

ALBERTA LABOUR HISTORY INSTITUTE SUBMISSION TO LABOUR LAW REVIEW COMMITTEE

April 2017

The Alberta Labour History Institute (ALHI) is pleased to present this submission to the panel established by the Government of Alberta to consider amendments to Alberta's labour laws. ALHI was founded in 1999 by a group of trade unionists, social activists, academic historians and interested individuals who were committed to collecting, preserving and disseminating resources relating to Alberta's labour history. We welcome this review of our labour laws, as we believe it provides an historic opportunity to make badly needed changes to a legal regime that, from the workers' point of view, has been one of the most restrictive and backward-looking in the country.

The history of Alberta labour law demonstrates that, throughout most of our history, the dominant policy approach of the Alberta government has been to deny that workers, not owners of capital, are the creators of our province's wealth. This is why successive governments have advanced and protected the interests of employers at the expense of the workers who constitute the vast majority in our society. The brief outline history we provide below illustrates how some gains have been won by Alberta's workers over more than a century of struggle, but these have been repeatedly rolled back and frustrated by government laws and administrative actions that either restricted or denied their rights.

Master & Servant

Only one substantial labour law was on the books when Alberta became a province in 1905: the *Masters and Servants Ordinance* passed by the Assembly of the Northwest Territories in 1879. The basic premise of the law was that the employment relationship was one of subordination, based on a contract in which the employer (owner of capital) was the superior party and the employee was subordinate. It emphasized the obligations of workers to employers, establishing fines and prison sentences for workers who disobeyed owners, were insubordinate, or were absent from work without permission. The first labour law passed by the Alberta government, the *Public Service Act* of 1906, reinforced this power imbalance. It permitted government to set wages and hours of work for public employees without negotiating with workers collectively or individually. A request for a raise was a cause for automatic termination.

There is a popular assumption that, since then, collective agreements in conjunction with improvements to labour laws and administrative authorities, have brought the dark days of Master & Servant to an end, and that the relationship between the two parties to the employment contract is now properly balanced, needing only a slight 'tweaking'. Nothing could be further from the truth. Noted law professor Harold Glasbeek explains that the common law rules:

... which made workers the disadvantaged party in employment relationships ... still constitute the ruling framework, despite the fact that statutory collective bargaining has become the focus of public attention. This is so because collective bargaining is not universal. It is also true because, even when collective bargaining takes place, the new legal conceptual framework has not displaced the old one. This is what one would expect if it is correct, as argued above, that individual-contract-of-employment law was

peculiarly well-suited to satisfy the ruling ideology and if adherence to that ideology and all that it entails has not been publicly abandoned. ... Accommodation is not the same as capitulation. Given society's continued support for free market enterprise precepts, the law could be expected to rely on the tried and true means of supporting that economic and philosophical system.¹

Glasbeek's point can be seen in the historical developments we refer to in our brief outline. Statutes, regulations, court decisions and labour board decisions that appeared to signal gains for workers actually altered the relationship between master and servant only slightly. Employment is still a relationship of subordination. Residual power to manage or 'run the workplace' remains totally with the employer, qualified only to the extent that it is abridged by express language in (amongst others) statutes, regulations or collective agreement, backed by a dedicated administrative system. Therefore, if your government intends to make meaningful changes in our labour laws, it will have to greatly strengthen the wording in our laws and guidelines and follow this with clear direction to those whose duty it is to administer them.

Occupational Health & Safety

Pressure from fledgling unions of coal miners and various skilled workers resulted in some Alberta legislation before and during World War I that would potentially protect the health and safety of workers. However, counter-pressures from employers and government parsimony led to staffing insufficient to enforce the legislation. The *Coal Mines Act* of 1906, for example, included safety provisions for mines but did not make mine inspections mandatory. Over 1000 coal miners died while at work from 1906 to 1945. The biggest disaster was the Hillcrest Mining Disaster of June 19, 1914 when 189 men were killed. Experts hired by the union charged that the company had violated the *Mines Act* and failed to provide fresh air to each mine seam that would have rendered harmless the noxious gas that allegedly led to the explosion. The jury at the coroner's inquest concluded that the company had failed to follow the Act, but no penalty was given to those whose negligence had caused a slaughter. Other laws meant to protect workers' lives such as the *Building Trades Protection Act* of 1913 and the *Factories Act* of 1917 similarly failed because of insufficient inspection and enforcement.

On its face, the *Occupational Health and Safety Act*, introduced in 1976 by the Lougheed Government, appeared to respond to labour's call for the right of workers to (i) participate, (ii) be informed and (iii) refuse dangerous work. It fell short in its administration, however, in particular as it concerned worker participation. The Gale Commission Report, which had formed the basis for the new Act, made it very clear that the above objectives could only be achieved by fully functional joint worksite occupational health and safety committees (JWH&SC). The province refused to mandate these committees, however, designating them for only a handful of worksites, and thereby denied workers the on-the-ground protection they needed. Actual implementation of the spirit of the Act was further hampered by a shortage of inspectors and policy decisions that played down enforcement, emphasizing instead consultation and advance warning to employers.

¹ Glasbeek, Harry J., "The contract of employment at common law." in John Anderson and Morley Gunderson, eds. *Union-Management Relations in Canada* (Toronto: Addison-Wesley, 1982), 48.

The *Workmen's Compensation Act* of 1918 was perhaps the first labour legislation that delivered benefits to many workers. It replaced an earlier act in 1908 that provided benefits to some workers, or in case of death, to their families, if employer negligence caused the accident. Arbitrators in these cases rarely supported injured workers against managers. The new legislation, supported by the Alberta Federation of Labour, provided no-fault compensation, however at very low levels of replacement of wages. Early boards minimized reports of workers' injuries and often expected them to return to work before they had fully recovered or to take lower-paying work that required less physical strength. Domestic and farmworkers were excluded.

In 1982, however, the WCB stopped counting non-lost-time injuries, reducing the government's ability to be aware of and deal with the vast number of preventable accidents on worksites. The WCB began to focus even more on cost reduction at the expense of services to injured workers, even giving their own workers bonuses for denying or getting people off compensation. The culture of the Board must change, along with improved legislation and regulations.

Collective Bargaining Rights

Alberta's workers had almost no legal rights or protections to engage in collective bargaining at the time our province was born. Collective agreements were primarily won through collective action and were not regarded as enforceable by law. Employers retained the arbitrary right to fire workers for participating in a union, or for any other reason. Workers in a number of sectors organized anyway, compelling employers to the bargaining table by sheer collective power.

The particularly violent confrontation in 1907 between the mineworkers in Lethbridge (members of the United Mine Workers of America) and Alexander Galt's Alberta Railway and Irrigation Company provides a good example of this. The federal government responded with the *Industrial Disputes Investigation Act* (IDIA), legislation applied initially to federally regulated industries, public utilities, and coal mines. It required conciliation before strikes could occur, allowing employers to increase inventories and hire strikebreakers before any strike could begin. It was the brain child of William Lyon Mackenzie King, Canada's first deputy minister of Labour, and stood until its applicability to provincial industries was challenged in *Toronto Electric Commission v. Snider*.² After this, Alberta passed the 1927 *Labour Disputes Act* adopting the federal conciliation processes for industries within provincial jurisdiction.

