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## Certification Delay under Elections and Card-Check Procedures: Empirical Evidence from Canada

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## Abstract

This paper examines the determinants and consequences of delay in the union certification process using data from certification applications and unfair labor practice complaints (ULPs) from British Columbia (1986–98) and Ontario (1993–98). During the period studied, there were several changes in delay-related laws, including laws regulating the presence and stringency of election time limits and the availability of expedited ULP hearings. Key findings are that ULPs against the employer reduced the likelihood of compliance with time limit laws except where expedited ULP hearings also existed; employer-filed objections to the application reduced the likelihood of compliance; and election delay reduced the likelihood of certification success both in policy regimes without time limits and in those where stipulated time limits were frequently breached. Overall, the results suggest that enforced time limits on elections coupled with expedited ULP hearings may substantially mitigate the adverse effects of election delay on certification success.

**KEYWORDS:** Certification Delay, Union Elections, Card-Check Procedures

# LABOR LAW REFORM AND THE ROLE OF DELAY IN UNION ORGANIZING: EMPIRICAL EVIDENCE FROM CANADA

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This paper examines the determinants and consequences of delay in the union certification process using data from certification applications and unfair labor practice complaints (ULPs) from British Columbia (1986–98) and Ontario (1993–98). During the period studied, there were several changes in delay-related laws, including laws regulating the presence and stringency of election time limits and the availability of expedited ULP hearings. Key findings are that ULPs against the employer reduced the likelihood of compliance with time limit laws except where expedited ULP hearings also existed; employer-filed objections to the application reduced the likelihood of compliance; and election delay reduced the likelihood of certification success both in policy regimes without time limits and in those where stipulated time limits were frequently breached. Overall, the results suggest that enforced time limits on elections coupled with expedited ULP hearings may substantially mitigate the adverse effects of election delay on certification success.

**D**elay in the union organizing process is well recognized in the labor relations community as serving the strategic purposes of employers who are trying to avoid unionization. Over two decades' research has shown that election delay is negatively related to union certification success (see Cooke 1983 and Riddell 2001 for reviews). Even where the union is able to maintain sufficient support to succeed in an election, the delay and the employer's conduct during the certification process may weaken employee support for the union enough to undermine the long-term viability of the unit. Research

has shown that some of the adverse consequences may include early termination of the certification and failure to obtain a first collective agreement. For example, Cooke (1985) found that the largest negative correlate of first contract success is delay in the disposition of the certification application. Similar evidence for Canada was found by Bentham (2002).

Certification delay is fundamentally linked to the union recognition procedure. In North America and the United Kingdom, union recognition has become a key aspect of collective bargaining and industrial relations policy-making. The extensive literature on

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The programs used to conduct this analysis are available upon request. Please direct requests to the corresponding author, Chris Riddell, at [chris.riddell@queensu.ca](mailto:chris.riddell@queensu.ca). Stata 9 was the statistical package used.

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Access to the data requires permission from the respective labor relations boards. Requests for access to the British Columbia data can be directed to British Columbia Labour Relations Board, Suite 600, Oceanic Plaza, 1066 West Hastings Street, Vancouver BC V6E 3X1 (604-660-1300). Requests for access to the Ontario data can be directed to Ontario Labour Relations Board, 505 University Avenue, Toronto Ontario M5G 2P1 (416-326-7450).

employer behavior during union organizing drives in the United States strongly suggests that the National Labor Relations Board (NLRB) election system gives employers the time to launch a campaign against the union, and that such campaigns reduce the likelihood of certification success. One alternative to the NLRB process is the traditional Canadian system of union recognition by card-check, whereby unions can become certified without a vote if they sign up a certain percentage (in Canada, usually 55% or more) of the proposed bargaining unit. But critics of card-check procedures argue that card-check may lead to artificially inflated levels of support (for instance, Yager, Bartl, and LoBue 1998).

Is any compromise available? Currently, there appear to be two main options. One is collectively bargained card-check or employer-neutrality arrangements. Some evidence indicates that such negotiated agreements limit management opposition (Eaton and Kriesky 2001), have dramatically shorter processing times (Budd and Heinz 1996; Eaton and Kriesky 2001), and increase success rates (Benz 1998; Eaton and Kriesky 2001). However, the lack of data on such agreements has prevented any systematic, quantitative analysis, with the exception of Eaton and Kriesky (2001). The other option—often associated with Paul Weiler (1983), but first used in Nova Scotia in the 1970s—is “instant elections” or “quick votes,” in which the election takes place a short number of days following application. In the United States, negotiated quick-vote elections have also been recently used as an alternative to the NLRB procedure (Brudney 2005).

Legislated quick-vote elections appear to be Canada’s new choice for union recognition, as many provinces (including three of the four most populous ones: Ontario, British Columbia, and Alberta) have recently moved away from the traditional card-check procedure whereby unions typically became certified without a vote. In the United Kingdom, union recognition has also moved toward an election-based procedure with time limits on the vote. However, the United Kingdom’s new system, implemented in 1999, involves a delay of around 100 days from application

to vote—a far cry from Canada’s quick-vote system, in which time limits are typically one to two weeks (see Wood and Godard 1999).

What do we know about quick votes? Very little. Johnson (2002), Slinn (2003), and Riddell (2004) all showed that certification success rates are lower under elections than under card-check, with estimates ranging from 9 percentage points lower for all sectors to 20 percentage points lower for the private sector. Riddell (2004) also showed that management opposition may be twice as effective under quick-vote elections than under card-check. To our knowledge there has been no systematic study of how quick-vote laws are performing along any other dimension. Moreover, there has been no rigorous analysis of the link between management opposition and delay in the organizing process (either delay in the vote or delay in disposition). Indeed, following their survey of union organizing under different recognition and employer neutrality procedures, Eaton and Kriesky (2001) concluded that understanding the role of delay in the organizing process is a key area for future research.

The Canadian experience can provide important information for union leaders and policy-makers in the United States, United Kingdom, and other countries. In particular, the Canadian data permit an analysis of a number of unanswered questions that are crucial in determining the efficacy of quick-vote procedures: Do quick votes reduce the adverse effects of election delay on union win rates? Are these time limits complied with? If not, what factors are associated with non-compliance? In particular, are employers able to manipulate election delay in the presence of election time limits? This paper addresses each of these questions.

Our analysis is based on data from Ontario and British Columbia. These two provinces have accounted for around 50% of the Canadian labor force over the past two decades. The data on these provinces span a fairly long period: January 1993 to June 1998 for Ontario, and September 1986 to May 1998 for British Columbia. More important, the data cover periods when there were changes in union recognition laws in both provinces. In particular, the study period covers years in

which the legislation included the standard Canadian card-check laws and the relatively new mandatory election laws, which contain provisions for quick votes. Our data set also enables us to undertake some inter-provincial comparative analysis because of other differences in legislation and policy between the two provinces during our study period—in particular, in the parameters of time limit procedures and the treatment of unfair labor practice complaints.

### 1. Union Recognition in British Columbia and Ontario

Depending on the jurisdiction and the legislation in place at the time, two certification procedures are used in Canada: the compulsory election (also called mandatory vote) procedure and the card-check procedure (also called the automatic certification procedure). British Columbia and Ontario used both of these certification procedures during our study period. The legislative packages in effect during our study period were (a) for British Columbia, the 1984 Labour Code Amendment Act for September 1986 to July 26, 1987 (the “LCA Act,” which extensively amended the 1979 Labour Code) and the 1987 Industrial Relations Reform Act (“IR Act”) for the period July 27, 1987, to 1992, both of which involved compulsory elections, and the 1993 Labour Relations Code (“1993 LRC”) from 1993 to May 1998, under which card-check rules were in effect; and (b) for Ontario, the 1992 Collective Bargaining and Employment Act (the “CBE Act,” which extensively amended the 1990 Labour Relations Act) from January 1993 to November 1995, under which the card-check procedure was in place, and the 1995 Labour Relations Act (“1995 LR Act”) from November 1995 to June 1998, which mandated certification votes.<sup>1</sup>

Under the mandatory election procedure, the union is entitled to a representation election if it submits membership cards from a sufficient fraction of employees in the unit

applied for (generally 40% in Ontario, 45% in British Columbia), provided only that the other legislative requirements for certification (such as a bargaining unit that is deemed appropriate for collective bargaining, proper trade union status of the applicant, and so on) are met. Certification is not granted unless the union wins the representation vote.

Under the card-based certification procedure, if the applicant union submits signed union membership cards to the labor relations board from a legislatively determined minimum proportion of the total number of employees in the bargaining unit applied for (usually over 55%), then the union is granted certification, provided that other legal requirements for certification are satisfied. If the applicant fails to achieve this level of card support, but produces cards from a lesser proportion of unit employees (generally 40% or 45%), then the applicant is entitled to a representation election. Where the union receives more than half the votes cast, it shall be granted certification. It has been rare for a certification attempt, in either British Columbia or Ontario, to require a vote in a card-check regime (Thomason 1994; Riddell 2004).

Table 1 presents the trends in certification success rates, the number of certification attempts, and the number of decertifications during our study period—by private and public sector when possible. In general, certification success rates were in the 60–70% range for both the British Columbia and Ontario private sectors during the mandatory election regimes, but were around 90% in the card-check regimes. The data will be discussed in Section 3, but it is important to note that the latter numbers exclude withdrawn applications. If withdrawn cases were included in the denominator, success rates would be roughly 10 percentage points lower in both provinces. In the public sector, there is very little difference between the two provinces in union organizing success.

Moreover, the card-check years witnessed, on average, two times more certification attempts than the election-regime years in the Ontario private sector (1,418 vs. 667) and nearly 50% more attempts in the B.C. private sector (1,437 vs. 1,003). Finally, in both

<sup>1</sup>See Riddell (2004) for a review of the laws in British Columbia and Slinn (2003) for a review of those in Ontario.

Table 1. Certification and Decertification Activity in British Columbia and Ontario, 1987–1998.

