LABOUR LAW

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I. INTRODUCTION

Two recently completed reports [1] resulting from intensive investigations and studies in labour-management relations show determined efforts to find practical solutions in the troubled field of labour-management relations in Canada.

The major recommendation of the Rand Report is the establishment of an industrial tribunal empowered to regulate a wide range of labour-management disputes. This tribunal, it is advocated, should be composed of members possessing the qualifications of members of the Supreme Court of Ontario and they "shall be of the highest qualifications." [2] The tribunal would have the power, *inter alia*, to intervene, at the request of the government or on its own initiation, in any labour-management conflict of importance; to impose its own terms of settlement, at the request of the government, in essential industries; to inquire at the government's request into matters of wages, hours of work, fringe benefits and cost-of-living; to act at the request of the parties as a board of arbitration, and to make orders of termination of strikes continuing more than six months.

The Task Force Report, on the other hand, accepts "the foundations and essence of the present Canadian industrial relations system and the role of collective bargaining and trade unionism within that system . . . not only because of its virtues . . . but also because we see no alternative that is compatible with the heritage of western values and institutions . . ." [3] Consequently, the bulk of the recommendations of this report are intended to improve the form of the existing collective bargaining process rather than to suggest any radical changes.

However, the report does recommend considerable changes in the form, terms and jurisdiction of the Canada Labour Relations Board "in the area of bargaining-unit determination and redetermination, and in the regulation of internal union affairs, unfair labour practices, including unlawful strikes and lock-outs, and picketing and boycotting." [4]

Thus both reports envisage and recommend a wider role of governmental participation. In a recent article, [5] the recommendations were dis-

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[1] REPORT OF THE ROYAL COMMISSION INQUIRY INTO LABOUR DISPUTES (Ont. 1968) (hereinafter cited as the RAND REPORT) and the REPORT OF THE FEDERAL TASK FORCE ON LABOUR RELATIONS (1961) (hereinafter cited as the TASK FORCE REPORT).

[2] RAND REPORT 103.

[3] TASK FORCE REPORT 137.

[4] *Id.* at 207.

[5] Hendry, *Annual Survey of Labour Law*, 3 OTTAWA L. REV. 605 (1969).

cussed in the light of the present roles of the three agencies of government, the legislature, the judiciary and the executive, in an attempt to give an adequate picture of the procedures and difficulties in implementing a rule of labour-management relations law. Particular attention was given to the administrative tribunal, a relatively new governing instrument if and when more governmental intervention in labour-management relations is desired or considered necessary.

What has happened in the quest for industrial peace since the completion and publication of these reports? Has the approach advocated in the Rand Report been preferred to that of the task force report? Have the reports resulted in any major changes in the law of labour-management relations in Canada?

II. Public Interest Disputes

Canadian legislatures have at times acted to proclaim certain economic areas of public interest in which the workers are denied the right to strike. Many jurisdictions deny the right to policemen and firemen. Hospital employees have been the subject of special legislation; teachers and government employees are generally denied the right to strike and many strikes in the transportation industries have been the subject of special legislation. [6] Most of these industries are publicly-owned or subsidized and stoppages of work in them have stirred public opinion to such an extent that legislative action has had wide public support. A prominent writer has said of the difficulty of defining public interest so as to warrant legislative interference: "At least for the purpose of assessing the Canadian experience to date, it is actual events rather than abstractions which must be relied upon to identify areas of labour relations which are particularly affected by the public interest." [7]

However, the provinces of British Columbia, Alberta, Manitoba, [8] and Saskatchewan have attempted to prescribe general definitions and methods of dispute settlement for public interest disputes.

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[6] See a number of examples in Binavince & Chapman, *Recent Developments in Canadian Labour Law*, 2 Ottawa L. Rev. 87 (1967).

[7] Arthurs, *Public Interest Labour Disputes in Canada: A Legislative Perspective*, 17 Buffalo L. Rev. 39 (1967).

