 22(1), 135-165.

¹⁶ See discussion in Forrest, A. (1988). Organizing Eaton’s: Do the Old Laws Still Work? *Windson Yearbook of Access to Justice*, 10(2), 184-190; Langille, B., (1980-1981). The Michelin Amendment in Context. *Dalhousie Law Journal*, 6(3), 523-557; Doorey, Graduated Freedom of Association, *supra* note 1.

¹⁷ D. Doorey, “A Canadian Proposal for Starbucks Bargaining” (29 July 2022) *OnLabor*: <https://onlabor.org/a-canadian-proposal-for-starbucks-bargaining/>

However, if one party insists on bargaining separate collective agreements for each location, it can be difficult if not legally impossible in some Canadian jurisdictions, to obtain a consolidation order from the labour board. The duty to bargain in good faith prohibits parties from “bargaining to impasse” changes to the bargaining unit, so a union could not strike to pressure an employer to consolidate bargaining units.¹⁸

In some provinces, labour boards are already empowered to consolidate multiple units of a single employer if it makes labour relations sense to do so. For example, the Alberta Labour Relations Board has done this through the exercise of its power to reconsider bargaining units. In a recent example, the ALRB consolidated two Starbucks stores that had been organized separately by the Steelworkers in Calgary into one bargaining unit covering both stores.¹⁹ However, in jurisdictions in which a party can insist on separate agreements for each bargaining unit, a simple and effective legislative amendment could give labour boards authority to consolidate units. Between 1993-1995, the Ontario *Labour Relations Act* granted the OLRB authority to combine multiple bargaining units of the *same employer* represented by the *same union*, unless doing so would cause “serious labour relations harm.”²⁰ One of my first jobs in labour law involved preparing applications to consolidate separate bargaining units of retail stores represented by RWDSU in the early 1990s. In the brief period that the law was in effect, the OLRB consolidated multiple bargaining units into single units at various large retail companies, among other businesses.²¹



Both the 2017 Ontario *Changing Workplaces Review* (CWR) and the 1995 federal task force into federal collective bargaining law recommended granting labour boards the power to combine bargaining units involving the same employer and same union (or council of unions).²² Governments could accept these recommendations and introduce a statutory consolidation power similar in substance to the Ontario law of the early 1990s. Specific details, such as whether this consolidation power should apply to all sectors or as recommended by the Changing Workplaces Review, only to historically unrepresented sectors, can be worked out during consultations.

¹⁸ See *T. Eaton Company*, *supra* note 13; *Burns Meats*, [1984] OLRB Rep. Aug. 1049

¹⁹ *Starbucks Coffee Canada, Inc.*, 2024 ALRB 65 (CanLII), <https://canlii.ca/t/k5m9f>. In BC, the BRLRB has authority to consolidate multiple bargaining units of the same employer pursuant to Section 142 of the Labour Relations Code, which permits certifications to be varied: *Island Medical Laboratories* BCLRB No. B308/93

²⁰ *Labour Relations Act*, RSO 1990, Ch. L.2, s. 7 (repealed Nov. 10, 1995)

²¹ See e.g. *RWDSU, Local 1000 v. Hudson's Bay Company*, 1993 CanLII 7901 (OLRB)

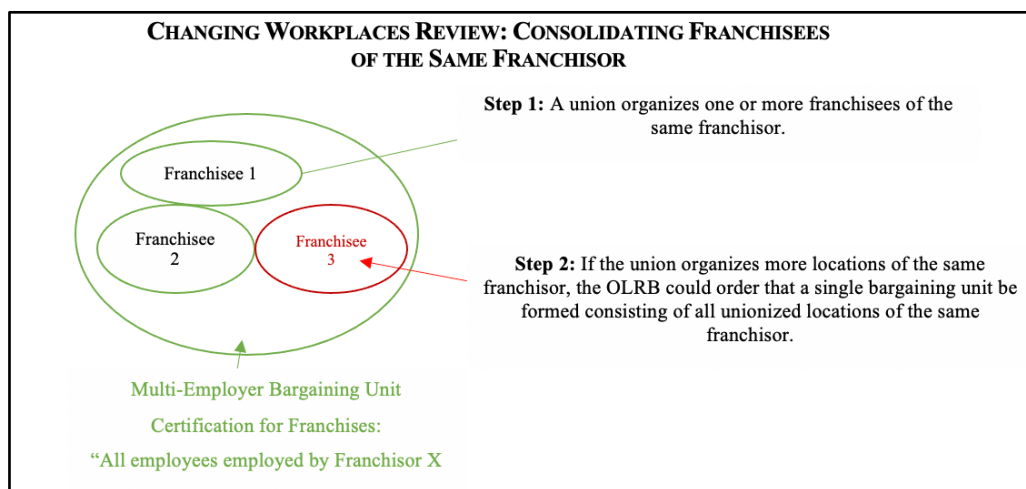
²² Sims, A., Blouin, R., & Knopf, P. (1995). *Seeking a Balance: Canada Labour Code, Part 1 Review* (Canada); Mitchell, M. & Murray, J. (2017). *The Changing Workplaces Review, Final Report*. Ontario.