Year	Certification Success Rates				Certifications Filed				Decertifications Filed	
	British Columbia		Ontario		British Columbia		Ontario		B.C.	Ontario
	Private Sector	“Public” Sector	Private Sector	“Public” Sector	Private Sector	“Public” Sector	Private Sector	“Public” Sector		
1987	71.9	92.0	—	—	146	59	—	—	221	—
1988	74.4	91.4	—	—	184	78	—	—	276	—
1989	68.8	92.8	—	—	157	69	—	—	223	—
1990	61.1	94.7	—	—	193	38	—	—	143	—
1991	62.9	74.4	—	—	170	39	—	—	150	—
1992	71.8	88.5	—	—	153	48	—	—	188	—
1993	87.4	94.5	92.2	93.7	278	109	554	175	80	122
1994	86.4	90.8	89.7	95.5	220	131	478	179	320	110
1995	89.5	92.6	81.3	88.8	227	93	386	203	125	145
			58.3 <sup>a</sup>	85.7 <sup>a</sup>						
1996	90.2	87.5	58.9	85.5	254	72	241	110	158	251
1997	88.1	98.6	69.0	85.0	214	69	279	160	138	198
1998	87.1	95.3	69.9	82.7	244	43	147	75	159	188

Notes: The mandatory election regime in British Columbia was 1987–92, and the card-check regime was 1993–98. For Ontario, the card-check regime was from 1993 to October 1995, and the election regime was from November 1995 to 1998. The source for success rates and number of certifications is the micro data on certifications used in the analysis, and therefore excludes withdrawn certifications and the construction industry. The “public sector” consists of social services, which is predominantly public sector services, but some private sector services in health and education remain in this grouping (and cannot be isolated). Note that success rates would appear lower if withdrawn certifications were included. Information on decertifications comes from the annual reports of the BCLRB and OLRB. For the OLRB, decertifications are based on fiscal year, not calendar year (for example, the 1993 cell is actually 1992–93), which results in the 1995 cell being 1994–95, thus including three months of the election regime. Without micro data on decertifications (to which we do not have access), these cannot be separated. Detailed information on unfair labor practices is only available in the Annual Reports of the BCLRB, although not for all years. After 1992 ULPs were broken down only by applicant, and cases stemming from union organizing were not isolated. The number in parentheses is complaints of organizing on employer premises.

<sup>a</sup>The number in the main row is for January–October, and that in the row beneath is for November–December.

provinces, substantially more decertifications occurred during the election regime than during the card-check regime: on average, 25% more in British Columbia, and about 70% more in Ontario. Interestingly, for all three measures of organizing activity, there was a bigger drop in these proportions in Ontario after the move to election law than in British Columbia. (See Riddell [2007] for an empirical analysis of certification and decertification activity.)

A critical question remaining is what factor(s) underlie these dramatic effects. Some research (for example, Riddell 2004) suggests that management opposition was more effective during the compulsory election years, but overall, very little is known.

## 2. Framework for Analysis

Our goal in this paper is to examine a number of different aspects of the union organizing process. Specifically, we focus on the factors influencing compliance with time limits in quick-vote legislation, as well as the factors influencing election delay when no time limits are in place; the effect of election delay on union success; and the factors influencing overall certification delay.

Table 2 provides a summary of the election and certification delay–related policies in effect in both provinces during our study period. In the election regime, both provinces used time limits on elections: seven days in Ontario and ten days in British Co-

lumbia. Note that in British Columbia for our sample period, there were two different policies within the election regime: September 1986 to July 27, 1987, during which time limits were a policy<sup>2</sup> only, and then the period after the Industrial Relations Act was passed, when time limits became formal law. For the card-check regime, there was no time limit on elections in Ontario, but the same ten-day statutory requirement applied in British Columbia. We show the distribution of election delay (that is, plots of the empirical survival function) for the time limit regimes in Appendix Figure A1, while Appendix Figure A2 shows the same distribution for the card-check regime, and Appendix Figure A3 shows election delay in British Columbia before and after the IR Act.<sup>3</sup>

Compliance with the time limit laws was high, particularly in British Columbia. In Ontario, however, in many cases the election was held well beyond the legally required time period. In fact, non-compliance in Ontario was around 25%, compared to only 3.2% in British Columbia. Of course, Ontario had a more stringent election date guideline, but even if we use British Columbia's ten-day rule for Ontario, delayed elections still occurred in 16% of cases. For British Columbia prior to the IR Act, "non-compliance" with the non-binding (that is, not statutorily required) time limit policy was much higher, at 25.5%, than after the IR Act was passed.

In the card-check regime, we see the difference in election delay after the move to time limit policies. In British Columbia, where the same time limit discussed above was still in effect, the distribution of election delay was similar to the distribution under time limit laws. In Ontario, however, those

applications that did go to an election were likely to experience long delays, with a median around 45 days, and the 90<sup>th</sup> percentile over 120 days.

What factors can contribute to election delay and non-compliance with time limits? In addition to the legislation, we also reviewed the regulations and policies in both provinces in each legislative regime. Overall, the official regulations and policies stated nothing about the circumstances under which an election would be delayed, regardless of what time limit procedures were in effect. To pursue this further, we reviewed decisions from cases in which we observed a delayed election, and interviewed staff at the Boards as well as management and union-side lawyers. We learned that (1) both parties (employer and union) could mutually agree to delay the election, and (2) an election could be delayed if a party filed a complaint for investigation.

Certification-related complaints fall into two broad categories. First, a submission could be filed by the employer or employees objecting to the legitimacy of the application by, for example, challenging the appropriateness of the bargaining unit, the validity of the card-check evidence, or the validity of the voter's list. Second, an unfair labor practice complaint (ULP) could be filed by any party against either the union or the employer. The ULP could allege an unfair dismissal; various forms of intimidation, threats, or coercion; interference with trade union administration; or organizing activity on the employer premises. Our first goal in the paper is to identify the correlates of election delay (and, in particular, non-compliance with time limit procedures), with a focus on whether the complaint process—the filing of objections and ULPs—was playing a role.<sup>4</sup>

<sup>2</sup>Labor boards were required to comply with relevant statutes and their associated regulations. However, these were not the only sources of direction for labor board procedures and decision-making. Boards, themselves, often formulated their own policies and rules, which tended to address more detailed procedural matters. Boards generally complied with their own rules and regulations, although they could not be compelled to do so (as they could be in the case of statutory and regulatory requirements).

<sup>3</sup>We plot the distributions of the duration data with the Kaplan-Meier estimator of the survivor function.

<sup>4</sup>Something of a contradiction emerged from our interviews as well. In the case of a challenge to the membership evidence or a challenge to the voter list, the labor relations boards had the power to hold the election in a timely manner, double-seal the ballots of individuals in question, and hear the evidence at a later date. Thus, there were policies in place to mitigate the effects of complaints causing election delay, although perhaps they were not being used; our analysis includes a test to address this question. However, it is likely to have been much more difficult for the boards to take

Table 2. Certification Delay–Related Policies in Ontario and British Columbia.

<i>Legislative Regime</i>	<i>Ontario</i>	<i>British Columbia</i>
<b>Compulsory Elections</b>	<b>1995 LR Act</b> (November 1995–June 1998)	<b>1984 LCA Act</b> (September 1986 to July 26, 1987) and <b>1987 IR Act</b> (July 27, 1987, to December 1992)
	Time limits: election to be held within 7 days of the application	Time limits under 1984 LCA Act: election recommended to be held within 10 days of the application (policy) Time limits under 1987 IR Act: election to be held within 10 days of the application (law)
	Expedited ULP hearings: no policy in place	Expedited ULP hearings: introduced as policy July 27, 1987, with IR Act
<b>Card-Check</b>	<b>1992 CBE Act</b> (January 1993 to October 1995)	<b>1993 LRC</b> (January 1993 to May 1998)
	Time limits: no policy in place	Time limits: election to be held within 10 days of the application
	Expedited ULP hearings: Hearing to be held within 17 days of application	Expedited ULP hearings: hearing to be held within 5 days of application

We also examine the role of expedited ULP hearings, which some provinces have instituted to speed up the processing of ULPs.<sup>5</sup> During the election regimes in the two provinces, under which British Columbia had an expedited ULP procedure and Ontario did not (Table 2), non-compliance was much higher in Ontario. The procedure in British Columbia came into effect July 27, 1987. We therefore have data for years

similar action in response to more complex complaints, such as those challenging the appropriateness of the bargaining unit (which could apply to a large number of individuals and fundamentally change the dynamics of the application) or involving dismissals.

<sup>5</sup>British Columbia implemented an expedited ULP law requiring that a hearing for a ULP case be held within 72 hours. This change, made July 27, 1987, constituted a policy only, and it was not until 1993 that the statutory requirement was enacted. A key problem with ULP cases is that hearings into the employer's conduct have typically taken very long periods of time. With such an expedited ULP law in place, there may be a reduced likelihood of an unfair labor practice complaint causing a delay in the election or in disposition of the application (or both). That said, while the legislation stipulated that the hearing must take place within 72 hours, there were no concrete rules about when the decision must be made. Our analysis uses the decision date and thus will test whether decision time was affected by expedited procedures.

before and after the change, allowing for an analysis of whether this change reduced ULP processing times in British Columbia.

Election delay is important because it can influence the union win rate, that is, the union's success in certifying candidate units. Our second key objective is thus to examine the effect of election delay on union win rates under the different union recognition regimes. The different time limit procedures in place across provinces allow for some comparative analysis to test the effectiveness of quick votes in reducing the potential adverse effects of election delay. Toward that end, we first estimate the effect of election delay on union success under mandatory election laws. Here, the comparison is between Ontario's statutory requirements under relatively high non-compliance and British Columbia's under very low non-compliance. We can test whether the higher non-compliance in Ontario allows for election delay to be negatively associated with union win rates. Second, we estimate the effect of election delay on union success under card-check laws. In this case, there is a more dramatic difference in time limit procedures, with no provisions for quick votes in Ontario, but a statutory requirement with low non-compliance in British Columbia.

In addition to potentially affecting election delay, complaints may delay the overall disposition of the application (that is, the timing of the unit's official certification). In fact, ULPs can more easily delay the disposition than the vote, because all outstanding complaints, such as ULPs filed after the election, reconsiderations of earlier complaints, and any appeals, must be resolved before a disposition can occur. Provincial labor relations legislation has only emphasized controlling election delay. Essentially nothing is known about certification delay, and while the certification outcome is already determined, the delay between the election (or card-checks) and actual certification has been shown to play a role along other important dimensions. Cooke (1985) found that the largest detriment to first contract success is disposition delay. For Canada, Bentham (2002) found that in cases involving postponements (some before the election, such as employer objections, some after, such as appeals), which tend to delay disposition, the new organized units are less likely than in other cases to obtain a first collective agreement, and also more likely to suffer early decertification. Our third goal therefore is to examine whether complaints filed during the certification process are correlated with disposition delay.

While the certification process under the *National Labor Relations Act* (NLRA) in the United States is similar to the assortment of mandatory election procedures existing in Canadian jurisdictions, it differs in several key respects (see Appendix I for more details on the U.S. certification process). First, the NLRA allows for a substantial period of time to elapse before an election. Appendix I outlines this in more detail. Second, institutionally, the parties appear to have more room in the United States than in Canada to affect the timing of the election by agreeing or failing to agree on pre-election matters—although the importance of such effects has yet to be empirically tested.

### 3. Data

Our data from British Columbia cover September 1986 to May 1998, and were compiled from the administrative records of the

British Columbia Labour Relations Board (BCLRB). The Ontario data cover January 1993 to June 1998, and were obtained from the administrative records of the Ontario Labour Relations Board (OLRB) and the Ontario Ministry of Labour (OML).

For British Columbia, there are essentially two different data sets: hard copy records for September 1986 to May 1989, containing not only readily quantifiable data tracked by the BCLRB, but also useful descriptive information, such as parties' formally submitted objections to the petition requirements and richer details on ULPs; and electronic records for May 1989 to May 31, 1998. For Ontario, ULPs are contained in separate records and must be matched based on employer name, union name, and application dates.

