Collective Bargaining in Canada

Human right or Canadian illusion?

Second Edition

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Foreword

THE NATIONAL UNION of Public and General Employees and the United Food and Commercial Workers Union Canada have been running a national ***Labour Rights are Human Rights*** campaign for the last two years. The purpose of the campaign is to focus new emphasis and new action on the human rights of workers here in Canada and around the world. Our clear message to all governments and employers is that the time has come to address this hidden human rights deficit by respecting and upholding workers' rights to join a union and bargain collectively.

The foundation of our joint campaign is this study. It was originally published in January 2005 and has been widely recognized by the labour movement and academics in the field of labour relations. It shows how the rights of working Canadians have been eroded in the past 25 years.

We had planned to have the study translated and published in French shortly after the English edition was published but decided to delay until the outcome of negotiations that took place in the latter half of 2005 between the Quebec government and unions representing over 500,000 public sector employees in the province was determined.

On December 15, 2005, the Liberal government of Jean Charest rammed through a law that legislated an unprec-

edented seven-year contract on 500,000 of the province's public sector workers. Bill 142, *An Act Respecting the Working Conditions in the Public Sector*, imposed wages and working conditions on Quebec's public sector workers until March 2010. The most despicable provisions of Bill 142 were those that toughened and extended to the whole of Quebec's public sector anti-strike sanctions contained in a law that the late Robert Bourassa's Liberal government adopted in 1986. From now until March 2010, public sector workers do not have the right under any circumstances to withdraw their labour and take strike action.

Details of Bill 142 are contained in this revised edition of the study. Unfortunately the government of Quebec was not unique in its assault on fundamental rights of working people. Almost every jurisdiction in Canada has experienced a major violation of the bargaining rights of its citizens. Governments have all too often abused their power to deny workers the fundamental right to join a union, to outlaw the right to strike, to impose collective agreements on workers that represent the employer's last offer and to allow employers to engage in union busting activities. Both the private and the public sectors have been affected.

This sustained attack has hurt the labour movement's ability to effectively represent union members and to organize the unorganized. The Canadian labour movement must reverse this situation. It is time to vigorously campaign in Canada and internationally to expose and oppose this trend.

In doing the study, we wanted to look at the increasing restrictions on the collective bargaining rights of Canadian workers from a human rights perspective. Canada believes it has an enviable record on human rights. Based on the premise that *labour rights are human rights*, our experience tells us that this is simply not the

case. Governments unhesitatingly override labour rights if those rights stand in the way of a government's political interests.

The research reveals a disturbing story – the pervasive undermining by governments at every level in Canada of a fundamental human right, the right to free and effective collective bargaining.

We are determined to continue our fight to ensure every Canadian enjoys the right to full and free collective bargaining. The future of our country and the quality of life of Canadian working families depend upon our success.

We encourage you to become actively engaged with us in our campaign to restore human rights and fair labour laws in Canada and around the world. Please visit the website we have developed to support our *Labour Rights are Human Rights* campaign – **www.labourrights.ca.**

James Clancy	**Wayne Hanley**
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July 2006

Section I
Introduction and Summary

IN THE past two decades Canadians have seen a serious erosion of a fundamental and universal human right, their right to engage in full and free collective bargaining.

The most recent example has been in Quebec. On December 15, 2005 the Charest Liberals rammed through a law that eliminated the right to collective bargaining for 500,000 hospital workers, teachers, civil servants, school support staff and other provincial public sector workers for an unprecedented seven-year period. Bill 142, *An Act Respecting the Working Conditions in the Public Sector*, imposed wages and working conditions on Quebec's 500,000 public sector workers until March 2010 including a 33-month freeze retroactive to June 2003, and annual wage increases of two percent in the last four years of the legislated contract. The legislation also outlawed the right to strike to any public sector employee until March 2010.

Bill 142 had nothing to do with stopping an illegal strike or forcing workers on a legal strike back to work. Its objective was clear and simple – to deny over 500,000 workers their basic human right: the right to engage in collective bargaining as the

means of determining their wages, working conditions and terms of employment.

Another recent example was in the province of Newfoundland and Labrador. In April 2004, the government of Premier Danny Williams used its majority in the legislature to smash a legal strike by its own employees and those of other agencies. The government legislation threatened legal strikers with termination and heavy fines if they didn't return to work even though they had no collective agreement. The government ignored the collective bargaining that had taken place to that point and imposed its own terms on the employees, rolling back provisions in the previous agreements. Neither the federal government nor other provincial governments expressed outrage or even concern.

These assaults on fundamental rights by the governments of Quebec and Newfoundland and Labrador were not unique. Almost every jurisdiction in Canada has experienced a major violation of the bargaining rights of its citizens. Collective agreements have been torn up. Freely negotiated wages and benefits have been taken away. Employers' proposals have been legislatively imposed on workers and the right to strike removed. Both the private and the public sectors have been hit by this phenomenon.

Public sector employees are especially vulnerable because the government is their employer. Governments have access to power no other employer has, the power to change the law to suit themselves. This power has been much abused in Canada. Legislatures have given the right to collective bargaining and governments have taken them away.

The consequences for Canadian working families are direct. Real incomes decline. Part-time low paying jobs replace full-time work. Contracting out endangers job security. The legislative assault undermines the labour movement, the col-

lective voice of working people. Labour has worked for better social and economic policies. In this environment, labour's voice faces a difficult struggle to be heard in the legislative chambers of the nation. As a result, the services on which working families depend erode: health care, education, cities, housing and environmental protection. In the past 25 years Canada has experienced a widening gap between rich and poor in a country that values social equality as an important national objective.

Internationally, for almost a century, Canada has proclaimed the virtues, for other people, of freedom of association, free collective bargaining and the right to strike. Yet the assault on collective bargaining in this country has resulted in Canada being repeatedly condemned for its failure to live up to its obligations in international law. Despite its rhetoric, Canada has one of the worst records of any Western country in the actual experience of labour rights by working people.

It is time to end this attack on the rights of workers. This study concludes that Canadians must join in a campaign to win genuine and free collective bargaining for working people across this country. Collective bargaining is crucial for a positive future for working families. Canada is blessed with resources and potential. Yet it is damaged by regressive policies, policies that are out of step with Canada's international commitments and with the country's national values. Working people themselves must join together to claim and win the right for all Canadians to free collective bargaining, or the decline in quality of life will continue. In the past century, Canadian workers struggled to gain the right to bargain collectively. The right was not given. It was won, often through courageous sacrifice. That right needs to be reclaimed in new and imaginative ways and in new and imaginative forms. The quality of life, the health and the future of the people depend on it.

Section II
The Idea of Free Collective Bargaining

LET'S BEGIN with a review of the principles underlying collective bargaining. Why is collective bargaining important? How did the idea develop?

-1-

Freedom of Association: the Cornerstone of Democracy

The right to associate with other like-minded people in common cause is the very cornerstone of democracy. Other freedoms are tremendously important – freedom of expression, of religion, the right to a fair trial and so on – but it is the freedom of association which creates the possibility for citizens to win other freedoms.[1] In countries where individuals enjoy the right to establish and participate in independent organizations, the result is a better society, especially for ordinary working people. Where freedom of association does not exist or is severely limited, the country is run for and by the powerful elites.

-2-

Unions and Democracy

For the past 150 years as modern economies have developed, perhaps the most significant fact for an individual's quality of life is that individual's work. It becomes important then for individuals to associate collectively with those who share a common interest in their work. Out of this reality, unions, the associations of groups of workers, have become crucial institutions for working people, an important expression of their freedom of association. Through these associations of working people, workers are able to have their common interests as workers expressed in the political, social and economic arenas, as well as in the workplace.

The exercise of this right of free association by workers, the right to form and join unions, is crucial to democracy.

Unions make democracy work better for workers and their families. Unions press for better social, economic and environmental policies, through "labour" political parties, through coalitions with others in society who have common aims and through other forms of political action. Working politically through the group strengthens the individual's voice against the powerful voices of the employers who themselves have their own political parties and who do not hesitate to operate collectively in the political realm.

Unions have been and continue to be an important force for democracy, not just in the workplace, but beyond, in the community – locally, nationally and globally. Unions need democracy in order to thrive. Democracy needs unions within each nation state and, in this age of globalization and interdependence, within the global community. The large membership and geographic reach of unions can deepen and broaden support for democratic principles and practices within a country. Unions are often the only mass membership-based organizations that can stand

against authoritarian regimes. Unions are grounded in the workplace. They are real, dealing with the real issues for working people. As unions are effective within the democratic process, confidence in democracy rises. It is no coincidence that in countries where there are free and active trade union movements, there are more democratic, transparent and representative forms of government.

Unions help nations undergoing economic and democratic change by contributing to the emergence of a stable, fairly paid, working middle-class. If unions succeed in improving the economic situation for working families, democracy is strengthened. In those countries where there is no union movement or where the movement is vulnerable, the vast majority of their alienated citizens continues to be trapped in poverty. It is in these conditions that instability and extremism thrive. A stable, peaceful and progressive international community depends on vibrant democracies. Vibrant democracies depend on strong and vibrant labour movements.

Unions need a stable and democratic environment to protect the political and economic rights of their members. For unions, democracy is the only environment in which they can be truly effective in protecting and promoting the interests of workers.

Unions cannot adequately protect worker interests if they are subject to the whim of governments that do not respect democratic principles. While free and fair elections are critical for democracy, trade unions working within a legal framework that protects their rights help to ensure the long-term sustainability of democracy. If that legal framework can be casually set aside by governments or employers, democracy as a whole is threatened and unions cannot do their job.

-3-

Justice in the Workplace

It is in the workplace that the right to associate freely with co-workers and to "bargain collectively" is most keenly felt. Unions, as the association of employees, assert the right to bargain terms and conditions of employment "collectively" on behalf of the employees. Freedom of association in the setting of the workplace is expressed as the right of employees to join the union of their choice. Employees associating together in a union are able to insist that workers be treated with dignity and respect. Employees can achieve more than they can on their own by bargaining collectively. Freedom of association in the workplace means that employees as a group meet with the employer. They don't have to meet with the employer one-on-one where the employer has all the bargaining power. Collective bargaining also means, in principle, that the wishes of the majority of employees prevail, a key democratic concept. This is of course subject to built-in protections for minorities. Unions can challenge arbitrary or unreasonable decisions of the employer through face to face discussion or through an independent grievance process. These processes have been used effectively by representative unions to protect employees from unfair decisions in discipline, termination, promotions or layoffs, to change unilateral decisions on working conditions, to require action on health and safety issues and of course to negotiate better terms and conditions of employment including better pay, better benefits and better vacations.

-4-

The Right to *Effective* Collective Bargaining

Freedom of association must be more than the mere right to hold a meeting. Employees engaged in collective bargaining must have tools to effectively pursue their goals.

For workers, the effective right to bargain collectively requires the ability of workers in concert to withdraw their labour – the "right to strike". Without this right or something very close to it, freedom of association for workers may be meaningless. The threat and, in some cases, the reality of a strike adds real strength and effectiveness to collective bargaining. The employer must reach agreement with the workforce if the employer wants the work to continue. In some limited cases, it may be difficult to argue for an unfettered right to strike. In these rare situations, an effective alternative must be found, such as the right to independent arbitration and the right to be consulted on the alternative process and on the circumstances under which the alternative is invoked.

These rights must be protected by law. Otherwise they aren't rights; they are dreams. Employers must be bound by law not to interfere with employees' rights to join a union or to organize. They must legally be required to bargain in good faith with the employees' choice of union, to deal with the union's choice of representative and to accept the legitimacy of a strike, should the employees decide to withhold their labour. These rights must also be readily enforceable through specialized labour boards and/or the courts.

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Collective Bargaining Works

Over the decades, where the principles of freedom of association, collective bargaining and the right to strike have been given effect, working families have benefited. Unions have sought to provide workers with a decent wage so they and their families can enjoy a quality standard of living and financial security. And they have succeeded. Unions have sought to provide workers with comprehensive benefits over and above legislative benefits and universal public programs. Vacations, extra medi-

cal insurance, disability and life insurance and a retirement income are all areas where unions have negotiated enhanced provisions. Unions provide workers with job security and thus economic security for themselves and their families.

Beyond the economic benefits provided to workers and their families, unions have historically been a major force in humanizing and democratizing the economies of nations. Unions promote higher levels of economic equality and, in many ways, also encourage labour markets to achieve greater economic growth and efficiency.[2] Historically, unions have been instrumental in raising the wages to a greater degree for "low-skilled" rather than for "high-skilled" workers. Consequently, unions lessen wage inequality.

All of this has a positive impact on the economy. Bargaining outcomes produce higher wages and greater income equality and have a positive impact on employment growth. Bargaining achievements such as paid time off the job, restrictions on overtime, early retirement provisions and job sharing arrangements have not only preserved jobs, but have also created employment and enhanced productivity.

Unions also have a key role in promoting sound government policies on economic growth that benefit the whole community. Business, especially foreign owned business, focuses on the interest of the particular business, not on the well-being of the country as a whole. Unions are broadly-based. They will reflect the broad interest of working people in having a prosperous economy.

The fact that unions promote economic prosperity is not just recognized by the labour movement. It is now acknowledged by international financial institutions like the World Bank and OECD, who have seldom, if ever, been sympathetic to the views of labour. "Appropriately designed industrial relations systems may have positive economic effects despite some popular beliefs

to the contrary," according to McMaster University professor emeritus Roy Adams.[3]

As we will see from a review of the past 25 years, the erosion of bargaining rights in Canada has had a negative impact on the economic well-being of most Canadians. Only a relative few have benefited from economic growth in this period. The growing body of empirical evidence shows that labour laws and practices promoting collective bargaining and providing workers with the right to strike actually make a major contribution to higher economic productivity to the benefit of the community as a whole.

Section III
The Dream Becomes a Universal Human Right

HOW HAVE these concepts of collective bargaining and other labour rights been developed? What is their status?

Undoubtedly the idea of collective bargaining and the right to strike has been around since human beings first began to work for other human beings. One can imagine the workers on the Pyramids complaining during their lunch breaks, if they got any, about their working conditions. They probably tried to encourage Pryceps to speak to the straw boss. The initial results likely weren't too happy for Pryceps, but it was a start. Later Moses led his people out of Egypt – the first recorded strike. Sparticus led the slaves of Rome in revolt against their treatment in the salt mines.

In the early years of the industrial revolution, employer-employee relations in most of the industrialized world were understood to be governed by individual contracts between masters and servants. In other parts of the world, slavery was the norm. Employees as a group had no rights at all. Indeed unions were illegal, deemed to be a conspiracy to interfere crimi-

nally with the sacrosanct contracts of employment between individual workers and their employers.

The 19th century saw the first stirring of trade unionism. Exploited workers rose in revolt against appalling conditions. Invariably they were thrown back by the power of employers backed up if necessary by the full force of the state. Private armies of detectives and bully-boys were recruited to break up picket lines and intimidate workers and their families. Police were sent in to "restore order".

The first breakthrough in many countries came with the success of the skilled trades in forcing employers and contractors to recognize their trade unions as bargaining agents.

By the early 20th century the ideals of democracy, liberalism, socialism and the rights of workers were sweeping the industrial world. By the end of the First World War, the international community was ready to formally acknowledge and proclaim freedom of association as a fundamental human right. From the outset, this was understood to include in the labour context the right to collective bargaining and the right to strike. In 1919, the International Labour Organization (ILO) on behalf of the international community affirmed in its constitution "freedom of association" as a global labour right. This was reaffirmed in the United Nations Declaration of Human Rights in 1948 after the Second World War.

In 1948 the ILO, as an agency of the UN, spelled out the details of the right to freedom of association in two Conventions. These Conventions, No. 87 (Freedom of Association and the Right to Organize) and No. 98 (The Right to Organize and Collective Bargaining) confirmed the right to bargain collectively and the right to strike. At its 1998 annual conference, the ILO adopted a Declaration on

Fundamental Principles and Rights at Work further underlining the obligation of member States to respect, promote and realize, in good faith, a set of core labour standards, including the right to collective bargaining.

In its explanation of the Declaration, the ILO states:

> *Workers and employers can set up, join and run their own organizations without interference from the State or one another. Of course, they have to respect the law of the land – but the law of the land, in turn, must respect the principles of freedom of association. These principles cannot be set aside for any sector of activities or group of workers.*[4]

ILO jurisprudence "makes it clear that freedom of association implies the right to bargain collectively and the right to strike," Roy Adams has noted.[5]

In 1999, the UN developed a Global Compact containing a commitment to core labour standards as foundational human rights. The Compact specifically calls on businesses to "uphold the principle of freedom of association and the effective recognition of the right to collective bargaining".[6] Labour, non-profit organizations and business, including the International Organization of Employers and the International Chamber of Commerce and 50 major multinational corporations, agreed to adhere to the Compact. For business and labour, the Compact was a response to the need to establish a level playing field of rights and norms throughout the world.

These principles are now enshrined in law. It has long been held that rights identified as fundamental to every human being by virtue of their humanity are to be given enforceable legal status at international law. According to Professor Adams, "a very strong international consensus has emerged around the proposition that a set of core labour rights ought to be regarded as fundamental human rights".[7] These developments have en-

shrined the right to collective bargaining, the right to choose one's bargaining agent and the right to strike, as fundamental human rights in international law.

All member States of the United Nations are required to recognize these rights and to ensure they are a reality within their jurisdiction.

Section IV
Canada's Commitment

CANADA HAS been a major participant in the ILO from the beginning and was a founding member of the organization in 1919. Montréal was home to the ILO during the Second World War. In 1948 the Government of Canada supported the adoption of both key labour rights' Conventions No. 87 – Freedom of Association and Protection of the Right to Organize and No. 98 – Right to Organize and Bargain Collectively. Canada ratified Convention No. 87 in 1972. Since 1975 Canada has chaired the "Industrialized Market Economy Countries" group within the ILO. Canadians have provided leadership within the organization. Former Canadian Labour Congress President Joe Morris served as chair of the ILO's Governing Body in the 1970s.

The Government of Canada was an active participant in 1998 in drafting the ILO Declaration of Fundamental Principles and Rights at Work and voted in favour of its adoption. By its vote, Canada promised "to respect, to promote and to realize, in good faith"[8] the principles underlying the core 1948 Conventions (Conventions No. 87 and No. 98).[9]

The federal Parliament went so far as to include in the Preamble of the *Canada Labour Code* reference to the ILO Conventions and the broadly defined principles of freedom of association:

> *And whereas Canadian workers, trade unions and employers recognize and support freedom of association and free collective bargaining as the bases of effective industrial relations for the determination of good working conditions and sound labour-management relations;*
>
> *And whereas the Government of Canada has ratified Convention No. 87 of the International Labour Organization concerning Freedom of Association and Protection of the Right to Organize and has assumed international reporting responsibilities in this regard....*

The development of the Global Compact in 1999 was enthusiastically pressed by Canada.

The Canadian government has repeatedly pledged to abide by these international human rights standards. Canada expressly recognized in 2000 "that Canada does not expect other governments to respect standards which it does not apply to itself".[10] This country's official position was that "legislation (at the provincial and federal levels) generally promotes free collective bargaining and recognizes the right to strike or lockout".[11] Canada has bound this country legally and rhetorically in international law to ensure that all workers in Canada actually have these rights and not to enact legislation or engage in activities that undermine them.

As we will see, the reality of Canada's record, federally and provincially, is quite different, at great cost to Canadians. Canada has only ratified 30 of the ILO's 185 Conventions. Of the 30 ILO Conventions adopted since 1982 – all of which Canada voted for at the ILO's annual International Labour Conferences – Canada has only ratified three of them. Nor has

the federal government even tried to get the provinces to comply with those ILO Conventions which it has ratified, as is its international obligation.

The promise of Canada's international rhetoric, as we will now examine, has not been met in this country. The rights endorsed so enthusiastically in international forums by Canada have never been fully realized. Canada has failed to promote labour rights at home. During the past 25 years, federal and provincial governments have repeatedly violated the law they have been obliged to uphold, at great cost to Canada's social and economic well-being. This record has been a disgrace to Canada's international reputation and a scandal perpetrated on its own citizens.

Section V
Collective Bargaining Comes to Canada

FROM THE earliest stages of industrial development in Canada, the fight for collective bargaining and the right to strike have been difficult and only partly successful.

The first baby step towards the recognition of the right to collective bargaining came in 1872 with the passage of the *Trade Union Act* protecting unions from the threat of criminal prosecution. In many parts of the country during the latter decades of the 19th century, unions formed and labour councils and federations began to take shape. Small embryonic labour and socialist political groups surfaced to assert the rights of labour.