[8] The Alberta Labour Act, Alta. Rev. Stat. c. 196, § 106 (1970) provides:

> (1) Where at any time in the opinion of the Lieutenant-Governor in Council a state of emergency exists in Alberta in such circumstances,
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> (a) that life or property would be in serious jeopardy by reason of (i) any breakdown or stoppage or impending breakdown or stoppage of any system, plant or equipment for furnishing or supplying water, heat, electricity or gas to the public, or (ii) a stoppage or impending stoppage of hospital services in any areas of the Province, or
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> (b) that extreme privation or human suffering has been caused by any stoppage of services or work over an extended period of time, if a state of emergency arises from a labour dispute, the Lieutenant Governor in Council may by proclamation declare that from and after a date found in the proclamation all further action and pro-

In 1966, the Saskatchewan Liberal government passed The Essential Services Emergency Act, 1966.[9] Subsection 3(1) as amended provides:

> Where at any time in the opinion of the Lieutenant-Governor in Council a state of emergency exists in the province by reason of labour dispute in such circumstances that the public interest or welfare may be in jeopardy, the Lieutenant-Governor may by proclamation declare that on and from a date to be fixed in the proclamation all further action and procedures in the dispute are replaced by the emergency procedures provided in this act.

The act then prescribed compulsory arbitration by a three-man board.

The act originally covered workers in gas, power, water and hospital services. In 1970, it was extended to cover construction workers[10] and, in 1971, to all employees and employers.[11]

Sometime before the provincial election in July 1971, the late Premier Ross Thatcher announced the intention of his government to introduce labour courts, and apparently these courts were to supersede the arbitral procedures set forth in The Essential Services Emergency Disputes Act. In describing the courts, press reports quoted Mr. Thatcher as stating that they would consist of three judges appointed for life to handle all disputes not resolved through normal channels of negotiation. Thus there did not appear to be much variation in the intended effect proposed legislation for labour courts. The defeat of the Liberal government in the recent provincial election not only put an end to the possibility of such novel legislation but also caused the repeal of The Essential Services Emergency Disputes Act.[12]

In 1968, in British Columbia, the Mediation Commission Act[13] created an independent mediation commission with wide powers to settle disputes which, in the opinion of the provincial cabinet, affect the public interest and welfare. To get the parties down to realistic bargaining more quickly, conciliation boards were eliminated and supervision of strike votes discontinued.

> cedures in the dispute are to be replaced by the emergency procedures under this section.

A three member Public Emergency Tribunal is established pursuant to section 107 of the act and is empowered to issue binding awards on the employer, the bargaining agent and employees affected after making due inquiry into the disputes.

Manitoba has recently enacted similar provisions which have not yet been proclaimed (Man. Stat. 1971 c. 86, § 6). Sections 84, 85 and 86 of The Labour Relations Act empowers the Lieutenant Governor in Council to declare that a business or work is "essential to the health and well-being of the people of the province, or of some of them, or the preservation of property within the province." The declaration expires after fourteen days unless it is confirmed by a resolution of the legislative assembly. All strikes and lock-outs are forbidden during the term decreed in the resolution.

[9] Sask. Stat. 1966 (2d Sess.) c. 2.

[10] Sask. Stat. 1970 c. 11.

[11] Sask Stat. 1971 c. 11.

[12] Bill 6, An Act to repeal the Essential Services Emergency Disputes Act, 1966, received royal assent on August 11, 1971.

[13] B.C. Stat. 1968 c. 26.

In 1969, although strikes were avoided in many industries perhaps by the very existence of the Mediation Commission, the construction industry was involved in the most protracted labour dispute in provincial history. This one dispute alone accounted for more than two million lost man days of production and it was wondered why so long a time was taken to decide that the public interest was involved. This matter was cleared up, however, when the government finally did invoke the power of settlement by the commission and immediately thereafter found itself in a potentially explosive confrontation with the labour movement. The dispute was finally settled by voluntary negotiation and confidence was lost in the commission.

In 1970, the most serious dispute had nothing to do with wages. It involved the Teamsters' Union and the Automotive Transport Labour Relations Association and the union's demand for a "struck goods" clause. When the union went on strike against one of the companies in the association, the association replied by ordering a lock-out. Within hours, the government announced it would move in on the ground that the public interest was involved.