2. The Consolidation Model: Consolidating Multiple Workplaces of *Multiple Employers*

Consolidating bargaining units of a *single employer* represented by a *single union* is relatively straightforward and there are lots of examples of this process in Canada already. A more complicated set of proposals address the situation of creating *multiple-employer* and possibly *multiple-union* bargaining. Multi-party collective bargaining within the same industry/sector is the next logical step upwards in the ascension strategy of strengthening collective bargaining rights. Wagner model legislation in Canada has long permitted employers and unions to form “councils” for the purpose of collective bargaining, so the idea of multi-employer, multi-union bargaining teams is not new (although relatively few such councils exist in practice). However, employers in competition with one another are not naturally inclined to cooperate in collective bargaining, and the same is often true of unions, which do not have a rich history of cooperating to build a stronger collective bargaining foundation to benefit workers.

a. *The Changing Workplaces Review Model for Franchises Only*

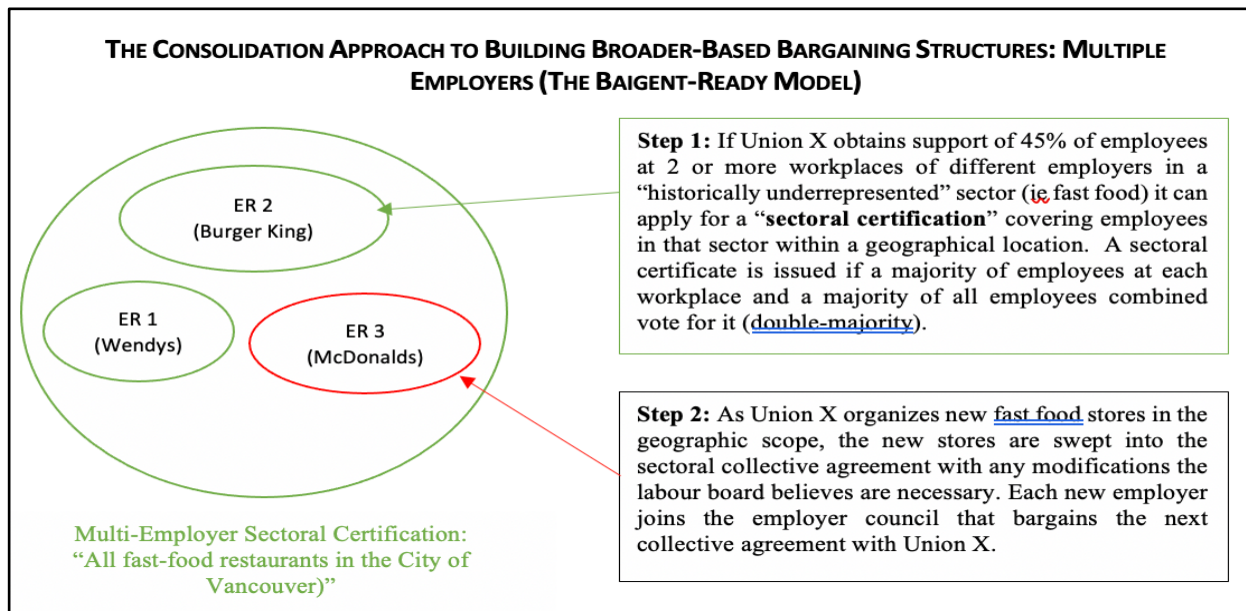
Various proposals have been advanced over the years to facilitate multi-employer/multi-union bargaining structures. For example, to “make collective bargaining an effective option where there are many vulnerable workers in precarious low-paid work who do not currently have access to meaningful collective bargaining”, Ontario’s CWR report recommended a model of multi-employer bargaining but for franchises only (CWR, Recommendation 157). This model would have permitted the OLRB to order multiple *franchisees of the same franchisor* to bargain as one employer agency, even though those franchisees may be separate legal entities. The model also potentially brought the franchisor to the bargaining table, a move that ultimately may be necessary if collective bargaining is to take root in the franchising sector. The CWR proposal essentially mirrored the consolidation of multiple locations of a single employer discussed above but modified to apply to franchisees which are separate legal entities. The result would be akin to what was ordered by the Alberta Labour Relations Board if the two Calgary Starbucks stores had been separate franchisees (in fact, both stores were corporate owned, so there was only one employer in that case operating out of two locations).²³