The period during and immediately after World War One was a difficult one for Alberta workers, as they were subjected to an assault on their civil and political rights, including surveillance, censorship, internment and deportation in the midst of which employers were able to roll back many of the gains workers had made during the war. The federal government introduced Section 98 of the *Criminal Code of Canada* in response to the 'Great Labour Revolt' which appeared after the war. It gave the state extraordinary powers to deal with actual and apprehended threats to law and order, such as the Winnipeg General Strike and the sympathy strikes that took place that spring. The fact

² Anecdotal evidence is that a similar challenge to federal authority was made in the Edmonton Transit strike in 1920, and that a consent order from the Alberta Supreme Court was obtained holding that the Dominion legislation did not apply, obviating the need for conciliation.

that the government viewed the strikes as much more than a labour issue was clearly evidenced in the section on sedition, which appeared in the Code:

Any association, organization, society or corporation whose professed purpose, or one of whose purposes is to bring about any governmental, industrial or economic change in Canada by use of force, violence, terrorism, or physical injury to person or property, or threats of such injury in order to accomplish such change or for any other purpose or which shall by any means prosecute or pursue such purpose or professed purpose or shall so teach, advocate, advise or defend, shall be an unlawful association. Any person who acts or professes to act as an officer of such unlawful association and who shall sell, speak, write or publish anything as the representative or professed representative of any such unlawful association, or become and continue to be a member thereof, or wear, carry or cause to be displayed upon or about his person or elsewhere a badge, insignia, emblem, banner, motto, pennant, card, button or other device whatsoever, indicating or intended to show or suggest that he is a member of or in anywise associated with any such unlawful association, or who shall contribute anything as dues or otherwise to it or to anyone for it, or who shall solicit subscriptions or contributions for it, shall be guilty of an offence and liable to imprisonment for not more than twenty years.³

The law, ostensibly directed against Bolshevik-style subversion, amounted to a direct attack against the labour movement which was viewed as a challenge to the state. It granted wide powers to government and law enforcement officers. Although Mackenzie King was reluctant to use its powers during the 1920's, it came into full force in the early 1930's to harass Communists, other left parties and organizations, and [labour unions](#) generally.^[2] As a result of public opposition, the law was finally repealed in 1936 following the re-election of [Mackenzie King](#)'s Liberals.

The workers' cause received a brief lift, when the United Farmers of Alberta (UFA) formed the provincial government in 1921. The UFA government invited Alex Ross, one of four Labour members elected that year, to join the Cabinet, and in 1922, the government legislated a minimum wage for women. Trade union representatives joined employer representatives on the Workmen's Compensation Board, resulting in somewhat better treatment for compensation applicants. Ross was defeated in the 1926 provincial election, and although six Labour members won their seats, the UFA failed to name any of them to Cabinet. Over the next nine years, the trade unions' main complaint was that the UFA government failed to enforce its legislation. In 1935, for example, Edmonton waitresses unionized and went on strike simply to get café owners to pay the legal minimum wage for women. During the Great Depression, the UFA government brutally suppressed hunger marches and strikes by coal miners.

The 1935 U.S. 'Wagner Act', promulgated as part of FDR's New Deal, led to pressure for similar Canadian legislation, and the election of a Social Credit government in 1935 brought some positive changes in this direction. The Alberta Teachers' Alliance (now Alberta Teachers' Association) formed in 1917 as a voluntary organization of teachers who protested school boards' unilateral imposition of pay and working conditions and the

³ Jerry Petryshyn, "Class Conflict and Civil Liberties: The Origin and Activities of the Canadian Labour Defense League," *Labour/ Le Travail*, 10 (Autumn 1982), p.50.

docking of a portion of their pay during the war to help the war effort. In 1936, with union organization increasing across the province, legislation made membership in the ATA compulsory for all teachers. In 1937, the *Freedom of Trade Union Association Act* declared collective bargaining contracts enforceable legal documents and provided procedures for certification of unions as bargaining agents, making Alberta only the second province in Canada to make collective bargaining a legally protected procedure.

In 1938, however, the Social Credit government passed legislation containing strike-delaying tactics equivalent to the IDIA. The *Industrial Conciliation and Arbitration Act* was actually advocated by the Canadian Trades and Labour Congress to replace federal conciliation.⁴ A Board of Industrial Relations was created that year to administer minimum wage laws and “labour schedules” set out in the *Industrial Standards Act* of 1935.⁵ Finally, a new inspectorate was created to enforce employment standards.

During the early years of the Great Depression, workers in most fledgling processing and manufacturing industries found themselves outside the trade union movement looking in. Workers in Alberta’s lumber camps and the meatpacking plants organized their own unions to challenge miserable working conditions. In 1938, the newly organized International Woodworkers of America held two strikes to challenge companies that were paying poverty wages, and had raised the charge for room and board to a level that many described as ‘intolerable.’ By 1949, the union had organized four companies and had about 1,000 members.

During World War II, Orders in Council imposed under the *War Measures Act* were used first to impose wage and price controls, and secondly, to regulate labour relations in both the federal and the provincial spheres.⁶ A Wartime Labour Relations Board was established with sweeping powers in this area, and George Bligh O’Connor, Alberta’s Chief Justice from 1950-1957,⁷ became its chair, presiding over Canada’s first comprehensive labour legislation.

A record number of strikes, particularly in the mining sector, led the federal government on 17 February 1944, to issue Privy Council Order 1003, the *Wartime Labour Relations Order*, the first comprehensive Canadian *Wagner Act* style labour legislation. Employers were required to negotiate with unions recognized by a labour board established by the federal government. After the war the federal government replaced the wartime measures with the *Industrial Relations and Disputes Investigation Act*, the predecessor to the *Canada Labour Code*. Provinces resumed their control over labour matters within their peacetime jurisdiction and passed legislation to respond to the provisions of PC 1003 for workers outside of federal jurisdiction.

⁴ This legislation was passed against the backdrop of contentious and difficult organizing campaigns at the Burns, Swifts Canadian and Gainers Packing Houses in Edmonton. This was not to be the last time that a Gainers’ strike led to a “change the law” campaign.

⁵ For a discussion of that Act see Max Wershoff, Industrial Law Research Council, *The Industrial Standards Act of Alberta*, prepared for the Labour Law Research Institute, Volume 2, No. 4, November 1937.

⁶ Most provinces cooperated in having the federal regulation apply to provincial industries, often through a provincial board subject to an appeal to the federal board.

⁷ For a summary biography, see C. J. Ford, “The Honourable George Bligh O’Connor , A Tribute,” *Alberta Law Review* (Fall 1957).