In general, we only have micro-data on ULPs filed by employees or the union *against* the employer. For British Columbia this includes Section 2 and 3 cases for 1986–92 and Section 5 and 6 cases for 1993–98; for Ontario, Section 96 cases. However, it is noteworthy that employers rarely file ULPs against the union. Appendix Table A1 provides descriptive statistics on different forms of complaints in British Columbia, which provides more detailed information than Ontario. The number of ULPs (Section 4(1) and 4(2) cases) filed by the employer against the union during union certification was trivial.<sup>6</sup> Even across all unionization-related ULPs, very few were filed by the employer. On the other hand, during the years we examine, almost all submissions objecting to the terms of the certification application (bargaining unit appropriateness, card-check evidence, and so on) were filed by the employer.

For both provinces, the administrative data contain information on the bargaining

<sup>6</sup>We know for certain that the cases under Section 4(1) and 4(2), which concern organizing on the employer's premises, were employer-filed ULPs against the union. Some of the 4(3) cases (concerning union coercion) could have been filed by the employer, but unfortunately the Annual Reports of the BCLRB do not indicate the applicant. Based on our information for September 1986–May 1989, we believe that approximately two-thirds of Section 4(3) complaints were filed by the employer, with the remainder filed by employees.

unit's size, union affiliation, and industry, and dates for the application, disposition, and vote, if one was conducted. We exclude construction and withdrawn certifications from our sample. The certification process in the construction industry is very different from that in all other industries and is not comparable, particularly in Ontario; and including withdrawn cases, for which the time to disposition/compliance with quick-vote laws has little meaning, would impart a bias to our estimates.<sup>7</sup> After these two exclusions, we have a sample of 2,963 certifications for Ontario and 3,052 for British Columbia.

#### 4. Methodology and Model Specification

We use a logit model to estimate the probability that a certification election was not held within the legally required number of days (which we refer to as non-compliance) and the probability that a union was successful in the vote. Rather than present the coefficient estimates in the tables, we present odds ratios for the logit models. An odds ratio is the exponentiated value of the coefficient estimate, that is,  $OR_j = \exp(\hat{\beta}_j)$  for variable  $j$ . Odds ratios greater than 1.0 indicate that the variable is associated with an increase in the odds of an event occurring (that is, the probability of an event occurring divided by the probability it does not occur) and correspond to positive coefficient estimates.<sup>8</sup> Conversely, odds ratios less than 1.0 indicate that the variable is associated with a decrease in the odds of an event occurring and correspond to negative coefficient estimates.

We also examine the length of the election delay, the time it took to process a ULP,

<sup>7</sup>In Canada, the decision to withdraw a certification application is made entirely by the union. In contrast, the NLRB will request that a union withdraw its application, if that application will otherwise be dismissed. See Riddell (2004) for other methodological issues pertaining to withdrawn applications.

<sup>8</sup>For example, if the odds ratio for a dummy variable is 1.05, then that variable is associated with a 5% (that is,  $100 * (\exp(\beta) - 1)$ ) increase, relative to the excluded reference group, in the odds of an event occurring. On the other hand, an odds ratio of 0.95 indicates that the variable is associated with a 5% decline (relative to the excluded reference group) in the odds of the event occurring.

and the disposition time of a certification application. These estimates are obtained using hazard models. Hazard models are concerned with estimating the conditional probability of an event occurring—for example, the probability that a bargaining unit has its application processed in day 15, given that 14 days have passed without a disposition decision.<sup>9</sup> We use a proportional hazards model, which specifies the hazard rate at time  $t$  as

$$(2) \quad h(t) = \exp(x_i' \beta) h_0(t),$$

where  $x_i$  is a vector of explanatory variables,  $\beta$  is a vector of parameters for the controls for individual characteristics, and  $h_0(t)$  is the baseline hazard. We employ a Cox proportional hazard model, which treats the baseline hazard function  $h_0(t)$  as a nuisance parameter. This approach conditions the baseline hazard out of the model. Since the coefficient estimates from a hazard model are difficult to interpret, we present hazard rate ratios, which are the exponentiated coefficient estimates from the hazard model ( $HR_j = \exp(\hat{\beta}_j)$ ).<sup>10</sup> Like the odds ratios, hazard rate

<sup>9</sup>Hazard models are used to estimate the duration of events because they have a number of advantages over regression-based methods. First, they are able to deal with censored or incomplete spells. Second, they can easily accommodate explanatory variables that vary with time. Third, because the hazard models estimate the conditional probability of an event occurring, they may be particularly suited to analysis of certification delay, because they suggest that the conditional probability of certification can vary over time.

<sup>10</sup>Let the hazard rate at time  $t$  for a covariate  $x$  be written as  $h(t) = h_0(t) \exp(x\beta)$ . Suppose  $x$  is a dummy variable such that if  $x = 1$ , then  $x(1) = 1$ , and if  $x = 0$ , then  $x(0) = 0$ . Then the hazard rate ratio can be written as

$$\begin{aligned} HR(t, x(1), x(0)) &= \frac{h_0(t) \exp(x(1)\beta)}{h_0(t) \exp(x(0)\beta)} = \frac{\exp(x(1)\beta)}{\exp(x(0)\beta)} \\ &= \exp(\beta(x(1) - x(0))) = \exp(\beta(1 - 0)) = \exp(\beta). \end{aligned}$$

If the covariate is continuous, then the hazard rate ratio can be interpreted as the effect of a one-unit change in  $x$  on the hazard

$$\begin{aligned} HR(t, x_1, x_0) &= \frac{h_0(t) \exp(x_1\beta)}{h_0(t) \exp(x_0\beta)} = \frac{\exp(x_1\beta)}{\exp(x_0\beta)} \\ &= \exp(\beta(x_1 - x_0)) = \exp(\beta), \end{aligned}$$

if the difference between  $x_1 - x_0$  equals 1, and we would have the exponentiated coefficient estimate.

Table 3. Summary Statistics.

Variable	British Columbia	Ontario
Non-Compliance with Time Limit Laws <sup>a</sup>	.032 (.171)	.158 (.364)
Time Until Certification Disposition	21.56 (46.94)	61.99 (124.63)
Unfair Labour Practice Filed against Employer	.225 (.418)	.141 (.352)
Vote Held	.441 (.497)	.416 (.493)
Compulsory Election Law	.402 (.491)	.345 (.476)
Bargaining Unit Size (Number of Persons)	27.70 (39.87)	48.47 (124.26)
AFL-CIO Union (or Other International)	.474 (.499)	.536 (.499)
Canadian Labour Congress (CLC) Union (or Other National)	.483 (.500)	.316 (.465)
Independent Union	.050 (.217)	.148 (.355)
Manufacturing	.226 (.418)	.170 (.375)
Primary Sector	.057 (.232)	.024 (.153)
Transportation and Storage	.091 (.288)	.026 (.160)
Trade	.129 (.335)	.092 (.289)
Finance and Business Services	.031 (.174)	.014 (.118)
Hotel and Restaurant Services	.082 (.275)	.059 (.236)
Other Services	.154 (.361)	.312 (.464)
Public Sector	.225 (.417)	.302 (.459)
Number of Observations	3,052	2,963

Note: All summary statistics are means with standard deviations in parentheses.

<sup>a</sup>The number of observations for non-compliance with statutory requirements on time limits under mandatory election procedures is 1,060 for B.C. and 1,069 for Ontario.

ratios greater than 1 correspond to positive coefficient estimates and indicate that they are associated with increases in the hazard or, equivalently, shorter duration times. Conversely, hazard rate ratios less than 1 correspond to negative coefficient estimates and are associated with lower hazard rates or longer duration times.

We estimate these models using data from British Columbia and Ontario separately. The explanatory variables in these analyses include those that are related to our key hypotheses, as outlined earlier, as well as controls for economic and regional characteristics, bargaining unit characteristics, and institutional/bureaucratic factors. We describe these variables in the remainder of this section. Summary statistics are provided in Table 3.

*Managerial behavior.* We control for the effects of management opposition principally by using a dummy variable that indicates whether a ULP was filed by the employees or union against the employer. Some of our supplemental analyses will draw on additional information available in British Columbia only. Notably, some of our analyses incorporate data on employer-filed objections to the petition requirements (bargaining unit appropriateness, card-check evidence, and so on) or voting list, which may provide a more direct link to employer behavior in addition to capturing a legal form of employer involvement. We also have the application date of the ULP for some years in British Columbia, and so can distinguish between ULPs filed before and after a certification election.

Other studies of management tactics have shown that unfair labor practice complaints tend to be filed in cases where management “goes all out” and uses a full array of anti-union tactics. For example, in a study of Ontario certifications using both survey and administrative data on certification applications, Martinello and Yates (2005) showed that ULPs were primarily filed in certifications where employees claimed that management was also using a wide variety of tactics, ranging from legal (or marginally legal) actions such as holding captive audience meetings to largely (or outright) illegal maneuvers such as threatening plant closure. Thus, our ULP variable is likely capturing such cases, and not certification bids in which management only pursued a limited range of union avoidance tactics.

*Bargaining unit characteristics.* The characteristics of the bargaining unit can also influence the outcomes of certification applications. For example, the size of the unit

or the ideology of the union applying for certification can influence the resources or intensity of the push during a certification drive. We control for bargaining unit characteristics using variables for the size of the bargaining unit, the affiliation of the union, and the industry of the bargaining unit.

*Legislation.* As discussed in Section 1, each province made a major legislative change during our study period (see the summary provided in Table 2). The key change made in both provinces was the introduction or removal of compulsory elections. Our analyses of non-compliance and union win rates are generally conducted separately by union recognition regime. For disposition time, we estimate the hazard models by union recognition regime and for a pooled sample, which includes a dummy variable for the compulsory election law in order to test for whether such laws themselves have an effect on certification delay. As discussed previously (refer to Table 2), in British Columbia, several other interesting changes occurred. First, a legislative change (1987 IR Act) during the 1986–92 election regime switched time limits from a policy to formal law. To test whether the latter change affected election timing, we also estimate a non-compliance regression for British Columbia in 1986–92 and include a dummy for the 1987 IR Act. Finally, in British Columbia, the time limit law on elections was the same during the 1993–98 card-check regime as under the 1987 IR Act. Thus, we will also estimate a non-compliance logit for British Columbia pooling both union recognition regimes, and will include a dummy for the card-check period (1993 LRC).<sup>11</sup>

<sup>11</sup>It is possible that the legislative changes made in our sample period were not exogenous. To determine if there was an endogeneity bias in our estimates, we conducted some additional analyses. In particular, we omitted observations from our sample within a time window around the policy change. We did this using both 3-month and 6-month windows. For some of our analysis—such as our examination of ULP decision times and the union win rates in the card-check regimes—we cannot perform this check due to insufficient observations. Overall, the results using both choices of window size were very similar, and in many cases virtually identical, when we dropped observations close to the policy change.