²³ See D. Doorey, “A Canadian Proposal for Starbucks Bargaining” (July 29 2022), Harvard Law School *OnLabor*: <https://onlabor.org/a-canadian-proposal-for-starbucks-bargaining/>

b. *The “Baigent-Ready Model” of Multi-Employer Bargaining for Small, Under-Represented Sectors*

In 1992, British Columbia lawyers John Baigent and Vince Ready proposed a model (“the B-R Model”) that would have permitted a *single union* to obtain a *sectoral certification* to bargain a collective agreement that would apply to *multiple employers* (including multiple franchises and franchisees) operating in the same sector within a defined geographic area.²⁴ The law would have applied only to “small enterprises” (fewer than 50 full-time employees or part-time equivalents) in “historically underrepresented sectors” (such as fast food). For example, if a union organized one Burger King and one Wendy’s store in the City of Vancouver, the union could apply to the labour board to obtain a *sectoral certification* that would cover, “*all fast food employees in the City of Vancouver*”. The certification would be granted if a majority of employees at both stores *and* a majority of all employees in the two stores combined (double majority) voted in favour of the union. If the union then organizes other fast food restaurants in Vancouver, the new workplaces would be swept into the pre-existing sectoral collective agreement and the new employer would join the employer council.



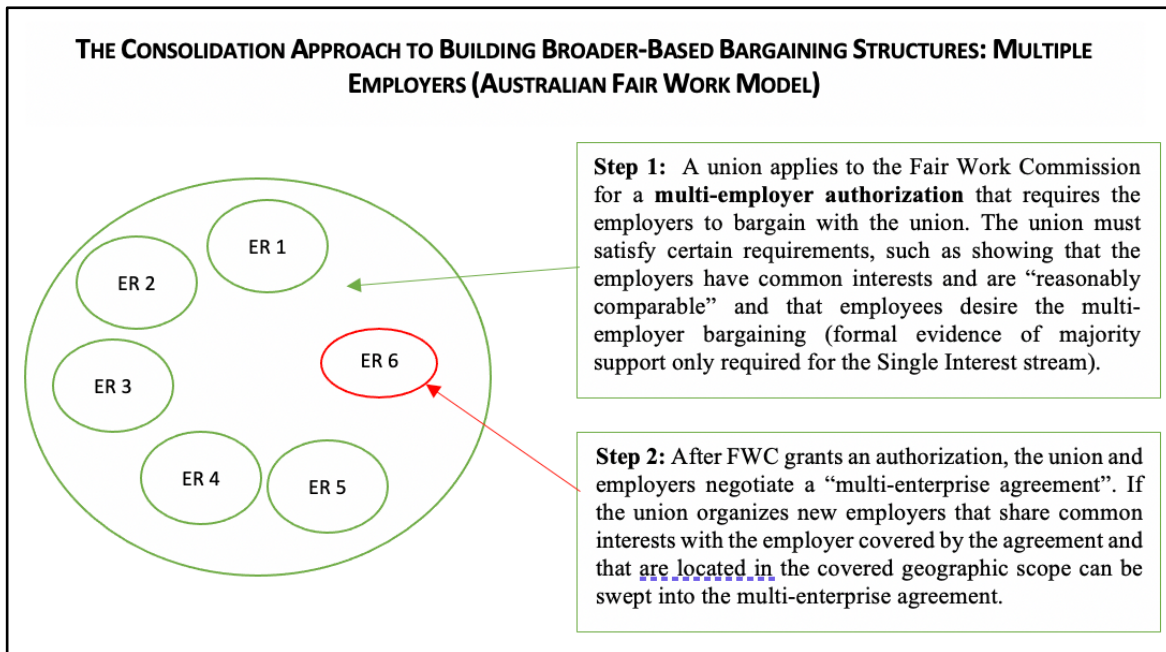
Under the B-R Model, each union would obtain their own *sectoral certification* and then slowly build up the number of locations covered by sectoral collective agreement over time. The authors believed that the potential for union competition built into the model was healthy. The employer bargaining team would be comprised of a council of employers representing each of the companies at which the union had organized at least one location.