In the first decades of the 20th century, labour disputes and unregulated strikes were seen by governments as threats to economic productivity and social stability. Federal and provincial governments set up mechanisms to mediate "industrial disputes". The first national labour statute, the *Industrial Disputes Investigation Act*, was enacted in 1907. This law did not provide a framework for bargaining, but it did establish a government-assisted process for the investigation and conciliation of labour

disputes. The legislation did imply for the first time a minimum level of recognition for unions as legitimate bargaining agents for groups of employees. The legally-protected right to freedom of association in the workplace had taken a step forward.

-1-

Right to Bargain in the Private Sector

A more complete framework of labour rights emerged only after the labour movement and collective bargaining were firmly established in much of the industrial private sector and the municipal sector. The right to collective bargaining was achieved, not by legislation, but through tough, difficult and hard-fought organization in the plants, mines, forest camps and sweat shops of Canada. Union organizers were threatened with injury, even death. Activists and strikers risked being fired on the spot. Long tumultuous strikes pitted workers against police and against private armies contracted by employers. Yet, where employees stuck together, they were able to wrestle collective agreements out of very reluctant employers. By the 1940s and the Second World War, well-established specialist trades unions were joined on the scene by larger "industrial" unions.

During the war, the federal government had temporarily assumed the constitutional authority for labour relations. It enacted the wartime executive order known as Privy Council Order 1003. PC Order 1003 went beyond the limited investigative and conciliation procedure of the 1907 Industrial Disputes Investigation Act and established permanent collective bargaining rights for all private sector workers across Canada. When the constitutional authority for labour relations was returned to the provinces after World War II, it was left to the provincial legislators to enact their own collective bargaining statutes.

The federal law followed the U.S. model enacted in 1935 as part of President Roosevelt's "New Deal" and was known as the

"Wagner Act" after its sponsor in the U.S. Senate. PC Order 1003 provided for legally recognized certification procedures, prohibitions against unfair practices by employers, regulation of strikes and lockouts and legally-sanctioned systems of grievance arbitrations.

The federal initiative was in part a response to the upsurge of political support in the 1940s to the labour-backed CCF, the predecessor of the NDP. As the unions grew, they began to flex their political muscle. The CCF scored a number of notable advances, most dramatically in Saskatchewan, where, in 1944, the CCF formed the first democratic socialist government in North America. The CCF moved quickly to set up its own model patterned on the federal law. The Saskatchewan legislation was far ahead of its time in extending bargaining rights to its provincial public service workers, the first time in Canada that government employees were afforded these rights in any meaningful way. The Saskatchewan legislation survived constitutional challenge, adding to the pressure on other provincial governments.

In the years immediately after the Second World War, the federal government moved from the wartime executive order to enact the *Canada Labour Code* on the same principles as PC Order 1003. Other provincial governments followed suit, though it took nearly three decades for the other jurisdictions, including the federal government, to follow Saskatchewan's lead for public service workers.[12] By 1950, a "Wagner Act" system was in place across Canada for private sector and municipal workers in Canada.

-2-

Extension of Rights to the Public Sector

Through the 1960s and 1970s the federal government and other provincial governments followed the Saskatchewan example and extended collective bargaining into the public sector. Many of these

public sector gains only came after "illegal" strikes persuaded governments that if strikes weren't made legal, they'd simply continue to be subjected to unregulated illegal walkouts and disruption of services. The election of labour-friendly governments made the difference in some provinces, notably Manitoba and British Columbia. Political realities played a part in the others.

In 1961, the Liberal government of Jean Lesage was elected in Quebec, breaking 25 years of strong conservative rule under the Union Nationale. The new government wanted to make peace with an increasingly militant Quebec labour movement. One of the solutions was to grant collective bargaining rights to public sector workers in Quebec in 1965.

This breakthrough helped politicize federal government workers in Quebec. This politicization, combined with the frustration of federal government workers across the country over receiving little or no pay increases during years under the Diefenbaker Progressive Conservative government, 1957 to 1963, created the momentum for federal government workers to demand the right to collective bargaining. In 1967, Lester Pearson's minority Liberal government passed the *Public Service Staff Relations Act*, which gave collective bargaining rights to government workers and allowed them the option of arbitration or the right to strike to settle disputes. Even then, the legislation denied the right to unionize to significant groups in the federal public sector, such as the RCMP and the military.

Over the next decade the remaining eight provincial governments moved to extend collective bargaining rights to their own employees. New Brunswick was next, with the Liberal government of Louis Robichaud passing the *Public Service Labour Relations Act* in 1968, modeled almost identically on the federal legislation. The last provincial government to grant collective bargaining rights to public employees was Nova

Scotia, when, in 1978, the *Civil Service Collective Bargaining Act* was proclaimed.

-3-

The High Water Mark in Canada

With the infusion of public service workers into the world of collective bargaining, by 1983, forty percent of the Canadian workforce were union members, covered by freely negotiated collective agreements.[13] Canada now had a legislative framework for collective bargaining in every jurisdiction.

However this proved to be the high water mark for collective bargaining rights in Canada. Structural changes in the economy, weaknesses in the law and a readiness of governments to set aside rights if their exercise proved inconvenient all led to an erosion of the rights achieved by this point in Canadian history.

At the peak of unionization in Canada, there were huge gaps in the effective right to collective bargaining. With only 40 percent unionized, most workers were still on their own, outside the protection of collective bargaining. Agricultural workers had virtually no protection at all.[14] Many workers were excluded by statute or regulation from collective bargaining. Even for workers who were covered by collective agreements, the system was less than adequate. Many public sector workers did not have the right to strike, for example. Public sector legislation usually dictated bargaining groups and limited the matters that could be negotiated.

-4-

Private Sector Complications

In the private sector, the Wagner Act model adopted from the U.S. did not so much encourage collective bargaining as regulate it, though as Paul Weiler noted, the Canadian public policy ostensibly favoured collective bargaining and did offer some

encouragement to trade union representation.[15] This was offset by a more cautious approach in Canada to the right to strike.[16] The role of government in this model was as a "neutral" third party between employers and employees to keep the peace, impose order and promote labour relations stability.

This "neutral" approach showed several weaknesses, leading to poor results overall. Most significantly, private sector labour law established an elaborate process of certification, administered by a government-appointed labour relations board. To get certified and thus acquire the right to bargain on behalf of a group of employees, a union needed to demonstrate it had the support of employees within a particular bargaining unit. Employers were often able to successfully defeat certification applications by legal maneuvers such as challenging the definition of the bargaining unit, for example. Unions were forced to go back to the drawing board, having revealed their hand. To be in a position to apply for certification in the first place, employees were usually required to work with a union under the cover of secrecy from employers and their sympathizers to sign up members. While there are some sanctions and restrictions on employer interference in union organizing, in many workplaces the reality and fear of subtle or not-so-subtle intimidation was never far away. Inadequate enforcement of unfair labour practice provisions encouraged employers to routinely violate the laws, knowing that they would probably not be caught and would only be punished lightly if they were.

Once past the hurdle of certification, the union then had to negotiate a first collective agreement generally unaided by any state pressure on the employer. Legislation and the courts also imposed restrictions on picketing during lawful strikes. Little wonder, then, that the figures for those covered by collective agreements were so low in Canada (and even worse in the United States) even at the peak.

Critics of the labour and employer groups have argued that the low rate of unionization was a mark of the lack of interest on the part of most Canadian workers in collective bargaining. Roy Adams points out, however, that, according to survey evidence, the large majority of unrepresented workers would actually prefer some form of collective bargaining in the development of their terms and conditions of employment.[17]

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Public Sector Constraints

Just as the federal public sector bargaining legislation excluded many employees, most provincial legislation governing public sector collective bargaining was more restrictive than legislation applicable to the private and municipal sectors.

Private sector labour laws give the authority to a neutral Labour Relations Board, to determine the appropriate size and composition of a bargaining unit, for example. In the public sector, the bargaining unit determination was either defined or restricted by criteria contained in the public sector bargaining legislation.

While private sector labour law did not restrict the types of issues that can be bargained, public sector law prescribed the scope of bargaining. The list of non-negotiable issues varies from jurisdiction to jurisdiction, but the restrictions generally had the effect of giving the employer stronger management rights.

The most substantive area of difference between private sector and public sector collective bargaining legislation was the procedures for dispute resolution. In the private sector, once negotiations have followed a particular legislative course, unions were generally free to strike and employers to lockout, subject as we will see to the propensity of governments to invoke back-to-work legislation in the private as well as the public sector. The

right to strike was not universal in the public sector. In three jurisdictions (Alberta, Prince Edward Island and Nova Scotia), the law bans strikes, providing government employees with only the right to binding arbitration. In all jurisdictions, certain classifications of workers, like police and firefighters, were forbidden from taking strike action. Ontario[18], Quebec and Newfoundland and Labrador allowed workers to take strike action once a determination was made as to which essential workers would be required to remain on the job during any strike action. British Columbia, Manitoba and New Brunswick, like the federal jurisdiction, provided for the choice between the right to strike or binding arbitration. A certain level of essential employees still had to be provided in the event of a strike in these jurisdictions.

Despite these restrictions, 75 percent of all public sector workers in Canada enjoyed the right to collective bargaining, albeit under a somewhat more restrictive framework. One of the major reasons behind higher public sector union rates in Canada was that collective bargaining was effectively mandatory. Employers in the public sector were not able to use anti-union tactics during organizing drives. However as we will show, the experience has been that most public sector employers demonstrated their anti-union animus in other ways.

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And Those with No Collective Bargaining at All

For those who weren't covered by collective agreements, employment standards, minimum wage and occupational health and safety legislation established some coverage. However, these laws did not generally provide for any negotiations around these issues with representatives of the affected workers. The legislated standards were determined without real consultation and cannot easily be changed. Enforcement has been the responsibility of the staff of labour standards branches of government who are

generally sympathetic to the rights of employees who contact them, but must remain officially neutral. Independent legal representation or counsel is not provided to employees in the case of disputes under employment standards or other legislation-based disputes, as occur in union grievances.

Section VI
Rights Under Attack

IN BOTH the private and public sector, the story of the past two decades has been dismal. Collective bargaining rights in Canada such as they were by the early 1980s have been under unrelenting attack at every level. There have only been a few exceptions and they have been minor efforts to modify the current system, or to hold the line at the status quo. There have been no radical moves forward. For the most part, governments have persistently cut down on Canadians' rights to free collective bargaining in both sectors.

By 2005, only 17.5 percent of the private sector workforce was unionized, compared to approximately 25 percent of private sector employees at the peak. In part this was the result in several jurisdictions of amendments to private sector labour laws to make the certification process even more restrictive. Legislative changes were introduced to make it more difficult for unions to organize in the private sector. Globalization and free trade resulting in structural changes in the economy took a huge toll on the ability to organize private sector workers. Numbers of jobs in the heavily-unionized sectors such as mining, forestry and manufacturing sharply declined. The hard-to-organize sectors under the

Canadian certification system have been the source of most new jobs. Tourism, food services, small businesses, high tech and information technology are largely outside the realm of collective bargaining in Canada.

-1-

Back-to-Work Legislation

Canada has had a long tradition of back-to-work legislation. This is the country that honoured "peace, order and good government" in its first constitution and in its ongoing political ethos. As noted, the aegis for the early labour relations legislation was the perceived need for conciliation and mediation processes whenever industrial disputes disturbed the tranquility of the Canadian economy and its social fabric. Each decade had examples of high-profile strikes being ended by legislation forcing the workers back to their jobs. The legislation usually provided for compulsory arbitration, or imposed neutral conciliation board reports. In some cases the legislation provided for a cooling off period after which the union could go back on strike. This usually resulted in collective agreements being negotiated without a second strike. As long as the legislation did not impose the employer's position in bargaining and was used only after long strikes and negotiations were at an impasse, the labour movement did not usually object too strongly.

There has been a major change in the frequency and severity of back-to-work legislation in Canada in recent years. Since the early 1980s, the number of instances of back-to-work legislation and legislation suspending the right to strike is higher than any other period in the history of labour relations in Canada. In the last 25 years, the federal government alone passed 13 pieces of back-to-work legislation while provincial governments across the country have enacted 72 pieces of back-to-work legislation. Most

of this legislation not only forced workers back to work after taking strike action, but also arbitrarily imposed settlements that reflected the employer's last offer and temporarily suspended the right of employees to bargain collectively and take strike action.

-2-

The Take-Away Begins

The ink was barely dry on public sector bargaining legislation when governments began to take away the rights public sector workers had struggled so long to achieve.[19] The take-aways were also extended to the private and municipal sectors as well. The excuse initially was the alleged public need to control wages as a way of controlling inflation.[20]

In the early 1980s, Canada was undergoing a renewed bout of raging inflation. Governments responded with legislation that put caps on wage increases in the public sector. The model followed by most provincial governments was the "six and five" 1982 federal legislation that limited increases to six percent in the first year and five percent in the second. The legislation was a sham. The clear evidence was that wages followed inflation, not the other way around. If inflation was running at eight percent per year, for example, workers pressed their unions to negotiate contracts that would protect their standards-of-living. Many provincial governments used the legislation to stop collective bargaining altogether or to take away terms or benefits that had nothing to do with inflation.

The effect of wage control legislation was to reduce living standards for public sector workers, especially lower-paid employees. Most of the legislation expressed the limits in terms of percentages of wages, not actual dollar amounts. This meant that lower income families again got hit hardest. The cost of food, rent or maintaining a car went up in actual dollars and cents. For lower-paid workers the cost-of-living rose much more rapidly as a

percentage of their income than for higher rated workers. Wage controls expressed as a percentage of wages meant higher rated employees were entitled to and got higher pay increases, invariably much in excess of the actual increase in their living costs. Efforts to negotiate real improvements for lower rated employees through collective bargaining were stymied. Women were invariably at the bottom end of pay levels. Fixed percentage caps put a real brake on pay equity and eliminated the fine tuning that could be achieved in free collective bargaining to deal with wage anomalies.

Public sector workers were not the only workers to have their collective bargaining rights restricted during this period. In six provinces, private sector labour legislation was amended to further restrict the certification process. In some cases, the amendments unduly interfered in the internal matters of unions.

- *The Federal Government*

  The Liberal government of Prime Minister Trudeau enacted the *Public Sector Compensation Restraint Act* (Bill C-124) in August 1982. The "six and five" program was phased in starting in June 1982 and was continued until December 1985 for some employees. By early 1983, no fewer than six provincial governments followed the federal government's example and used their legislative authority to limit or deny collective bargaining for public sector workers and impose wage controls on them.

- *Newfoundland and Labrador*

  In April 1983, the government of Newfoundland and Labrador enacted the *Public Service (Collective Bargaining) Amendment Act* (Bill 59). This legislation added another feature which was going to recur in the ensuing decades. The

Act allowed the government to designate up to 49 percent of a bargaining unit as essential employees, thereby making strikes a totally ineffective tool for public sector unions. The legislation also excluded some 2,000 public employees from joining a union by broadening the definition of management employees. Public sector unions, led by the National Union's component, Newfoundland and Labrador Association of Public and Private Employees (NAPE/NUPGE) strongly objected to the legislation.

Bill 59, combined with a two-year wage freeze instituted by the Peckford Conservative government in 1982, forced 5,500 NAPE members out on strike in April 1985 after negotiations failed to meet NAPE's bargaining goals. The union's two primary demands were: withdrawal of Bill 59 and wage parity with public sector workers in Atlantic Canada.

During the first week of the strike, the government signaled that it was prepared to amend Bill 59 and meet the union's wage demands. In response, NAPE suspended its strike action and returned to the bargaining table. Negotiations continued through the spring and summer without any progress on these two issues, again forcing NAPE back on strike in September.

The government responded by applying for and receiving an injunction against the strike. NAPE refused to back down and hundreds of strikers were arrested in front of the provincial legislature including NAPE President Fraser March and provincial NDP leader Peter Fenwick. The government decided to make an example of these two men and proceeded with prosecution resulting in a four-month jail term for March and a two-month jail term for Fenwick.

- *Nova Scotia*

  In June 1983, the Nova Scotia government passed the *Public Sector Compensation Act* (Bill 71) suspending the collective bargaining rights of 25,000 workers for one year, extended collective agreements for the same period and imposed a six percent limit on wage increases. The government also passed *An Act to Amend Chapter 19 of the Trade Union Act* (Bill 91) in May 1986. The Bill required a vote on the employer's "final offer" before a strike could begin.

- *Prince Edward Island*

  The PEI government passed the *Compensation Review Act* (Bill 39) in June 1983 similarly restricting wage increases for a two-year period. The PEI Act forced all negotiated settlements to be submitted to a government-appointed Compensation Review Commissioner who had broad powers up to and including rejecting freely negotiated settlements that he felt did not meet the legislated wage guidelines.

- *New Brunswick*

  In December 1988, the Liberal government of New Brunswick passed *An Act to Amend the Industrial Relations Act* (Bill 73). It took away the right to strike from all municipal and regional police officers and replaced it with binding arbitration.

  The Industrial Relations Act was amended again in May 1989 to enable the provincial Cabinet to designate specific construction work a "major project" and consolidate unionized workers into a single, new bargaining unit. Picketing was restricted at worksites designated as a "major project".

- *Quebec*

In June 1982, in Quebec, the PQ government, which had been elected with substantial union support, passed the *Remuneration in the Public Sector Act* (Bill 70). This legislation removed the right to strike, extended collective agreements and instituted an average 19.5 percent wage cut for over 300,000 public sector workers between the period of January 1 and March 31, 1983. The government then followed with the *Conditions of Employment in the Public Sector Act* (Bill 105) suspending collective bargaining for three years until December 1985 and imposing a limit on wage increases of 1.5 percent less than the provincial cost of living rate. Bill 105 also changed the contract language in over 100 collective agreements, weakening provisions on job security and working conditions.

In protest against such severe restrictions on their collective bargaining rights, public sector workers in Quebec went on an illegal strike in January 1983. In response, the Quebec government quickly passed the *Resumption of Services in the Public Services Act* (Bill 111) in February 1983. Bill 111 was unprecedented, one of the most severe attacks on workers' rights in Canadian history. The back-to-work legislation exempted Quebec from the federal *Charter of Rights*, if it applied, and suspended sections of Quebec's Charter of Human Rights and Freedoms. It imposed huge fines, imprisonment and the decertification of unions if the illegal strike did not end immediately.

In contrast to the federal legislation, the Quebec legislation went far beyond what might arguably have been required to restrain inflation. Substantive non-wage provisions, negotiated under a free collective bargaining regime, were altered by a government that used its control of the legislature to impose conditions reflecting the gov-

ernment's preferences as employer. It was this blurring of roles that was to be repeated over and over again by governments at both levels and all across Canada. The Quebec legislation was the first of a long string of legislation enacted in Canada that was found by the ILO to contravene international labour standards.

With an end coming to Bill 111, the Quebec government passed the *Process of Negotiation of Collective Agreements in the Public and Parapublic Sectors Act* (Bill 37) in June 1985. This legislation was designed to weaken the bargaining power of public sector unions in the province for the foreseeable future. There was no pretense that the legislation was temporary and enacted only in response to a public crisis, such as inflation. Bill 37 dramatically increased the designation of the number of public employees as essential and therefore not allowed to go on strike. The legislation also altered the bargaining process in a way that public sector unions could no longer form a common front and engage in province-wide coordinated bargaining.

The new Liberal government which succeeded the PQ government in 1986 continued the legislative attack on the collective bargaining rights of Quebec's public sector workers. In its first year in office, the new government enacted no less than six back-to-work measures removing the right to strike from particular groups of workers. The most severe legislation was *An Act Respecting the Maintenance of Essential Services in the Health and Social Services Sector* (Bill 160) passed in November 1986. Bill 160 was enacted following a 24-hour strike, requiring employees to return to work and denying them the right to strike. The legislation was written in a way that allowed the government to invoke the legislation at any time in the future to prevent a strike in the health and social service sectors. In

addition, Bill 160 established the harshest penalties of any similar legislation to date for defiance of the legislation. The penalties included for the unions 12 weeks of suspension of dues check-off for every day of the strike and for the workers a day's reduction in annual salary and the loss of one year's seniority for every day on strike.

The new government also enacted *An Act Respecting the Resumption of Construction Work* (Bill 106) in June 1986. Bill 106 ended a 10-day lockout by the provincial construction industry of its workers and denied construction workers the right to strike for a three-year period.

- *Ontario*

The Ontario government followed the federal pattern by enacting the *Inflation Restraint Act* (Bill 179) in September 1982. This legislation suspended collective bargaining for over 500,000 public sector workers in the province and extended all collective agreements for one year, imposing a maximum five percent compensation increase.

Following the expiry of Bill 179, the Ontario government then passed the *Public Sector Prices and Compensation Act* (Bill 111), extending legislative wage controls for another year. While Bill 111 purported to allow for collective bargaining, most public sector workers still did not have the right to strike and the legislation destroyed any independence in the only dispute procedure they had access to, the arbitration system.

Bill 111 forced arbitrators to consider the employer's "ability to pay". All collective agreements had to be reviewed and given approval by a government-appointed Restraint Board.