As a result of this quick action by the government, it may be argued that any dispute may affect the public interest. In any event, fears were expressed in labour circles that this precedent means that no dispute of any size is immune from government action. However, since this time, a dispute in the forest industry, another flareup in the construction industry and, more recently, a dispute in the electric power industry have been referred to a one-man negotiator and the Mediation Commission thereby circumvented.

III. The Construction Industry

For some time now the negotiating weakness of the contractors with the unions in the construction industry has been apparent. In many cases, contractors have permitted settlement at any price so long as the project continues or is completed on time. Concession after concession has been granted and increases in wages up to 50 per cent have not been unusual. Not only have the unions made substantial gains in wages but they have been able to force small independent contractors to do their bidding through subcontract clauses, hiring halls and apprenticeship clauses in labour agreements.

Because of this negotiating weakness, the Canadian Construction Association and other groups in the building industry have been urging accreditation of employer organizations. Its main purpose is to strengthen the hand of the employers in bargaining especially by preventing individual contractors from signing individual agreements during strike action. Contractor associations have been waging an urgent campaign to convince the provincial governments that the power of construction trade unions is so great that demands for wage increases cannot be resisted without legislative assistance.

Most provincial jurisdictions have responded by prescribing similar systems of accreditation. Some have prescribed methods of the settlement of

jurisdictional disputes and some have given additional powers to boards for enforcing boards' orders.

A. *The British Columbia Labour Relations Act* [14]

A new section 9A provides that an employers' organization may be accredited by the Labour Relations Board as a bargaining agent with exclusive authority to make binding agreements on behalf of the employers named in the application. Before the board accredits the employers' organization it must determine if the employers in the application: (a) constitute a group appropriate for collective bargaining, (b) are members of the applicant organization, (c) have agreed to the accreditation of the organization as their bargaining agent. When the employers' association is accredited it has, for the length of time mentioned in the accreditation, the exclusive authority to bargain collectively on behalf of the employers and to bind the employers by a collective agreement. There is no special mention of procedures for the settlement of jurisdictional disputes or special enforcement provisions.

B. *The Alberta Labour Act* [15]

Section 75 provides that when an organization of employers engaged in the construction industry has as members the majority of the employers in a territory in respect of whom a trade union or trade union council has the right of collective bargaining, it may apply to the board to be registered. If the board is satisfied that the organization should be registered, the organization will have exclusive authority to bargain on behalf of its members, and on behalf of any other employers in the construction industry with whom the trade union may establish the right of collective bargaining in the area named in the registration. Any collective agreement entered into will be binding on all such employers and their employees.

By section 77, when a difference arises following the assignment of work to members of a particular trade union or to workmen of a particular trade, craft or class, any of the parties affected may refer the question to the jurisdictional committee. The jurisdictional committee is a representative committee of employers and trade unions.

Subsection 77(4) provides for a binding award by the jurisdictional committee. If no committee has been established, the dispute may be referred to the board. If the award of the committee or the decision of the board is not complied with, it may be registered and enforced as an order of the court in the judicial district in which the dispute arose.

C. *The Ontario Labour Relations Act* [16]

The most extensive amendments affecting the construction industry are found in this act. Section 113 provides that where a trade union or council of trade unions has been certified, has been granted voluntary recognition or has entered into collective agreements with more than one employer covering a unit of employees in the construction industry, an employers'

[14] B.C. REV. STAT. c. 205 (1960).
[15] ALTA. REV. STAT. c. 196 (1970).
[16] ONT. REV. STAT. c. 232 (1970).

organization may apply to the board to be accredited as bargaining agent for all employees in a particular section and geographic area of the industry.

By section 114, the board shall determine what constitutes an appropriate unit of employees for collective bargaining purposes and it may combine geographic areas, sectors of the industry or both. The board must be satisfied that the organization has the support of a majority of employers represented and that such majority of employers have in their employ a majority of the employees of the trade union. The board must also satisfy itself that the organization is able to discharge the responsibilities of an accredited bargaining agent.