²⁴ Baigent, J., Ready, V., & Roper, T. (1992). *Report to the Honourable Moe Sihota, Minister of Labour: Recommendations for Labour Law Reform*. The third member of the panel, Tom Roper, dissented on this proposal. See also: MacDonald, D. (1997), Sectoral Certification: A Case Study of British Columbia. *Canadian Labour & Employment Law Journal*, 5(1), 243

c. ***The Australian Fair Work Model of Multi-Employer Bargaining***

Legislation introduced in Australia in 2022 introduced two new streams of multi-employer collective bargaining, known as the “Supported Bargaining” and the “Single Interest” bargaining streams. The Supported Bargaining stream was intended to apply mainly to government-funded sector and Single Interest bargaining stream to private sector employers, although that demarcation is not always followed. An important difference between the two streams is that in the Single Interest stream, a union needs to demonstrate majority employee support in each workplace that would be covered by the multi-employer bargaining order, whereas in the Supported Bargaining stream, the union need only demonstrate that “at least some of the employees who will be covered” are represented by the union.²⁵

In a nutshell, the law grants authority to the labour tribunal (the Fair Work Commission) to make bargaining “authorizations” that require multiple employers to bargain with one or more unions when the employers and employees satisfy certain requirements of commonality, such as a pattern of low wages in a sector and a common geographic location. For example, in 2025, a multi-employer “Supported Bargaining” authorization was issued to the Shop, Distributive and Allied Employees Association that covered all 18 McDonalds’ franchisees in South Australia which together operated 60 restaurants in the province.²⁶ Another authorization covered 64 early childhood education and care employers and their mostly low-paid female 12,000 employees. Once an authorization is made, newly organized employers falling within the scope of the authorization can be swept into the existing agreement. The FWC has a variety of tools available to encourage and support efforts to reach a multi-employer agreement.



To date, most of the multi-employer authorizations under the new legislation have involved the support of the employers. In these cases, the law works similar to a voluntary recognition arrangement involving a

²⁵ *Fair work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*, s. 243(1)(c).

²⁶ *Application for supported bargaining authorization in respect of McDonald’s franchises in South Australia*, [2025] FWCFB 130. See discussion in Harrison & Forsyth, *supra* note XX, at 234-235.

council of employers and a union and, sometimes, a council of unions. The situation is more complicated when employers resist the unions' attempts to bargain a multi-employer agreement. When that happens, the Single Interest stream requires that the union(s) obtain majority support in each workplace that would be covered by the agreement. This requirement for majority support creates challenges familiar to the Wagner model, including that it creates the impetus for the parties (employers and unions) to campaign for worker support and for the employers to challenge the union's evidence of majority support. In a case involving an application for a Single Interest authorization involving 6 employers operating pharmacies in South Australia, the union submitted evidence in the form of petitions signed by a majority of employees in each pharmacy.²⁷ The employer challenged the evidence as unreliable, but the Commission ruled that the union had satisfied the requirement for majority support and issued the order.

* * *

The Consolidation Model approach to broader-based bargaining aims to build bargaining strength in industries that operate through many small establishments. The basic idea is to allow unions to build power over time by organizing location-by-location and then combining locations into a single bargaining unit. The models mostly envision a single union, although the CWR permitted multiple unions to create a "council of unions" under the *Labour Relations Act's* union council provisions.²⁸ The B-R Model, the CWR proposal, and the Australian Fair Work models envision the possibility of union(s) bargaining with a council representing multiple employers. Neither the CWR proposal nor the B-R Model of multi-employer bargaining was adopted, reflecting the engrained resistance to experimentation that breaks the mold of the decentralized Wagner model.