In June 1984, *An Act to Amend the Labour Relations Act* (Bill 75) was also passed, which gave the Labour Relations

Board the authority to take action against not only the union and its leadership, but the rank and file members who participated in a strike deemed illegal.

- *Saskatchewan*

  The *Trade Union Amendment Act* (Bill 104) was proclaimed in June 1983. This legislation weakened a union's ability to organize new members by enforcing more stringent certification requirements on unions and allowing employers to freely campaign against the union during an organizing drive and during negotiations. The legislation further restricted the internal matters of unions by broadening the time frames for providing advance notice of union meetings and when strike votes were to be conducted. It also allowed non-union members to participate in strike and ratification votes. Bill 104 gave the employer the authority to apply to the Labour Relations Board to order a vote on its "final offer" after workers have been on strike for 30 days – even if they had already voted on the same offer before the strike commenced. The legislation also restricted a union's ability to discipline members who crossed picket lines or violated the union's constitution.

  Bill 104 weakened the collective rights of workers by giving individuals the right to sue their union if they felt the union had unfairly represented them. It also limited the scope of bargaining units, allowing for employers to claim a greater number of excluded employees.

  In January 1986, 12,000 provincial government workers, members of the National Union's Saskatchewan component, the Saskatchewan Government and General Employees' Union (SGEU/NUPGE), went on strike against the government's wage restraint guideline which did not

take a legislative form. The government quickly responded by passing the *SGEU Dispute Settlement Act* (Bill 144). The Act ended the strike and permitted the government to dismiss employees who disobeyed the order.

- *Alberta*

Alberta entered this period with the most restrictive legislative framework for public sector collective bargaining in the country. It proceeded to place further restrictions on workers' rights with the passage of the *Labour Statutes Amendment Act* (Bill 44) in June 1983. Provincial government employees in Alberta never had the right to strike. Bill 44 expanded this ban to include almost all workers in the province whose salaries were directly paid by provincial government revenues. With Alberta already having the lowest overall unionization rate (23 percent) and the lowest private sector unionization rate (13 percent) in the country, Bill 44 resulted in over 70 percent of union members in the province not having the right to strike.

Bill 44 severely weakened the independence of the arbitration system by forcing arbitrators to consider such factors as government policy, employer's "ability to pay" and non-union wages. The legislation also allowed the employer to suspend the collection of dues in the event workers participated in strike action.

In June 1988, Alberta's *Labour Code* further restricted workers' rights with the passage of the *Labour Code Amendments Act* (Bill 22). Bill 22 negatively impacted on almost every area of union activity imaginable, including:

- when and how a union can conduct a strike vote;
- when a strike could occur;

- where and in what form picketing could take place;
- when unions must conduct a vote by their members on the employer's last offer.

All organizing campaigns were subject to a certification vote even if 100 percent of the workers within a bargaining unit signed union cards. The amendments to the Labour Code also empowered the government to declare an emergency to end a strike within the private and public sectors for a variety of reasons. In the event of an illegal strike, the government had the authority to order the Labour Board to revoke a certification of the union.

- *British Columbia*

One of the more audacious attacks on workers' rights took place in British Columbia.

In June 1982, the Social Credit government of Bill Bennett introduced its first restrictive labour legislation. The *Education (Interim) Finance Act* (Bill 27) applied to teachers employed by public school boards and enabled the government to block – through its budget – wage increases which had been previously agreed to by the parties to the negotiations. The *Compensation Stabilization Act* (Bill 28) in the same year was modeled after the federal government's "six and five" program, unilaterally imposing wage increases of six and five percent on 220,000 public sector workers for a two-year period retroactive to February 1982.

Shortly after its re-election in the spring of 1983, the government introduced with its budget in July, a sweeping package of legislative reform consisting of 26 regressive Bills. The *Compensation Stabilization Amendment Act* (Bill 11) extended the previous year's restraint legislation for another year. It changed the "six & five" wage increase guideline contained in the 1982 legislation to a range for

changes in total compensation from minus five percent to plus five percent and established a Compensation Commissioner with the power to decide wage increases based only on employer's "ability to pay" considerations. Collective bargaining wasn't part of the process.

The *Public Service Labour Relations Amendment Act* (Bill 2) would have basically legislated the master agreement of the National Union's largest BC component, the BC Government and Service Employees' Union (BCGEU/NUPGE), covering 25,000 government employees out of existence.

The *Public Sector Restraint Act* (Bill 3) overrode job security provisions contained in public sector collective agreements allowing employers, including the government, to fire workers when funding was cut back or programs and services were eliminated. This Bill so shocked the BC public that, following *Operation Solidarity* spearheaded by the province's labour movement, the government backed down and withdrew both Bills 2 and 3. Most of the rest of the regressive package remained intact and was adopted by the legislature.

Some of the other Bills contained in the Socred's legislative reform package introduced in the summer of 1982 placed permanent restrictions on the collective bargaining rights of private sector workers. The *Employment Development Act* (Bill 16) gave the government the authority to deny private sector workers the right to strike if they worked at sites the government deemed to be an "economic development project".

The other offensive legislation specifically attacking workers' rights was the *Employment Standards Act* (Bill 26), which allowed private agreements between employers and workers in both the private and public sector to override minimum employment standards.

The Socred government's legislative attack continued into the next year when the government introduced the *Labour Code Amendment Act* (Bill 28). This legislation allowed for greater employer interference in union organizing drives and a simpler decertification process for anti-union employees. Bill 28 also restricted secondary picketing and extended the government's ability to declare "economic development projects" strike-free zones.

Not content with the legislative shift in favour of employers resulting from the Socred's 1983 package of labour law reforms, in June 1987 the re-elected government, under the new leadership of Bill Vander Zalm, implemented another major restructuring of labour law with the passage of the *Industrial Relations Reform Act* (Bill 19). This legislation was most notable for the unprecedented amount of government interference with private sector collective bargaining law.

Bill 19 substantially weakened a union's ability to negotiate contract language that would prevent employers from contracting out. The Bill restricted successor rights and the definition of a related employer. Bill 19 gave the provincial government the authority, through its newly established Industrial Relations Council (IRC), to declare not only public, but also private sector workers, as essential and therefore not having the right to strike.

The legislation stipulated that failure of an employee to obey a back-to-work order constituted grounds for an employer to take disciplinary action against the employee, including immediate dismissal.

Bill 19 placed more restrictions on when a union could conduct a strike vote, while broadening the conditions

for when the IRC could order the union to take a vote on the employer's "final offer". The IRC was also given the power to prohibit secondary picketing and hot cargo boycotts. It had the authority to refer a dispute to mediation, a fact finder or a public inquiry board with instructions to take into account the employer's "ability to pay". The IRC could order that a vote be taken on the recommendations of the public inquiry board and any failure of the union to participate in any of these processes would give the employer the right to set the terms and conditions of a collective agreement.

At the same time that Bill 19 was introduced, the Socred government weakened the collective bargaining rights for teachers in the province by passing legislation that changed the structure of collective bargaining away from a provincial centralized model. The *Teaching Profession Act* (Bill 20) split the new British Columbia Teaching Federation (BCTF) into separate bargaining units for each school board and excluded principals and vice-principals from membership.

Collective bargaining for teachers was again restricted in July 1989 when the government passed the *School Act* (Bill 67) which excluded certain matters from the bargaining process, including programs of study, professional methods and the hiring of teaching assistants.

The only province in Canada that did not pass restrictive labour law in the 1980s was Manitoba which was governed by an NDP government from 1981 to 1988. The government however did adopt wage restraint as a matter of public policy throughout most of the 1980s.

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The 1990s: The Assault Picks Up Momentum

The stated motivation for the assault on bargaining rights changed in the 1990s. Governments faced major deficits. Led by the business sector and Preston Manning's Reform Party, neo-conservatives found their voice and demanded severe cutbacks in government expenditures. Governments felt bound to respond, even though the majority of the public continued to give higher priority to maintaining and expanding public services, especially in health and education. The stated need to control deficits became the driving political issue of the day.

With wages and salaries the main component of government costs, governments attacked on three fronts: they legislated direct cutbacks of negotiated wages, they contracted out government services usually to non-union low-wage contractors and sharply cut back government staff and programs. To the extent that public sector collective bargaining continued, the bargaining power of public sector unions was severely undermined. Employees seemed relieved they still had jobs and had no enthusiasm for long strikes. The political triumph of the Mulroney government on the free trade issue in 1988 seemed to embolden Conservatives and put the left on the defensive. Even NDP governments, including the first-time NDP government of Ontario, found themselves engaged in efforts to cut back on negotiated agreements.

Governments' abuse of their legislative authority to unilaterally determine the wages and working conditions of their employees continued to be the norm in the 1990s when seven out of ten provincial governments enacted legislation that suspended collective bargaining and established wage freezes or rollbacks. In several provinces, the "temporary" restraint legislation was replaced with other "temporary" restraint legislation once the original legislation expired. Temporary legislative interference

came to look more like a permanent feature of the collective bargaining process in the public sector.

As in the 1980s, the private sector workers were unable to escape the attack on their collective bargaining rights. In no fewer than five provinces, governments amended private sector labour legislation to restrict the organizing ability and bargaining power of unions in the private sector.

- *The Federal Government*

  In June 1991, the Mulroney government enacted the *Public Service Reform Act* (Bill C-26). The Act expanded the definition of management to unilaterally take away bargaining rights from public service workers who were entitled to them on recognized principles. It also gave management the right to hire more casual workers and to contract out, regardless of the provisions of their collective agreements.

  In response to a wage freeze proposal by the federal government, members of the Public Service Alliance of Canada (PSAC) went on strike in the fall of 1991. The federal government's reaction was to end the strike by enacting back-to-work legislation, the *Public Sector Compensation Act* (Bill C-29). Bill C-29 extended existing contracts for a two-year period with no wage increase in the first year and a three percent wage increase in the second year. In April 1993 the federal government extended the wage freeze in the 1991 Public Sector Compensation Act for a further two years with the passage of the *Government Expenditure Restraint Act* (Bill C-113).

  With the election of the Liberal government in October 1993, PSAC expected a return to full collective bargaining especially since Jean Chrétien had affirmed his party's commitment to free collective bargaining in the 1993 federal

election campaign.[21] That commitment disappeared in the Liberal's first budget in February 1994, with the *Budget Implementation Act* (Bill C-17) amending the 1991 *Public Sector Compensation Act* to freeze wages and extend contracts for another two years. Another one-year extension was legislated in the 1995 budget through the *Budget Implementation Act* (Bill C-76), thus ensuring the suspension of collective bargaining rights for federal government workers for five straight years.

In the budget of February 1995, the government again amended the *Public Sector Compensation Act* to strip the job security provisions contained in the federal government employees' collective agreements. These measures caused PSAC to lose 21 percent of its membership within the next three years.[22]

- *Newfoundland and Labrador*

  In Newfoundland and Labrador, public sector workers had their wages frozen for six years throughout the 1990s. In April 1991, the government passed the *Restraint of Compensation in the Public Sector Act* (Bill 16) which suspended collective bargaining and imposed a one-year wage freeze on the province's 25,000 public sector workers. Bill 16 also allowed the provincial government to renege on its previous commitment to provide retroactivity for pay equity agreements, which had been negotiated earlier.

  One year later, the government passed the *Extension of the Restraint of Compensation in the Public Sector Act* (Bill 17) which suspended collective bargaining for another two years, extended the wage freeze for a year and set a maximum wage increase in the second year of three percent. In December of that year, the government passed the *Public Sector Restraint Amendment Act* (Bill 64) eliminating the

three percent ceiling on wage increases contained in Bill 17 and nullifying negotiated wage increases scheduled to come into effect at the end of the control period.

In February 1994, the government introduced *An Act to Amend the Labour Relations Act* (Bill 49), which took away the right of a union to automatic certification when a majority of a bargaining unit signs a card. Certification votes now would have to take place in all organizing drives, even if 100 percent of the workers signed a union card. The legislation also made it mandatory for a union to conduct a strike vote on any employer's "last offer".

- *Nova Scotia*

Public sector workers in Nova Scotia were denied their collective bargaining rights for the first seven years of the 1990s. In May 1991, the Conservative government passed *An Act Respecting Compensation Restraint in the Public Sector* (Bill 160). The legislation imposed a two-year wage freeze on all public sector workers to take effect on the expiry of their collective agreements.

In November 1993, the new Liberal provincial government passed the *Public Sector Unpaid Leave Act* (Bill 41). This gave government and all other public sector employers the authority to lay off public sector workers for a total of five days (November 12 as well as four days between Christmas and New Year's Day) – a reduction of 2.5 percent in actual compensation costs.

In April 1994, the government passed the *Compensation in the Public Sector Act* (Bill 52). The legislation not only contained an immediate freeze on any increase in public sector wages, salaries and wage-related benefits, it also imposed a permanent three percent wage rollback on all workers making less than $25,000 a year, and continued

wage freezes until October 1997. Bill 52 had also the effect of preventing any organizing in the public sector until October 31, 1997. If a union organized a new group, that group would not be permitted to negotiate wages and benefits greater than it had before.

- *New Brunswick*

  Public sector workers in New Brunswick experienced four years of legislative wage restraint in the 1990s. The provincial government proclaimed the *Expenditure Management Act* (Bill 73) in May 1991. The Act provided for a one-year wage freeze for all public sector employees in the fiscal year 1991-92.

  In May 1992, the government passed wage "restraint" legislation entitled the *Expenditure Management Act* (Bill 42). This legislation gave unions the option. They could accept a two-year wage package of one percent and two percent inserted into their collective agreement, effectively extending the collective agreement and delaying any previous unpaid negotiated improvements by two years. Alternatively they could negotiate some other period of extension and/or delay in negotiated wage improvements "consistent" with the restraint measures contained in the legislation.

  In April 1994, *An Act to Amend the Industrial Relations Act* (Bill 47) was passed by the Liberal government that gave employers the authority to request that a union conduct a vote on the employer's "last offer".

- *Prince Edward Island*

  The Liberal government proclaimed the *Public Sector Pay Reduction Act* (Bill 70) in May 1994. This legislation suspended collective bargaining on all monetary items in the

public sector until May 1995 and rolled back wages by 7.5 percent on salaries above $23,000 and 3.75 percent on salaries below $23,000 for all public sector employees on the Island. The wage rollback was considered permanent.

- *Quebec*

  The Quebec government passed *An Act Respecting the Extension of Collective Agreements and Remuneration in the Public Sector* (Bill 149) in July 1991. The legislation compelled the province's 270,000 public sector workers to extend their collective agreements for up to three years and prescribed maximum wage increases of three percent for the first nine months following the original expiry date, and one percent for the next three months. In cases where the parties could not reach an agreement, the legislation extended the expiry date by one year.

  Public sector employees had their collective bargaining rights stripped again in September 1993 under *An Act Respecting the Conditions of Employment in the Public Sector and the Municipal Sector* (Bill 102). Bill 102 imposed a two-year wage freeze on public sector employees and extended their collective agreements for the same two-year period ending in 1995. In addition, Bill 102 forced employees to take up to three days unpaid leave annually, equivalent to one percent of the employees' wages. The legislation allowed public sector unions to avoid the one percent wage reduction provided they had negotiated other forms of compensation decreases equivalent to one percent of annual wage costs.

- *Ontario*

  In the spring of 1993, public sector unions reluctantly agreed to enter into a series of discussions with the NDP

government of Bob Rae for the purpose of negotiating a "social contract". Discussions commenced in April. By late May, the social contract talks had broken down. In response, the government proclaimed the *Social Contract Act* (Bill 48). The legislation terminated unrestricted collective bargaining in the public sector in Ontario for a three-year period.

Bill 48 provided for expenditure reduction targets for each of the eight sectors of public employment established by the government (direct government services; health; colleges; universities; schools; municipalities; social service agencies; and boards, commissions and agencies of the government). Public sector employers and unions were expected to reach these expenditure reduction targets through sector-wide agreements, followed by local agreements. Where no sector agreement was reached, the Act's "fail-safe" provisions kicked in, forcing employees earning over $30,000 to take up to twelve days of unpaid leave each year – "Rae Days" as they became known – which was equal to a 4.6 percent rollback in wages. On top of that, Bill 48 provided a three-year wage freeze with no possibility of any form of compensation increases until April 1996.

The irony of the *Social Contract Act* was that it was tabled in the Legislature on the very same day the government also tabled amendments to the *Crown Employees Collective Bargaining Act*, which finally extended the right to strike to provincial government employees in Ontario.

Most of the labour law changes made by the Progressive Conservative government of Mike Harris in the second half of the decade impacted more negatively on the rights of private sector workers than public sector workers. The assault on public sector workers and their unions came not

so much from changes to labour law but from the government's policy agenda of downsizing, tax cuts, privatization, deregulation and drastic under-funding of public services.

In the late 1990s, public service unions were faced with massive restructuring of the public service forcing them to spend a great deal of time and resources competing with each other in a large number of union intermingling votes. These intermingling votes were the result of the 1997 *Public Sector Transition Stability Act* (Bill 136), an Omnibus Bill that forced unions to participate in run-off votes in the hundreds of newly merged workplaces resulting from the restructuring. The legislation also gave the authority to a government-appointed Commissioner to impose the first collective agreement on a newly merged bargaining unit if no agreement could be reached through collective bargaining.

The *Labour Relations and Employment Statute Law Amendments Act* (Bill 7) was passed in October 1995. The intent of Bill 7 was to repeal the progressive changes to labour law made by the NDP government earlier in the decade. The legislation explicitly denied access to collective bargaining and the right to strike for agricultural workers, domestic workers and certain specified professionals (architects, dentists, land surveyors, lawyers and doctors).[23] In addition, Bill 7 removed the section of the *Labour Relations Act* that disallowed the use of scabs during a strike, a provision that had been implemented during the previous NDP government's term in office. It forced certification votes in all organizing drives and made it easier for anti-union workers to force decertification votes. Finally, as noted in the last section, it removed successor rights from provincial government employees.

Bill 7 also had major consequences for the National Union's largest Ontario component, the Ontario Public Service Employees Union (OPSEU/NUPGE) in that it took away OPSEU's successor rights which the government considered to be a major obstacle in the way of its privatization agenda.

The *Education Quality Improvement Act* (Bill 160) was also passed in December 1997. This legislation gave the Conservative government control over almost every aspect of the education system including governance, funding and labour relations. It allowed government to dictate, through regulation, the teachers' terms and conditions of employment. Bill 160 also allowed the government to declare cost items such as preparation time and class size as non-negotiable items.

The Harris government often used deceptive language to describe its regressive labour law, frequently characterizing the legislation as a tool to promote "workplace democracy". An example of this was the *Economic Development and Workplace Democracy Act* (Bill 31) introduced in June 1998. This legislation gave the government authority to ban private sector strikes on certain large construction projects in order to protect private investors from any economic losses resulting from construction delays. Bill 31 also increased barriers to organizing drives and certification votes while making it easier for workers to decertify a union.

The *Prevent Unionization with Respect to Community Participation under the Ontario Works Act* (Bill 22), adopted in December 1998, was one of the government's rare instances of linguistic honesty.[24] Bill 22 did just what was stated in its title; it deprived those workers who were required to work for welfare under the *Ontario Works Act* (Bill 142) of

fundamental rights to join a union, bargain collectively and strike.

- *Manitoba*

  In June 1991, the Tory government led by Gary Filmon passed the *Public Sector Compensation Management Act* (Bill 70). Bill 70 extended every single public sector collective agreement for one year, ending all rights to collective bargaining for one year.

  Shortly after the Tories formed their first majority government in the fall of 1991, the *Labour Relations Amendment Act* (Bill 12) was enacted. The legislation repealed Final Offer Selection, a procedure the former NDP government inserted into the Labour Relations Act in 1987, which allowed union and management representatives to present a final proposal to an arbitrator. The arbitrator only had the option of choosing one offer or the other in full as a basis for the settlement of a new collective agreement.

  When Bill 70 expired, the government passed the *Public Sector Reduced Workweek and Compensation Management Act* (Bill 22) in April 1993. The legislation gave the provincial government the authority to reduce annual compensation to all public sector employees in the 1993-94 and 1994-95 fiscal years by approximately four percent per year. This was done during the term of existing agreements, thus nullifying several sections of negotiated collective agreements.

  Bill 22 established a mandatory layoff of up to a maximum of 15 days for employees of the provincial government, crown corporations, health care facilities, municipalities, school boards, universities and colleges. For most direct-government employees, this resulted in seven long weekends ("Filmon Fridays") and three days off be-

tween Christmas and New Year's Day for a period of three years.

In October 1996, the Filmon government passed the *Public Schools Amendment Act* (Bill 72). It took away the right of teachers to collectively bargain many of their working conditions including the length of classroom instruction and preparation time, class size and layoff provisions. Most of the regressive sections of this legislation were repealed by the NDP government of Gary Doer with the passage of *An Act to Amend the Labour Relations Act* (Bill 44) in October 2000.