The accredited organization has exclusive bargaining rights in respect of all employers in the bargaining unit (section 116) and a collective agreement entered into by the organization and the trade union or council of trade unions is binding on such employers and their employees (section 117). Bargaining between the union or council and individual employers is prohibited and any separate collective agreement between the individual employer and the trade union is void.

Section 120 prescribes that an employers' organization shall not act in a manner that is arbitrary, discriminatory or in bad faith, that membership shall not be denied or terminated except for fair and reasonable causes, and that the organization shall not charge, levy or prescribe initiation fees, dues or assessments that are unreasonable or discriminating.

With respect to jurisdictional disputes, section 108 lays down a procedure for the private settlement of such disputes. Every trade union, council of trade unions, employer and employers' organization in the construction industry is required to file with the board on or before April 1, 1971, or within fifteen days after it has entered into a collective agreement, a notice giving the name and address of a person resident in Ontario who is authorized to act as a designated jurisdictional representative in the event of a dispute as to the assignment of work. Where a complaint is filed, the designated representatives must meet forthwith and attempt to settle the dispute (section 81). If they agree the board must incorporate the settlement in the form of a direction and file it with the Supreme Court.

The board's power to deal with jurisdictional disputes in section 81 has been amended. Subsection 81(1) substitutes "persons" for employers thereby removing the effect of judicial interpretations restricting the board's jurisdiction in work assignment disputes in which the employer has employees of competing unions within its employ.

Another amendment is the power granted to the board in section 123 to issue an order directing action in the case of an illegal strike or lock-out. A copy of the direction must be filed with the Supreme Court whereupon it becomes enforceable as an order of the court.

D. *Quebec Construction Industry Labour Relations Act* [17]

The Construction Industry Labour Relations Act is a continuation of the decree system which has been in force in Quebec since 1934. Under

[17] Que. Stat. 1968 c. 45.

this system it is possible to extend juridically a collective agreement by decree on the entire industry or within a specified area. In other words negotiated standards are extended to employers and employees who are not parties to the collective agreement. Under the new act unions are no longer certified in the sense that the act gives exclusive bargaining rights to a union having majority support. The act recognizes two employers and five employee organizations as representatives for bargaining purposes. However, other associations may be recognized by the minister responsible. Chapter IV provides that representative associations shall begin to negotiate jointly within 120 days preceding the expiry day of the decree or if no decree is in force, within 120 days following date of intention to negotiate. Strikes are permitted after the expiration of the 120-day period. Chapter V concerns juridical extension of the decree. The term of a decree shall not be less than one year nor more than three years and strikes and lock-outs are prohibited during its term. Chapter VI specifies requirements of a decree which must contain provisions respecting classifications of employment, remuneration, payroll, working hours, overtime, holidays, vacations with pay, notices of dismissal, complementary social security plans, the terms of the decree and the procedures for amending the decree. The decree must also contain provisions respecting union security, including advance deduction of assessments, union delegates, the procedures for settling grievances and the exercise of employee's recourse against disciplinary measures taken by the employer.

E. *The New Brunswick Industrial Relations Act* [18]

Recent amendments to this legislation make provision for accreditation of groups of employers as exclusive bargaining agents for employers' organizations and for recognition of councils of trade unions as bargaining agents for building trade unions. Section 47 provides that if the board is satisfied that a majority of employers are represented in the employers' organization and that such majority of employers employed a majority of employees of such employers, the employers' organization, trade union or council of trade unions shall be accredited. Before accreditation, the board must be satisfied that the organization has the appropriate authority to discharge its responsibilities and that no trade union or council of trade unions has participated in the formation, selection or administration or has contributed financial or other support to it. Upon accreditation, it becomes the exclusive bargaining agent and collective agreements between the accredited employers' organization and a trade union or council of trade unions are binding on these parties, all employers and trade unions composing the organization and council and on all the employees in the bargaining unit defined in the agreement.

The act further provides, at sections 83 to 89, that the parties name jurisdictional dispute representatives or tribunals to which such disputes may be referred. Pending settlement by the representatives of tribunals, the Labour Relations Board may issue orders or directions and such interim orders may be filed with the Supreme Court and become enforceable as orders of the court.