*Institutional factors.* We control for institutional/bureaucratic factors that can affect the certification process using a set of dummy variables to indicate the chair of the BCLRB, because there were a number of changes in the chair of the BCLRB during our study period. In addition to influencing the choice of staff who process applications, managing those staff, and setting the overall philosophy of the board, the chairperson may have the power to shape labor relations board policy—particularly in British Columbia. First, the chair has the power to empanel all cases, that is, decide which vice chair(s) and members (if any) will sit on the case. Second, the BCLRB occasionally issues special “policy decisions.” These are reconsideration decisions that the chair has decided will determine the labor relations board’s policy on a particular issue or group of issues. The chair of the BCLRB not only decides which cases will be policy decisions, but also empanels the case.<sup>12</sup>

*Other controls.* Our empirical specifications also include dummies controlling for the month and year. These dummies will capture the seasonal as well as cyclical variation in the data. We also include regional dummies (region within the province) because British Columbia and Ontario are both large provinces, and it may take longer to process applications from areas that are a considerable distance from the cities of Vancouver and Toronto (where the respective labor relations boards are located).

<sup>12</sup>For British Columbia, we have variation in chairpersons *within* a legislative regime, and thus our test of whether chairs were able to affect the processing of applications can control for the legislation in effect. We are unaware of any existing empirical evidence in any part of the industrial relations literature on whether bureaucratic regimes matter. In British Columbia, there were four chairs of the BCLRB during our study period: John Kinzie (until July 26, 1987), Edward Peck (July 27, 1987, to February 28, 1992), Stan Lanyon (March 1, 1992, to October 31, 1996), and Keith Oleksiuk (November 1, 1996, to 1998). We could not undertake a parallel analysis for Ontario, because there were only two chairs of the Ontario Labor Relations Board during our study period, and only two months during which the change in Chairs did not overlap with the change in the union recognition law.

Table 4. Odds Ratios from Logit Estimates of Non-Compliance with Time Limit Policies.

Variable	(1)	(2)	(3)
	Ontario under 1995 LR Act	British Columbia under 1987 IR Act Only	British Columbia under 1987 IR Act Plus 1993 LRC
ULP Filed against Employer	1.879** (2.11)	.664 (0.86)	.986 (0.20)
Bargaining Unit Size (Individs./5)	1.003* (1.67)	1.036 (1.50)	1.006 (0.33)
CLC Union	1.263 (1.50)	1.155 (0.38)	.978 (0.01)
Independent Union	1.529** (2.04)	1.892 (0.55)	1.433 (0.65)
1993 LR Act Cases	—	—	7.755*** (6.78)
Mean Non-Compliance Rate	.158	.032	.057
Log Likelihood	-685.72	-118.22	-187.03
$\chi^2$ Statistic (All Coefficients = 0)	82.32***	10.09	56.52***
Number of Observations	1,069	1,060	1,262

Notes: Estimates are reported as odds ratios. t-statistics are in parentheses. The dependent variable equals 1 if the election was held within the legally required number of days, 0 if not. The omitted union category is an international union. Other covariates include dummies for industry, region, month, and year.

\*Statistically significant at the .10 level; \*\*at the .05 level; \*\*\*at the .01 level.

## 5. Empirical Results

### 5.1 Non-Compliance with Time Limit Policies

We begin with an analysis of the correlates of non-compliance with time limit laws. As noted earlier, the dependent variable equals 1 if the election was not held within the legally required number of days; for comparison purposes we use a ten-day rule throughout our analysis for Ontario, but recall that Ontario's statutory requirement was seven days. The odds ratios for the explanatory variables are presented in Table 4.

Beginning with the first column, in Ontario, union/employee ULPs filed against the employer were associated with an 88% increase in the odds of an election being delayed past ten days. In British Columbia under the 1987 IR Act only (that is, July 27, 1987, to 1992), during which non-compliance with a time limit rule was only 3.2%, there was no statistically significant association between ULPs and non-compliance. The final column of Table 4 uses all elections in British Columbia under time limit laws as the

sample, that is, elections under the 1987 IR Act plus those cases under the card-check 1993 LRC that went to an election. Although these two sets of cases were covered by identical time limit laws, the elections in the latter set (post-1992)—which arose under a card-check regime that required elections when only 45–55% of the unit signed cards, and thus clearly differ in genesis from the 1987 IR Act elections—were characterized by dramatically higher non-compliance rates. The ULP variable does not have a statistically significant effect on non-compliance, but the dummy controlling for the 1993 LRC is associated with a large increase in the odds of non-compliance with the time limit. One plausible explanation for this finding is that the cases under the 1993 LRC were ones with marginal support. This suggests that our finding that non-compliance was dramatically higher in elections under card-check laws may be capturing unobserved employer activity, which is consistent with the notion that employers are more likely to interfere when they believe they can influence the outcome, that is, in cases of more marginal support for the union (see,

Table 5. Odds Ratios from Logit Estimates of Non-Compliance with Time Limit Policies: Alternative Specifications.

Variable	(1) <i>British Columbia under 1987 IR Act Only</i>	(2) <i>British Columbia under 1987 IR Act Plus 1993 LRC</i>	(3) <i>British Columbia under 1984 LCA Act Plus 1987 IR Act</i>	(4) <i>British Columbia under 1984 LCA Act Only</i>
ULP vs. Employer	—	—	1.352 (1.58)	1.756* (1.70)
ULP Filed before Election	2.435 (1.35)	3.171*** (2.92)	—	—
ULP Filed after Election	.422 (1.22)	.340* (1.78)	—	—
Submission Filed by Employer	—	—	1.980** (2.31)	3.970*** (2.84)
Bargaining Unit Size (Indivs./5)	1.038 (1.59)	1.012 (0.61)	1.026 (1.22)	1.044 (1.10)
CLC Union	1.202 (0.44)	.991 (0.03)	1.100 (0.48)	.816 (0.59)
Independent Union	1.561 (0.55)	1.242 (0.37)	1.522 (0.53)	1.481 (0.52)
1993 LRC Cases	—	6.136*** (5.67)	—	—
1984 LCA Act Cases	—	—	9.509*** (6.23)	—
Mean Non- Compliance Rate	.032	.057	.141	.255
Log Likelihood	-116.54	-180.00	-120.46	-91.34
$\chi^2$ Statistic (All Coefficients = 0)	16.17	70.59***	50.33***	10.53***
Number of Observations	1060	1262	618	217

Notes: Estimates are reported as odds ratios. t-statistics are in parentheses. The dependent variable equals 1 if the election was held within the legally required number of days, 0 if not. The omitted union category is an international union. Other covariates include dummies for industry, region, month, and year. Due to the time period, the final column includes controls for only industry and region.

\*Statistically significant at the .10 level; \*\*at the .05 level; \*\*\*at the .01 level.

for example, Freeman and Kleiner 1990; Riddell 2001).

Table 5 contains several robustness checks on the estimates presented in Table 4. In particular, we consider the effect of alternative definitions of the complaint variable on non-compliance with time limits in British Columbia. As noted above, these alternative specifications can be estimated with the data from British Columbia only for certain years, because some details of the information that was collected changed over time. Unfortunately, we could not obtain comparable data from Ontario and undertake a parallel analysis for that province.

In Table 5 we first examine whether union/employee ULPs filed before an election dif-

fered from those filed after. Our rationale for this examination is that only ULPs filed before the election can potentially cause the election to be delayed (for reasons outlined in Section 2). Consequently, a finding that ULPs filed after the election were associated with election delay would suggest that the estimates on the ULP variable in Table 4 may be capturing other unobserved factors, such as very hostile and complex certification bids. These estimates are presented in the first two columns of Table 5 and are based on the same sampling period used in Table 4.

The estimates in column (1), which uses data from the period covered by the 1987 IR Act, indicate that there are no statistically significant associations between ULPs,

regardless of when they were filed, and non-compliance with time limit policies. However, the estimates in column (2), which include data from the 1993 LRC as well as the 1987 IR Act, indicate that ULPs filed before the election were associated with an increase in the odds of non-compliance with the time limit policies in British Columbia. In addition, the estimates in column (2) indicate that ULPs filed after the election were associated with a decrease in the odds of non-compliance, but this estimate is significant only at the 10% level. The estimates in column (2) suggest that even in British Columbia (characterized by low non-compliance rates), ULPs filed before the election date could delay the vote. Of course, non-compliance in British Columbia increases from 3.2% to 5.7% when the analysis includes the 202 LRC cases of 1993 (special cases in which only 45–55% of cards were signed).

The second set of robustness checks in Table 5 introduces a new complaint variable: employer-filed objections to the application. As noted previously, these include *legal* challenges such as objections to the appropriateness of the bargaining unit or the card-check evidence. Note that due to data availability, the analysis of employer objections uses a time period different from that used in the first two columns. In columns (3) and (4) of Table 5 we include controls for union/employee-filed ULPs as before, but we also include the employer-filed objection variable. These estimates will allow us to determine whether employer-filed submissions are positively correlated with non-compliance when we also control for union/employee-filed ULPs, and in particular they test whether the ULP estimates elsewhere in the paper are capturing unobserved legal employer activity. The estimates in column (3) are based on the entire time period for which submissions are available (September 1986–May 1989), which covers two different time limit policy regimes as outlined in Table 2 (the 1984 LCA Act plus the 1987 IR Act). The estimates in column (4) are based only on those cases filed under the 1984 LCA Act. Election delay differed greatly under these two regimes: the rate of non-compliance was 25.5% under the 1984 LCA Act, where time

limits were only a policy, compared to 3.2% under the 1987 IR Act, where they were a statutory requirement.

Employee/union-filed ULPs are associated with an increase in the odds of non-compliance with time limit policies in column (4), but this estimate is significant only at the 10% level. More important, employer-filed submissions objecting to the application are associated with a very substantial increase in the odds of non-compliance with time limits in both columns (3) and (4) of Table 5. Thus, the available data suggest that employer objections were the factor most strongly correlated with election delay, but ULPs also substantially increased the likelihood of non-compliance. The exception to this pattern is in British Columbia under the 1987 IR Act, where non-compliance was only 3.2%. Note also that when we estimate the regressions for columns (3) and (4) without the objections variable, the coefficients on the ULP variable are larger (and more precisely estimated). Thus, based on the evidence for British Columbia from years available, it appears that the ULP estimates presented elsewhere may be in part capturing unobserved *legal* employer actions.

In a similar vein, we also examined the impact of employee/union-filed ULPs on election delay in Ontario's card-check regime. However, because no time limit policies were in place in Ontario, the election delay times were not clustered around the time limit, as were those in British Columbia (see Appendix Figure A2) or in Ontario under the election regime. Consequently, there would be benefits to using a Cox proportional hazard model to estimate the length of the election delay, that is, the number of days from the certification application date to the date of the election. The hazard rate ratios for the explanatory variables are presented in Table 6. The hazard rate ratio for the ULP variable in Table 6 indicates that ULPs filed against the employer were associated with a 34% decline in the hazard rate; that is, like non-compliance, ULPs were associated with longer delays.