In February 1997, the government passed *An Act to Amend the Labour Relations Act* (Bill 26). This legislation outlawed automatic certification for unions that managed to obtain signed cards from a majority of workers in a workplace. Employers were given new rights to interfere in organizing drives and fewer obligations to negotiate fairly with their unionized workers.

Bill 26 also provided severe restrictions on the use of union dues for political purposes. Shortly after the election of the Doer NDP government, most of the restrictive measures contained in Bill 26 and Bill 72, which denied collective bargaining rights to teachers (see previous section), were repealed by *An Act to Amend the Labour Relations Act* (Bill 44) in October 2000.

- *Saskatchewan*

Saskatchewan was one of the three provinces that did not institute wage restraint legislation in the 1990s. However, the government did take a hard nosed bargaining approach with regard to public sector employees resulting in four years of "negotiated" wage freezes. In October 1998, IBEW members employed with the Sas-

katchewan Power Corporation went on strike against the government wage guidelines and, after 14 days on strike, the government passed the *Maintenance of Saskatchewan Power Corporation's Operations Act* (Bill 65) which imposed annual wage increases of two percent on the employees of the Power Corporation, in line with public sector wage restraints.

- *Alberta*

  Alberta was another province that did not implement wage restraint legislation in the 1990s. The government's threat of imposing such legislation hung over public sector collective bargaining throughout the decade.

  In fact, in November 1993, the government announced its intention to cut by five percent the amount of money allocated for the wages for Alberta's 100,000 public sector workers for a three-year period. The government strongly urged public sector unions to voluntarily accept and attempt to negotiate the five percent wage cut or else have the government legislate a wage rollback. All public sector unions in the province ended up negotiating a five percent compensation reduction for the three-year period beginning in the fall of 1993.

  Between 1993 and 1995, the government of Alberta made changes to the administrative rules for certification, bargaining rights and grievance arbitration in ways that severely disadvantaged unions.[25] These Acts included the *Industrial Wages Security Act (1993)*, the *Employment Standards Code Amendment Act (1994)*, the *Labour Board Amalgamation Act (1994)* and the *Management Exclusion Act (1995)*.

- *British Columbia*

The draconian legislation of the 1980s in British Columbia was reinforced in the early 1990s by the Social Credit government in its final two years in office. In July 1990, the government required the parties in public sector bargaining to file their positions with a Public Sector Bargaining Registrar. This enabled the government to increase public pressure on unions during the negotiation process. It also gave employers the opportunity to distort the union's bargaining demands and influence the timing of strikes.

The *Compensation Fairness Act* (Bill 82) enacted in March 1991 went well beyond its predecessors of the early 1980s. No specific percentage limit on wage increases was established. Instead, the amount of a wage increase had to depend solely on the employer's "ability to pay", as determined by the employer and the government-appointed Commissioner. Factors to be taken into account by the CSP when deciding "ability to pay" included "any fiscal or financial policies adopted by government".

The Act gave the Commissioner the authority to disregard or override freely negotiated agreements. He had the power to:

- roll back wages or other compensation;
- order workers to pay back wages;
- reach back in time as far as he/she liked in imposing wage controls;
- reverse a mediator's settlement;
- overrule an arbitrator;
- unilaterally impose wage settlements or any other item he/she considered part of the compensation package;
- unilaterally impose the way compensation was divided among wages, working conditions or benefits;

- dictate how compensation was calculated; and
- hand down orders for enforcement, with the legal weight of a court order without any appeal procedure contained in the Act.

Successor NDP governments, beginning in 1991 and through to 2000, repealed almost all of the anti-labour legislation of the Social Credit government. Collective bargaining was dramatically expanded within the public sector and into the broader health and social service sectors. Collective bargaining in the non-government public sector in the province was structured in a way that resulted in thousands of employees in social service agencies and health providers winning collective agreements for the first time.

-4-

The Current Era

The legislative assault on public sector workers' rights has continued into the current decade with restrictive labour legislation being implemented in five of Canada's ten provinces. The BC, Quebec and Newfoundland legislation in particular demonstrated how far governments were prepared to go to eliminate the reality of collective bargaining. The stated motive continued to be the control of government expenditures. But the rhetoric grew more blatantly anti-union and anti-public service. There was an even more direct and unapologetic attack on the right to strike.

- *Nova Scotia*

  In Nova Scotia, the government made the mistake of taking on highly-popular nurses and health care workers. Seeking to head off a strike by some 9,000 nurses and health care workers represented by the National Union's Nova Scotia component, the Nova Scotia Government and Gen-

eral Employees Union (NSGEU/NUPGE), the government introduced the *Health Services Continuation Act* (Bill 68) in June 2001. Bill 68 would have prevented the health care workers from striking even before the legislation was passed and gave Cabinet the power to impose contract settlements that could not be challenged in court. Fines for disobeying the legislation would have been up to $50,000 for a union, plus $10,000 for each additional day. For individuals, fines could have been as high as $2,000 for the first day and up to $500 for each extra day. After mass protest against Bill 68 and several days of strike action by NSGEU members, the government backed down on July 5, 2001 and withdrew Bill 68. It was replaced with binding arbitration known as final offer selection.

In the same month, the government also enacted *An Act to Amend the Teachers' Collective Bargaining Act* (Bill 15). Bill 15 narrowed the range of matters that are the subject of bargaining between school boards and the Nova Scotia Teachers' Union and transferred bargaining on some matters to the Minister of Education.

- *Ontario*

In Ontario, the Conservative government managed to introduce several pieces of anti-union legislation in the final three years of its mandate.

In May 2000, the government passed the *Education Accountability Act* (Bill 74) which dramatically altered the terms and conditions of employment for teachers. It altered collective agreements by regulating extracurricular activities and instructional time at the secondary level. Bowing to negative public reaction to making voluntary extracurricular activities compulsory, the government passed Bill 74 without proclaiming the sections dealing with compulsory extracurricular activities.

Between November 2000 and June 2003, the Conservative government passed four pieces of back-to-work legislation ending strikes or lockouts of educational workers (Bill 145 in November 2000 to end a lockout of teachers employed by the Hamilton-Wentworth Public School Board; Bill 13 in April 2001 to end a strike of educational support workers and teachers employed by the Toronto and Essex School Boards; Bill 211 in November 2002 to end a strike by teachers employed by Simcoe-Muskoka Catholic District School Board; and Bill 28 in June 2003 to end a lockout of teachers employed by Catholic elementary schools in the Toronto area). The government also passed the *City of Toronto Labour Disputes Resolution Act* (Bill 174) in July 2002 to end a strike by Toronto's outside municipal employees.

With the defeat of the Harris/Eves government in October 2003, it appears that the severity of the legislative attack on workers and their unions has passed its peak, at least for the time being. After a difficult round of bargaining with the Liberal government of Dalton McGuinty, OPSEU was able to negotiate a new four-year agreement on behalf of its 42,000 members employed directly with the Ontario government. The Liberal government also passed Bill 144 – *Labour Relations Statutes Law Amendment Act* in June 2005 which repealed two of the most offensive legislative changes made by the Harris government – the requirement to post decertification information in the workplace and the requirement of trade unions to disclose the salaries of their elected officials and staff. Bill 144, however, was discriminatory by its selective reinstatement of the long-standing card certification provisions only limited to the construction industry.

Almost three years into its term of office, the McGuinty government has yet to provide a signal that it is prepared to follow through on its election commitment to restore successor rights for government employees taken away by the Harris government under Bill 7 in 1995.

- *Alberta*

  In Alberta the *Labour Relations (Regional Health Authorities Restructuring) Amendment Act* (Bill 27), which came into force in April 2003, significantly altered bargaining rights for health care workers in the province. It excluded nurse practitioners from unionization, terminated the right to strike for all health care workers, removed negotiated severance provisions from collective agreements and restructured the health care sector. Bill 27 also enforced intermingling votes within unions in the health care sector as a result of the restructuring. The unions that were not successful in these votes were no longer allowed to organize the unorganized.

- *Quebec*

  One of the most recent and perhaps the most outrageous violations of workers' rights in Canada took place in December 2005 in Quebec when the Liberal government of Jean Charest abused its legislative power to ram through one of the most anti-worker pieces of legislation in recent Canadian history. The government rammed through *An Act Respecting the Working Conditions in the Public Sector* (Bill 142) which legislated an unprecedented seven-year contract on 500,000 hospital workers, teachers, civil servants, school support staff and other provincial public sector workers.

Using the bizarre manoeuvre of adjourning the National Assembly one day and calling it back into emergency session the next, the government passed Bill 142 which imposed wages and working conditions on Quebec's 500,000 public sector workers until March 2010. Bill 142 imposed a 33-month wage freeze retroactive to June 30, 2003, and annual wage increases of two percent in the last four years of the legislated contract. The imposed contract will expire in March 2010.

The legislation also brought an abrupt end to the pay equity negotiations between the government and the province's public sector unions which were supposed to end gender pay discrimination in mostly female job classifications. Bill 142 also contained a series of measures that undermine job security and increase the workload of public sector employees. It also included changes to working conditions that the government concluded at the last minute with several public sector unions under the threat of a legislated contract.

However, the most despicable provisions of Bill 142 are those that toughen and extend to the whole of Quebec's public sector anti-strike sanctions contained in a law that the late Robert Bourassa's Liberal government adopted in 1986. From now until March 31, 2010, any public sector worker involved in a work stoppage faces the loss of two days pay for every day off the job and fines of up to $500. Union officials face fines ranging from $7,000 to $35,000 per day and unions face fines ranging from $25,000 to $125,000.

In September 2003, one of the first actions of the newly elected Charest government was to radically alter the health and social services sector in the province. Four separate Bills were introduced: *An Act to amend the Act respecting health services and social services* (Bill 7) took away the right

of independent family support workers to join a union; *An Act to amend the Act respecting childcare centres and childcare services* (Bill 8) took away the right of independent home childcare providers to join a union; *An Act respecting bargaining units in the social affairs sector and amending the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors* (Bill 30) defined bargaining units by four occupational categories and limited unions from representing employees in more than one category and also replaced the right to strike with a system of restrictive compulsory mediation/arbitration; and *An Act to amend the Labour Code* (Bill 31) permitted health care employers to subcontract free of successor rights.

- *British Columbia*

The most consistent attack on workers' rights in the current decade is in British Columbia.

Since its election in May 2001, the BC Liberal government of Gordon Campbell has implemented more anti-union legislation than any other provincial government has in a single term of office. The government's cavalier disregard of the basic rights of workers has brought down on its head the wrath of the International Labour Organization. So far the government has simply ignored the ILO or any other of its critics.

After campaigning on a promise "not to rip up collective agreements", within a month in office, Premier Campbell and his government proclaimed the *Health Care Services Continuation Act* (Bill 2) in June 2001. The legislation ordered members of the National Union's BC component, the Health Sciences Association of BC (HSA BC/NUPGE), to cease their lawful strike during a 60-day "cooling off period" and ordered the parties to resume bar-

gaining. All workers returned to work on June 21, 2001 and the union returned to the bargaining table with the employer. Less than two months later in August 2001, the government enacted the *Health Care Service Collective Agreements Act* (Bill 15), which imposed the conditions of work contained in the employer's last offer.

In August 2001, the government passed the *Skills Development and Labour Statutes Amendment Act* (Bill 18) which severely restricted the right to strike of public educational workers by extending the designation of "essential services" to teaching and non-teaching personnel and prohibited strikes until an essential service designation had been made by the Labour Relations Board.

Six months later in January 2002, the Liberal government again abused its legislative power to enforce its bargaining position as employer on thousands of public sector workers. The *Education Service Collective Agreement Act* (Bill 27) impacted on more than 45,000 teachers employed by school boards in the province. It imposed on them a three-year collective agreement that contained terms and conditions of the employer's last offer. The legislation prohibited the right to strike without providing access to an independent arbitration process.

At the same time, the *Public Education Flexibility and Choice Act* (Bill 28) had the effect of making certain contract clauses in collective agreements of educational workers null and void. Over the years, unions representing teachers and staff in the public education system had negotiated and won provisions in their members' collective agreements respecting the size of the class they are required to teach, the courses they must teach, hours of instruction and other related issues. In the name of "flexibility" and "choice", Bill 28 gave employers the right to override these provi-

sions. The Bill allowed the government to take away these provisions from educational workers without compensation, consultation, arbitration or agreement. The Bill also overrode provisions protecting the job security of employees and allowed employers to contract out, notwithstanding the negotiated terms of collective agreements to the contrary.

The *Health and Social Services Delivery Improvement Act* (Bill 29) eliminated much of the job security protection for health and social service workers that their unions managed to bargain as part of their collective agreements. The legislation empowered health and social service employers to "contract out" to non-union employers not bound by the terms of the collective agreements, notwithstanding clauses to the contrary in collective agreements. Existing layoff and bumping provisions in collective agreements were rewritten by the legislation in favour of the employer. Severance pay was unilaterally reduced below even the standard applicable to non-union employees under provincial Employment Standards legislation.

In November 2003, the government passed the *Health Sector Partnerships Agreement Act* (Bill 94), which was really an extension of Bill 29 but impacted on private sector workers employed in the health care sector. The Act prevented the Labour Relations Board or an arbitrator from making a true employer declaration for any employee working for a private contractor and/or a sub-contractor in the health care sector. It nullified any clauses contained in collective agreements between private sector partners (and sub-contractors) and their employees that restrict, limit or regulate the employer's ability to contract outside of the collective agreement for the provision of non-clini-

cal services. Bill 94 also voided any successorship rights of a person employed by a private sector health partner contained in the collective agreement or referred to in Section 35 of the BC *Labour Code*.

The government's legislation allowing for the privatization of the province's public ferry system, the *Coastal Ferry Act* (Bill 18) passed in March 2003, also had similar de-unionization provisions to Bill 29 and Bill 94. It allowed private contractors to override contracting out provisions contained in the collective agreements of workers belonging to the BC Ferry and Marine Workers' Union (BCFMWU).[26]

The *Health Sector (Facilities Subsector) Collective Agreement Act* (Bill 37) was introduced to end a three-day old strike of 43,000 health support employees who work in hospitals and long-term care facilities across the province. Bill 37 imposed a 15 percent wage rollback on the health care workers, extended the workweek by 1.5 hours and imposed no cap on the employer's ability to contract out union jobs to the private sector.

Expectations were that the Campbell government would attempt to make peace with the province's labour movement in its second term of office after unleashing its major anti-union legislative assault during its first term and after nearly losing its massive majority to the NDP in the May 2005 election. Those expectations were proven wrong in October 2005 when the government passed its 11th piece of restrictive labour legislation in four years. *The Teachers' Collective Agreement Act* (Bill 12) resulted in five years of imposed conditions of employment, no improvement in students' learning conditions and a freeze on teachers' salaries. The legislation was introduced just as the BC Labour Relations Board was set to rule on

whether teachers could legally go on strike. The teachers responded by defying the legislation and participating in a two-week "illegal" strike.

In the spring of 2006 for the first time in five years, the government decided to follow the course of free collective bargaining without legislative interference and negotiate with public sector unions. Its true motivation for this change of direction was to ensure labour peace during the 2010 Winter Olympics in Vancouver. In fact in its February 2006 budget, the government announced that it had set aside $1 billion in signing bonuses for those unions which the government was able to reach an agreement with prior to March 31, 2006. This incentive helped obtain four-year collective agreements with unions representing 225,000 public employees, all of which expire a month after the 2010 Olympics.

- *Newfoundland and Labrador*

On April 30, 2004 the Newfoundland government passed *An Act to Provide for the Resumption and Continuation of Public Services* (Bill 18). Bill 18 was introduced five days earlier to end a 27-day strike of some 20,000 public service employees which began on April 1, 2004. Two unions in the province represented the striking employees. Approximately 16,500 were represented by the National Union's Newfoundland and Labrador component (NAPE) and some 3,500 employees are represented by the Newfoundland and Labrador division of the Canadian Union of Public Employees (CUPE).

Bill 18 however was much more than back-to-work legislation. It was a coercive tool the Conservative government of Premier Danny Williams used to legislate its bad faith bargaining approach in its first negotiations with its pub-

lic sector unions since being elected in October 2003. Bill 18 also contained the harshest penalties ever contained in back-to-work legislation in the history of Canada. It provided for immediate dismissal for employees who did not return to work and fines of $250,000 a day on the union and $25,000 a day for individual union representatives.

After what the unions were led to believe was good faith bargaining during the strike, the legislation that was introduced in the fourth week of the strike ignored offers made by the government during the negotiations. Without notice or discussion, the government imposed the lower offer it had made before the strike began. This included a two-year wage freeze and rollbacks in contract language.

It was clear the government never did intend to bargain in good faith. Before the Bill passed in the Legislative Assembly, the employees had gone back to work. The government had said the Bill was needed to restore public services disrupted by the strike, but with the employees back at work, the Bill was no longer necessary. Even as drafted, the Bill's sweep was so broad all employees were required to return to work or face dismissal. There was no attempt to limit the requirement to "essential" services. It was clear that the real intention of the government was to impose its own position as employer on the terms and conditions of its employees. The legislation was a blatant abuse of legislative authority and public trust. The government could have taken the unions up on their offer to suspend debate on the legislation and continue to bargain with the unions in order to reach a negotiated settlement but chose not to.

Section VII
The ILO Responds: Canada Condemned[27]

THE ASSAULT on labour rights over the past 25 years has drawn increasingly sharp criticism from the ILO. The total disregard of human rights, international norms and Canada's solemn obligation by federal and provincial governments has dealt Canada's reputation internationally a devastating blow. The governments of Ontario and BC have not only ignored the ILO's directives but have acted with complete disrespect for the international organization. This is at a time when the ILO is gaining in importance during a time of trade liberalization and the widespread recognition of the need to develop international standards and a level playing field for global employers.[28]

Under ILO procedures, national labour bodies may file complaints for review by the ILO's Committee on Freedom of Association. Almost from the outset of the 25-year assault on collective bargaining rights, the Canadian labour movement, through the Canadian Labour Congress, has formally complained to the ILO that most of the legislation described above has been in breach of ILO Conventions.

Since 1982, Canada's record with respect to the number of complaints submitted to the ILO's Freedom of Association Committee is the worst of any of the ILO's 178 member States with unions in Canada filing more complaints than the national labour movements of any other country. Since the ILO Freedom of Association Committee was established in 1951, only unions from four other countries – Argentina, Colombia, Peru and Greece – have submitted more complaints than Canadian unions.

The 76 ILO complaints filed against Canadian federal and provincial labour legislation represent over five percent of all complaints filed with the ILO since 1982. Nearly one-third of these ILO complaints – 25 in total – have been filed by the National Union on behalf of its components. The last complaint filed (*Case 2430*) was in June 2005 against the government of Ontario and its *Colleges Collective Bargaining Act*, which denies all part-time employees employed by any of the public colleges in the province of Ontario the right to join a union and engage in collective bargaining. Several of these complaints were subject to more than one restrictive piece of labour legislation.

Of those 76 complaints, the ILO has reached decisions on 73 and found that freedom of association principles had been violated in 68 of the cases.[29] Over 90 percent of all complaints on restrictive labour legislation passed in Canada since 1982 that the ILO has investigated were found to be in violation of ILO freedom of association principles.

Also troubling has been the complete disregard the federal and provincial governments have shown towards the rulings of the ILO Governing Body with respect to the various complaints against restrictive Canadian labour legislation.

Canada's record has been so bad of late that at the June 2002 annual Conference of the ILO, the Committee on Freedom of Association asked its chairperson to hold consultations with the government delegation from Canada regarding the large number

of complaints from Canadian unions and the lack of responsiveness to the Committee's recommendations contained in the ILO Governing Body's rulings. It is interesting to note that the only other governments the CFA felt compelled to consult regarding multiple complaints and lack of government cooperation were Chad and Morocco – certainly not countries that Canada would like to be compared to in terms of labour legislation.

In March 2003, the ILO Governing Body adopted the Committee on Freedom of Association recommendations concerning the Canadian labour movement's four complaints against the government of BC and its one complaint against the government of Ontario. In all cases, the Committee strongly condemned both provincial governments for proclaiming legislation that fell below ILO freedom of association standards.

In diplomatic language the Governing Body "firmly" requested the BC government to repeal major elements of its legislative package and promise not to do it again. The ILO recommended that, in future, if the government had financial concerns it should consult with the unions in advance of bargaining in a thorough, detailed way. One piece of legislation set up a process to revamp education labour relations. To engage in such a process without consulting with the unions on how the process should work was in itself a violation of the principles of freedom of association which Canada, on behalf of all its citizens, had accepted.[30]

The BC government, the former and current government of Ontario and the federal government have ignored the ILO Governing Body's ruling. In response to the ILO's request for a report on what action has been taken by both provincial governments with respect to implementing the March 2003 recommendations, the federal government did nothing more than pass on the request to the governments of Ontario and BC.