[18] N.B. Stat. 1971 c. 9.

F. *The Prince Edward Island Labour Act* [19]

New provisions applicable to the construction industry would permit the board to certify a trade union as bargaining agent without a hearing when it is satisfied that the applicant union is suitable for collective bargaining and that it represents a majority of the employees in the proposed unit, which is determined by references to a geographical area and not necessarily confined to a particular site or project. The certification would be subject to review within ten days upon an application of the employer named in the order.

G. *The Nova Scotia Trade Union Act* [20]

An amendment in 1970, section 7A, makes provision for a Construction Industry Panel of the board and further provides for an application for certification by the trade union if it has as "members in good standing not less than thirty-five per cent of the employees in the unit in respect of which the application is made." The panel may designate the whole or any part of the province as a geographical area for the purposes of an application and may limit an application to a designated geographic area.

The province has been concerned for some time about strikes in the construction industry which have been blamed for a loss of confidence by investors in establishing new industry in Nova Scotia and further amendments are expected shortly. [21]

H. *Conclusion*

Legislative efforts of nearly all the provinces to solve difficulties in the industry bespeak the urgency of finding solutions. The outlined legislation provides a possible path to harmony if the parties wish to avail themselves of it but the lack of compulsion on the parties to take the path makes its success highly dubious. The difficulty of course, is that the employers and the trade unions are not compelled to bargain on a group basis. The system of accreditation laid down in the legislation still permits one employer or one trade union to have a bargaining impact far out of proportion to the place of its members in the industry. This is not only the result of legislative timidity. The fault can be partly attributed to the contractors for being incapable of organizing themselves into a united front.

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[19] P.E.I. Stat. 1971 c. 35.

[20] N.S. REV. STAT. c. 311 (1967).

[21] The government introduced in the latter part of 1970 the Construction Projects Labour Relations Act (Bill 1, 1971, 2d Sess.) to deal with work stoppages in large industrial projects. It provides that no construction contractor shall commence a construction project involving more than ten million dollars until the contractor and trade unions representing the majority of employees engaged in the project have entered into a collective agreement which binds all parties to the construction project. Thereupon no striking or picketing is permitted for the duration of the project. Trade unions not covered by the collective agreement may strike for thirty days but must not engage in picketing and if the dispute is not settled within the thirty days the parties must submit it to compulsory arbitration. The act was proclaimed in force in August 1971, with respect to the county of Pictou only. Press reports have expressed views as to its temporary nature and that the purport of its provisions will be incorporated in the Trade Union Act before too long.

The consequences of labour unrest are well illustrated in the construction industry at the present time. Non-striking workers are unable to find employment; contractors cannot meet deadlines; owners have not their promised buildings; suppliers are hard hit by lagging sales; shopkeepers lose income; in a few words, everybody suffers.

IV. Other Amendments

A. *The Administrative Structure and Powers*

It has been mentioned that both the Rand and Task Force Reports advocate stronger governmental intervention and enhanced roles for the boards. The proposed Bill C-253, introduced in the federal parliament on June 28, 1971, [22] makes provision for a general reorganization of the Canada Labour Relations Board. The bill proposes that the board be reconstituted as a full-time body comprising of a chairman, a vice-chairman and four members, and if considered advisable by the Governor in Council, there is provision for the addition of another vice-chairman and up to four additional members. The board would have substantial new responsibilities arising from enforcement powers relating to unfair labour practices, individual rights and the effects of technological change. [23] The board's orders would be enforced in the federal court. [24]

By amendments to the Quebec Labour Code in 1969, [25] a new procedure for handling labour relations was set up in Quebec. The Quebec Labour Relations Board was abolished and it was replaced by a new organization consisting of civil servants employed in the Department of Labour. A labour court was also created which, like other provincial courts, is subject to the supervision of the Minister of Justice. Section 101 provides that "the Lieutenant Governor in Council shall appoint the members of the court from among the judges of the provincial court, in sufficient numbers for the rapid dispatch of the business submitted to the court."