As noted in Section 2, we also conducted several other qualitative analyses, including a review of case decisions from certification

applications for which we observed lengthy election delays (case decisions include the certification file's reference number, which is also available in the certification application data), as well as interviews with lawyers and Board staff. From this work we also discovered evidence of increasing use of litigation tactics in Ontario. But no such evidence exists for British Columbia. If these diverging patterns indeed were occurring, they would also be consistent with the higher non-compliance rates in Ontario and the ULP effect identified for Ontario but not for British Columbia. As noted earlier, survey evidence from Ontario (Martinello and Yates 2005) suggests that ULPs against the employer tend to be filed in cases where the employer "goes all out." If litigation tactics were indeed on the rise in Ontario (and not in British Columbia), then the ULP variable may be capturing such union-avoidance strategies.

One striking feature of the results thus far is that under compulsory elections with statutory requirements on time limits, ULPs increased the odds of non-compliance in Ontario, but not in British Columbia, even when we focus on ULPs filed before the election. As we outlined earlier (see Table 2), one notable difference between the election regimes of the two provinces is the presence of an expedited ULP hearing procedure in British Columbia. Rates of compliance with the time limit were substantially higher in British Columbia than in Ontario, and a key question is whether expedited ULP hearings played a role in these compliance differences. To shed some light on this question, we employ a Cox proportional hazards model to examine whether the B.C. IR Act (passed July 27, 1987) had an impact on actual ULP decision times (defined as the number of days from the date of the ULP application to the date of the initial decision). Unfortunately, the data available to conduct this analysis are quite limited, covering only September 1986 to May 1989. After this period, the ULP data only have the application date and close date, not the decision date. Close dates indicate that the file has been literally packed up and stored. Boards tend to leave ULP cases open for a long time, and there is little reason to

Table 6. Hazard Rate Ratios for Cox Proportional Hazard Model Estimates of Election Delay: Election Cases in Ontario's Card-Check Regime.

Variable	Estimate
ULP Filed against the Employer	.664** (2.10)
Bargaining Unit Size	1.001 (1.14)
CLC Union	.770 (1.38)
Independent Union	.592 (0.02)
Mean Election Delay	60.67
Log Likelihood	-873.20
$\chi^2$ Statistic (All Coefficients = 0)	21.82***
Number of Observations	229

Notes: Estimates are reported as hazard ratios. t-statistics are in parentheses. The dependent variable is the time from the date of the certification application to the date of the election. Other covariates include dummies for industry and region.

\*\*Statistically significant at the .05 level; \*\*\*at the .01 level.

believe that expedited ULP procedures would affect this tendency.

The model estimates are presented in Table 7. The hazard ratio (1.77) on the IR Act dummy indicates that the post-IR Act period (that is, July 27, 1987, to May 1989) was associated with substantially lower ULP decision times. This suggests that the IR Act, which included expedited ULP procedures, may have helped reduce ULP processing times in British Columbia. Given that we also found no correlation between ULPs and non-compliance in British Columbia for this same time period (see column 3 of Table 5), there is evidence to suggest that expedited ULP procedures are a useful policy tool for mitigating the effects of ULPs on delay. However, recall that the hazard model estimates in Table 6 from Ontario's card-check regime—where a formal expedited ULP hearing process was in place but *without* any time limits on elections—indicated that ULPs were still associated with an increase in election delay. This suggests, on the basis of the estimates from British Columbia and Ontario, that while expedited ULP hearings can help reduce election delays, they may not

*Table 7. Hazard Rate Ratios for Cox Proportional Hazard Model Estimates of ULP Decision Time: British Columbia, 1986–1989.*

<i>Variable</i>	<i>Estimate</i>
Industrial Relations Act (July 27, 1987, to 1989)	1.774*** (2.84)
Mean ULP Decision Time	23.71
Log Likelihood	-276.58
$\chi^2$ Statistic (All Coefficients = 0)	8.19***
Number of Observations	145

*Notes:* Estimates are reported as hazard ratios. *t*-statistics are in parentheses. The dependent variable is the time from the date of the ULP application to the date of the initial decision. Other covariates include bargaining unit size and dummies for union and region.

\*\*\*Statistically significant at the .01 level.

be effective unless they are accompanied by time limits.<sup>13</sup>

Overall, the results suggest that employers (either directly or indirectly) were able to delay the election past the legally required number of days when no time limits were in place or when time limits were not binding. The finding that only when legislation (as opposed to a policy) was in place and there was a commitment to that legislation—as in British Columbia under the 1987 IR Act—did labor relations boards do what was necessary to hold elections in a timely manner is somewhat surprising given that the labor relations boards in both provinces always had the power to hold the election in a timely manner, double-seal the ballots of those employees in question, and hold a hearing at a later date. This was true whether the formal complaint was an employee/union-filed ULP or an employer objection such as a challenge to the voting list or card-based membership evidence.

Of course, relative to the U.S. system, the Canadian system limits the ability of the

employer to delay the election, given the presence of time limits and the relatively high rates of compliance with those policies. Our findings on the effect of union/employee ULPs on non-compliance with time limits and election delay are somewhat troubling from a normative perspective, given that previous evidence comparing certification success in the B.C. card-check regime with the election regime suggests that even a small delay can lead to large increases in the effectiveness of employer opposition (Riddell 2004). To further investigate the link between delay and labor relations outcomes, we now analyze the effects of election delay on union win rates across provinces and legislative regimes.

## 5.2 Election Delay and Union Success in Certification Applications

This section presents estimates of the effect of election delay and unfair labor practice complaints on union success (win rates) in election contests for the certification of a bargaining unit. As we noted above, election delay has been found to have an adverse effect on union success. These logit models estimate the probability that the union wins the election in a certification attempt. This analysis compares British Columbia and Ontario for two legislative subsamples: certification applications that went to an election (a) in a compulsory election regime and (b) in a card-check regime. As we have discussed earlier, Ontario and British Columbia had different policies within the same union recognition procedures, which allows for some useful comparative analysis. In particular, in the election regime we can contrast British Columbia's (1987 IR Act only) time limit laws under high compliance with Ontario's (1995 LR Act) time limit laws under lower compliance. In the card-check regime the comparison is more dramatic: Ontario (1992 CBE Act) had no time limit laws, while British Columbia (1993 LRC) did. Finally, we will analyze British Columbia's compulsory election regime prior to the 1987 IR Act (applications filed from September 1, 1986, to July 27, 1987), under which time limits were only a policy and election delay tended to be much longer, as illustrated in Figure A3. Note

<sup>13</sup>The problem in evaluating expedited ULP hearings on the basis of Ontario's card-check regime—with no provisions for quick votes—is that there is no counterfactual, since British Columbia's card-check regime did have quick votes. It could be that ULP decision times and ultimately election delays were lower in Ontario's card-check regime than they would have been in the absence of expedited ULP hearings.

Table 8. Odds Ratios from Logit Estimates for Union Success:  
Compulsory Election Cases with Time Limits as a Statutory Requirement.

Variable	British Columbia under 1987 IR Act		Ontario under 1995 LR Act	
ULP Filed against the Employer	.715** (2.07)	.740** (1.87)	.542* (1.70)	.543* (1.79)
Election Delay (Days/5)	1.02 (0.87)	—	.997 (0.73)	—
Election Delay > 10 Days	—	1.45 (1.26)	—	.682** (2.00)
Mean Success Rate	.801	.801	.759	.759
Log Likelihood	-607.73	-605.42	-551.53	-550.98
$\chi^2$ Statistic (All Coefficients = 0)	101.26***	105.87***	85.64***	86.75***
Number of Observations	1,060	1,060	1,069	1,069

Notes: Estimates are reported as odds ratios. t-statistics are in parentheses. The dependent variable equals 1 if the union was certified (that is, won the election), 0 if not. Other covariates include bargaining unit size and dummies for union, industry, region, month, and year.

\*Statistically significant at the .10 level; \*\*at the .05 level; \*\*\*at the .01 level.

that one should exercise caution if comparing the results *across* union recognition regimes, because elections were required under card-check laws only if 45–55% of the proposed bargaining unit signed cards, resulting in a sample very different from the sample of elections that occurred in a compulsory election regime.

Table 8 presents the odds ratios for the logit estimates of union success in a vote based on the compulsory election regimes under time limit laws (1987 IR Act only for British Columbia and 1995 LR Act for Ontario). The odds ratios on the ULP variables from both provinces indicate that ULPs were associated with declines in the odds of a union winning a certification election. For example, in British Columbia a ULP filed against the employer was associated with a statistically significant 26–28.5% decline in the odds of winning an election. In Ontario, the estimates suggest that ULPs were associated with a 46% decline in the odds of the union winning an election, but these estimates are only significant at the 10% level. The odds ratio for the election delay variable (measured in days) is not statistically significant for either province. However, recall that the plots of the survival function for election delay in Appendix Figure A1 indicate that there was high compliance with the time limit, as shown by the clustering of election

delay durations around the time limit. This suggests that a dummy indicating whether there was non-compliance with the time limit is more appropriate to include in the analysis than is the actual number of days of the delay. When we control for election delay using that dummy variable—again, for purposes of comparison across provinces, we use election delay greater than ten days as the indicator—the results are different. In particular, in Ontario, the odds ratio on the delay dummy indicates that elections held after ten days were associated with a 32% decrease in the odds of the union winning the election. The odds ratios on the non-compliance dummy and the number of days of election delay for British Columbia are not statistically significant. However, this is not surprising, because in British Columbia the rate of non-compliance with the time limit laws (the 1987 IR Act) was only 3.2%.

Table 9 presents logit estimates of union success in election contests based on a sample from the 1984 LCA Act, which for our data covers September 1, 1986, to July 27, 1987. Again, this is the period of British Columbia's compulsory election regime, under which time limits were only a Board policy (not a statutory requirement) and in 25.5% of cases an election was held after the ten-day point. As illustrated in Figure A3, election delay is still clustered around the recommended

*Table 9.* Odds Ratios from Logit Estimates for Union Success: British Columbia under the 1984 LCA Act (Compulsory Elections with Time Limits as a Policy Rather Than a Requirement).

Variable	Odds Ratio	
	(1)	(2)
ULP Filed against the Employer	.447** (2.28)	.415*** (2.66)
Election Delay (Days/5)	.897** (2.32)	—
Election Delay > 10 Days	—	.650** (2.09)
Mean Success Rate	.739	.739
Log Likelihood	-73.43	-76.91
$\chi^2$ Statistic (All Coefficients = 0)	14.72***	8.55**
Number of Observations	217	217

*Notes:* Estimates are reported as odds ratios. t-statistics are in parentheses. The dependent variable equals 1 if the union was certified (that is, won the election), 0 if not. Other covariates include bargaining unit size and dummies for union, industry, and region.