The Ontario government has yet to respond and the BC government responded to the ILO with totally inaccurate

information. In a July 2003 letter to the ILO the BC Deputy Minister of Labour stated the government "supports the ILO freedom of association principles…" and that it has "been trying to initiate the discussions with employers and unions necessary to bring about improvement and change….".[31] The statement was unsupported by any evidence.

The National Union again wrote the BC Minister of Labour in October 2004 asking that his government take action to implement the recommendations of the ILO Governing Body. In February 2005, the Deputy Minister replied that the government had noted the ILO recommendations but was not planning to amend or repeal the legislation.

In response to the BC government's failure to provide a follow-up report as requested by the ILO, the Committee on Freedom of Association in its March 2006 report to the ILO Governing Body stated:

> "*The Committee deeply regrets the fact that the Government has so far failed to communicate any follow-up information on measures taken to give effect to the Committee's recommendations. The Committee is particularly concerned about this situation in view of the fact that the Government has in the meantime intervened once again through retroactive legislation in the collective bargaining process. The Committee recalls that when a State decides to become a Member of the Organization, it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association. The Committee therefore urges once again the Government to provide information without further delay on the steps taken with regard to the Committee's recommendations mentioned above. The Committee regrettably is bound to remind the federal Government of Canada that the principles of freedom of association should be fully implemented throughout its territory.*"[32]

Section VIII
The Canadian Charter of Rights and Freedoms and the Courts

IRONICALLY as Canadian workers began to experience the assault on their labour rights, the country reached agreement on the *Canadian Charter of Rights and Freedoms,* proclaimed in 1982. The *Charter* would bar federal and provincial legislatures from enacting legislation that interferes with the rights set out in the *Charter.* It also required those who are bound by it, including governments and agencies of governments, not to discriminate. Section 2 explicitly defined a number of rights that all Canadians enjoy, including the fundamental freedoms of expression, religion, assembly and association.

The labour movement did not participate in a major way in the national debate around the drafting of Canada's *Charter*. In deference to the opposition of the Quebec Federation of Labour to the *Charter*, the Canadian Labour Congress did not participate in hearings of the Special Joint Committee of the Senate and the House of Commons, which examined its terms

in detail and recommended amendments.[33] With the right to freedom of association contained in the *Charter,* the labour movement held the view that this would provide an opportunity to challenge the multitude of restrictions on union activities, including limitations on the right to collective bargaining and the right to strike. It was assumed that the ILO jurisprudence declaring the right to collective bargaining and the right to strike was an essential and implied component of "freedom of association".

During the debate however, several unions warned that the *Charter* could be a doubled-edged sword for the labour movement and strongly lobbied for a coordinated approach in bringing forward *Charter* cases to advance labour rights.[34] Those unheeded warnings proved to be correct.

The question as to whether the *Charter*'s guarantee of freedom of association would reflect the ILO's freedom of association principles was answered by the Supreme Court of Canada in 1987 when it delivered its judgments in three cases, which have come to be known as the *Labour Trilogy*, the *Alberta Reference, Dairy Workers* and *Public Service Alliance.*[35] The challenged statutes in these cases were:

- Three Alberta labour laws – *Public Service Employees Act, Labour Relations Act* and *Police Officers Collective Bargaining Act* – that banned strikes in the public sector;
- Saskatchewan's 1984 *Dairy Workers (Maintenance of Operations) Act* which ordered striking dairy workers back to work; and
- The federal government's 1982 Bill C-124, the *Public Sector Compensation Act* in August 1982, most commonly known as the "six and five" program which imposed wage freezes and limits on public service workers.

The legal issue was whether the term "freedom of association" as used in Section 2 of the *Charter* included the right to collective bargaining and the right to strike. The argument was that free-

dom of association was virtually meaningless if it did not include the rights that would permit associations, including unions, to effectively pursue their objectives. "Freedom of association" had to mean more than the right to attend meetings, it was argued. Advocates for this broader view pointed to Canada's international obligations and commitments through the ILO and its Conventions.

Only two of the six participating judges relied at all on Canada's international treaty commitments as definitive of the meaning to be given to "freedom of association" in the *Charter.*[36] The majority of the Supreme Court took a much more limited view of freedom of association and concluded that it did not include the right to bargain collectively or the right to strike. Legislatures were free to rip up collective agreements reached through collective bargaining and to take away the right temporarily or permanently, as they saw fit. The Supreme Court's *Labour Trilogy* decision stated that the right to bargain collectively and to strike "… are not fundamental rights or freedoms. They are the creation of legislation, involving a balancing of competing interests in a field which has been recognized by the courts as requiring specialized expertise".[37] In a dissenting opinion, Chief Justice Dickson relied extensively on Canada's international obligations under the ILO Conventions:

> *The general principle to emerge from interpretations of Convention No. 87… is that freedom to form and organize unions, even in the public sector, must include freedom to pursue the essential activities of unions, such as collective bargaining and strikes, subject to reasonable limits….The most salient feature of the human rights documents discussed above in the context of this case is the close relationship in each of them between the concept of freedom of association and the organization and activities of labour unions. As a party to these human rights documents, Canada is cognizant of the importance of freedom of association to trade unionism, and*

> *has undertaken as a binding international obligation to protect to some extent the associational freedoms of workers with Canada*.[38]

This critical Supreme Court of Canada ruling has been cited in numerous court rulings that have denied constitutional challenges against regressive labour law made by unions in Canada over the last 15 years.

Recently there has been a glimmer of hope that the labour movement might be able to reverse the Court's tendency not to be supportive of workers' right. First there was the 2001 decision of the Supreme Court of Canada [*Dunmore v. Ontario Attorney-General*[39]] in support of a constitutional challenge, brought forward by the United Food and Commercial Workers Union Canada, to legislation passed by the previous Ontario government denying agricultural workers the right to join a union.[40]

Dunmore struck down the Ontario legislation. The decision is consistent with the *Labour Trilogy* in that it requires legislatures to allow associations (unions) to be formed and joined. It says nothing about protecting the ability of those associations to do anything effective through collective bargaining or the right to strike.[41] The glimmer of hope comes from the recognition by the majority of the Court that Canada's international commitments are "human rights obligations which are not only an individual, but also a *collective* right".[42] The Court concluded that judicial recognition of trade union freedoms "strengthens the case for their positive protection. *It suggests that trade union freedoms lie at the core of the* Charter" (italics added).[43] The Court asserted that, given the extreme vulnerability of agricultural workers in Ontario, "the freedom to associate becomes meaningless in the absence of a duty of the state to take positive steps to ensure this right is not a hollow one".[44] Legal scholars caution against reading the decision as too expansive.

In June 2003, the Eves government brought forward new legislation, Bill 137 – *The Agricultural Employees Protection Act*. The Act gave agricultural workers the right to join or form an association but no rights to collective bargaining. United Food and Commercial Workers Union (UFCW) Canada challenged the constitutionality of Bill 137 at the Ontario Superior Court on the basis that the legislation continues to deny agricultural workers access to collective bargaining which is necessary in order for them to exercise their right to freedom of association under the *Charter of Rights and Freedoms*. In January 2006, the Superior Court ruled Bill 137 is not necessarily a contravention of the *Charter* in that it provides "adequate [adequate in the sense of meeting minimum standards] protection..." The union is challenging the Superior Court's decision at the Ontario Court of Appeal as it is convinced that Bill 137 is not the remedy the Supreme Court of Canada called for in 2001.

This Superior Court's decision on Bill 137 came only days after another Ontario Superior Court decision legitimized the UFCW Canada union as a representative of thousands of migrant agricultural workers who come to Canada each season. One Ontario court recognizes argicultural workers need a collective voice, while another court rules farm workers do not necessarily require the right to collective bargaining.

If Bill 137 is ultimately found to violate the *Charter's* right to freedom of association, then the decision in *Dunmore* opens the door to interpreting the *Charter* as matching Canada's international promises to comply with the ILO freedom of association principles including the right to organize and its intrinsic corollary, the right to strike.[45] Challenges to the BC legislation will also demonstrate how far the door can be pushed open. These cases, along with the many other constitutional challenges that unions have brought forth over the past 15 years, highlight the need for the Canadian labour movement to take a more coordi-

nated approach in using the judicial system to protect and enhance workers' rights in Canada.

On October 24, 2004 the Supreme Court rendered another good news – bad news decision in *Newfoundland and Labrador Association of Public and Private Employees (NAPE) v. Newfoundland and Labrador (Treasury Board)*. The bad news was that the Court allowed the Newfoundland government to postpone for three years the implementation of a pay equity agreement in the public sector. The government had claimed it couldn't afford to implement the wage adjustments under the agreement because of the province's serious deficit. NAPE called the decision "devastating", as it certainly was for women public service employees in Newfoundland and Labrador. The good news was that the Court, in a 7-0 unanimous judgment written by Mr. Justice Ian Binnie ruled that the decision to postpone was discriminatory and that it could only be upheld in the "exceptional circumstances" of Newfoundland's financial situation at the time. A claim by governments based on budget constraints for taking actions that were discriminatory would be met with "strong skepticism", Justice Binnie wrote. In "exceptional" circumstances only would a financial crisis "attain a dimension that elected governments must be accorded significant scope to take remedial measures" if the measures would have an adverse effect on a *Charter* right.[46] The case raises a high bar for governments to overcome if they seek to justify interference with *Charter* rights. The problem remains that so far the Supreme Court has not held that the right to strike or the right to collective bargaining are *Charter* rights, even though they are recognized as fundamental rights in international law and even though the government of Canada is obliged to promote and enhance them. There is still judicial work to be done.

Section IX
So Where Do We Stand Now?

THE PAST 25 years have seen a steady erosion of collective bargaining rights in both the public and private sectors. As of June 2005, only 17.5 percent of private sector employees were covered by collective agreements. The overall rate of non-agricultural unionization and collective bargaining coverage is 30 percent. Seventy-one percent of the public sector remains covered, but that figure hides the fact that the number of direct employees of government has declined through cutbacks and contracting out, victims of more than 10 years of unremitting "restraint". Those who do have collective bargaining in the public and the private sector persistently have had their rights undermined when they seek to assert them. They have seen agreements shredded, gains taken away, working conditions imposed, wages fall behind and laws passed that effectively deny them the right to collectively withdraw their labour. Only where there are severe shortages of labour have wages gone up.

While international agencies repeatedly criticize federal and provincial governments for breaches of international law, those agencies are just as repeatedly ignored. The *Canadian Charter of Rights and Freedoms* which seems to work for some people in

Canada has been narrowly interpreted in most cases involving the rights of working people. That may be the fault of the drafters. It may be the narrow perspective of the courts. In either case, court action hasn't so far been of much help in securing rights for working people that Canada and the world community have proclaimed are the entitlement of every human being.

The negative impact of this situation on Canadian families has been dramatic. A study of the changes in family incomes has concluded: "Any way you slice it, more families raising children in the 1990s have found their earned incomes falling, despite working longer hours and despite a booming economy. At the same time, community supports and public services are being cut back too."[47] In the report for the Centre for Social Justice, Armine Yalnizyan found that "the poor are getting poorer and there are more poor among us". More and more middle income families are sliding to the bottom, the study found. There are fewer people who are rich. Those who remain rich are even richer than before. Through cutbacks to transfers and tax cuts that benefit only the rich, "government policies have made it worse", the study reports.

-1-

The Corporate Globalization Agenda: The Assault in Context

The legislative attack on workers' rights in Canada is part of an international phenomenon. During the last two decades, national labour movements in almost every country of the world have been under attack. The severity of this attack may differ based on a country's level of union density, but the objective remains the same – to weaken workers' rights and their unions. Regardless of whether one looks at Nordic countries where unionization rates have remained quite high or countries like the U.S. or Australia where unionization rates have dropped substantially, they have all faced the same pressures in the last couple of decades.

The attack on workers and their unions, regardless of where it takes place in the world, is very much related to the global corporate agenda. In all instances, there is a common set of ingredients, which leads to a common result – increased corporate rights at the expense of workers' rights.

Corporate globalization has resulted in the restructuring of national economies to the benefit of corporations and the detriment of workers. Times have changed – a competitive market used to mean the value of a worker's labour increased. In today's globalized economy, however, the fierce competition between corporations for markets and between countries for investments has had the opposite effect. Corporations now try to compete by reducing their labour costs. Meanwhile, one of the main ways in which countries compete for investments is by deregulating both the workplace and the labour relations framework that governs the workplace.

The impact of this global competition is that workers in one country are played off against workers in another, driving down the wages and working conditions for all workers. Some see it as a "race to the bottom". This global competitiveness is not the result of an objective process; it is the result of a political process advanced solely by corporate interests with a clear and specific purpose in mind – to increase the power of capital over labour. The balance between the two has shifted so much towards corporations that democratic institutions and the sovereignty of nations are threatened.

-2-

The Human Rights Context

At one important level, most of the issues facing working people can be dealt with by better public policies. "The solution to closing the gap (between rich and poor) lies in four things: even

distribution of job growth, better wages, services to help families meet their basic needs and supports for the poorest families," according to the Centre for Social Justice, for example.[48] The labour movement has consistently worked for policies of this kind, including policies that respond to the pressures of globalization.

This study suggests that it may be helpful to place the social, economic and political developments of the past decades in the context of the assault on human rights that has taken place in this country, the "human rights deficit". To restate the theme: Canadian governments at both levels have a persistent record of overriding the fundamental human rights to collective bargaining and the right to strike. This poor record costs all of us. The federal government in particular has a solemn obligation to promote the rights it has signed on for internationally. So do the provinces and territories.

European countries have adopted policies to increase participation in collective bargaining. While participation rates in Canada have declined, in Europe they have dramatically risen. In France, for example, which set a goal in the early 1980s of closing the representation gap, more than 90 percent of employees have some form of collective bargaining rights today.[49] In Canada the rate is barely 30 percent.

In addition to encouraging collective bargaining of the conventional kind in Canada, other models of representation should be explored.

Section X
Restoring Workers' Rights and Fairness in Canada's Labour Laws

BOTH historical experience and a review of current conditions around the world indicate that strong, independent, democratic trade unions are vital for societies where human rights are respected. Human rights cannot flourish where workers' rights are not enforced. This is as true for Canada as for any other country.

The legislative assault on workers' rights in Canada is especially troubling when one considers the strong reputation that Canada has had in the international human rights community. Canada has historically played a leading role at the International Labour Organization (ILO) in the development and adoption of the ILO's core international labour standards. Yet federal and provincial governments have a dismal record of compliance with those labour standards.

Canada's official international trade position at the World Trade Organization or in the new Free Trade Area of the Americas is

that the global trade and investment system must acknowledge the internationally recognized workers' rights of the ILO. This position on a rights-based linkage to trade is undermined when core labour rights are systematically violated in Canada.

Canadian workers, generally, do not face gross human rights violations where death squads assassinate trade union organizers or collective bargaining and strikes are completely outlawed. The absence of overt government repression does not mean that workers in Canada can effectively exercise their right to freedom of association. On the contrary, workers' freedom of association is under sustained attack in this country. The Canadian government is failing in its responsibility under international labour and human rights standards to deter such attacks and protect workers' rights. In fact, the federal government's record of workers' rights violations is as deficient or worse than many of the provincial governments in Canada.

This sustained attack has hurt the labour movement's ability to effectively represent the interests of organized workers. It also continues to hamper unions in trying to organize the unorganized.

The time has come for labour to respond. In the past, labour won rights by collective action, by insisting on recognition when employers tried to refuse. From time to time over the past 20 years, collective action has been successful in forcing governments to back down. We need to be ready to build these kinds of responses in every part of the country when workers' rights come under attack, as they surely will again. The abuse of power is a contagious disease.

This will not be a simple or quick campaign. We will need to focus on the ILO and its provisions, on using the courts to establish and re-establish our basic rights, on effective political pressure and on mobilization of workers through their unions.

We need to promote our own *Workers' Bill of Rights*, which affirms that *all* workers have the right to join a union and engage in collective bargaining (see Appendix III – a copy of the *Workers' Bill of Rights*). This document was developed by the National Union and UFCW Canada and unveiled on December 10, 2005, the 57th anniversary of the 1948 United Nations Universal Declaration of Human Rights, which also recognizes the right to join a union and bargain collectively as a basic human right.

We need to encourage union activists from across the country to use the *Workers' Bill of Rights* as a tool to create greater awareness around labour rights in the context of human rights. We need to ask every citizen who stands for public office, whether for a community organization, municipal, provincial or federal government, to endorse the *Workers' Bill of Rights* and pledge that they will stand up for workers' rights.

During the January 2006 federal election, the National Union and UFCW Canada used the *Workers' Bill of Rights* as an effective tool to promote our *Labour Rights are Human Rights* campaign. We encouraged all candidates to endorse it and were successful in having over 500 candidates sign the *Workers' Bill of Rights*, including the leaders of all major parties – *except Stephen Harper*. This element of our campaign will continue over the coming months as we encourage every Member of Parliament to sign the Bill.

We will need to pressure the Canadian government to ratify the remaining three core ILO Conventions still not ratified by the Government of Canada: No. 29 – Forced Labour, No. 98 – the Right to Organize and to Bargain Collectively and No. 138 – Minimum Age Convention.

We should promote the enactment of the ILO principles by all provinces in Canada. This would include monitoring of compliance with ILO provisions and public information on ILO standards and reports on Canadian complaints. It should be a matter of considerable shame and embarrassment that governments in this

country continue to violate international standards for workers' rights. Governments must face increased public scrutiny for such actions.

We need a coordinated national strategy within the Canadian labour movement to use the judicial system to advance workers' rights in Canada, including joint legal research, communications strategies and financial support on the key cases.

We need to target governments that violate labour rights and elect governments committed to free collective bargaining. We should strongly encourage public and private sector unions to support each other in this, when the other is under attack.

The trade union movement confronts today's challenge with enormous assets. Millions of Canadian families are connected through union membership. Many others wish they had union representation. They can all vote. Organized labour has more than a century of experience. It has international connections. And labour has working for it the fact that the present situation is not working for most Canadians. Living standards are being squeezed. Health is jeopardized in the workplace. Public services are crumbling. Good jobs are scarce. This especially hits communities in which employment options are limited. These realities form the basis for recruiting Canadians behind a program of change, including a major expansion in collective bargaining rights.

As this study has noted, these rights are important to Canadians. We are facing a real crisis, one that has been building for 25 years. The assaults of the past quarter century do not have to be the end of the story. Let us all join together to see that the next chapters are written by us, for the workers in this great country and beyond. Let us turn the Canadian illusion into the reality of rights for all.

Appendix I

The International Labour Organization and How the ILO Works

The ILO is the specialized agency of the United Nations responsible for promoting international efforts to improve working conditions, living standards and the equitable treatment of workers worldwide. It was founded in 1919 and is the only surviving major creation of the Treaty of Versailles, which brought the League of United Nations (predecessor of the UN) into being.

Tripartite structure

Within the UN system, the ILO has a unique tripartite structure with workers and employers participating as equal partners with governments. Tripartism within the ILO means the power of decision-making is distributed between governments, workers' organizations and employers' organizations. Currently there are 178 nations (including Canada) that are member States of the ILO.

ILO Conventions

One of the primary roles of the ILO is to formulate international labour standards in the form of Conventions. These minimum standards of basic labour rights cover: freedom of association, the right to organize, collective bargaining, abolition of forced labour, equality of opportunity and treatment and other standards regulating conditions across the entire spectrum of work related issues. As of March 2006, the ILO has adopted 185 Conventions.

A Convention is considered a legal instrument; it defines standards and provides a model for nations to follow. Member nations are encouraged to ratify Conventions and have an obligation to put the Conventions before their Parliament for consideration. Once a Convention is ratified by a country, its government is expected to treat it as an international treaty and therefore has accepted two obligations: a commitment to apply the provisions of the Convention to its laws and a willingness to accept a measure of international supervision through formal monitoring and reporting mechanisms.

Core labour standards

Of the 185 ILO Conventions that have been developed over the years, eight have been identified by the ILO's Governing Body as being fundamental to the rights of human beings at work, irrespective of levels of development of individual member States. The ILO views these rights as a precondition for all the others in that they provide for the necessary foundation to strive for the improvement of individual and collective conditions of work.

The eight core ILO Conventions are as follows:

- Forced Labour Convention, 1930 (No. 29)
- Freedom of Association & Protection of the Right to Organize Convention, 1948 (No. 87)
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Equal Remuneration Convention, 1951 (No. 100)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

In any recent debate around international trade issues, it is common to hear the trade union movement take a position that international trade deals should include core labour standards. The core labour standards being referred to are these eight ILO fundamental Conventions.