The new system of certification comprises three stages. First is the work of the investigators, which is primarily administrative. On application for certification the investigator assures himself of the representative character of the association and whether the employer and the association agree on the bargaining unit. If so, he is empowered to certify the association immediately. If the procedure at this stage does not result in certification, the second stage results in the case being referred to the investigation commissioner who has wide powers to make inquiries into cases of dissension and dispute. The investigation commissioner must render his decision within three days after completing his investigation. His powers are set forth in section 30 which provides: "Of his own motion during its investigation and at any time upon request by an interested party, the investigation commissioner may decide if a person is an employee or a member of an associa-

[22] The bill purports to replace the Industrial Relations and Disputes Investigation Act, Can. Stat. 1948 c. 54, by Part V of the Canada Labour Code.

[23] §§ 189 and 153.

[24] § 123.

[25] Que. Rev. Stat. c. 141 (1964).

tion, if he is included in a bargaining unit, and any other matters relating to certification." He is authorized to revoke the certificate if an association has ceased to exist or if it no longer represents the majority of the group for which it is certified.

Generally, the labour court has exclusive jurisdiction to hear and decide on appeal any case arising from a decision of the investigation commissioner. It is the court of first instance in penal prosecutions under the Labour Code (section 103). The party wishing to appeal must apply for leave (section 107). Section 108 provides that the judge shall render final judgment within fifteen days.

B. *Certification and Related Matters*

In Bill C-253, professional employees may constitute their own units or may bargain as members of other units. [26] The New Brunswick Industrial Relations Act, in section 2, defines employee as including members of the medical, legal, architectural, dental or engineering professions as well as agricultural workers. An amendment to the Ontario Labour Relations Act [27] provides for a bargaining unit of engineers or the inclusion of engineers in another unit.

In accordance with the recommendation of the Task Force Report, [28] in Bill C-253 [29] and in the Ontario Labour Relations Act [30] a union applying for certification for a unit is entitled to a representation vote if it can demonstrate at least thirty-five per cent membership. Membership is determined on the basis of a majority of employers actually voting.

The Task Force Report recommended that the right of a union to represent exclusively employees in collective bargaining may be obtained by being recognized by the employer as well as by obtaining a certificate from the appropriate board. [31] Bill C-253 [32] provides that bargaining rights acquired by voluntary negotiation are on equal footing with those acquired by certification but such an agreement may be challenged within a year on the ground that it lacks majority support. [33]

Provisions in Bill C-253 (section 143) and the Prince Edward Island Labour Act (section 37) provide for the continuation of bargaining rights when businesses are sold. [34]

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[26] § 125.

[27] ONT. REV. STAT. c. 232, § 6(3) (1970).

[28] TASK FORCE REPORT 143.

[29] § 127.

[30] ONT. REV. STAT. c. 232, § 7 (1970).

[31] TASK FORCE REPORT 142.

[32] § 137.

[33] *See also* the Ontario Labour Relations Act, ONT. REV. STAT. c. 232, § 45 (1970) and the Nova Scotia Trade Union Act, N.S. REV. STAT. c. 311 § 10B (1967).

[34] Section 47(*a*) of the Ontario Labour Relations Act has been amended to provide that existing collective agreements remain in force when a business is sold and that the board has a discretionary power to determine the extent to which a collective agreement is binding on the parties. An Act to amend The Labour Relations Act, Ont. Stat. 1970 c. 85, § 22.

C. *Unfair Labour Practices*

Although the Task Force Report noted that "union abuse of power over their members is rare," it recommended several areas of possible abuse in which the individual should receive protection.[35] Bill C-253 and the Alberta Labour Act[36] have introduced a number of new unfair labour practice provisions to give added provision to union members or prospective members against unfair or arbitrary action by the union. Thus, in Alberta, where a collective agreement requires that an employee be a member of a specified trade union, the admission and membership requirements must be the same for all persons. An employee who, as a condition of employment, must be a member of a specified union, and whose membership is suspended or revoked, is protected from loss of employment during an appeal initiated within ninety days and is entitled to be represented by counsel at the appeal. Also, a trade union or any of its officers is forbidden to fire, suspend, expel or otherwise discipline a member except for non-payment of dues or fees unless: (a) he has been served with written specific charges, (b) he has been given reasonable time to prepare his defense, (c) he has had a full and fair hearing including the right to be represented by counsel, and (d) he has been afforded reasonable time to pay any fines imposed. Bill C-253 prohibits termination of employment by the employer because of suspension or withdrawal of union membership for any reason other than a failure to pay dues. The trade union is interdicted from discriminatory application of union membership rules or standards of discipline.