\*\*Statistically significant at the .05 level; \*\*\*at the .01 level.

limit, but has a smoother distribution relative to the other election regimes, particularly when compared to delay after the 1987 IR Act. In this case, we find a strong, negative correlation between election delay and the likelihood of the union winning the election even with a continuous election delay variable as shown in the first column of Table 9. In particular, the odds ratio for the election delay variable is associated with a 10% reduction in the odds of a union winning an election for every five days the election is delayed. The second column is based on a specification that uses the dummy variable approach (delay > ten days), and the results indicate that applications delayed beyond the recommended time limit were associated with 35% lower odds of being certified. It is also noteworthy that the ULP estimates are much larger (50% lower odds of winning the election) than the ULP estimates from the post-IR Act sample as shown in Table 8. Given that the IR Act introduced a statutory requirement on time limits (which was complied with) and a policy on expedited ULP hearings (which had a strong effect,

as demonstrated in Table 7), the findings are suggestive that such policy instruments also mitigated the possible adverse effects of ULPs.

Table 10 presents the logit estimates of union success in election contests based on data from the card-check regimes. Unlike in Table 8, we do not estimate a specification that uses an election delay dummy for Ontario, where, because of the absence of laws imposing a deadline for elections, the time to elections tended to be quite long (see Appendix Figure A2). Thus, a continuous variable is more appropriate. This provides a contrast between British Columbia and Ontario, because elections in British Columbia were still governed by time limits, with delay being clustered around the limit. The odds ratios for the ULP variable from both provinces indicate that unfair labor practice complaints filed against an employer were associated with a decrease in the odds of the union winning the election. The estimates for the ULP effect are slightly larger in Ontario (a 47% decrease in the odds of winning) than in British Columbia (a 33% decrease in the odds of winning). For election delay, the estimates from British Columbia indicate that—despite a higher non-compliance rate than under the election regime—there is no statistically significant relationship between election delay and win rates, although the coefficient on the delay dummy (which translates to a 10% reduction in the odds of a union win) is just outside conventional significance levels, with a t-statistic of 1.58. In contrast, the odds ratio for the election delay variable is associated with a 4% reduction in the odds of a union winning an election for every five days the election was delayed in Ontario. Given that the median election delay in Ontario's card-check regime was 45 days, and the 90<sup>th</sup> percentile was 108 days, this is a very large effect. We also examined non-linearities in election delay for Ontario's card-check regime by estimating a quadratic specification, but the coefficient on the squared term was not statistically different from zero.

Overall, the union win rate results suggest that time limit laws can play a role in reducing the adverse effects of election delay. In

Table 10. Odds Ratios from Logit Estimates for  
Union Success: Election Cases within a Card-Check System.

Variable	British Columbia under 1993 LR Act		Ontario under 1993 LR Act
ULP vs. Employer	.667* (1.64)	.678* (1.66)	.532* (1.72)
Election Delay (Days/5)	.979 (0.91)	—	.960** (2.25)
Election Delay > 10 Days	—	.854 (1.58)	—
Mean Success Rate	.544	.544	.500
Log Likelihood	-81.24	-79.98	-133.43
$\chi^2$ Statistic (All Coefficients = 0)	9.84***	11.02***	14.56***
Number of Observations	202	202	229

Notes: Estimates are reported as odds ratios. t-statistics are in parentheses. The dependent variable equals 1 if the union was certified (that is, won the election), 0 if not. Other covariates include bargaining unit size and dummies for union, industry, and region.

\*Statistically significant at the .10 level; \*\*at the .05 level; \*\*\*at the .01 level.

the post-1987 IR Act B.C. election regime, with enforced time limit laws and only a 3.2% non-compliance rate, election delay had no impact on union win rates. In contrast, during Ontario's election regime, when time limit laws were in effect but with a much higher non-compliance rate, we find that election delay (defined as a delay exceeding ten days) was associated with a large decrease in the odds of a union winning an election. As well, for British Columbia under compulsory elections before the 1987 IR Act, when time limits were a policy only and "non-compliance" was over 25%, we find a very strong negative correlation between election delay and union win rates. In the B.C. card-check election cases, for which there were time limit laws (albeit with a higher non-compliance rate than in the 1987 IR Act election regime), we still find no effect of election delay on win rates. On the other hand, in Ontario, where no time limits at all were in place during the card-check regime, we find a strong, negative effect of election delay on union success.

### 5.3 Disposition Delay

The hazard rate ratios from the Cox proportional hazard estimates of disposition delay are presented in Table 11. We estimate the Cox proportional hazard model

for each province on three subsamples: a pooled sample, which includes the election and card-check regimes; the election regime; and the card-check regime. We also conduct an analysis that includes a set of dummy variables controlling for the identity of the BCLRB's chair and selected legislation in British Columbia, to explore the effects of variation in those factors.

The hazard rate ratios in Table 11 indicate that unfair labor practice complaints were associated with lower disposition hazard rates and, consequently, longer times to disposition. In most cases, the disposition date was the same as the certification date, and thus ULPs were associated with longer certification delays. In particular, estimates on the unfair labor practice complaints variable for the pooled sample show that a ULP filed against the employer was associated with a 30.5% reduction in the hazard rate for British Columbia, compared to a much larger 50.8% reduction for Ontario.

The difference across provinces in the effect of unfair labor practice complaints on the disposition hazard for applications is interesting because Ontario and British Columbia had very similar union recognition laws. Moreover, the amount of resources (or number of staff) that the labor relations board used per certification was also very similar across the two provinces. We again

Table 11. Hazard Rate Ratios for Cox Proportional Hazard Model Estimates for Time until Disposition of the Certification Application.

Variable	British Columbia			British Columbia—Including Chairpersons			Ontario		
	Pooled	Election Regime	Card-Check Regime	Pooled	Election Regime	Card-Check Regime	Pooled	Election Regime	Card-Check Regime
ULP vs. Employer	.695*** (8.66)	.736*** (4.52)	.740*** (5.54)	.691*** (8.66)	.732*** (4.61)	.738*** (5.53)	.492*** (10.93)	.446*** (7.44)	.521*** (7.95)
Bargaining Unit Size	.996*** (6.51)	.997*** (3.32)	.997*** (3.91)	.996*** (6.51)	.997*** (3.66)	.997*** (3.91)	.999*** (4.66)	.999*** (3.10)	.998*** (3.25)
CLC Union	1.151*** (3.03)	1.078 (0.25)	1.158*** (2.51)	1.127*** (3.03)	1.026 (0.42)	1.141*** (2.51)	1.090** (1.91)	1.142* (1.83)	1.083 (1.35)
Independent Union	.997 (0.03)	.936 (0.84)	1.109 (0.99)	.997 (0.03)	.941 (0.52)	1.116 (0.98)	1.020 (0.36)	.837* (1.78)	1.167** (2.27)
Compulsory Election Regime	.525*** (5.22)	—	—	.649*** (5.22)	—	—	1.128*** (3.05)	—	—
Election Held	—	—	.566*** (6.76)	—	—	.579*** (6.77)	—	—	.542*** (7.84)
1984 LCA Act Cases	—	—	—	.739*** (2.63)	.645*** (3.77)	—	—	—	—
Peck (1987 IR Act)	—	—	—	1.002 (0.03)	1.026 (0.11)	—	—	—	—
Lanyon (1987 IR Act + 1993 LRC)	—	—	—	Omitted Category	Omitted Category	Omitted Category	—	—	—
Oleksiuk (1993 LRC)	—	—	—	.998 (0.04)	—	.969 (0.55)	—	—	—
Mean Disposition Time	21.76	23.79	20.24	21.76	23.79	20.24	61.97	50.57	68.97
Log Likelihood	-20,874.09	-7,305.55	-11,704.97	-21,886.78	-8,211.76	-11,710.39	-20,770.14	-6,768.60	-11,978.60
$\chi^2$ Statistic (All Coefficients = 0)	326.21***	124.04***	175.94***	336.13***	134.50***	165.11***	230.94***	121.31***	223.95***
Number of Observations	3,052	1,277	1,775	3,052	1,277	1,775	2,963	1,069	1,894

Notes: Estimates are reported as hazard ratios. Standard errors are in parentheses. The dependent variable is the number of days from the certification application date to the disposition date. The omitted union category is an international union. Other covariates include dummies for industry, region, month, and year.

\*Statistically significant at the .10 level; \*\*at the .05 level; \*\*\*at the .01 level.

turn to two potential explanations that were raised in our discussion of non-compliance with election time limits, where we found that ULPs increased the odds of non-compliance in Ontario but not in British Columbia. First, the presence of an expedited ULP procedure in British Columbia's election regime but not in Ontario's is consistent with a larger ULP effect in Ontario. Recall that the evidence in Table 7 suggested that such procedures may reduce ULP decision times. Second, our case and qualitative evidence indicating increased litigation tactics in Ontario, but not in British Columbia, is also a possible explanation, for reasons outlined earlier.

The models estimated in the pooled sample in Table 11 also include a dummy variable for the mandatory election legislative regimes (1987–92 for British Columbia; December 1995 and thereafter for Ontario). For British Columbia, the mandatory election regime was associated with longer processing times (a 47.5% decrease in the disposition hazard). For Ontario, the results suggest that processing times were shorter under the mandatory election regime (a 12.8% increase in the disposition hazard). Because of the differences in the underlying distribution of election delay, it is difficult to interpret these findings. In particular, note that mean disposition times in British Columbia under elections vs. card-checks were 23.8 and 20.2 days, respectively (see Table 11), whereas for Ontario, in contrast, the corresponding numbers are 50.6 and 69 days.

Also presented in Table 11 are estimates from a specification with a set of dummies to control for how disposition time for applications was affected by the identity of the person chairing the BCLRB and by certain legislation in British Columbia. The chair dummies were not statistically significant in any of the models we estimated. However, the hazard rate ratio on the 1984 LCA Act dummy, which includes the period when John Kinzie was chair of the BCLRB, was associated with a 26.1% decrease in the disposition hazard in the pooled sample (that is, longer delays). Based on the election regime data, the hazard rate ratio on this dummy variable was even larger, indicating a 35.5% decrease in the disposition hazard. We cannot say for

certain whether this coefficient is picking up the effect of the 1984 LCA Act or the Kinzie bureaucratic regime. The former would be a plausible explanation because the 1987 IR Act (the comparison regime in the election regression)—in addition to introducing time limits as a statutory requirement and expedited ULP procedures—made various changes to the processing of labor relations applications and generally introduced a “culture of efficiency.”<sup>14</sup>

We also conducted some further analyses with our British Columbia data, because those data contain some additional information that allows us to control for whether the ULP was filed before the election as well as whether the employer filed a submission. These analyses are presented in Tables 12 and 13.

In Table 12, we use the subsample of the data from British Columbia that includes information on employer submissions. Our model specification includes the employee/union-filed ULP variable as well as a dummy variable controlling for submissions filed by the employer. The estimate on the employee/union-filed ULP variable indicates that these sorts of complaints were associated with a statistically significant 34% decrease in the disposition hazard. This effect is very similar to the estimates on the ULP variable presented in Table 11. The effect of employer submissions on the disposition hazard is even larger. In particular, an employer-filed submission is associated with a statistically significant 68% decrease in the disposition hazard. The implication is that management opposition to certification through submissions that objected to the terms of the application (bargaining unit appropriateness, card-check evidence, and so on) were more effective in extending the time for the disposition of an application than were activities that would have caused the union to file a ULP against the employer. This finding echoes our investigation of

<sup>14</sup>This culture was initiated through the IR Act under Section 27 (which outlines the purpose of the Board); specifically, it requires the Council to exercise its statutory responsibilities “so as to achieve the expeditious resolution of labour disputes.”