As the war ended, the federal government gradually lifted price controls, fuelling inflation that ate away workers' wartime wage gains. This led to a strike wave in 1945-1946, centered in Ontario, that won the "Rand formula" for many unions, which requires that all workers in a unionized shop must pay dues. This put unions on a better financial footing.

Industrial unions

By 1935, meatpacking was the largest manufacturing and processing industry in the province, with about 1500 employees accounting for about 22% of all manufacturing employment in the province – 38% when combined with the flour and feed industry. Most were unorganized, and working conditions were generally brutal. The 'shape-up' required all workers to assemble early in the dressing room to see if they would be chosen for work that day by the foreman – with no regard to seniority or skill. Not a cent would be received for time in the dressing room. Secondly, the 'speed-up' forced workers to risk injury to avoid the constant threat of firing.

The defeat of the original union at the hands of Pat Burns in 1920 and the bullying of workers in meatpacking plants lasted until the late Thirties, when workers finally found a union that would take on Pat Burns, Canada Packers, and Swifts. The Canadian Victuallers and Caterers Union was a Branch of the All Canadian Congress of Labour, and although the strike into which it led workers in 1936 was unsuccessful, it prepared meatpackers for the successful actions they would take during and after the war years.

During World War II, all the big packing plants in Edmonton were organized, first by directly chartered TLC locals, and then by the United Packinghouse Workers (UPWA) of the CIO. UPWA lost a number of its first certification applications because of a quirk in the law which illustrated how it can be used to deny workers their association rights. Regulations at the time dictated that, in order to be certified, a union had to be chosen by a majority of *all* workers – giving the employer the right to produce a list of workers that might not have been in the plant for some time. After the union succeeded in overcoming this barrier in 1945, it put forward a demand for national bargaining – the only way that workers could avoid having the company play off one plant against the other. When it threatened a strike at Canada Packers, however, the federal government used its wartime powers to take over all the plants. In 1947, a major strike against Canada Packers, Swifts and Burns finally brought in 'pattern bargaining', but only after packinghouse workers across Canada joined in the action. At its peak, 14,150 workers from 47 plants across Canada were out on strike forcing the employers to concede.

Alberta's Premier Manning responded angrily to this display of worker power, amending the *Alberta Labour Act* in 1948 to make both unions and their leaders responsible for actions of their members, and imposing steep fines on violators. He furthermore gave his government the right to place meatpacking under the provisions of the IDIA. Union organizers would thereafter require employer permission to organize in the workplace, and if a strike was declared illegal, the existing collective agreement would be automatically terminated. The years that followed were unkind to organization by legitimate unions as opposed to the company unions. In 1957, for example, the Board of Industrial Relations dismissed charges of intimidation by a union in a case where all activists had been fired and the employer had affirmed its recognition of a company

union, which after eight years of official status, had never negotiated a formal contract.

In 1947, after yet more strikes in the coal industry, Alberta passed a comprehensive *Labour Act* encompassing employment standards and collective bargaining, all to be administered by a Board of Industrial Relations. It was, however, one of the most anti-labour of all the resulting provincial labour laws, as Premier Ernest Manning considered trade unions to be tools of an international communist conspiracy. He wanted, in particular, to keep unions out of the oil industry, which he saw as the key to the province's economic future after the Leduc discovery in February of that year. Specific voting procedures and the interventionist powers granted to the Board of Industrial Relations made it difficult to win certification, and company unions proliferated with the expansion of the oil industry, providing an effective strategy for companies to keep legitimate unions out of their worksites.⁸

Government intervention

Government intervention has been prominent in Canadian industrial relations from the beginning. In a Task Force Report for the Canadian government, Stuart Jamieson comments that the government played a prominent role in labour disputes through its police forces, primarily the RCMP, noting that there are not the sharp restrictions on the use of police in Canada that there are in the USA. "The RCMP has thus become a highly-pervasive force in Canadian society. Its presence has been felt with enough force to tip the scales of battle in hundreds of strikes and labour demonstrations. ... The particular image ... which this situation has generated in the eyes of many in the ranks of organized labour, in all probability has had a profound effect on the climate of labour relations in this country."⁹

The police, however, were acting within a framework of laws and administrative machinery that, while providing apparent support for worker rights and collective bargaining, would in reality restrict any activity that would threaten the status quo. The Fifties provide ample illustration, as they were relatively quiet even though a shortage of labour put unions in a good bargaining position, and gains were made in income, job security and other benefits. Human resource management had switched from 'force' to 'manipulation' in its approach to worker control, elaborating on a tradition promoted by the late William Lyon Mackenzie King and PC 1003.

The practice of active government intervention in labour disputes was seen in a Canada-wide strike of 125,000 non-operating employees from August 22-30, 1950 against both the CPR and the CNR. It began amidst exaggerated reports of food shortages and other difficulties, even though 'mercy trains' were allowed by mutual agreement to ship needed supplies to isolated communities. Once again, the government used a war to justify 'exceptional' measures to limit workers' collective bargaining rights; in this case, it was the Korean War, in which Canada had become engaged against widespread opposition. On August 29, 1950, the federal government called an emergency parliamentary session

⁸ Alberta continues to be the home of the company union to this day, with organizations such as the Christian Labour Association of Canada (CLAC) signing voluntary recognition and other 'deals' with employers, thereby closing the door on any union organizing,

⁹ Stuart Jamieson, *Times of Trouble: Labour Unrest and Industrial Conflict in Canada, 1900-66*, Task Force on Industrial Relations (Ottawa: Information Canada, 1968), p. 54.

to enact the *Maintenance of Railway Operations Act*, which compelled the parties to return to the bargaining table, and if unsuccessful, to submit their proposals to an arbitrator. Minor gains were realized in the report.

Another railway strike was taken against the CPR in 1957 by the Locomotive Firemen and Enginemen, involving 2,850 employees directly and another 65,150 indirectly. It arose out of the CPR's plan to dispense with firemen on its diesel engines and in the freight yards, and lasted from January 2 to 11. The government appointed a 3-man commission under Justice R.L. Kellock which, after a year, came back with a report supporting the company's position. Plans for a strike collapsed when it was learned that the other railway unions would not support the Firemen.

The Province began to respond to growing expectations by workers and their unions by introducing emergency "back-to-work" legislation in 1960. In fact, the entire Labour Act underwent revision in 1970, as these measures became the norm. What became particularly striking in the 1970s was a shift towards new coercive measures through legislation at both federal and provincial levels. Not only was back-to-work legislation introduced with increased frequency and wider application but it was also introduced with greater dispatch after the onset of a dispute and with less parliamentary debate. In addition, governments began legislating increasingly onerous penalties for union members defying the law.

Picketing: Much of the coercion by governments has been directed at the workers' right to picket, the primary method through which strikes become effective. At the same times as the amount of labour legislation steadily grew, courts retained most of their original influence with respect to picketing and injunctions, which often put them front-and-centre in major labour disputes. This, in conjunction with their role in strike-related criminal proceedings, put them in a position where they would be seen by labour as opposed to the interests of working people.