B. The "Umbrella Approach" to Broader-Based Bargaining (BBB): Sectoral Bargaining

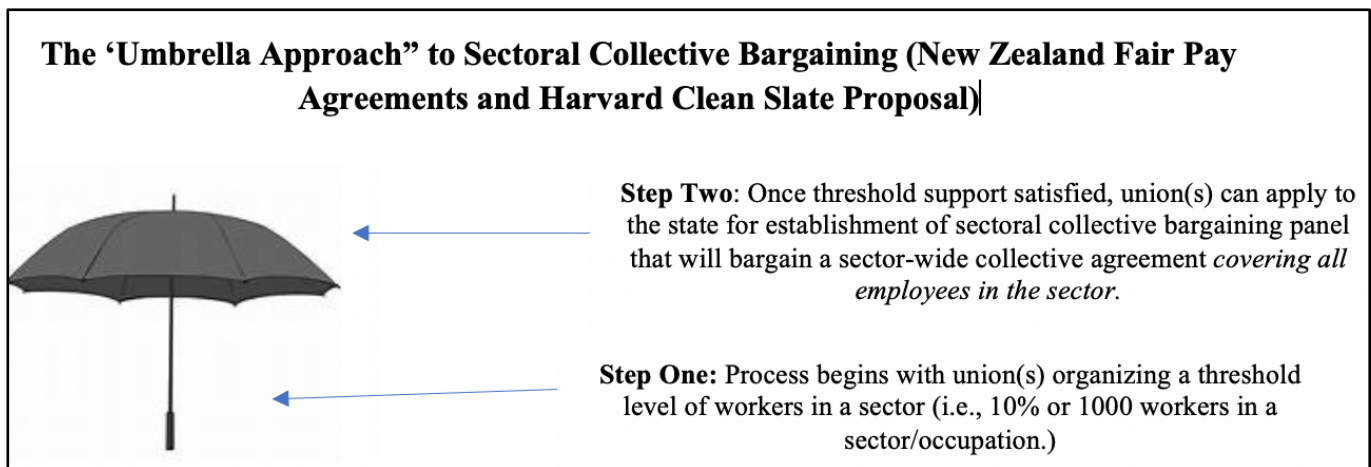
The "Umbrella Approach" to BBB swaps the philosophy of a slow build upwards through organization and then consolidation of multiple locations and focuses instead on establishing *industry* or *sector-wide bargaining*. This approach can be particularly effective at expanding collective bargaining to work arrangements in which workers are spread out across many workplaces in a sector or occupation. This was the approach adopted, for example, in New Zealand's now repealed Fair Pay Agreements law and recommended in Harvard's Clean Slate project, to provide two recent examples. The idea behind these models is that support for collective bargaining from a critical mass of employees within a sector initiates -- or "opens up"-- a legislatively mandated process of sectoral bargaining between a single union, or council of unions, and a council of employers representing the sector. The threshold of worker support necessary to activate the sectoral bargaining model is set relatively low so that it does not pose a barrier to access to the model. However, the models ensure that workers support any sectoral bargaining agreement that is negotiated by requiring majority worker support in some form through a ratification vote.

The process begins with unions organizing workers within a sector until they obtain the required threshold level of support defined in the legislation. In the New Zealand Fair Pay Agreement model the threshold was set at 10 percent or more of workers employed in a sector (hospitality) or occupation (security guards) or 1000 employees, whichever was less. In the Harvard Clean Slate proposal, the threshold for initiating sectoral bargaining was set at 5000 employees or 10 percent of workers in a sector, whichever is less. Once the union satisfies the threshold level of employee support, it could apply to the state to obtain a *sectoral*

²⁷ *Shop, Distributive and Allied Employees Association v. Philip Colasante Pharmacies Pty Ltd and Others*, [2025] FWC 2352.

²⁸ *Ontario Labour Relations Act*, 1995, s. 12

certificate that would then “open up” -- hence the ‘umbrella’ label --bargaining for a sector-wide agreement that would cover *all employees* in the sector.²⁹



C. The Top-Down Model of Sectoral Collective Bargaining

In the first two models (Consolidation and Umbrella), the process begins with unions organizing employee support within individual workplaces and sectors. A core belief built into these structures is that collective bargaining only works if it has grass roots support from workers on the ground. Therefore, unions need to “get out there” and organize workers and once they obtain some legislated level of employee support, they can then apply to the state to obtain a license to bargain a multi-employer collective agreement within a model that also obligates the employers to bargain. In the “Top Down” model, the initial step requiring unions to organize a critical mass of workers is eschewed in favour of the state imposing an obligation on unions and employers to bargain a “sector” or “industry” level. This is the approach proposed in the “Manifesto” prepared by leading labour lawyers and academics in the United Kingdom, as well as the sectoral bargaining provisions in Ontario’s construction sector.

In 2016, a collection of leading labour law academics in the UK released “A Manifesto towards a comprehensive revision of workers’ rights”.³⁰ The Manifesto included a sweeping array of proposed reforms for 21st century labour law, including mandatory sectoral collective bargaining across the economy. The Manifesto called for the government to establish Sectoral Employment Commissions (SECs) within all industries that would have responsibility to promote collective bargaining and regulate minimum terms of employment within their industry. SECs would be comprised of equal representatives of employers and workers, with a lesser number of government officials if necessary to break deadlocks.³¹ The SECs would negotiate Sectoral Collective Agreements (SCAs) that would cover minimum standards in regards to a list of core topics, including wages, job security, health and safety, equal pay for equal work, pensions, and the application and compliance with international law applicable to the UK.