The ILO Committee on Freedom of Association

Perhaps the most fundamental and certainly the most referred to Convention of the ILO is No. 87 – Freedom of Association and Protection of the Right to Organize Convention, 1948. Canada, with the support of all provincial and territorial governments, ratified this Convention in March 1972.

A large majority of complaints regarding non-compliance of ILO Conventions involve Convention No. 87. Because of the importance the ILO attaches to freedom of association principles, it has established in addition to the regular system of supervision, a standing committee for the monitoring and enforcement of these principles by member States. This Committee is known as the Committee on Freedom of Association (CFA) and reports directly to the ILO Governing Body. The CFA is a very important part of the ILO and has the primary task of dealing with complaints about infringements of labour and human rights around the world. Complaints are usually submitted by employer or worker representative organizations from those countries that are member States of the ILO.

The Committee will always ask governments that have been alleged to have violated an ILO Convention to comment on the complaint made against it. Once these comments have been considered along with any further observations from the complaining organization, the CFA will report to the ILO Governing Body at its next session (June, November or March). If the CFA finds the alleged facts constitute an infringement of ILO Convention No. 87, the ILO Governing Body will then adopt the

Committee's recommendations and communicate them to the government concerned. The Governing Body will draw attention to the Convention No. 87 violations and recommend the government take appropriate measures to remedy the situation.

The effectiveness of the ILO's complaints procedure

While the ILO does not have any legal authority to enforce its recommendations on governments that it has found to violate basic ILO Conventions, it does have a great deal of moral suasion in having a government reconsider its actions that are contradictory to basic international labour standards.

Most governments that are found guilty of violating basic ILO Conventions and refuse to comply with rulings of the ILO Governing Body are usually from countries that have fragile democracies and a poor record on human rights.

Appendix II

Legislation Restricting Collective Bargaining and Trade Union Rights in Canada 1982 – 2006

Part A

Back-to-Work, Wage Restraint and Suspension of Collective Bargaining

• ***The Federal Government***

Public Sector Compensation Restraint Act, 1982 (Bill C-124, June)

The Act legislated away collective bargaining rights of approximately 200,000 public service employees for two years, imposed maximum wage increases of six percent and five percent for a minimum of two years and rolled back signed agreements with increases above those amounts.

This legislation was the subject of a complaint to the ILO (*Case 1147*) in July 1982, and found to comply with the principles of freedom of association if certain recommendations were observed.

West Coast Ports Operations Act, 1982 (Bill C-137, November)

The Act ended a strike by longshoremen at British Columbia ports and mandated a negotiated settlement.

Maintenance of Ports Operations Act, 1986 (Bill C-24, November)

The Act ended a strike by British Columbia dockworkers and imposed a settlement based on a conciliator's report, including a wage freeze for one year and increases below the level of inflation for the following two years.

Maintenance of Railway Operations Act, 1987 (Bill C-85, August)

The Act ended a five-day strike by railway workers and ordered employees to return to work, extended the expired collective agreement and provided for arbitration.

This legislation was the subject of a complaint to the ILO (*Case 1438*) in February 1988, and found not to comply with the principles of freedom of association.

Postal Services Continuation Act, 1987 (Bill C-86, October)

The legislation ended a seven-day strike by postal workers and prohibited further strikes for the duration of the imposed settlement.

This legislation was the subject of a complaint to the ILO (*Case 1451*) in April 1988, and found not to comply with the principles of freedom of association.

Prince Rupert Grain Handling Operations Act, 1988 (Bill C-106, January)

The Act ended a strike by grain handlers, extended the expired collective agreement and provided for the appointment of an arbitrator to address all matters in dispute.

Government Services Resumption Act, 1989 (Bill C-49, December)

The Act ended a strike by ships' crews and federal hospital employees, extended collective agreements and established conciliation boards to resolve matters in dispute between the parties.

British Columbia Grain Handling Operations Act, 1991 (Bill C-25, June)

The Act ended a strike by grain handlers, extended the term of the collective agreement and provided for the appointment of a mediator-arbitrator for the purposes of concluding a new collective agreement.

Public Sector Compensation Act, 1991 (Bill C-29, October)

The Act ended a strike by members of the Public Service Alliance of Canada (PSAC), extended existing contracts for a two-year period with no wage increase in the first year and a three percent wage increase in the second year and suspended collective bargaining for a three-year period.

This legislation was the subject of a complaint to the ILO (*Case 1616*) in December 1991, and found not to comply with the principles of freedom of association.

Thunder Bay Grain Handling Operations Act, 1991 (Bill C-37, October)

The Act ended a nine-day strike by approximately 900 grain handlers, extended the collective agreement and provided for the appointment of a mediator-arbitrator.

This legislation was the subject of a complaint to the ILO (*Case 1681*) in November 1992, and found not to comply with the principles of freedom of association.

Postal Services Continuation Act, 1991 (Bill C-40, October)

The Act ordered an end to a strike by postal workers, extended the expired collective agreement and provided for the appointment of an arbitrator.

Government Expenditure Restraint Act, 1993 (Bill C-113, April)

The Act extended the wage freeze for federal public service employees and suspended collective bargaining for a further two years beyond the one-year suspension contained in the *Public Sector Compensation Act*, 1991 (see above).

This legislation was the subject of a complaint to the ILO (*Case 1758*) in February 1994, and found not to comply with the principles of freedom of association.

West Coast Ports Operations Act, 1994 (Bill C-10, February)

The Act ended a two-week strike by 3,500 longshoremen employed with the Port of Vancouver, extended the collective agreement and provided for the nomination of an arbitrator to perform final offer selection.

Budget Implementation Act, 1994 (Bill C-17, June)

The Act extended the wage freeze for federal public service employees for two years, suspended provisions regarding pay increments and excluded all forms of collective bargaining by again amending the Public Sector Compensation Act, 1991.

This legislation was the subject of a complaint to the ILO (*Case 1800*) in October 1994, and found not to comply with the principles of freedom of association.

Public Sector Compensation Restraint Act, 1994 (Bill C-18 June)

The Act extended the collective agreement of teachers employed in the Yukon Territory for three years, suspended collective bargaining, froze compensation for the same period and further reduced wages by two percent effective January 1, 1995.

This legislation was the subject of a complaint to the ILO (*Case 1806*) in October 1994, and found not to comply with the principles of freedom of association.

West Coast Ports Operations Act, 1995 (Bill C-74, March)

The Act ended a strike of 500 ship and dock foremen of the Port of Vancouver, extended the collective agreement and provided for the appointment of a mediator-arbitrator.

Maintenance of Railway Operations Act, 1995 (Bill C-77, March)

The Act ordered an end to a strike by railway employees of CN, CP and VIA, extended the expired collective agreement and appointed a Mediation-Arbitration Commission for each

bargaining unit to be "guided by consideration of the economic viability of a coast-to-coast railway system".

Budget Implementation Act, 1995 (Bill C-76, June)

The Act amended the Public Sector Compensation Act, 1991 affecting federal public service employees. It rescinded the bargaining agent's right to negotiate job security and workforce provisions in collective agreements for a period of three years and extended the wage freeze for the fifth consecutive year.

This legislation was the subject of a complaint to the ILO (*Case 1859*) in October 1995, and found not to comply with the principles of freedom of association.

Postal Services Continuation Act, 1997 (Bill C-24, December)

The Act ended a strike by postal workers, extended the expired collective agreement for three years, imposed pay awards and required the mediator-arbitrator appointed by the Minister to take Canada Post Corporation's interests into account, including its viability and financial stability.

This legislation was the subject of a complaint to the ILO (*Case 1985*) in September 1998, and found not to comply with the principles of freedom of association.

Government Services Act, 1999 (Bill C-76, March)

The Act ended rotating strikes by blue-collar federal public service employees, extended the expired collective agreements and permitted the government to set the terms and conditions of employment. It was passed after a tentative agreement to end the dispute had been reached between the parties.

• ***Newfoundland and Labrador***

Public Service (Collective Bargaining) Act (Regulation 165/90, June 1990)

The government passed a back-to-work order allowing for suspension of the right to strike under sections 30, 32 and 51(1) ending a 13-day strike of hospital support staff.

Restraint of Compensation in the Public Sector Act, 1991 (Bill 16, April)

The Act suspended collective bargaining for approximately 25,000 public sector employees, imposed a one-year wage freeze and prohibited retroactive pay equity adjustments.

This legislation was the subject of a complaint to the ILO (*Case 1607*) in October 1991, and found not to comply with the principles of freedom of association.

Extension of Compensation Restraint in the Public Sector Act, 1992 (Bill 17)

The Act suspended collective bargaining for another two years and extended the wage freeze contained in Bill 16 (see above) for a further year to all public sector employees and set a maximum wage increase in the second year of three percent.

Public Sector Restraint Amendment Act, 1992 (Bill 64, December)

The Act eliminated the ceiling on wage increases to public sector employees in the last year of the controls set out in Bill 17 (see above) and nullified negotiated wage increases scheduled to come into effect at the end of the control period.

Health and Community Services Resumption and Continuation Act, 1999 (April)

The Act ended a strike by members of the Newfoundland and Labrador Nurses' Union.

Resumption and Continuation of Public Services Act, 2004 (Bill 18, April)

The Act ended a 27-day strike of 20,000 public service employ-

ees and imposed a four-year collective agreement with a two-year wage freeze and increases of two percent and three percent in the third and fourth year of the legislated contract.

This legislation was the subject of an ILO complaint (*Case 2349*) in May 2004, and found not to comply with the principles of freedom of association.

• ***Nova Scotia***

Public Sector Compensation Act, 1983 (Bill 71, June)

The Act suspended collective bargaining rights for public sector employees for one year and imposed a six percent limit on wage increases.

Compensation Restraint in the Public Sector Act, 1991 (Bill 160, May)

The Act extended existing collective agreements of public sector employees for two years and imposed a two-year wage freeze.

This legislation was the subject of two complaints to the ILO, one in October 1991 (*Case 1606*) and one in February 1992 (*Case 1624*), and found not to comply with the principles of freedom of association.

Public Sector Unpaid Leave Act, 1993 (Bill 41, November)

The Act required government and other public sector employees to take mandatory unpaid leave equivalent to a two percent reduction in annual salary.

This legislation was the subject of a complaint to the ILO (*Case 1802*) in October 1994, and found not to comply with the principles of freedom of association.

Compensation in the Public Sector Act, 1994 (Bill 52, June)

The Act imposed an immediate freeze on the wages and benefits of approximately 60,000 public sector employees; those employees making more than $25,000 a year were forced to take a permanent three percent wage rollback. It also extended col-

lective agreements for three years, suspending the right to bargain, strike or arbitrate over changes to the agreement for the same period.

This legislation was the subject of a complaint to the ILO (*Case 1802*) in October 1994, and found not to comply with the principles of freedom of association.

Ground Ambulance Services Act, 1999 (Bill 9, October)

The Act ended a strike and required the ambulance workers to return to work.

Health Care Services Continuation Act, 2001 (Bill 68, June)

This Act prevented a strike of health care workers from taking place and gave Cabinet the power to impose contract settlements that could not be challenged in court.

The legislation was withdrawn on July 5, 2001 after several days of strike action by health care workers and replaced with a form of binding arbitration known as final offer selection.

• ***New Brunswick***

An Act to Ensure Resumption and Continuation of Certain Non-Teaching Services in the Public Service, 1982 (Bill 18, April)

The Act ended a legal strike by two bargaining units of school board support staff.

An Act to Ensure the Continuation of Veterinary Services in the Public Service, 1983 (June) (did not receive assent)

The threat of proclaiming this Act prevented an impending strike by veterinarians employed with the provincial government.

Industrial Relations Act (May 1985)

The government invoked subsections 80(4), 91(5) and 91(6) of the Act to suspend the right to strike for police officers in Moncton and Saint John in May 1985.

Industrial Relations Act (June 1985)

The government invoked subsections 80(4), 91(5) and 91(6) of the Act to suspend the right to strike for police officers in Chatham in June 1985.

Industrial Relations Act (October 1987)

The government invoked subsections 80(4), 91(5) and 91(6) of the Act to suspend the right to strike for police officers in Newcastle in October 1987.

Expenditure Management Act, 1991 (Bill 73, May)

The Act provided for a one-year wage freeze for public sector employees and imposed restrictions on collective bargaining for the same period.

This legislation was the subject of a complaint to the ILO (*Case 1605*) in October 1991, and found not to comply with the principles of freedom of association.

Expenditure Management Act, 1992 (Bill 42, May)

The Act gave public sector bargaining agents the choice to accept an extension of existing collective agreements with a two-year wage package of one percent and two percent, or to negotiate another extension period consistent with the restraint measures contained in the legislation.

An Act to Ensure the Continuation of Certain Public Services in the Public Service, 2001 (Bill 30, March)

The Act ordered an end to a strike by CUPE members, extended their collective agreements and gave harsh penalties for refusal to comply with the legislation including revocation of union certification.

• ***Prince Edward Island***

Compensation Review Act, 1983 (Bill 39, June)

The Act restricted wage increases to public sector employees for two years to a maximum of five percent, and required that negotiated settlements were to be submitted to a Compensation Review Commissioner with broad powers.

Public Sector Pay Reduction Act, 1994 (Bill 70, May)

The Act suspended collective bargaining for all public sector employees on all monetary terms in the public sector until May 1995 and rolled back wages by 7.5 percent on salaries above $28,000 and 3.75 percent on salaries below $28,000 for all public sector employees.

This legislation was the subject of two complaints to the ILO in June 1994 (*Case 1779*) and in October 1994 (*Case 1801*), and found not to comply with the principles of freedom of association.

• ***Quebec***

An Act respecting the transit service of the Commission de transport de la communauté urbaine de Montréal, 1982 (Bill 47, January)

The Act prohibited a strike by transit workers, extended their expired collective agreement and ordered conciliation.

An Act respecting remuneration in the public sector, 1982 (Bill 70, June)

The Act imposed an average wage reduction on approximately 300,000 public sector workers of 19.5 percent for the period between January 1 and March 31, 1983, removed the right to strike and extended collective agreements due to expire.

This legislation was the subject of a complaint to the ILO (*Case 1171*) in November 1982, and found not to comply with the principles of freedom of association.

An Act to ensure the resumption of public transit service in the territory of the Communauté urbaine de Québec, 1982 (Bill 84, November)

The Act ended a legal strike by public transit employees.

An Act respecting conditions of employment in the public sector, 1982 (Bill 105, December)

The Act imposed wage increases of 1.5 percent less than the provincial cost of living rate on approximately 300,000 public sector workers, suspended collective bargaining for three years and altered the language in collective agreements to weaken provisions regarding job security and working conditions.

An Act to ensure the resumption of services in the schools and colleges in the public sector, 1983 (Bill 111, February)

The Act ended an illegal strike by teachers employed with school boards and CEGEPs. The strike was provoked by wage restraint and changes in workloads.

An Act to ensure the resumption of public transit service in the territory of the Communauté urbaine de Montréal, 1983 (Bill 16, May)

The Act ended a wildcat strike by maintenance employees of the Montréal Urban Community Transit Commission.

An Act respecting the continuation of services by and conditions of employment of ambulance technicians in administrative region 6A (Greater Montréal), 1984 (Bill 37, December)

The Act ordered the end to a strike of ambulance technicians and imposed a collective agreement on the employees.

Labour Code (February 1986)

The government invoked section 111.0.24 of the Code to suspend the right to strike of maintenance employees for the Montréal South Shore Transit Commission in February 1986.

Labour Code (March 1986)

The government invoked section 111.0.24 of the Code to suspend the right to strike of blue-collar workers employed by the City of Montréal in March 1986.

An Act respecting the resumption of transit services in the territory of certain school boards, 1986 (Bill 34, March)

The Act ended a strike by school bus drivers, extended the collective agreement in effect and provided for the appointment of a conciliation board.

An Act respecting the resumption of construction work, 1986 (Bill 106, June)

The Act ordered construction workers back to work, banned any further strike action for three years and imposed mandatory mediation.

This legislation was the subject of a complaint to the ILO (*Case 1394*) in February 1987. The ILO Committee on Freedom of Association ceased examination of the matter after the parties reached an agreement.

An Act respecting the maintenance of essential services in the health and social services sector, 1986 (Bill 160, November)

The Act ordered employees in the health and social services sector to return to work after a 24-hour strike and imposed a collective agreement on them.

The Act was the subject of a complaint to the ILO (*Case 1526*) in March 1990, and found not to comply with the principles of freedom of association.

Labour Code (May 1987)

The government invoked section 111.0.24 of the Code to suspend the right to strike of the Montréal Urban Community Transit Commission in May 1987.

An Act respecting the resumption of certain services of the Université du Québec à Montréal, 1987 (Bill 48, May)

The Act ended a strike by lecturers at the university and extended the collective agreement already in effect.

An Act ensuring continuity of electrical service by Hydro-Québec, 1990 (Bill 58, May)

The Act ended a strike of 15,700 electrical workers and imposed an 18-month collective agreement on them.

This legislation was the subject of a complaint to the ILO (*Case 1601*) in August 1991. The ILO Committee on Freedom of Association ceased examination of the matter after the parties reached an agreement.

An Act respecting the extension of collective agreements and remuneration in the public sector, 1991 (Bill 149, July)

The Act extended existing collective agreements of approximately 300,000 public sector employees for up to three years with the parties' agreement, or up to one year without, and imposed a limitation on wage increases of three percent for nine months following the extension and one percent for three months thereafter.

An Act respecting the conditions of employment in the public sector and the municipal sector, 1993 (Bill 102, June)

The Act imposed a two-year wage freeze on public sector and municipal employees and compelled employees to take leave days equivalent to one percent of salary.

This legislation was the subject of three complaints to the ILO in December 1993 (*Cases 1733, 1747, 1748*) and another complaint in September 1993 (*Case 1750*), and found not to comply with the principles of freedom of association.

An Act respecting the construction industry, 1993 (Bill 158, December)

The Act prohibited strikes in the construction industry, extended the existing decree setting out sector-wide conditions of employment, and imposed fines for contravention.

An Act respecting the provision of nursing services and pharmaceutical services, 1999 (Bill 72, July)

The Act ended a strike by nurses, imposed certain terms of a collective agreement, and appointed an inquiry by the Essential Services Council into work stoppages by pharmacists.

An Act to order the resumption of certain road freight transport services, 2000 (Bill 157, November)

The Act ordered an end to a strike by commercial truck drivers that was disrupting freight transportation and imposed penalties for violation of the Act.

An Act respecting the resumption of normal public transport service in the territory of the Société de transport de la Communauté urbaine de Québec, 2000 (Bill 183, December)

The Act ended a strike by transit workers, extended the collective agreement, and provided for the appointment of a mediation council to resolve outstanding disputes between the parties.

An Act Respecting the Working Conditions in the Public Sector, 2005 (Bill 142, December)

The Act imposed wages and working conditions on Quebec's 500,000 public sector workers until March 2010. It imposed a 33-month wage freeze retroactive to June 30, 2003, and annual wage increases of two percent in the last four years of the legislated contract. The imposed contract will expire in March 2010.

This legislation is the subject of a recent complaint filed with the ILO but has not been investigated by the ILO Committee on Freedom of Association.

• ***Ontario***

Inflation Restraint Act, 1982 (Bill 179, September)

The Act imposed maximum wage increases of five percent on approximately 500,000 public sector workers and extended their collective agreements for one year.

This legislation was the subject of a complaint to the ILO (*Case 1172*) in November 1982, and found not to comply with the principles of freedom of association.

Public Sector Prices and Compensation Review Act, 1983 (Bill 111, December)

The Act continued the wage controls of Bill 179 (see above) on approximately 500,000 public sector workers for another year, required arbitrators to consider the employer's "ability to pay" in the arbitration process and made all collective agreements subject to review by a legislated Restraint Board.

This legislation was examined by the ILO (*Case 1172*) in reference to a complaint filed against Bill 179 in November 1982, and found not to comply with the principles of freedom of association.

Toronto Transit Commission, Gray Coach Lines, Limited, and Go Transit Labour Disputes Settlement Act, 1984 (Bill 125, August)

The Act prevented a strike by public transit workers and provided for binding arbitration.

College of Applied Arts and Technology Labour Dispute Settlement Act, 1984 (Bill 130, November)

The Act ended a strike by the academic staff of the College of Applied Arts and Technology, imposed a schedule of wage in-

creases, provided for binding arbitration and created an Instructional Assignment Review Committee to review all aspects of instructional assignments.

Wellington County Board of Education and Teachers Dispute Settlement Act, 1985 (Bill 63, November)

The Act ended a two-month strike by teachers and provided for a collective agreement to be enacted by a government-appointed Commission.

Wheel-Trans Labour Dispute Settlement Act, 1986 (Bill 2, April)

The Act ended a strike of para transit workers and provided for binding arbitration.

Toronto Economic Summit Construction Act, 1988 (Bill 115, April)

The Act prevented a strike by construction workers and extended their collective agreements.