Table 12. Hazard Rate Ratios for Cox Proportional Hazard Model Estimates for Time until Disposition of Certification Application, British Columbia, 1986–1989.

<i>Variable</i>	<i>Estimate</i>	<i>Variable</i>	<i>Estimate</i>
ULP Filed against Employer	.661*** (3.86)	Independent Union	1.293 (0.42)
Submission Filed by Employer	.318*** (7.03)	1984 LCA Act Cases	.631*** (4.29)
Bargaining Unit Size	1.000 (0.99)	Mean Disposition Time	24.17
CLC Union	.750* (1.70)	Log Likelihood	-2975.81
		$\chi^2$ Statistic (All Coefficients = 0)	71.62***
		Number of Observations	618

*Notes:* Estimates are reported as hazard ratios. *t*-statistics are in parentheses. The dependent variable is the number of days from the certification application date to the disposition date. The omitted union category is an international union. Other covariates include dummies for industry, region, month, and year.

\*Statistically significant at the .10 level; \*\*\*at the .01 level.

non-compliance with time limits for British Columbia presented in Table 5, in which we found that employer submissions greatly increased the odds of non-compliance with the time limits.

In Table 13, we perform the same robustness checks as earlier in the paper by separating ULPs into those complaints filed before the election versus those filed after. We estimate this for the pooled sample, as well for the election and card-check regimes. In the pooled sample, ULPs filed before and after the election were associated with decreases of, respectively, 37% and 16% in the disposition hazard. Clearly, the disposition time of the application was prolonged more by pre-election ULPs than by post-election ULPs. The size of this effect is even larger when we look at the election regime subsample, with employee/union-filed ULPs filed before the election being associated with a statistically significant 43% decline in the disposition hazard. On the other hand, during the period covered by card-check legislation, employee/union-filed ULPs are found to have had a smaller, though still statistically significant, negative effect on the disposition hazard (27%). In summary, these estimates suggest that employee/union-filed ULPs against the employer will be associated with longer disposition times when they are filed prior to an election than when they are filed after, particularly in a card-check regime.

## 6. Concluding Remarks

We have examined a number of different aspects of the role of delay in the union certification process using data from British Columbia and Ontario. Our analyses have focused, in particular, on non-compliance with time limit legislation, as well as election delay with no provisions for quick votes; ULP decision times; the effect of election delay on union success in elections across different policy regimes; and the determinants of the delay in disposition of certification applications. Several findings are of interest.

First, we found that unfair labor practice complaints were associated with an increase in the odds of non-compliance with the time limits mandated by quick-vote legislation in Ontario, and were also positively correlated with election delay when no time limits were in place. In British Columbia, where there was very little non-compliance with time limits (under statutory requirements), the estimate on the unfair labor practice complaint variable was not statistically significant. In an analysis using a smaller sample (due to limited data availability), we also found that in British Columbia, submissions filed by employers objecting to the petition requirements or voter's list were associated with a huge increase in the odds of election delay. As well, the introduction of a formal expedited ULP hearing process under the

Table 13. Hazard Rate Ratios for Cox Proportional Hazard Model for Time until Disposition of Certification Application, British Columbia Alternative Specifications.

<i>Variable</i>	<i>Pooled</i>	<i>Election Regime</i>	<i>Card-Check Regime</i>
ULP vs. Employer before Election	.629*** (8.94)	.569*** (3.99)	.732*** (5.59)
ULP vs. Employer Filed after Election	.838** (2.28)	.866* (1.69)	.893 (0.49)
Bargaining Unit Size	.996*** (6.76)	.997*** (3.89)	.997*** (3.96)
CLC Union	1.128*** (3.07)	1.026 (0.43)	1.141*** (2.52)
Independent Union	1.008 (0.11)	.959 (0.35)	1.117 (0.98)
Compulsory Election Regime	.618*** (5.70)	—	—
Election Held	—	—	.566*** (6.69)
1984 LCA Act Cases	.704*** (3.02)	.605*** (4.19)	—
Peck (1987 IR Act)	.993 (0.08)	1.010 (0.11)	—
Lanyon (IR Act + 1993 LRC)	Omitted Category	Omitted Category	Omitted Category
Oleksiuk (1993 LRC)	1.008 (0.15)	—	.972 (0.49)
Mean Disposition Time	21.76	23.79	20.24
Log Likelihood	-21882.30	-8213.28	-11709.98
$\chi^2$ Statistic (All Coefficients = 0)	345.10***	131.46***	165.92***
Number of Observations	3,052	1,277	1,775

Notes: Estimates are reported as hazard ratios. t-statistics are in parentheses. The dependent variable is the number of days from the certification application date to the disposition date. The omitted union category is an international union. Other covariates include dummies for industry, region, month, and year.

\*Statistically significant at the .10 level; \*\*at the .05 level; \*\*\*at the .01 level.

1987 IR Act was associated with a substantial decrease in ULP decision times.

Second, we examined whether there was a link between delay and subsequent union outcomes. Under compulsory elections, we found that in Ontario (time limit law, 16% “non-compliance”), elections delayed past ten days were associated with a large decrease in the odds of a union victory. In British Columbia, the period we study saw a change in time limit parameters *within* the election regime. The results indicate that under very low non-compliance (3%) there was no correlation between election delay and certification success, but during the high non-compliance period (26%), election delay was associated with a very substantial decrease in the likelihood of a union win.

For election contests within the card-check regimes, we found that in Ontario (no time limits; median delay of almost 50 days) election delay was also associated with a very substantial reduction in the union win rate, while in British Columbia (time limit law, 15% non-compliance) election delay did not have a statistically significant effect on certification success (although the coefficient was just outside conventional significance levels). Moreover, we also find that the effectiveness of employer opposition, as measured by ULPs, increased with election delay. This occurred in both union recognition regimes; for the election regime the pattern is particularly compelling, with the ULP odds ratio rising from 26% (B.C. IR Act, 3% non-compliance) to 46% (Ontario LR Act, 16% non-compli-

ance) to almost 60% (B.C. LCA Act, 26% non-compliance).

Third, we find that in both provinces unfair labor practice complaints were associated with an increase in the disposition time of an application. In Ontario, the ULP variable was associated with about a 50% decrease in the disposition hazard, while in British Columbia the effect was much smaller at 30%. Employer objections were associated with even larger increases in disposition delay.

What do the results suggest for labor law reform and union organizing in North America? We believe the key implications of the results are twofold.

First, and foremost, the findings suggest that time limit laws for elections can be an effective tool for ensuring a fair union certification process. In British Columbia under the 1987 IR Act, non-compliance was only 3.2%. Under this regime we found no link between election delay and union win rates. When non-compliance was much higher (Ontario in the election regime and British Columbia's election regime under the 1984 LCA Act), or when no time limits of any form were in place (Ontario during the card-check regime), election delay had a strong, negative effect on union win rates. Moreover, the negative impact of ULPs on union win rates increased (in absolute value) as election delay increased. It is also true, however, that we found the largest ULP effects for periods when no expedited ULP procedures were in place. Ultimately, we do not have sufficient variation in time limit parameters and expedited ULP procedures to disentangle these two potential effects. Given our other evidence on the impact of ULPs (and other complaints) on election delay, it does seem clear that the roles of ULP processing and election delay in the union organizing process were intertwined. Overall, the B.C. 1987 IR Act regime—under which non-compliance was very low, and time limits were coupled with expedited ULP hearings—was clearly the best from the standpoint of mitigating the suppression effects of ULPs and election delay.

Second, the findings raise a new dimension relevant to the long-standing issue of how to deal with unfair labor practices.<sup>15</sup> The United States and Canada differ substantially in their approaches to amending labor legislation to deal with unfair labor practice complaints. Whereas the U.S. approach focuses on introducing punitive sanctions for employer misconduct, the Canadian approach concentrates on reducing delays in remedying and holding hearings for unfair labor practice complaints.<sup>16</sup> Over the past thirty years, several bills introduced in the U.S. Congress have proposed reforming NLRA remedies for unfair labor practice complaints, but no such legislative attempt has yet succeeded.<sup>17</sup> The recurring theme

<sup>15</sup>As noted, we also find that *legal* employer objections to a component of the application substantially increased non-compliance as well as the overall length of certification delays. There are already institutional options in place to prevent this (for example, holding the election in a timely manner, double-sealing the ballots, and conducting the investigation at a later date); clearly, more monitoring is needed to ensure that these mechanisms are used where appropriate.

<sup>16</sup>Examples include allowing the Board to make interim remedial orders (including to reinstate terminated workers) on an expedited basis, to be followed by a full hearing; requiring an expedited process for cases of termination or discipline during organizing; and proposals to require that discharge and discipline be subject to Board supervision from the point at which the employer has knowledge of union organizing, whether or not a certification application has been filed (see *Partnership and Participation in the 1990s: Labour Law Reform in Ontario* Report of the Labour Representatives to the Labour Law Reform Committee of the Ministry of Labour, Hon. Bob Mackenzie, Minister).

<sup>17</sup>In 1977, proposed amendments passed the House of Representatives, but not the Senate (*Labor Reform Act of 1977*, H.R. 8410, 95<sup>th</sup> Cong. (1977); S. 2467, 95<sup>th</sup> Cong. (1978)) [the "Carter Bill"]. More recently, the *Employee Free Choice Act*, H.R. 3619, 108<sup>th</sup> Cong. (2003); S. 1925, 108<sup>th</sup> Cong. (2003) [the "2003 EFCA"] and *Employee Free Choice Act*, H.R. 1696, 109<sup>th</sup> Cong. (2005); S.842, 109<sup>th</sup> Cong. (2005) [the "2005 EFCA"] were introduced, but were cleared from the books at the end of their respective Congressional sessions. Virtually the same proposals were revived for the *Employee Free Choice Act*, H.R. 800, 110<sup>th</sup> Cong. (2007); S. 1041, 110<sup>th</sup> Cong. (2007) [the "2007 EFCA"], which was passed by the House of Representatives and has been referred to the Senate Committee on Health, Education, Labor, and Pensions. The President has stated that he will veto the 2007 EFCA if it passes the Senate.

in these periodic proposals is the emphasis on punitive penalties for employer misconduct.<sup>18</sup> Only once, with the “Carter Bill,” was a proposal made to expedite processing of unfair labor practice cases, and this proposal was not revived by the Dunlop Committee or the Employee Free Choice Act.<sup>19</sup> At best,

a punitive approach might deter employers from engaging in unfair labor practice. This, however, does nothing to improve those situations where unfair labor practice complaints do occur, and, in particular, it will not likely have any effect on delay in the certification process. The results of this paper suggest that if legislators focused directly on expediting hearings and access to remedies, their proposed reforms—which might have more bipartisan appeal and therefore an improved chance of passage—would be more likely to counter the certification-suppressing effects of employer unfair labor practices.