While the right to strike has clearly existed in law since W.L.M. King's 1907 legislation, there has been no clear expression of any parallel right to picket. Such rights have always been subject to qualifiers like "without acts that are otherwise unlawful" and regulated by a variety of rather vague Victorian economic torts¹⁰ which, until 1988, remained within the Courts' jurisdiction. In the early years, police and private security firms controlled picketing using trespass laws and criminal offences like watching and besetting and unlawful assembly. Today, picketing is recognized as a form of free expression, but only after the Charter did it become a protected legal right.

A prime vehicle through which the courts have exercised control over picketing has been the preliminary injunction. It has always been regarded as one-sided, mainly because the legal principles on which it is based focus on property rights rather than workers' right to promote their cause. Even where the struck employer might not apply, there could always be another business, property owner, or group of employees who could claim that their interests are affected and apply for an injunction. The application of injunctions tends to be even more one-sided, because an interim injunction can be granted on an *ex parte* basis and enforced on short notice.

¹⁰ These include conspiracy (in a variety of forms), intimidation, inducing breach of contract, and its less decisive sister, interference with contractual relations.

Finally, injunctions, by their very nature, almost always restrain only the union, as one noted authority explains:

*The labour movement views the injunction as a strikebreaking tool by the use of which management is able to enlist the Court as an ally in the struggle against a striking union. There can be little doubt, in the view of organized labour, that the injunction represents an abuse of the judicial process when used in an industrial dispute; this widely-held view does little to increase public respect for the Courts and for the law.*¹¹

Every legislative review, from 1937 forward, has heard workers and their unions complain about injunctions being too freely available, notwithstanding mild procedural reforms in the way they are granted. Applicants have felt free to ask any judge to hear their motion, often in off-hours, and any prohibition on *ex parte* injunctions could always be avoided through applications by third parties who could claim to be affected.¹²

Two cases illustrate how the right to picket has been restricted in the past. *Edinburgh Developments et al v. Vanderlaan*¹³ arose when two construction unions struck a commercial office building site and members of other unions honoured their picket lines. The court held that the picketing by the strikers themselves was unlawful because it encouraged other workers to breach their contracts with their employers. It discounted the effect of Labour Act amendments legalizing picketing at one's place of work during a lawful strike. The judge ruled:

I do not think that the permissive right given to ... engage in direct picketing can serve or justify prohibited secondary picketing [at the same site] which is also an inescapable consequence of the picketing. The permission can be exercised only "without acts that are otherwise unlawful." The picketing in fact was otherwise unlawful since it necessarily constituted [secondary picketing].

The second case, *Pacific Western Airlines v. U.A.W.*,¹⁴ involved mass picketing which resulted in some violence at the Calgary Airport. The Court rejected the argument that the applicant needed to establish irreparable harm in order to get an injunction saying:

... unlawful acts by picketers will be enjoined whether or not irreparable harm is established. Moreover, where it is shown that certain activities have led to the commission of the unlawful acts, those activities will be so controlled as to prevent further similar problems, while leaving each side in the dispute free to pursue legitimate goals by legitimate means.

...

It is not the legitimate or lawful purpose of picketing to threaten or intimidate others or physically to prevent or hinder ingress to or egress from the employer's premises. Lawful picketing is informational or persuasive in character; it is not coercive or intimidating.

The Court went further and authorized restrictions on the size of picket lines saying:

¹¹ *The Labour Injunction in Alberta*, Kenneth P. Swan [1970] Alberta Law Review 9,1, pp 1-2

¹² See: *Nichol v. MacLaren* (1965) D.L.R. (2d) 667 (Riley J.)

¹³ (1974) 43 D.L.R. (3d) 354 (Alta. S.C.A.D.) leave to appeal to the S.C.C. refused 52 D.L.R. (3d) 479. A dissent by Justice Prowse suggested the majority result "rendered the right to picket nugatory".

¹⁴ [1986] A.J. 119

Sheer numbers of picketers, far beyond that which is necessary to disseminate information, can intimidate by their exuberance and their numbers. In this case the numbers were such as to give rise to the inference that members of the public were obstructed.

By the early 1960s, thanks to frequent amendments to the *Labour Act*, secondary and information picketing were banned, and refusal to cross picket lines by non-striking employees was made grounds for dismissal.

The Gainers Strike

The 1986 PWA decision set the stage for a decision on the Gainers' dispute in June of that year. Tension built when the company's owner Peter Pocklington, anticipating a strike, advertised for replacement workers, publicly proclaiming an intention to not only operate through any strike, but to actually give preference to replacement employees when the strike ended. On the first day of the strike, picketers confronted buses loaded with replacement employees and the resulting clash hit the national news. Over the next 214 days, over 400 strikers and their supporters were charged. The Court became involved when the company was granted an injunction not only limiting the union to six picketers at each plant gate, but further stating that they had to be members of the local on strike and listed in a register that was open to police inspection. Police barricaded 66th street, and a riot squad assembled to prevent interference with buses taking replacement workers into the plant. Confrontations continued, and in one day, 115 people were arrested including the President of the Alberta Federation of Labour.

In the second week of June, the Court granted a further injunction creating a prohibited zone around the plant in which no more than three people could gather. It was a restrictive provision that prompted groups as varied as the Catholic Friars of St. Francis of Assisi and the Edmonton Criminal Lawyers Association to protest in support of the Union. On June 12, 1987, the Legislature's opening was greeted with Edmonton's largest demonstration since the 1932 Hunger March. It included UFCW strikers and supporters, but also a contingent from the construction trades whose own bargaining had largely collapsed after the 1982 economic downturn. The demonstration marked a shift in focus from Gainers to Alberta's labour laws in general.

The strike at Gainers, while the most publicized, was only one of six that took place in the 'Summer of '86,' prompting a legislative review chaired by the Progressive Conservative Minister of Labour, Dr. Ian Reid. The *Alberta Labour Relations Code* which came out in 1988 further restricted workers' rights. Employers received the right to contact workers during organization drives and even when there was proof that the employer violated labour law to prevent a union getting certified, a vote was required for the union to be certified. Union proposals for the right of a union to be certified when it had collected a majority of votes by eligible members—the card check system—, as in other provinces, were rejected. Construction unions were singled out for extreme restrictions on free collective bargaining, organizing, and striking in an effort to prevent any strikes on industrial projects. There were no parallels to such legislation in other provinces.

Amendments to the *Labour Act* moved much of the primary jurisdiction over picketing from the courts to the Labour Board, which, in practice, meant that the Board could

balance a right to picket with the need to protect access rights and restrain violence. However, clear right to picket still does not exist in the legislation. This changed somewhat at a much later date, when the Charter was interpreted to protect the basic values involved in picketing.