Toronto Transit Commission Labour Disputes Settlement Act, 1989 (Bill 58, October)

The Act ended a strike by public transit workers, extended the expired collective agreement and provided for binding arbitration on wages.

Social Contract Act, 1993 (Bill 48, July)

The Act provided for compensation reduction targets to be reached through eight sector-wide agreements covering all public sector workers in the province. Where agreements were not reached, employees earning over $30,000 per year were required to take unpaid leave days, equivalent to a 4.6 percent annual wage rollback; a three-year wage freeze was also imposed.

This legislation was the subject of a complaint to the ILO (*Case 1722*) in June 1993, and found not to comply with the principles of freedom of association.

Lambton County Board of Education and Teachers Dispute Settlement Act, 1993 (Bill 109, October)

The Act ended a strike by secondary school teachers, ordered the parties to resume negotiations and made provision for teachers to vote on the employer's final offer if an agreement was not reached, failing which the Minister could take further steps to resolve the dispute.

East Parry Sound Board of Education and Teachers Dispute Settlement Act, 1993 (Bill 128, November)

The Act ended a strike of elementary school teachers, extended the expired collective agreement and referred outstanding matters to a board of arbitration to develop a new three-year collective agreement.

Windsor Teachers Dispute Settlement Act, 1993 (Bill 139, December)

The Act ended a strike by elementary school teachers, extended the expired collective agreement and made provision for outstanding matters in dispute to be referred to a three-person board of arbitration. Portions of the Act providing for settlement of dispute were not proclaimed into force.

Lennox and Addington County Board of Education and Teachers Dispute Settlement Act, 1997 (Bill 113, January)

The Act ended a strike of teachers, extended the expired collective agreement and appointed an arbitrator to conclude a new two-year collective agreement.

Back to School Act, 1998 (Bill 62, September)

The Act ended a strike by teachers employed with eight publicly funded school boards, including seven separate school boards, imposed contractual terms and conditions and instituted a compulsory mediation-arbitration system presided over by government-appointed arbitrators.

This legislation was the subject of a complaint to the ILO (*Case 2025*) in May 1999, and found not to comply with the principles of freedom of association.

Back to School Act (Hamilton-Wentworth District School Board), 2000 (Bill 145, November)

The Act ended a lockout of teachers and imposed compulsory arbitration.

This legislation was the subject of a complaint to the ILO (*Case 2145*) in July 2001, and found not to comply with the principles of freedom of association.

Back to School Act (Toronto and Windsor), 2001 (Bill 13, April)

The Act ended a strike by clerical and educational assistant employees, custodial and maintenance employees and instructors in Toronto and Essex school boards and provided for the appointment of a mediator-arbitrator if the parties did not conclude a new collective agreement within seven days.

City of Toronto Labour Disputes Resolution Act, 2002 (Bill 174, July)

The Act ended a strike by municipal employees and provided for the appointment of a mediator-arbitrator to conclude a two-year collective agreement, taking into consideration the employer's "ability to pay" and the economic situation of the city and province.

Back to School Act (Simcoe Muskoka Catholic District School Board), 2002 (Bill 211, November)

The Act ended a strike by teachers and provided for the appointment of a mediator-arbitrator if a new collective agreement was not concluded within seven days.

Back to School (Toronto Catholic Elementary) and Education and Provincial Schools Negotiations Amendment Act, 2003 (June)

The Act ended a lockout of teachers and provided for the appointment of a mediator-arbitrator.

• ***Manitoba***

Public Sector Compensation Management Act, 1991 (Bill 70, July)

The Act extended collective agreements of all public sector employees for one year.

This legislation was the subject of a complaint to the ILO (*Case 1604*) in October 1991, and found not to comply fully with the principles of freedom of association.

Public Sector Reduced Workweek and Compensation Management Act, 1993 (Bill 22, April)

The Act reduced annual compensation of all public employees by approximately four percent per year during the term of existing collective agreements by forcing them to take mandatory layoffs of up to a maximum of 15 days.

This legislation was the subject of a complaint to the ILO (*Case 1715*) in May 1993, and found not to comply with the principles of freedom of association.

• ***Saskatchewan***

Labour-Management Dispute (Temporary Provisions) Act, 1982 (March)

The Act prohibited a strike by hospital employees to take place during a provincial election campaign if the strike created a matter of "pressing public importance" or a danger to public health and safety.

The Cancer Foundation (Maintenance of Operations) Act, 1982 (August)

The Act ordered an end to a strike by employees of the Saskatchewan Cancer Foundation.

Dairy Workers (Maintenance of Operations) Act, 1984 (April)

The Act ended a strike by dairy workers and imposed binding arbitration on the parties.

SGEU Dispute Settlement Act, 1986 (Bill 144, January)

The Act ended a strike by 12,000 provincial government employees, permitted dismissal of employees who disobeyed the order and imposed a settlement based on a conciliation report. It also invoked the notwithstanding clause to exempt the Act from section 2(d) of the Canadian Charter of Rights and Freedoms (guaranteeing freedom of association).

The University of Saskatchewan (Resumption of Instruction, Teaching and Examinations) Act, 1988 (April)

The Act ended a strike by teaching staff at the university, imposed a "cooling-off" period and ordered that a meeting take place between the parties to appoint a mediator, failing which one would be appointed by the Minister.

The Regina Police Services (Continuation of Services) Act, 1988 (May)

The Act prevented a strike by police officers, extended the term of a collective agreement and imposed binding arbitration on the parties to conclude a new agreement.

Maintenance of Saskatchewan Power Corporation's Operations Act, 1998 (Bill 65, October)

The Act ended a strike by employees at a provincial Crown Corporation, extended the expired collective agreement for three years and imposed annual wage increases of two percent.

This legislation was the subject of a complaint to the ILO (*Case 1999*) in December 1998, and found to violate the principles of freedom of association.

Resumption of Services (Nurses-SUN) Act, 1999 (Bill 23, April)

The Act ended a strike by nurses, extended the expired collective agreement and imposed a two percent wage increase per year for the following three years.

• ***Alberta***

Health Services Continuation Act, 1982 (Bill 11, March)

The Act ended a strike by nurses employed by the Alberta Hospitals Association and other health care establishments.

Labour Relations Act (May 2001)

The government invoked section 148 of the Act to suspend the right to strike for Edmonton municipal employees and paramedics.

Labour Relations Act (March 2002)

The government invoked section 148 of the Act to suspend the right to strike for teachers in 22 school districts in March 2002.

Education Services Settlement Act, 2002 (Bill 12, March)

The Act ended a strike by teachers, imposed fines for not complying with the legislation and removed certain matters from collective bargaining.

• ***British Columbia***

Education (Interim) Finance Act, 1982 (Bill 27, June)

The Act enabled the government to block wage increases previously agreed upon through negotiations between teachers and public school boards.

This legislation was the subject of a complaint to the ILO (*Case 1350*) in October 1985, and found not to comply with the principles of freedom of association.

Compensation Stabilization Act, 1982 (Bill 28, June)

The Act imposed wage increases of six percent and five per-

cent on approximately 220,000 public sector workers for a two-year period, retroactive to February 1982, and suspended collective bargaining.

Compensation Stabilization Amendment Act, 1983 (Bill 11, July)

The Act changed the wage increase guideline under Bill 28 (see above) for approximately 220,000 public sector workers to a range for total compensation and established a Compensation Commissioner with power to decide wage increases based solely on considerations of the employer's "ability to pay".

This legislation, along with the 1982 Bill 28 was the subject of four complaints to the ILO in December 1982 (*Case 1173*), in September 1983 (*Case 1235*), in April 1985 (*Case 1329*) and in October 1985 (*Case 1350*), and found not to comply with the principles of freedom of association.

Pulp and Paper Collective Bargaining Assistance Act, 1984 (April)

This legislation ended a strike by employees in the pulp and paper industry, extended their expired collective agreement, and provided for the appointment of a special mediator to resolve the dispute.

Metro Transit Collective Bargaining Assistance Act, 1984 (September)

The Act ended a strike of public transit employees, extended their collective agreement and provided for the appointment of a special mediator.

Essential Services Disputes Act (February 1985)

This Act was invoked to suspend the right to strike for Esquimalt Police in February 1985.

Essential Services Disputes Act (March 1985)

This Act was invoked to suspend the right to strike for Victoria Police in March 1985.

British Columbia Railway Dispute Settlement Act, 1985 (May)

The Act ended a strike by BC Rail employees and provided for the imposition of a binding collective agreement by the Industrial Inquiry Commission.

Essential Services Disputes Act (August 1985)

This Act was invoked to suspend the right to strike for Oak Bay Police in August 1985.

Essential Services Disputes Act (August 1986)

This Act was invoked to suspend the right to strike for health care workers in August 1986.

Compensation Fairness Act, 1991 (Bill 82, March)

The Act allowed for the determination of wages for public sector employees by the employer and a government-appointed Commissioner, on the basis of "ability to pay", with reference to "any fiscal or financial policies adopted by the government". The Commissioner was given broad powers to override existing collective agreements, impose wage settlements, dictate the manner of calculation of compensation and impose enforcement orders not subject to appeal.

This legislation was the subject of a complaint to the ILO (*Case 1603*) in October 1991. The ILO Committee on Freedom of Association ceased to examine the Act following its repeal by a newly elected provincial government. A separate ILO complaint (*Case 1587*) was also withdrawn after the Act was repealed.

Education Programs Continuation Act, 1993 (Bill 31, May)

The Act ended a province-wide strike by teachers in May 1993.

Education and Health Collective Bargaining Assistance Act, 1996 (Bill 21, April)

The Act imposed collective agreements on employees of public school boards, post secondary educational institutions and

workers in the health sector in accordance with the recommendations of an Industrial Inquiry Commission or mediator appointed under the *Labour Relations Code.*

Public Education Collective Agreement Act, 1998 (Bill 39, July)

The Act imposed a province-wide collective agreement on teachers employed by public school boards based on terms negotiated between the BC Teachers' Federation and the school boards.

Public Education Support Staff Collective Bargaining Assistance Act, 2000 (Bill 7, April)

The Act ended a strike by support workers and cleaning staff in public schools and imposed a collective agreement.

Health Care Services Continuation Act, 2000 (Bill 2, June)

The Act ended a province-wide strike by health care professionals, imposed a 60-day "cooling-off" period and ordered the parties to resume bargaining.

This legislation was the subject of a complaint to the ILO (*Case 2166*) in December 2001, and found not to comply with the principles of freedom of association.

Health Care Services Collective Agreements Act, 2001 (Bill 15, August)

The Act imposed a three-year collective agreement on health care professionals based on the terms of the employer's last offer. The Bill was introduced after the 60-day "cooling-off" period imposed by Bill 2 (see above) failed to reach a collective agreement.

This legislation was the subject of complaints to the ILO in December 2001 (*Case 2166*) and in February 2002 (*Case 2173*), and found not to comply with the principles of freedom of association.

Greater Vancouver Transit Services Settlement Act, 2001 (Bill 13, August)

The Act ended a strike by public transit workers.

Education Service Collective Agreement Act, 2002 (Bill 27, January)

The Act removed the right to strike on approximately 45,000 teachers employed by school boards and imposed a three-year collective agreement on terms proposed by the employer's last offer.

This legislation was the subject of a complaint to the ILO in February 2002 (*Case 2173*) and in March 2002 (*Case 2180*), and found not to comply with the principles of freedom of association.

Railway and Ferries Bargaining Assistance Amendment Act, 2003 (Bill 95, December)

The Act ended a strike by ferry workers employed by the newly privatized BC Ferry Corporation.

This legislation was the subject of a complaint to the ILO (*Case 2324*) in February 2004, and found not to comply with the principles of freedom of association.

Health Sector (Facilities Subsector) Collective Agreement Act, 2004 (Bill 37, April)

The Act ended a three-day-old strike of 43,000 health support employees who work in hospitals and long-term care facilities across the province.

Teachers' Collective Agreement Act, 2005 (Bill 12, October)

This Act resulted in five years of imposed conditions of employment, no improvement in students' learning conditions and a freeze on teachers' salaries.

This legislation is the subject of a recent complaint filed with the ILO but has not been investigated by the ILO Committee on Freedom of Association.

Part B

Restrictions on Organizing, Collective Bargaining and Union Internal Affairs

• ***The Federal Government***

Public Service Reform Act, 1991 (Bill C-26, June)

The Act expanded the category of federal government employees occupying managerial and confidential positions who were excluded from unionization. The Act also allowed Cabinet to suspend strikes during an election period and enabled management to hire more casual workers and contract out a larger amount of work.

This legislation was the subject of a complaint to the ILO (*Case 1670*), and found to be in partial compliance with the principles of freedom of association.

Budget Implementation Act, 1999 (Bill C-71, June)

The Act suspended the right of federal government employees to use binding arbitration as a dispute resolution mechanism during negotiations with Treasury Board in 1999.

• ***Newfoundland and Labrador***

Public Service (Collective Bargaining) Amendment Act, 1983 (Bill 59, April)

The Act enabled the government to designate up to 49 percent of a public service bargaining unit as essential service employees in the event of a strike and broadened the management designation, resulting in the exclusion of 2,000 employees from unionization.

This legislation was the subject of a complaint to the ILO (*Case 1260*) in February 1984, and found not to comply with the principles of freedom of association.

An Act to Amend the Labour Relations Act, 1994 (Bill 49, February)

The Act imposed the requirement of a certification vote in all organizing drives, even where 100 percent of workers signed union cards, and made a strike vote mandatory on the employer's final offer.

Amendments to the Labour Relations Act, 2001 (Bill 18, May)

The amendments to the Act increased fines for illegal strikes by unions and illegal lockouts by employers.

• ***Nova Scotia***

An Act to Amend Chapter 19 of the Trade Union Act, 1986 (Bill 91, May)

The Act required private sector unions to take a vote of its membership on the employer's final offer before a strike could begin.

Financial Measures Act, 2000 (Bill 46, June)

The Act withdrew government funding from the public sector arbitration process, with the result that arbitration became fully funded by employers and bargaining agents.

An Act to Amend the Teachers' Collective Bargaining Act, 2001 (Bill 15, June)

The Act narrowed the range of matters subject to collective bargaining for teachers.

• ***New Brunswick***

An Act to Amend the Industrial Relations Act, 1988 (Bill 73, December)

The amendments to the Act removed the right of municipal and regional police officers to strike and replaced it with binding arbitration.

An Act to Amend the Industrial Relations Act, 1989 (Bill 46, May)

The amendments to the Act enabled the provincial Cabinet to designate specific construction work a "major project" thereby giving the government the right to consolidate all bargaining units of construction workers into a single, new bargaining unit and severely restrict workers' right to picket their worksites.

An Act to Amend the Industrial Relations Act, 1994 (Bill 47, April)

The Act gave employers the authority to request a ratification vote on their final offer in all sets of negotiations with unions representing private sector employees.

• ***Quebec***

An Act respecting the process of negotiation of the collective agreements in the public and para public sectors, 1985 (Bill 37, June)

The Act narrowed the scope of collective bargaining for workers employed in the education and social affairs sector and government agencies, empowered government to impose wage rates in the second and third year of collective agreements and restricted the right to strike.

This legislation was the subject of a complaint to the ILO (*Case 1356*) in December 1985, and found not to comply with the principles of freedom of association.

An Act respecting the negotiation process for collective agreements in the public service, 1995 (Bill 37, June)

The Act increased the number of public sector employees designated "essential" and altered the collective bargaining process to bring an end to province-wide bargaining.

An Act to ensure that essential services are provided to the Bureau d'habitation de Montréal, 1999 (Bill 70, June)

The Act suspended the right to strike for workers at the municipal housing office in Montréal.

An Act to amend the Act respecting health services and social services, 2003 (Bill 7, December)

The Act took away the right of independent family support workers to join a union.

This legislation, along with Bills 8, 30 and 31, was the subject of three complaints to the ILO in October 2004 (*Case 2343*), in November 2004 (*Case 2401* and *Case 2403*), and found not to comply with the principles of freedom of association.

An Act to amend the Act respecting childcare centres and childcare services, 2003 (Bill 8, December)

The Act took away the right of independent home childcare providers to join a union.

This legislation, along with Bills 7, 30 and 31, was the subject of three complaints to the ILO in October 2004 (*Case 2343*), in November 2004 (*Case 2401* and *Case 2403*), and found not to comply with the principles of freedom of association.

An Act to modify bargaining units and local bargaining, 2003 (Bill 30, December)

The Act established a ceiling of four bargaining units per health care employer, introduced a mandatory bargaining process and eliminated the right to strike and the arbitration framework beyond the negotiation of the first agreement.

This legislation, along with Bills 7, 8 and 31, was the subject of three complaints to the ILO in October 2004 (*Case 2343*), in November 2004 (*Case 2401* and *Case 2403*), and found not to comply with the principles of freedom of association.

An Act to amend the labour code of Quebec, 2003 (Bill 31, December)

The Act allowed health care employers to subcontract with no guarantee of successor rights.

This legislation, along with Bills 7, 8 and 30, was the subject of three complaints to the ILO in October 2004 (*Case 2343*), in

November 2004 (*Case 2401* and *Case 2403*), and found not to comply with the principles of freedom of association.

• ***Ontario***

An Act to Amend the Labour Relations Act, 1984 (Bill 75, June)

The Act enabled the Ontario Labour Relations Board to impose penalties on unions, their officials and individual members who participated in illegal strikes.

An Act to Amend the Labour Relations Act, 1993 (Bill 80, December)

The amendments to the Act gave power to the Labour Relations Board to review and overturn decisions of international unions in the building and construction industry regarding union locals, including decisions involving the removal of union officers.

The legislation was the subject of a complaint to the ILO (*Case 1735*) in September 1993, and found not to comply with the principles of freedom of association.

Labour Relations and Employment Statute Law Amendments Act, 1995 (Bill 7, October)

The Act denied access to collective bargaining and the right to strike to agricultural and domestic workers and specified professionals, removed a prohibition on the use of replacement workers during strikes and removed successor rights for Crown employees.

This legislation was the subject of a complaint to the ILO (*Case 1900*) in August 1996, and found not to comply with the principles of freedom of association.

Savings and Restructuring Act, 1996 (Bill 26, January)

The Act gave the government broad powers to restructure municipalities and hospitals and imposed requirements on arbitrators to consider government concerns in adjudicating

disputes with certain public sector workers who lacked the right to strike.

Public Sector Transition Stability Act, 1997 (Bill 136, June)

The Act applied to public sector workers in newly merged workplaces and compelled run-off votes between unions. It also gave the authority to a government-appointed Commissioner to impose the first collective agreement where agreement could not be reached with the new bargaining unit in the newly merged workplace.

Education Quality Improvement Act, 1997 (Bill 160, December)

The Act enabled government to regulate terms and conditions of employment for teachers and removed cost items, including preparation time and class size, from collective bargaining.

This legislation was the subject of a complaint to the ILO (*Case 1951*) in February 1998, and found not to comply with the principles of freedom of association.

Economic Development and Workplace Democracy Act, 1998 (Bill 31, June)

The Act increased barriers to organizing drives and certification votes, facilitated decertification and enabled the government to ban private sector strikes on large-scale construction projects to prevent economic losses.

Prevent Unionization with Respect to Community Participation under the Ontario Works Act, 1997 (Bill 22, December)

The Act prevented workers participating in mandatory "workfare" programs from joining a union, bargaining collectively and/or striking.

This legislation was the subject of a complaint to the ILO (*Case 1975*) in July 1998, and found not to comply with the principles of freedom of association.

Education Accountability Act, 2000 (Bill 74, May)

The Act imposed a series of terms and conditions of employment on teachers and reduced the scope of matters open to collective bargaining.

This legislation was the subject of a complaint to the ILO (*Case 2119*) in March 2001, and found not to comply with the principles of freedom of association.

Labour Relations Amendment Act, 2000 (Bill 139, December)

The Act facilitated decertification of workers' organizations by requiring employers to post documents setting out the process.

This legislation was the subject of a complaint to the ILO (*Case 2182*) in March 2002, and found not to comply with the principles of freedom of association.[50]

An Act to Revise the Law Related to Employment Standards, 2000 (Bill 147, December)

The Act permitted a workweek of up to 60 hours and introduced averaging provisions that disadvantaged workers in the calculation of overtime.

• ***Manitoba***

Labour Relations Amendment Act, 1990 (Bill 12, December)

The Act repealed Final Offer Selection, a procedure included in the Labour Relations Act in 1987, that allowed union and management representatives to present a final proposal to an arbitrator-selector to be chosen as the new collective agreement.

Labour Relations Amendment Act, 1992 (Bill 85, June)

The amendments expanded the scope of permissible employer comments during an organizing drive, repealed the prohibition on employers to object to unionization and raised the required level of support for automatic certification to 65 percent.