<sup>18</sup>Including proposals to: allow double or triple back-pay awards to employees unlawfully terminated during organizing or first contract negotiations (Carter Bill, 2003 EFCA, 2005 EFCA, 2007 EFCA); impose substantial civil penalties (up to \$20,000) on employers who willfully or repeatedly commit ULPs such as unlawful termination during organizing or first contract negotiation (2005 EFCA, 2007 EFCA); and debar companies found to have substantially and willfully breached an NLRB order or court-enforced Board order from future federal government contracts for three years (Carter Bill).

<sup>19</sup>However, proposals have been made to require the NLRB to seek a federal court injunction promptly if there is reasonable cause to believe the employer has engaged in conduct significantly interfering with

employee rights during organizing or first contract negotiations. (2003 EFCA, 2005 EFCA, 2007 EFCA; the Carter Bill also contained a version of this. At present the NLRB is only required to seek such injunctions where an employer files a charge against unions for certain specified categories of misconduct.)

### Appendix 1

#### Union Certification Procedures in the United States

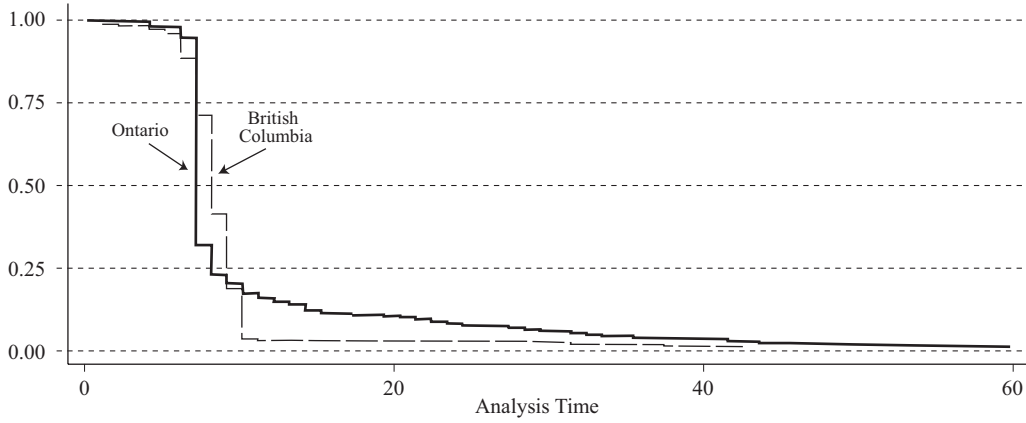
The NLRA essentially provides for two alternative routes to an election, and the legislation does not specify a time limit for holding a representation vote. The first, a consent or stipulated case, occurs where the employer voluntarily agrees with the union’s description of the unit applied for as well as related matters and, therefore, no pre-election hearing is necessary. Where the employer and union do not agree, a hearing will be ordered by the Regional Director or National Labor Relations Board to decide the pre-election issues. In these cases the employer can influence the vote date by raising objections to the proposed unit and requiring a pre-election hearing and decision.

Consent cases, approximately 80% of cases, are decided more quickly and with less formality than Regional Director- or Board-ordered elections (Holmes and Rogow 1994: cp1; NLRB “Representation Cases”). In these cases, the NLRB will generally schedule the vote six to eight weeks after the certification petition or application was filed. Cases requiring a hearing and decision take longer to come to a vote. Directors’ decisions generally take 45 days (though this is not a mandatory time limit), and NLRB guidelines indicate that directors will normally schedule elections between the 25<sup>th</sup> and 30<sup>th</sup> day after the date of their decision. However, this is not a mandatory time limit, and many situations will lead to a greater delay. In any event, an election may not be held less than ten days after the Board receives the list of names and addresses of eligible voters unless an economic strike is involved (NLRB “Representation Cases”; NLRB “Outline of Law and Procedure”).

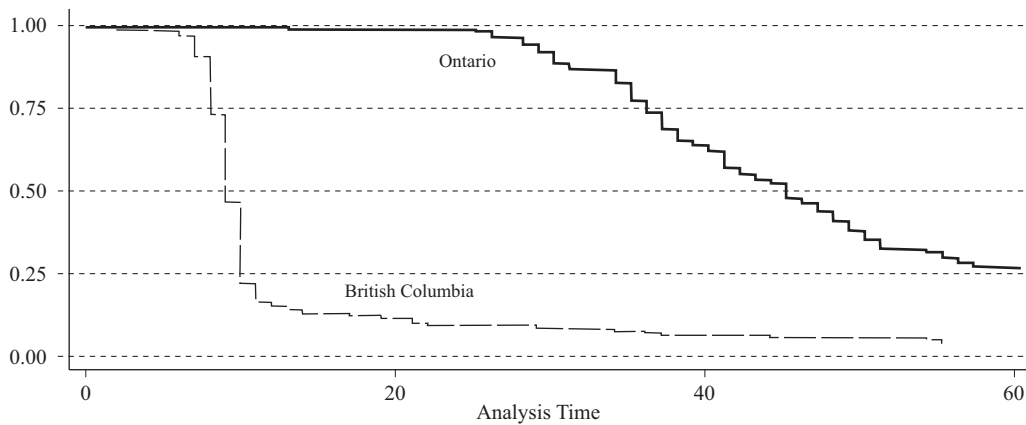
Once a vote is ordered, the remaining procedural steps are the same for each type of case. The NLRA does allow for expedited elections within 30 days of the commencement of recognition picketing by the union, if a certification petition has been filed (NLRB “Outline of Law and Procedure”).

As a result, in the United States, a very lengthy period may elapse between the date the union files a petition for a representation election (which is analogous to filing a certification application in Canadian jurisdictions) and the date of the representation election, and again between the election and the disposition date. Fifty days is the approximate median time between petition and election, with about 20% of votes occurring more than 60 days after the petition for election (“Fact Finding Report: Commission on the Future of Worker-Management Relations,” p. 68). In fiscal year 2006, for instance, there was a median of 39 days from the date the petition was filed to the vote date, and 94.2% of elections were held within 56 days of the petition being filed (National Labor Relations Board, General Counsel, *Summary of Operations: Fiscal Year 2006*, January 3, 2007, available at <http://www.nlr.gov>).

**Figure A1**  
**Survival Function of Election Delay: Election Cases under Time Limit Laws, Ontario vs. British Columbia**



**Figure A2**  
**Survival Function of Election Delay: Election Cases under Card-Check, Ontario vs. British Columbia**



**Figure A3**  
**Survival Function of Election Delay: Election Cases before and after the 1987 IR Act in British Columbia**

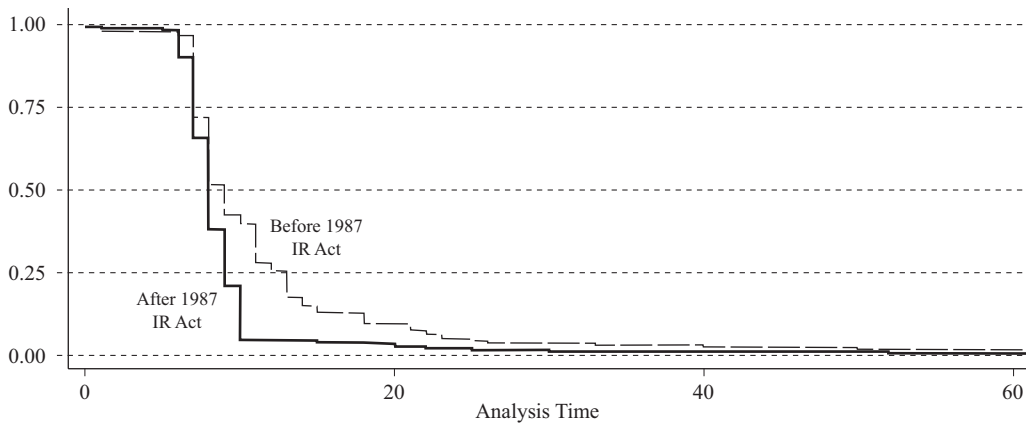


Table A1  
Complaints Filed in British Columbia.

Year	Complaints Filed During Union Certification, Micro-Data 1986–1989		Total Complaints Filed, Annual Reports 1984–1998						
	Submission Filed by Employer or Employees	Sec. 3 ULP Filed vs. Employer	Any Sec. 4 ULP Filed vs. Union	Sec. 3 Filed vs. Employer (# Dismissals)	Sec. 4(1), 4(2) Filed vs. Union	Sec. 4(3) Filed vs. Union	Sec. 5, 6, 7, 9 Filed by Employer	Sec. 5, 6, 7, 9 Filed by Employee	Sec. 5, 6, 7, 9 Filed by Union
1984	—	—	—	141 (80)	3	10	—	—	—
1985	—	—	—	139 (62)	3	12	—	—	—
1986 <sup>a</sup>	8	6	0	171 (74)	2	18	—	—	—
1987	23	53	1	162 (77)	1	18	—	—	—
1988	34	41	0	122 (53)	1	11	—	—	—
1989 <sup>b</sup>	13	22	1	164 (67)	4	12	—	—	—
1990	—	—	—	364 <sup>c</sup>	4 <sup>e</sup>	23 <sup>c</sup>	—	—	—
1991	—	—	—	341	3	19	—	—	—
1992	—	—	—	320	4	20	—	—	—
1993	—	—	—	—	—	—	35	53	693
1994	—	—	—	—	—	—	26	42	848
1995	—	—	—	—	—	—	29	50	770
1996	—	—	—	—	—	—	19 <sup>d</sup>	20 <sup>d</sup>	432 <sup>d</sup>
1997	—	—	—	—	—	—	33	18	573
1998	—	—	—	—	—	—	28	29	564

*Notes:* Complaints from the micro-data directly involve a union certification application and are based on the sample described in the “Data” section; complaints from the Annual Reports do not all involve a union certification application. Section 3 filings are ULPs filed against the employer for some type of activity designed to discourage employees from unionization. Section 4(1) and 4(2) cases are ULPs filed against the union for organizing activity on employer premises. Section 4(3) cases are ULPs filed against the union for activities that have the effect of influencing the unionization decision. For Section 3, the application could have been filed by the union or by employees (or both). For all Section 4 filings, the application could have been made either by the employer or by employees (or both). Following the 1993 Labour Relations Code, all of the latter ULPs (as well as some new categories) were grouped into a single category in the Annual Reports (Sections 5, 6, 7, and 9). The Annual Reports separate applicants into three categories—union, employee(s), and employer—but we do not observe the nature of the ULP and thus the numbers are not comparable to those for earlier years. For instance, some of the filings by employees could be equivalent to Section 3 complaints against the employer, while others could be equivalent to Section 4(3) complaints against the union.

<sup>a</sup>Includes only September–December.

<sup>b</sup>Includes only January–May.

<sup>c</sup>The BCLRB changed its system for counting multiple ULP applications, and the numbers are not comparable to those for earlier years.

<sup>d</sup>The BCLRB again changed the system for counting multiple ULP applications, and the numbers are not comparable to those for earlier years.

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