A 2001 Labour Board decision on a strike against the province's beer distributor found the provision restricting picketing to "the striking or locked out employee's place of work and not elsewhere" contrary to the Charter to the extent it prohibited picketing an allied employer.¹⁵ The Court rejected the argument that, as picketing was governed by common law, the Charter was not applicable. It held that the 1988 *Labour Code* amendments altered the common law and provided reasons, drawing on Charter jurisprudence, to balance the competing rights and interests involved. While it dealt only with allied employer picketing, not secondary picketing, the decision represented the beginning of a new approach which viewed picketing as a statutory right, albeit one to be exercised in limited circumstances. Charter values were henceforth to be weighed along with the economic considerations that were, for so long, the sole focus of picketing cases. This approach was reinforced in a case involving broader picketing issues during the 2005 Telus dispute, where the Court of Appeal ruled that the "the law is reasonably well established."¹⁶

The legacy of Bill 41: The PSERA Model

From the time the Civil Service Association (the predecessor of the Alberta Union of Provincial Employees) was formed in 1919, public sector employees, and in particular, those who worked for the government, had little or no collective bargaining rights. Strikes were strictly forbidden, and the government would simply impose an agreement after a period of 'joint council consultation' – termed 'collective begging' by some of the negotiators involved.

Peter Lougheed, who became the province's first Progressive Conservative Premier in 1971, had promised to give public service workers the same rights as other workers. He did just the opposite: in 1977, his government passed the *Public Service Employee Relations Act* (PSERA) which not only applied a no-strike policy across the whole public service but also limited the items that could be negotiated and then taken to arbitration. That same legislation covered crown hospitals and non-academic university employees. The Courts became more involved than ever, and for the first time, cases involving the public sector labour relations overtook those involving the private sector.

Members of the newly-created United Nurses of Alberta (UNA) defied PSERA and the *Labour Act* on several occasions between 1979 and 1982, and when the government ordered striking nurses back to work, it looked to the judiciary to arbitrate outstanding items in dispute. As members of an overwhelmingly female profession, nurses felt historically underpaid, unhappy with unreasonable shift schedules, threatened by technology, and anxious to perform their professional role in healthcare. UNA members insisted on their right to strike, and swore to never submit voluntarily to arbitration as

¹⁵ *Alberta (Attorney General) v. Retail, Wholesale Canada, Local 285* [2001] A.J. No. 85

¹⁶ *Telus Communications v. T.W.U.*, 2005 ABQB 719. The appeal on intervenor status in which the Appeal Court ruled that the law was well-established was *Telus Communications v. T.W.U.*, 2006 ABCA 297, citing *Pepsi-Cola* [2002] 1 S.C.R. 156

required under PSERA.

After they disobeyed back-to-work orders in 1982, the government punished the disobedient nurses by passing Bill 11, the *Medical Health Services Continuation Act*, which contained previously unheard of restrictions on the rights of workers and unions. It even went so far as to allow decertification of the union, should its members defy the government. The government went a step further in 1983, with Bill 44, the *Labour Statutes Amendment Act*, which extended the most draconian provisions of Bill 11 to all provincial hospital employees, firefighters and a number of others in the public sector. In this instance, as with PSERA, government justified restrictions that denied collective bargaining rights by claiming that it was necessary to protect essential services.

A Canadian Labour Congress complaint to the International Labour Office regarding the *Public Service Employee Relations Act* was upheld in 1979 by the ILO Freedom of Association Committee on the grounds that it violated Convention 87, *Freedom of Association*, which had been ratified by the Government of Canada. Such restrictions, the Committee argued, could only be justified if the services to which they referred were ‘essential to life and limb.’ However, an Alberta court upheld Alberta’s position, citing an exception to strike rights for persons involved in the ‘administration of the state.’ The ILO Committee’s recommendations, he held, did not form part of the law of Alberta and the Act was not, therefore, *ultra vires*.¹⁷

The introduction of the *Canadian Charter of Rights and Freedoms* in 1982, with its express reference to freedom of association, provided a new opportunity to challenge the PSERA model. Rather than facing the challenge, the province asked the Court of Appeal, by reference, to rule whether prohibiting strikes and mandating arbitration violated the Charter.

IN 1988, the United Nurses of Alberta proceeded with a strike vote followed by a province-wide strike, both in the face of a Labour Board order declaring any such actions illegal. Employers applied to cite UNA in contempt, as the Board Order had already been filed with the courts. The Nurses were found in criminal contempt and assessed a fine of \$250,000.00. When the strike continued, a second motion before the Court of Queen’s Bench imposed a further fine of \$150,000. The findings and sentences were upheld by the Supreme Court of Canada, and UNA was faced with one of the largest fines on working-class institutions in Canadian history.

Many of the same issues came to the fore again in 2002, when employees represented by the Alberta Union of Provincial Employees threatened to strike 156 continuing care facilities. Members of the union had already engaged in a number of ‘wildcat’ strikes in the late 1990s, all of which were successful in bringing the employer to the table. When the Labour Board prohibited the strike and filed its directive with the Court of Queen’s Bench, AUPE President Dan MacLennan appeared on television to argue that his members “had no other choice.” Even though a mediated settlement was reached, the matter was brought before the Court of Queen’s Bench, which held the union in contempt, imposing a \$400,000 fine. At the same time, the Court refused a request to

¹⁷ *Alberta Union of Provincial Employees et al and The Crown in Right of Alberta* (1980), 120 D.L.R. (3d) 590. The Court of Appeal adopted Chief Justice Sinclair’s reasons in total and without further comment. See: 130 D.L.R. (3d) 191

stay the Labour Board order on constitutional grounds.

The union appealed and succeeded only in having its fine reduced as its conviction was for civil rather than criminal contempt.¹⁸ A second proceedings arose out of a modification introduced in 1988, which allowed dues suspension as one tool for penalizing or ending an illegal strike. Employers had asked the Labour Board to impose a 2-month dues suspension, but the Board had held that only an employer, and not the Board itself could initiate a dues suspension, and that furthermore it could be done only during an illegal strike. The Court disagreed on a fine point of interpretation, and trade unions were, once again, caught in a maze of legalities on which the authorities could not even agree.

The Assault on Construction Trades Unions

The 1980s was a period of rapid decline for unions in the construction industry as actions and decisions by government, Labour Board, and courts allowed many contractors to engage in previously unheard-of labour relations tactics to bypass collective bargaining obligations. Even though the infamous Bill 110 was never proclaimed, a number of decisions, combined with a 25 hour lock-out enabled contractors to become double-breasted and either keep, or de-certify, their unionized signatory companies. Union density in this sector went from 70% in 1982 to 10% in 1984, which resulted in wages decreasing 30 to 40% for the average construction worker. As bankruptcies and foreclosures soared, many in the skilled trades left the province for Ontario or the United States to find employment and start over.

The construction industry is one of the most significant and specialized areas of labour relations in Alberta where union organization and bargaining had been a fact of life since before the province was born. Unlike bargaining in the industrial model, bargaining in this sector takes place on a trade-by-trade basis. The short-term nature of projects and the tendering process, moreover, make the industry highly vulnerable to wage rate competition.