Public Schools Amendment Act, 1996 (Bill 72, October)

The Act excluded certain working conditions for teachers in the public school system from collective bargaining and directed arbitrators to consider the school division or district's ability to pay in making awards.

This legislation was the subject of a complaint to the ILO (*Case 1928*) in May 1997, and found not to comply with the principles of freedom of association.

Government Essential Services Act, 1996 (Bill 17, November)

The Act gave government greater ability to designate public services essential, determine which workers fell outside a collective agreement and deprive workers of the right to strike.

An Act to Amend the Labour Relations Act, 1997 (Bill 26, February)

The Act ended automatic certification for unions that obtained signed cards from a majority of workers in a workplace, placed restrictions on the use of union dues for political purposes and required unions to file annual financial statements with the Labour Relations Board detailing compensation paid to officers earning more than $50,000.

• ***Saskatchewan***

Trade Union Amendment Act, 1983 (Bill 104, June)

The Act broadened the time frame for providing advance notice of union meetings and the conduct of strike votes, allowed non-union members to vote in strike and ratification votes and restricted the ability of unions to discipline members for crossing picket lines or violating the union's constitution. It also imposed more stringent certification requirements on unions and allowed campaigning by employers against unions during organizing drives and negotiations.

An Act to Repeal the Construction Industry Labour Relations Act, 1983 (Bill 24, December)

The Act allowed employers to avoid using unionized workers in the construction sector.

• ***Alberta***

Labour Statutes Amendment Act, 1983 (Bill 44, June)

The Act eliminated the right to strike for firefighters and hospital employees, imposed compulsory arbitration and required arbitrators to consider government policy, the employer's ability to pay and non-union wages. It also allowed suspension of the collection of dues if employees participated in illegal strike action.

This legislation was the subject of a complaint to the ILO (*Case 1247*) in November 1983, and found not to comply with the principles of freedom of association.

Construction Industry Collective Bargaining Act, 1987 (Bill 53, June)

The Act imposed a mandatory system of province-wide bargaining for employees in the construction sector. It required unions to negotiate a single "master agreement" with employers that would last five years and subsidiary agreements for specific trades that would last two years. Strikes were permitted only where 60 percent of unions and eligible voters were in favour.

Livestock Industry Diversification Act, 1990 (Bill 31, July)

The Act amended the Labour Relations Code to exclude persons engaged in the raising of "game production animals" from organizing.

Labour Board Amalgamation Act, 1994 (Bill 1, May)

The Act amalgamated the Public Service Employee Relations Board with the Labour Relations Board and altered the

Board's powers, including giving the Chair of the Board the power to sit alone and summon witnesses if the parties did not object.

Labour Relations (Regional Health Authorities Restructuring) Amendment Act, 2003 (Bill 27, April)

The Act excluded nurse practitioners from unionization, terminated the right to strike for all health care workers and removed negotiated severance provisions from collective agreements.

This legislation was the subject of an ILO complaint (*Case 2277*) in November 2003, and found not to comply with ILO freedom of association principles.

• ***British Columbia***

Employment Development Act, 1982 (Bill 16)

The Act enabled the government to deny workers the right to strike if they worked at sites deemed by the government to be an economic development project.

Employment Standards Amendment Act, 1983 (Bill 26, October)

The Act allowed employers and unions to agree to contract language that provided workers with less than minimum employment standards and provided that no collective agreement could alter the powers and obligations of the Commission of Public Service.

This legislation was the subject of two complaints to the ILO in December 1982 (*Case 1173*) and in September 1983 (*Case 1235*), and found not to comply with the principles of freedom of association.

Public Sector Restraint Act, 1983 (Bill 3, October)

The Act broadened the definition of senior management in the government service. This excluded employees from unioni-

zation, enabled employers to dismiss employees for economic reasons and stipulated the salaries and working conditions of supervisory personnel in schools would be fixed by the government and not subject to collective bargaining.

This legislation was the subject of two complaints to the ILO in December 1982 (*Case 1173*) and in September 1983 (*Case 1235*), and found not to comply with the principles of freedom of association.

Labour Code Amendment Act, 1984 (Bill 28, May)

The Act widened the scope of permissible employer action during union organizing drives, broadened the criteria for decertification, restricted secondary picketing and broadened criteria for strike-free economic development zones.

Industrial Relations Reform Act, 1987 (Bill 19, June)

The Act limited successor rights, restricted the definition of "related employer", established an Industrial Relations Council (IRC) through which the government could declare workers essential and limited the right to strike and secondary picketing.

This legislation was the subject of a complaint to the ILO (*Case 1430*) in October 1987, and found not to comply fully with the principles of freedom of association.

Teaching Profession Act, 1989 (Bill 20, July)

The Act split the new British Columbia Teaching Federation (BCTF) into separate bargaining units for each school board and excluded principals and vice-principals from union membership.

School Act, 1989 (Bill 67, July)

The Act excluded certain matters from the bargaining process for teachers including programs of study, professional methods and the hiring of teaching assistants.

Public Sector Bargaining Disclosure Act, 1990 (Bill 79, July)

The Act required public sector bargaining parties to file their positions with a Public Sector Bargaining Registrar, allowing employers to influence the timing of strikes.

Public Education Labour Relations Act, 1994 (Bill 52, June)

The Act imposed a single province-wide collective bargaining system for teachers employed by public school boards.

Skills Development and Labour Statutes Amendment Act, 2001 (Bill 18, August)

The Act restricted the right to strike for employees in the public school system by extending the designation of "essential services" to teaching and non-teaching personnel and prohibited strikes until essential service designations had been made by the Labour Relations Board.

This legislation was the subject of a complaint to the ILO (*Case 2173*) in February 2002, and found not to comply with the principles of freedom of association.

Skills Development and Fair Wage Repeal Act, 2001 (Bill 22)

The Act removed the requirement from employers in the construction industry to hire unionized workers when performing public works.

Education Service Collective Agreement, 2002 (Bill 27, January)

The Act impacted on more than 45,000 teachers employed by school boards in the province. It imposed on them a three-year collective agreement that contained terms and conditions of the employer's last offer. The legislation prohibited the right to strike without providing access to an independent arbitration process.

This legislation, along with Bills 28 and 29, was the subject of three complaints to the ILO in February 2002 (*Case 2173*), in March 2002 (*Case 2180*) and in May 2002 (*Case 2196*), and

found not to comply with the principles of freedom of association.

Public Education Flexibility and Choice Act, 2002 (Bill 28, January)

The Act permitted public school board employers to override negotiated collective agreement provisions for teachers regarding class size, courses to be taught, hours of instruction and job security. It also allowed for contracting out.

This legislation, along with Bills 27 and 29, was the subject of three complaints to the ILO in February 2002 (*Case 2173*), in March 2002 (*Case 2180*) and in May 2002 (*Case 2196*), and found not to comply with the principles of freedom of association.

Health and Social Services Delivery Improvement Act, 2002 (Bill 29, January)

The Act eliminated much of the job security protection for health and social service workers that their unions managed to bargain as part of their collective agreements. The legislation empowered health and social service employers to "contract out" to non-union employers not bound by the terms of the collective agreements, notwithstanding clauses to the contrary in collective agreements. Existing layoff and bumping provisions in collective agreements were rewritten by the legislation in favour of the employer. Severance pay was unilaterally reduced below even the standard applicable to non-union employees under provincial Employment Standards legislation.

This legislation, along with Bills 27 and 28, was the subject of three complaints to the ILO in February 2002 (*Case 2173*), in March 2002 (*Case 2180*) and in May 2002 (*Case 2196*), and found not to comply with the principles of freedom of association.

Coastal Ferry Act, 2003 (Bill 18, March)

The Act allowed private contractors to override contracting out provisions contained in the ferry workers' collective agreement.

This legislation was the subject of a complaint to the ILO (*Case 2324*) in February 2004, and found not to comply with the principles of freedom of association.

Health Sector Partnerships Agreement Act, 2003 (Bill 94, November)

The Act prevented the Labour Relations Board and arbitrators from making a true employer declaration for employees working for a private contractor or subcontractor in the health sector. It also overrode collective agreement provisions prohibiting contracting out, rewrote layoff and bumping provisions, and reduced severance pay below even the minimum standards applicable to non-unionized employees under provincial Employment Standards legislation.

The Act was the subject of a complaint to the ILO (*Case 2324*) in February 2004, and found not to comply with the principles of freedom of association.

Appendix III

Workers' Bill of Rights

IT IS RECOGNIZED THAT:

Democracy and human rights cannot flourish where workers' rights do not exist or are not enforced.

Unions have been, and continue to be, an important force for democracy, not just in the workplace, but beyond, in the community – locally, nationally and globally.

Unions have historically been a major force in humanizing and democratizing the economies of nations by promoting higher levels of economic equality and economic justice.

Unions provide workers with decent wages, benefits and working conditions so they and their families can enjoy a quality standard of living and financial security.

THIS IS CONFIRMED BY:

The *United Nations Universal Declaration of Human Rights* (1948) which sets out fundamental principles for human rights including the right to freedom of association (Article 21) as well as the right of everyone to form and to join trade unions (Article 23).

The *ILO Declaration on Fundamental Principles and Rights at Work* (1998) which reaffirms the commitment of the international community "to respect, to promote and to realize in good faith" the rights of workers to freedom of association and the effective right to collective bargaining.

IT IS THEREFORE AFFIRMED THAT:

-1-

All workers have the right to form unions for the promotion and defence of their interest without interference by employer or government. This basic human right goes together with freedom of association and freedom of expression. It is the basis of democratic representation and governance.

-2-

All workers have the right to a legal framework that recognizes collective bargaining as the means of determining their wages, working conditions and terms of employment.

Proclaimed the 10th day of December 2005

U.N. International Human Rights Day

Notes

• Section II

1 International Labour Organization, *Unions, Markets and Democracy,* a public lecture by Bill Jordan, former General Secretary, International Confederation of Free Trade Unions (Geneva: November 1998) p. 3.

2 Andrew Jackson, *'In Solidarity': The Union Advantage,* Canadian Labour Congress (Ottawa: July 2003) p. 2.

3 R.J. Adams, "Implications of the International Human Rights Consensus for Canadian Labour and Management" in (2002) 9:1 Canadian Labour & Employment Law Journal p. 141. See R.J. Adams, *Industrial Relations Under Liberal Democracy,* University of South Carolina Press (Columbia: 1995).

• Section III

4 International Labour Organization Website – www.ilo.org – explaining the *ILO Declaration on Fundamental Principles and Rights at Work*, ILO 86th Session (Geneva: June 1998).

5 Adams, cited above p. 124.

6 Principle No. 3 of the United Nations Global Compact. For more information on the Global Compact visit the section of the UN's website dedicated to the Global Compact – www.unglobalcompact.org.

7 Adams, cited above, p. 119.

• Section IV

8 Adams, cited above, p. 123.

9 Adams, cited above, p. 121.

10 Canada, Department of Foreign Affairs and International Trade, "Canada's Commitment to Human Rights" (Fall 1998), referred to in Adams, cited above, p. 120.

11 ILO, *Review of Annual Reports Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work,* International Labour Office (Geneva: 2000) 17, cited in Adams, cited above, p. 120.

• Section V

12 The Ontario Liberal government of Mitch Hepburn, unsuccessfully trying to stave off electoral defeat, was actually the first to introduce Wagner Act-type legislation into Canada with the adoption of *The Collective Bargaining Act, 1943,* on April 14, 1943. The Liberal legislation was in turn replaced by *The Labour Relations Board Act, 1944.* This improved legislation was the product of a Progressive Conservative minority government and was adopted at the urging of the CCF, by then the Official Opposition. The CCF Leader of the Opposition was Ted Jolliffe, later a well-known labour arbitrator.

13 Statistics Canada, *The Labour Force Survey,* Human Resources Development Canada website. This figure is for non-agricultural workers. Include farm workers and the percentage would be even lower. On the other hand, as Paul Weiler suggests in *Reconcilable Differences,* Carswell, (Toronto: 1980), other material points to a

somewhat higher figure: perhaps as high as 60 percent of workers in establishments employing more than 20 and excluding agriculture, construction, fishing and trapping. Either way, a very high percentage of Canadian workers did not exercise collective bargaining rights in the early 1980s and a significantly lower percentage do today.

14 Only a few provincial jurisdictions permitted agricultural workers to organize or provided any practical protection for them.

15 Weiler, cited above, p. 25.

16 same source, p. 69.

17 Adams, cited above, p. 127, referring to R.B. Freeman & J. Rogers, *What Workers Want*, ILR Press (Ithaca: 1999).

18 Ontario's original *Crown Employees Collective Bargaining Act* of 1972 did not provide public sector workers with the right to strike. It was amended in 1993 by the NDP government allowing for the right to strike – the only permanent expansion of collective bargaining rights in Canada during the two decades of the 1980s and 1990s.

• Section VI

19 The following sections summarizing the restrictive legislation rely heavily on *UPDATE: Collective Bargaining in the Provincial Public Sector*, a publication by the National Union of Public and General Employees and updated on a regular basis throughout the 1980s and 1990s. See also *Appendix II*. Another useful resource was Leo Panitch and Donald Swartz *From Consent to Coercion: The Assault on Trade Union Freedoms (third edition)*, Garamond Press Ltd. (Toronto: 2003).

20 There was a precedent that came in handy for governments that wanted to gut collective bargaining rights. In the mid-1970s the Trudeau government imposed its Anti-Inflation program establishing "guidelines" for wage and price hikes, administered by the Anti-Inflation Board. Where there were gaps, most provinces moved in with complimentary programs. The Trudeau program was unprecedented in peacetime in Canada, Prof. Weiler noted at page 249 of *Reconcilable Differences*.

21 Panitch and Swartz, cited above, p.186.

22 Panitch and Swartz, cited above, p. 217.

23 UFCW has successfully challenged this section of the legislation, denying freedom of association to agricultural workers all the way to the Supreme Court of Canada. See section entitled *The Canadian Charter of Rights and the Courts*.

24 Panitch and Swartz, cited above, p. 191.

25 Panitch and Swartz, cited above, p. 199.

26 BCFMWU is an affiliate of the BC Government and Service Employees' Union (BCGEU/NUPGE).

• Section VII

27 A detailed outline of how the ILO works is found in Appendix 1.

28 Brian W. Burkett, John D. R. Craig and Jodi Gallagher, *Canada and the ILO: Freedom of Association since 1982,* 10th Canadian Labour and Employment Journal 231 at p. 264.

29 Ken Norman, *ILO Freedom of Association Principles as Basic Canadian Human Rights: Promises to Keep*, a paper presented to a Conference on Employment Law and Policy sponsored by the College of Law, University of Saskatchewan (Saskatoon: March 2004) p.16. The National Union has updated Professor Norman's data based on recent decisions by the ILO's Freedom of Association Committee (as of April 2006).

30 *330th Report of the Committee on Freedom of Association,* adopted by the ILO Governing Body at its 286th Session, March 2003.

31 July 24, 2003 letter from the BC Government's Deputy Minister of Labour to the Senior International Labour Affairs Officer with the Government of Canada.

32 *340th Report of the Committee on Freedom of Association*, adopted by the ILO Governing Body at its 295th Session, March 2006, para. 49.

• Section VIII

33 Katherine Swinton, *The Charter of Rights and Public Sector Labour Relations,* in Gene Swimmer and Mark Thompson (eds.), *Public Sector Collective Bargaining in Canada*. Queen's University Industrial Relations Centre Press (Kingston: 1995) p. 59.

34 The National Union was among the first to sound the alarm. It prepared research material on the *Charter* and trade union rights with the publication of *The Canadian Charter of Rights and Freedoms: A Doubled-Edged Sword for Unions?* in January 1986.

35 Ken Norman, *ILO Freedom of Association Principles as Basic Canadian Human Rights: Promises to Keep*, a paper presented to a Conference on Employment Law and Policy sponsored by the College of Law, University of Saskatchewan (Saskatoon: March 2004) p. 7.

36 same source, p. 7.

37 *Labour Trilogy: Reference re Public Service Employee Relations Act* (Alta.), [1987] 1 S.C.R. 313 at p. 391; *R.W.D.S.U. v. Saskatchewan*, [1987] 1 S.C.R. 460; *P.S.A.C. v. Canada,* [1987] 1 S.C.R. 424.

38 *Reference re Public Service Employee Relations Act (Alberta),* [1987] 1 S.C.R. 313 at p. 358-359.

39 *Dunmore v. Attorney General (Ontario)* (2001) 207 D.L.R. (4th) 193.

40 The denial of agricultural workers the right to join a union was part of the Conservative government's October 1995 Omnibus Bill on labour legislation: Bill 7 – *Labour Relations and Employment Statute Law Amendments Act*.

41 The denial of agricultural workers the right to join a union was part of the Conservative government's October 1995 Omnibus Bill on labour legislation: Bill 7 – *Labour Relations and Employment Statute Law Amendments Act*.

42 *Dunmore,* p. 214 [para. 216].

43 Same source, p. 228 [para. 237].

44 *Dunmore*, p. 207 [para. 146].

45 Ken Norman, *ILO Freedom of Association Principles as Basic Canadian Human Rights: Promises to Keep*, a paper presented to a Conference on Employment Law and Policy sponsored by the College of Law, University of Saskatchewan (Saskatoon: March 2004) p.10.

46 Despite the Supreme Court of Canada ruling, the Newfoundland and Labrador government agreed in March 2006 to make a $24-million payment to five public sector unions to resolve a long standing pay-equity dispute. The payment will be dispersed amongst the close to 20,000 potential recipients.

• **Section IX**

47 Armine Yalnizyan, *Canada's Great Divide: the Politics of the Growing Gap between Rich and Poor in the 1990s,* Centre For Social Justice, (Toronto: 2000).

48 same source, p. iii.

49 Adams, Canadian Labour & Employment Law Journal, cited above, p. 129.

• **Appendix II**

50 The current Liberal government of Ontario introduced amendments to the Labour Relations Act in November 2004 to repeal this section.

References

Adams, George. *Canadian Labour Law (second edition)*. Canada Law Book. (Aurora, Ontario: 2003).

Adams, Roy J. *Realizing the Right to Bargain Collectively in Canada and the Americas*. Canadian Workplace Research Network. (Toronto: April 2001).

Adams, Roy J. *Labour Left Out: Canada's Failure to Protect and Promote Collective Bargaining as a Human Right.* Canadian Centre for Policy Alternatives. (Ottawa: 2006).

Aidit, Toke and Tzannatos, Zaffris. *Unions and Collective Bargaining: Economic Effects in a Global Environment*. The World Bank. (Washington: February 2002).

Blaikie, Heenan LLP. *Canada and the ILO Freedom of Association since 1982*. Canadian Employers Council. (Ottawa: September 2002).

Carrothers, A.W.R., Palmer, E.E. and Rayner, W.B. *Collective Bargaining Law in Canada (second edition)*. Butterworths. (Toronto: 1986).

Fudge, Judy and Tucker, Eric. *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900-1948*. Oxford University Press. (Toronto: 2001).

International Labour Organization Website – www.ilo.org.

Jackson, Andrew. *'In Solidarity': The Union Advantage*. Canadian Labour Congress. (Ottawa: July 2003).

Jordon, Bill, General Secretary, International Confederation of Free Trade Unions. *Unions, Markets and Democracy: a public lecture*. International Labour Organization. (Geneva: November 1998).

National Union of Public and General Employees. *The Structure of Collective Bargaining in the Provincial Government Sector*. (Ottawa: May 2000).

National Union of Public and General Employees. *Collective Bargaining in the Provincial Public Sector in the 1990s: An Overview*. (Ottawa: March 1999).

National Union of Public and General Employees. *The Canadian Charter of Rights and Freedoms: A Doubled-Edged Sword for Unions?* (Ottawa: January 1986).

Norman, Ken. *ILO Freedom of Association Principles as Basic Canadian Human Rights Promises to Keep*. College of Law, University of Saskatchewan. (Saskatoon: March 2004).

Organization for Economic Co-operation and Development. *Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade*. (Paris: 1996).

Panitch, Leo and Swartz, Donald. *From Consent to Coercion: The Assault on Trade Union Freedoms (third edition)*. Garamond Press Ltd. (Toronto: 2003).

Rastin, Sandra and Reshef, Yonatan. *Unions in the Time of Revolution: Government Restructuring in Alberta & Ontario*. University of Toronto Press. (Toronto: 2003).

Swimmer, Gene, ed. *Public Sector Labour Relations in an Era of Restraint and Restructuring*. Oxford University Press. (Toronto: 2001).

Swimmer, Gene and Thompson, Mark (eds.). *Public Sector Collective Bargaining in Canada*. Queen's University Industrial Relations Centre Press. (Kingston: 1995).

Weiler, Paul. *Reconcilable Differences: New Directions in Canadian Labour Law*. The Carswell Company Limited. (Toronto: 1980).