²⁹ Prior to the repeal of the Fair Pay Agreements’ law, unions in New Zealand had applied for sectoral bargaining to represent: bus drivers; the hospitality industry (hotels, cafes and restaurants, fast food, pubs and bars, casinos, movie theatres, catering, et cetera); security guards, commercial cleaners, early childhood education workers; grocery store workers; and waterside workers. The Fair Pay Agreements law was repealed in December 2023 by the newly elected National Party: <https://www.legislation.govt.nz/bill/government/2023/0003/latest/LMS926960.html>.

³⁰ <https://archive.ier.org.uk/sites/ier.org.uk/files/A%20Manifesto%20for%20Labour%20Law%20FINAL.pdf>

³¹ Ibid, at 20-21.

The SCAs would automatically apply to all employers in a sector and there is no antecedent requirement for unions to demonstrate majority employee support (hence why I refer to this model as “top down”). The SECs are created by operation of law and required to bargain. Finally, the SCAs establish minimum standards only; “enterprise” collective agreements can still bargain “up” from the terms in the SCAs, so the sectoral bargaining and enterprise level bargaining operate together, as complements. Although the Labour government in the UK expressed support for the Manifesto in principle, once elected it did not follow through with the sectoral bargaining provisions.³²

We can also lump the model governing collective bargaining in Ontario’s construction sector under the heading of top-down sectoral bargaining. Under Part IX of the *Labour Relations Act, 1995*, the legislature has structured bargaining around prescribed trades, geographic areas, and employer associations, requiring unions and contractors to negotiate at an industry level once a trade is established in a sector. As a result, collective agreements are concluded between unions and accredited employer organizations and then applied across all bound employers within the relevant sector and region, producing standardized wage rates and working conditions without the need for unions to certify each contractor individually. In the “industrial, commercial, and institutional (ICI) sector, the legislation mandates province-wide collective bargaining between trade unions and employer bargaining agencies within each of the major trades.³³ The Ontario construction model is complicated, but for our purposes, the point is that the state directly legislated the framework through which province wide sectoral bargaining is take place within the trades.

III. Moving Forward on Umbrella (Broader-Based Bargaining) Strategies

The benefits of sectoral bargaining have long been a topic of discussion in Canada and other countries where enterprise-level bargaining structures dominate. However, there is little consensus on how to develop sectoral bargaining in sectors with little history of collective bargaining. Unions were slow to support broader-based bargaining as a concept and even when they have agreed in principal that it is required to extend the reach of collective bargaining, they have not aligned in support of any specific model. Canadian employers, on the other hand, are mostly united in opposition to any proposal that could extend collective bargaining to sectors and workplaces that have heretofore operated non-union.³⁴ These circumstances have not been conducive to serious discussions about sectoral bargaining at the policy level in Canada.

Moreover, experience suggests that the sudden introduction of a sectoral bargaining model over the strong objection of employers would have a short life-expectancy. Even the relatively modest reform in Ontario during the 1990s that permitted the labour board to consolidate bargaining units of the same employer survived less than two years and was summarily repealed, and units “de-consolidated”, when the next government was elected. The political challenge of injecting a new model of BBB into an industrial relations system with 80 years of embedded experience with decentralized bargaining has discouraged experts appointed by Canadian governments over the years from recommending new models of BBB. On the other hand, these same experts

³² A modified pay arrangement model was enacted in relation to the adult social care sector and the school support staff sector that involves unions in a form of sector wage negotiations, but that model falls far short of that proposed in the Manifesto. For an explanation of the limited “fair pay agreement” model in these two sectors, see: https://www.gov.uk/government/consultations/fair-pay-agreement-process-in-adult-social-care/fair-pay-agreement-process-in-adult-social-care-consultation-document?utm_source=chatgpt.com#negotiation-process

³³ See D. Doorey & J. Mandryk, “Mapping Ontario’s Distinctive Model of Construction Labour Law” (2022) 24 CLEJ 207.

³⁴ See Doorey, D. (2023). “Can’t Get There from Here: Thoughts on the Idea of Labour Law Reform in the 21st Century.” (Sefton-Williams Lecture), Online: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4707810

have recommended that governments study the possibility of developing BBB models for the future in separate research projects (See Chart 1).