Early labour law made no provision for multi-employer bargaining or employers' associations, and it was not until a court ruling in 1963 that the Alberta Contractors' Association could represent employers. Strike votes and other labour relations issues would still be settled on an employer-by-employer basis, however, which fostered leap-frog bargaining, making industry-wide strategies difficult. In 1970, the Alberta government responded with a registration system for multi-employer construction bargaining based, in part, on the recommendations of the Goldenberg-Crispo Report.¹⁹ Over the course of the 1970's, registration procedures were amended several times to accommodate tar sands and other major projects by allowing site-specific long-term agreements.

The influence of the international (U.S.-based) organizations over Canadian construction trade unions raised questions. The constitution of the Carpenters Union, for example,

¹⁸ *Alberta Union of Provincial Employees v. Continuing Care Employees' Bargaining Association* [2002] A.J. 746 (Alta. C.A.)

¹⁹ The Goldenberg-Crispo Report, commissioned by the Canadian Construction Association, was the inspiration for specialized construction bargaining legislation across the Country. The later Dubensky report made particular recommendations for Alberta.

obliged applicants for membership to state “whether they were communists or in sympathy with communist philosophy.” Other restrictions concerning age, citizenship and the right to counsel conflicted with Alberta’s *Labour Act* and Premier Lougheed’s newly-enacted *Individual Rights Protection Act*. Justice Kirby upheld Board rulings that declared offending clauses inoperable in Alberta. They did not, however, disqualify the union as “an appropriate bargaining agent.”²⁰ It took a series of court appeals before labour boards began to aggressively pursue due process appeals to uphold rights in Alberta over the constitution of the international union.

Some cases concerned the right of union members to work non-union during cyclical downturns in the industry. Alberta courts responded by ruling against unions that wanted to use internal discipline procedures to deny such a right. This became a critical concern during the 1980’s, and the court ruled that the union’s constitutional right to discipline was limited only to cases where the union’s hiring hall could offer the employees work under the collective agreement. In one such case, the judge said:

*... this case ... is of extreme importance because it deals with the Union hiring hall practices and the right to work. The Board has decided, and in my view rightly so, that although a person may be a member of the union, where there is no employment available with the Union shop, the person should have the right to work for a non-union shop. Indeed, the legislature ... has so enacted ...*²¹

Aside from the Great Depression, the most difficult period for Alberta construction workers was the drastic downturn following the controversy over the 1980 National Energy Program, the drop in oil prices, and the cancellation of several mega-projects. In a very short time, the construction industry went from strained capacity with full employment to a drastic oversupply of workers, and contractors found themselves competing for increasingly scarce work, chasing small jobs they had previously abandoned to the non-union sector. Many union members, facing little work and long hiring hall waits, took non-union jobs, while unions were either unwilling or politically unable to roll back ‘boom year increases.’ Contractors refused to maintain these rates under the changed circumstances, and turned to new anti-union tactics.

“Double breasting” occurs where an established unionized company forms a parallel non-union company to compete by using non-union labour. Unionized Stuart Olson, for example, formed Stuart Olson Industrial Contractors Ltd. to undertake construction projects by sub-contracting its work to its new company (and other non-union employers), thus avoiding its own unionized employees. Unions applied to have the Labour Board declare both companies a ‘common employer’; however, the Board ruled, that it could not bind a ‘non-employer’ to a common employer declaration.

The Court deferred to the Board’s expertise and upheld the decision, setting the stage for a wholesale assault on construction unions. Contractor after contractor responded to the downturn by ‘double-breasting’; i.e., bidding jobs through non-certified affiliates and engaging employees indirectly through labour brokers set up solely for the purpose of supplying and paying workers. With little unionized work available, unions had no constitutional ability to prevent their members accepting such jobs.

²⁰ *Re Flint Engineering v. United Brotherhood of Carpenters Local 2410* (1973) 41 D.L.R. (3d) 100

²¹ *U.A. Local 488 v. Alberta (Board of Industrial Relations)*, (1976) 69 D.L.R. 74 (Alta S.C.A.D.)

While unionized employers had to wait for a new collective bargaining cycle, and industrial/commercial contracts were due to expire on April 30, 1984, the Roadbuilder's contract expired in 1983. That agreement contained a bridging provision that extended its term during the collective bargaining process. By September of that year, however, bargaining had reached an impasse and the Board ruled that the agreement was terminated. The union disagreed and obtained a ruling from the Court of Queen's Bench that the agreement continued. The Appeal Court disagreed, however, holding that:

*The bargaining process comes to an end when the parties reach an agreement in the course of bargaining in good faith or when bargaining has reached an impasse, whichever first occurs. It is not open to one party to fail to take or to unreasonably delay in taking a further step in the collective bargaining process for such action or inaction would support a finding that collective bargaining has reached an impasse and has ceased.*²²

This opened the door to a new strategy for contractors wanting to operate non-union. They could simply bring bridging clauses to an end by imposing a "24-hour lockout" and thus automatically terminate an existing contract. The next day, they could offer work to employees through individual contracts of employment – and at drastically lower rates! Unions protested vigorously, arguing that the end of a lockout (after 24 hours) and the re-engagement of employees meant that collective agreements were reinstated. The Labour Board agreed, but its decision was reversed by the Court of Queen's Bench. In January, 1985 the Court of Appeal also rejected the argument that offering the same work at lower rates "restrained employees from exercising their rights under the Act." Further, the statutory freeze on altering terms and conditions of employment only lasted during bargaining; i.e., until the collective agreement ceased to be in effect at the point of a strike or lockout. If the employees felt aggrieved, Justice Kerans held, they were free to strike to enforce their demands:

It is clear enough that the Board, in making the orders here made, sought to achieve labour peace by erasing the effect of the lock-out and trying to restore the parties to the status quo ante. While it no doubt acted from the best of motives, the Board simply exercised an authority it did not have. The Act permits strikes and it permits lock-outs; it permits a measure of labour strife. The Board must accept that further efforts to stop a strike or lock-out must be made by further legislation or ministerial order.

The 1982 downturn proved to be far more lasting than expected, and labour supply in the industry remained over-capacity for several years. For several years contractors and unions survived without formal collective bargaining, and as a result, the 1983-1985 period saw a major decline in trades unions' share of the market and a rapid growth of non-union companies.

This series of Court rulings left construction unions and their members feeling that the laws were all wrong. In addition to public response to the Gainers and other disputes that took place in 1986, it was the massive construction union presence that added potency to demands to "change the law" that came to a head in 1987. The 1988 *Labour Relations Code* which resulted from the Reid review introduced significant changes to construction

²² *International Union of Operating Engineers Local 955 v. Alberta Roadbuilders Association* (1984) 53 A.R. 355 (Alta. C.A.) at para. 20

bargaining, and few disputes thereafter involved the Courts.