CHART 1: EXPERT REPORTS CALLING FOR GOVERNMENT SUPPORTED RESEARCH INTO BROADER-BASED BARGAINING MODELS

REPORT, YEAR	RECOMMENDATION REGARDING BBB
Federal government, <i>Seeking a Balance: Task Force to Inquire into Part 1 of the Canada Labour Code</i> , 1996.	<p>“We are not persuaded to recommend multi-employer sectoral bargaining for the federal jurisdiction <u>at this time</u>. It lacks any widespread consensus or even understanding. However, <u>the idea raises a point that in our view merits further consideration.</u>”</p> <p>(The Report then recommends the model permitting consolidation of multiple bargaining units of the same employer, discussed earlier.)</p>
Ontario, <i>Changing Workplaces Review</i> , 2017	<p>“... the <i>Wagner Act</i> enterprise model is largely irrelevant to large groups of employees who work in smaller enterprises. Our recommendations with respect to multiple-location single-employer enterprises and the operations of franchisees provide some significant opportunity to broaden the enterprise model. If unionization did become more commonplace in chain restaurants, franchise operations and the retail sector, this would undoubtedly have a market impact affecting other employers, including an impact on market compensation rates, perhaps making sectoral bargaining more attractive for employers....</p> <p>In our view, this report should not be the end of the discussion on these issues. In our Conclusion, we recommend the creation of an Ontario Workplace Forum where leaders of the employer community, unions and employee advocates, together with government, could discuss important issues and opportunities regarding the workplace. <u>We recommend that this issue of sectoral bargaining and regulation be a standing issue in those discussions.</u>”</p>
British Columbia, <i>Recommendations for Amendments to the Labour Relations Code</i> , 2018	<p>“While we recognize the problems and need for innovation, we did not receive sufficient information or analysis to make concrete recommendations for sectoral certification. <u>This issue should be examined in more depth, perhaps by a single issue commission.</u>”</p>
British Columbia, <i>Recommendations for Amendments to the Labour Relations Code</i> , 2025	<p>“Sectoral or broad based bargaining is an extremely complex area and it is very difficult to assess the risks and impacts of mandatory sectoral bargaining in the abstract. Any consideration of amending the Code to provide a mechanism for determining the appropriateness of sectoral bargaining in a particular industry requires extensive research and consultation with stakeholders.”</p> <p>“<u>Since this consideration must be context dependent, we are recommending an Industrial Inquiry Commission be established ... [to] consider whether any changes to the Code are required and make any necessary recommendations to amend the Code.</u>”</p>

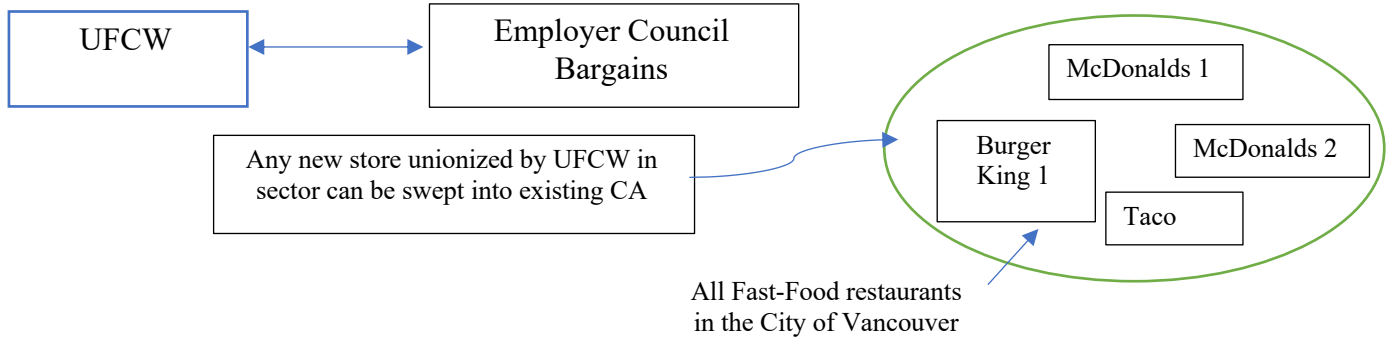
Given the prominence of sectoral bargaining in labour law reform debates in Canada and abroad, and the fact that expert panels commissioned by Canadian governments have repeatedly recommended that governments study the feasibility of broader based collective bargaining, it is striking that no such studies have *ever* been commissioned. Therefore, an important step in the process of working towards a twenty-first century collective bargaining model is for Canadian governments to finally initiate a serious multi-stakeholder roundtable dialogue about the future of multi-employer and sectoral collective bargaining. Those sectors where the Wagner model has rarely reached should be the prioritized, including Accommodation and Food Services (4.4% union density), Professional, scientific, and technical services (4.2%), Finance, insurance, real estate, rental, and leasing (8.7%), Agriculture (2.7%), and Wholesale and retail services (11.9%). To this list, we should add: (1) homeworkers, who are isolated and vulnerable and whose work arrangements are not conducive to Wagner model style collective bargaining (ILGWU, 1993); and (2) private transportation and courier industries, including App-based transportation and delivery services, which are characterized by high turnover of geographically dispersed, low-wage workers who are difficult to locate and organize under the traditional Wagner model.

Most of these sectors are governed primarily by provincial labour law, so it may be a task for provincial governments to strike these committees. However, given that similar challenges exist across the country regarding the mismatch of the Wagner model to the contemporary Canadian economy, the federal government could take a leadership role in striking an expert committee to study the possibilities for ascension labour law strategies towards thinking about the contours of a 21st century labour law model.

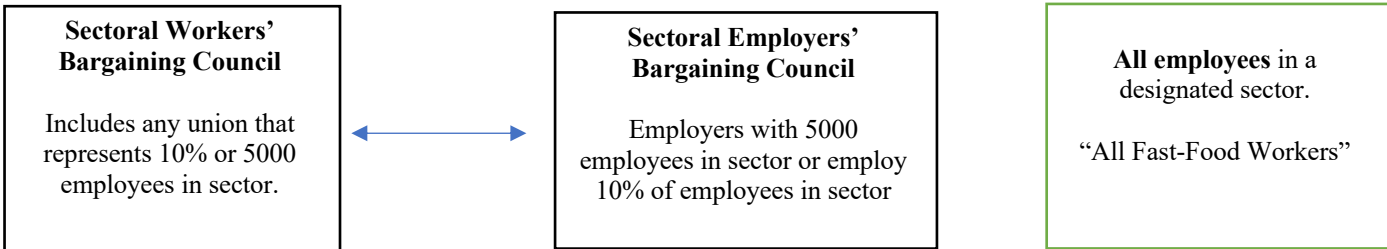
David J. Doorey
York University

Some Models of Broader-Based Bargaining

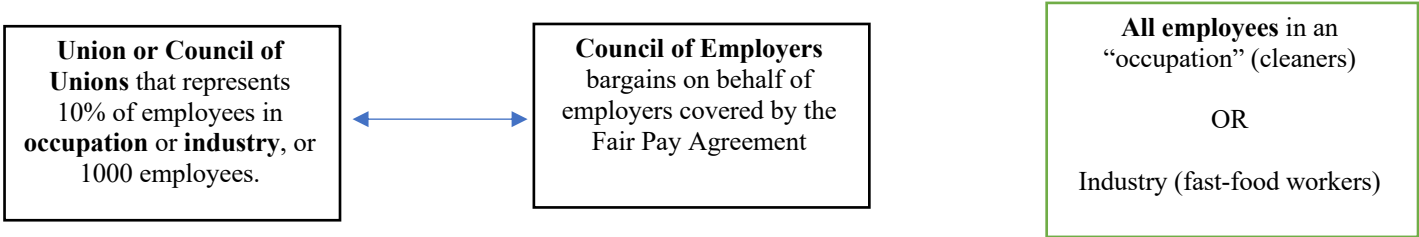
1. “Baigent-Ready Model”: Single Union / Multiple Employers in a Sector (1992)



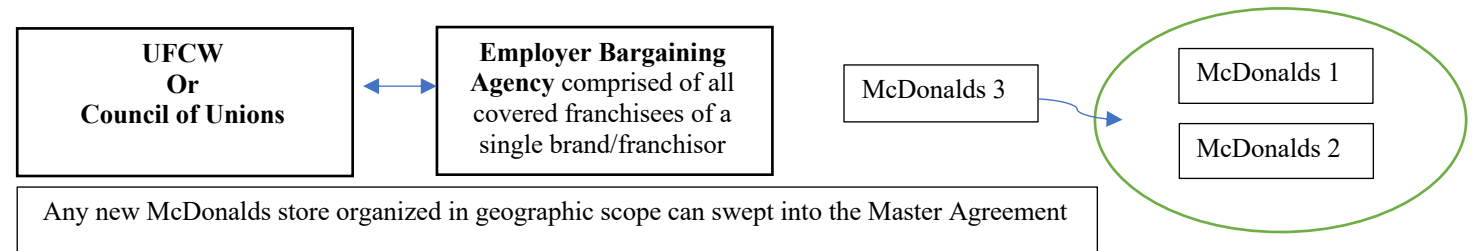
2. Harvard Clean Slate Proposal (2020)



3. New Zealand Fair Pay Agreement Model (2022)



4. Changing Workplaces Review, Proposed Franchise Model (2017)



5. Consolidation of Bargaining Units of Same Employer (Ontario 1993, 2018)