Management rights are a critical aspect of industrial relations in the construction industry. The industry, after all, requires that contracted work be completed, and furthermore, that it be performed under deadlines. A specialized aspect of construction, the hiring hall, however, received attention. The case of *Voice Construction* began with an arbitrator's finding that an employer breached a hiring hall clause by refusing to accept an employee dispatched to a job. The Queen's Bench quashed the arbitrator's ruling for having given priority to the hiring hall provision rather than the management rights' clause. Such management rights, it held, could only be abridged by express language, and this reasoning was strongly upheld by the Court of Appeal.²³

A long-simmering dispute between the construction unions and the Christian Labour Association of Canada (CLAC) reached the Courts in 2004.²⁴ as the unions sought to counter the decline in union construction through organizing drives. Employees, however, could only select or change their representation during 'window periods,' and registration provisions in the 1988 *Code* fixed all the craft unions with a biennial bargaining cycle that did not encompass unions such as CLAC.

Construction unions complained for years that employers favoured CLAC because, by signing with that union, they could avoid certification applications by the mainstream construction unions. When the Carpenters Union applied in 2001 to be certified for employees of J.V. Driver Installations Ltd., the Labour Board found that a CLAC collective agreement barred any such application until 2003. The craft unions mounted a full assault on the decision in the Queen's Bench, which found part of the Board's ruling patently unreasonable on the grounds that CLAC had signed the collective agreement without the employees' consent, effectively removing their statutory right to change or decertify their union. As the employees had no notice of this impact, the renewed agreement could not bar their right to change to the Carpenters.

The Board decision, the Court found, "potentially locks them into a cycle in which they may protest neither collective agreement nor the union who negotiated it for them." This was contrary to the *Code*'s purpose. The argument, however, was dismissed with regret, because for other reasons, the issue was moot.

Human rights

Most human rights legislation speaks of fundamental rights as if they were long-standing statements of society's values. This is far from true, as the concepts and values basic to human rights law which we take for granted today were introduced only recently into labour relations and employment law. They were, in part, a legacy of a civil rights movement which stigmatized racism, gender inequality, etc., and which blossomed in both the U.S. civil rights movement and the women's movement.

While some progress has been made to counteract discrimination as it affects the right to accommodation (housing), it is the workplace that has undergone the most significant

²³ *Voice Construction Ltd. v. Construction and General Workers Local 92* [2002] A.J. 1413 (Alta. C.A.)

²⁴ [13] *United Brotherhood of Carpenters and Joiners of America Local 1325 v. J.V. Driver Installations Ltd.* [2004] A.J. 1451 (Bielby J.)

change as a result of Alberta's unions using the courts to promote human rights legislation and the Charter to prohibit discrimination. Notable highlights include *Parcels* over maternity leave²⁵, *Dickason* over mandatory retirement²⁶ and *Vriend* which extended human rights protections to sexual preference.²⁷

Alberta passed a *Human Rights Act* in 1966, creating a new Human Rights Branch in the Department of Labour that year. In 1972, it created the Human Rights Commission and passed the *Individual Rights Protection Act*. Then the Charter provided new judicial tools, in 1982, particularly so when section 15 became effective in 1985. This is all recent history; what is significant is how quickly the Courts integrated these new rights, designed to change social values and discriminatory habits, into our labour law regime.

The initial scheme was to have such issues adjudicated by an independent and specialized Human Rights Commission through a Board of Inquiry process with an appeal to the Courts. One area where gender inequality was institutionalized was in the hospitals. "Women's work," particularly nursing, was historically underpaid, but the most obvious inequality was between nursing aides and nursing orderlies, female and male versions of the same basic job. The two groups bargained separately and negotiated agreements with different wage rates, based largely on gender. This led a group of aides to complain to the Human Rights Commission, and a Board of Inquiry found the complaints justified.²⁸ In addition to future costs, the cost of retroactively correcting this wage rate inequality was about half a million dollars.

Alberta, in common with most jurisdictions initially vested discretionary human rights jurisdiction in a Commission. Paradoxically, this mechanism appealed to those who feared opening the floodgates if citizens could sue to enforce these new rights, but at the same time appealed to those who felt judges were too inherently conservative to administer such progressive laws.

Human Rights laws written to protect minority rights inevitably gave rise to concerns that their judicial application would amount to invasions of the legislature's right to frame the law. This debate reached a particularly telling conclusion in the *Vriend*²⁹ case, when the Supreme Court of Canada overturned a decision by Alberta's Court of Appeal that the courts should not circumvent the legislature and read sexual orientation into the list of prohibited grounds for discrimination.³⁰ As a consequence, an unwilling Alberta government was compelled to add sexual orientation to the list of prohibited grounds for discrimination in its *Act*.

Another case which raised issues of jurisdictional overlap involved teachers and the

²⁵ *Alberta Hospital Association v. Parcels* (1992) 1 Alta. L.R. (3d) 332 (Alta. Q.B. Trussler J.)

²⁶ *Dickason v. University of Alberta* (1988) 62 Alta. L.R. (2d) 209 (Alta. Q.B. Murray J.); (1991) 81 Alta. L.R. (2d) 393 (Alta. C.A.); [1992] S.C.R. 1103

²⁷ *Vriend v. Alberta* (1994) 18 Alta. L.R. (3d) 286 (Alta. Q.B., Russel J.); (1996) 37 Alta. L.R. (3d) 364; [1998] 1 S.C.R. 493

²⁸ The Board was chaired by Prof. Fred Laux of the University of Alberta's Faculty of Law and reported on September 27, 1974.

²⁹ *supra*, footnote 96.

³⁰ *Ibid*, at para. 25

statutory Board of Reference. In one of these, *Gadowsky*,³¹ the Court of Queen's Bench upheld a teacher's complaint under the *Individual Rights Protection Act* that she had been forced from her job because she was approaching age 65, and found that the School Board's rights vis-à-vis teachers were subject to that Act.

Beginning in the 1970s, trade unions, with a growing number of women labour activists in their membership, began pressing a number of issues, carrying on a long tradition of struggle for women's rights that included the movements for suffrage and matrimonial rights. Pay equity - equal pay for work of equal value – was a prime issue, and unfortunately, Alberta remains alone among governments, provincial or federal, in having neither pay equity legislation nor a pay equity negotiation framework for either public- or private-sector employees.

A gain was made in 1975, when the Alberta government amended the *Labour Act* to allow the Labour Board to order particular employers to grant maternity leave without pay to an employee for up to twelve weeks before birth and six weeks after birth. In 1980, responding to continuing pressure from both trade union and women's movements, the government agreed to enact maternity leave legislation with which all employers are required to comply. A further gain in this area was achieved in 1991, when a Board of Inquiry made a decision pursuant to the *Individual Rights Protection Act* that nurse Susan Parcells was entitled to the same benefits during pregnancy leave as are provided to employees for sick leave under the collective agreement.³² The need for such a board of inquiry underlined the large number of "women's issues" that Alberta labour law has left unresolved. Working people have continued to demand fairer labour laws and to protest against new efforts to limit trade unions' bargaining power, as, for example, when Alison Redford's government attempted to impose wage settlements on government workers without the right either to strike or to have compulsory arbitration and to punish anyone who called for a militant response for a denial of such basic human rights.

Looking forward to change

Over 110 years have passed since W.L.M. King and the Liberal Government of Sir Wilfred Laurier invoked the IDIA to bring the Lethbridge coal miners' strike to an end, in the process recognizing workers' right to organize and engage in collective bargaining. Ever since PC 1003 established the framework of our current regime in 1944, workers have been promised full collective bargaining rights. Over 70 years later, the majority of Canadians, and Alberta workers in particular, are still being denied the benefits of a collective agreement and union representation.

In fact, there has been a steady decline in our unionization rate ever since WWII. In Canada, most of the decline took place in the 1980s and 1990s. Since Statistics Canada began measuring unionization through household surveys, the rate of unionization has fallen from 37.6 per cent in 1981 to 28.8 per cent in 2014.³³ Nowhere is this rate lower

³¹ *Gadowsky v. Two Hills (County No. 21)* [1981] 1 W.W.R. 647 (Cawsey J.)

³² In making this decision, the Board relied on a Supreme Court case, *Brooks v. Canada Safeway Ltd.* (1989), 10 C.H.R.R. D/6183 (S.C.C.), which found that denying such benefits amounted to discrimination on the basis of gender.

³³ Statistics Canada. Retrieved March 31, 2017 from <http://www.statcan.gc.ca/pub/11-630-x/11-630-x2015005-eng.htm>

than in the province of Alberta where only 22 per cent of eligible workers were unionized in 2014, with the bulk employed in the public sector.³⁴ When the benefits of unionization to both individual worker and society are so clear, one reason stands out: *our legal regime falls far short of guaranteeing Alberta's workers their basic association right to belong to a union of their choice and to engage in collective bargaining!*

The election of a New Democratic government in May 2015 should have given Alberta workers reason to hope that a change to this pattern was on the way. In fact, it has already led to some improvements in Alberta labour legislation. Farm workers now have the right to avail themselves of protection under occupational health and safety legislation, and most public service workers have gained the legal right to strike because of a different approach to essential services. In both cases, the new government was responding to Supreme Court decisions that its predecessor had ignored.

Unfortunately, most of the basic features of a labour law regime that has historically limited workers' rights to organize, engage in collective bargaining, and strike remain in place. These continue to be reinforced by a system of administration which guarantees that the vast bulk of power and authority will remain with the employer, including:

1. A prohibition on trade unions to be openly present in or about non-unionized workplaces to present their arguments to workers in favour of unionization.
2. The inability of unions to receive certification after signing a majority of members or to gain an early vote when they believe that they have signed close to a majority of eligible workers. The current system ignores that when a majority sign a card, it is tantamount to a vote. Existing rules allow employers to stall votes and intimidate workers against voting to unionize, often dismissing pro-union workers, and adding other employees to the list, so as to load the vote against unionization.
3. Lack of first-contract legislation. Employers are able to reverse a certification of a union by simply refusing to negotiate a first contract in good faith. This has resulted in a number of unions decertifying soon after they are formed. In several provinces, a union has the right to apply for a compulsory arbitrator to impose a first contract, a provision that puts pressure on both parties to come to an agreement at the table.
4. Lack of a legal prohibition on the right of employers to hire replacement workers (scabs) during a strike or lock-out. Both Quebec and British Columbia now ban the use of replacement workers during a strike with positive results, as it has been shown that the ability to access replacement workers often deters employers from negotiating in good faith and is also one of the prime causes of violence during a work stoppage.
5. Lack of protection for workers not on strike to respect a picket line without fear of reprisals. This feature of the law places many workers in a quandary, and once again, is used by employers as a way of reducing the effectiveness of the strike action.
6. Double-breasting as an ongoing practice by which a construction company is able to divide itself into two in order to escape the terms of a collective agreement. One of its companies would remain under a collective agreement while the other would not.
7. Discrimination against construction workers because of a legal framework and

³⁴ Retrieved March 31, 2017 from https://www.gov.mb.ca/jec/invest/busfacts/workforce/union_all.html

administrative system that virtually cancels their right to unionize and strike.

8. Lack of a meaningful prohibition on company-dominated unions, which results in workers being denied the right to belong to the union of their choice, and allows organizations such as CLAC to engage in ‘sweetheart’ deals with the employer.
9. Lack of pay equity legislation to cover all working people.

Reversing all of these shortcomings would create a measure of social justice for working people in Alberta. This must include, at the same time, a determined campaign to strengthen and provide for vigorous enforcement of the law, particularly in the area of occupational health and safety. Mandatory joint worksite committees and proper staffing for workplace inspections by government are a good place to begin. In addition, full staffing and empowerment of the Employment Standards Branch would provide protection for non-union workers who need it the most.

The Labour Law Review Process

The Alberta Labour History Institute is extremely concerned about the type of review process that has been announced by the Labour Minister. Our concern stems from the experience your government had in 2016, when it introduced Bill 6, the *Enhanced Protection for Farm and Ranch Workers Act*, which has now been enacted into legislation. The past year has already shown us how necessary this Act was; e.g., WCB claims from farmworkers have more than doubled when farm employers were required to register and abide by the terms of the Act.

However, that Bill suffered from one major flaw – the way it was enacted. We realize that some of the protest and resistance could have been expected no matter what your government had done to prepare Albertans for the Bill. Entrenched interests in the agriculture industry and farming community have a long history of dealing with farm labour in an unfettered way, which presumes that they have few of the rights that workers in other sectors have won. (The same applies to domestics). However, much more should have been done to educate Albertans, to elicit input from those directly concerned, and to rally the support that you might have had in those communities – all of which would have mitigated the subsequent reaction.

None of this was done, and the results were disastrous. We can expect a similar response from the interests that have been so successful in opposing progressive changes to our labour laws for so long. The firm of McLennan Ross has already issued a warning to employers and listed the ‘areas of interest’ where ‘there is cause for concern to employers.’ “These items, if implemented,” they say, “would increase red tape, reduce flexibility, and add costs to employers and ultimately consumers.” See:

https://mross.com/law/Firm/Publications/Email_Alerts/Government_Announces_Labour_and_Employment_Law_Review.cid1915

History has repeatedly demonstrated that it is not enough to formulate a bill that provides the ‘right answers’. Neither is it sufficient to simply allow for input and consultation, as appears to be the case with this review. It is crucial for any government that wishes to gain acceptance of its actions to employ a broad-based and time-consuming process that engages as many of the affected parties and members of the public as possible. Only in this way can you expect to reduce negative publicity and achieve positive results.

Thousands of Albertans and their organizations took an active part in the 2015 general election, determined to seize the opportunity to change Alberta history. These are the friends and supporters of your government, and they would like to be more involved in your efforts to effect positive change. The Alberta Labour History Institute is one of them. The issues and recommendations we provide are based on our knowledge of the history of our past, and we would welcome the opportunity to discuss them with you.

In solidarity,

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