The Task Force Report recommended "that legislation guarantees a duty of fair representation."[37] The Ontario amendment now puts such a duty in statutory form in section 51A. Thus, a trade union, "so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit."

The Alberta board has been given authority to deal into unfair labour practice complaints and to issue cease and desist orders requiring the employers, trade union or other persons to rectify the unfair labour practices. All such orders may be made enforceable as orders of the court.[38]

D. *The Collective Agreement*

The powers of arbitrators and arbitration boards have been enlarged in four jurisdictions[39] to provide a power to substitute for the discharge such other penalty as the arbitrator or arbitration board deems just and reasonable in the circumstances.

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[35] TASK FORCE REPORT 150.

[36] ALTA. REV. STAT. c. 196, §§ 185, 84 (1970).

[37] TASK FORCE REPORT 152.

[38] § 89. *See also* New Brunswick Industrial Relations Act, N.B. Stat. 1971, c. 9, § 107.

[39] In the federal jurisdiction by Bill C-253, § 157; Alberta Labour Act, ALTA. REV. STAT. c. 100, § 78 (1970); Ontario Labour Relations Act, ONT. REV. STAT. c. 232, § 34 (1970); New Brunswick Industrial Relations Act, N.B. Stat. 1971, c. 9, § 77.

The protection against discharge under union security clauses in the Ontario Labour Relations Act has been extended to include circumstances other than the loss or denial of union membership. [40] These are: (a) legitimate forms of internal union dissent, (b) discriminatory application of membership rules, and (c) unreasonable fees, dues and assessments. The board has also, by the new section 35A, been granted the power to exempt individuals from paying dues to a union on religious grounds wherever such payment is required as a condition of employment.

The federal Bill C-253 proposes that the minister be given a wider choice of means to settle industrial disputes. [41] In effect this would appear to mean that if the conciliation officer is unable to effect a settlement, the minister would be authorized to take no further action or to appoint either a conciliation commissioner or a conciliation board. Conciliation commissioners and conciliation boards would have equivalent powers. [42]

Bill C-253 represents the first attempt in Canada to legislate with respect to technological change. [43] At present, collective agreements are binding on parties for a period of at least one year and cannot be opened before the expiry of that time without mutual agreement. The bill proposes that an employer intending to introduce a technological change affecting the working conditions or security of a significant number of employees will be required to give the trade union ninety days notice of such changes. The union may then apply to the board for the right to bargain and to strike over the impact of the change. After the application is made, the employer may not introduce the proposed change until the board has made a decision on the union's request for bargaining rights.

E. *Economic Action and Dispute Settlement*

Section 182 of Bill C-253 would empower the Canada Labour Relations Board to make declarations that strikes and lock-outs are unlawful [44] and fines have been increased for offences against the acts in two jurisdictions. [45]

Under the Alberta Labour Act [46] registered employers organizations and trade unions are declared to be legal entities for purposes of prosecuting and being prosecuted for violations of the act, or of suing and being sued under the act. The scope of a similar provision in the New Brunswick act is unclear but there is no doubt that the Prince Edward Island Labour Act makes a trade union a legal entity for all purposes.

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[40] § 35.

[41] *See, e.g.*, 195-97.

[42] §§ 166-67. *See also* the Alberta Labour Act, ALTA. REV. STAT. c. 196, §§ 91-97 (1970), and the Nova Scotia Trade Union Act, N.S. REV. STAT. c. 311, § 17(a) (1967) for similar provisions.

[43] §§ 150-53.

[44] Similarly in the New Brunswick Industrial Relations Act, N.B. Stat. 1971 c. 9, § 103.

[45] In the Ontario Labour Relations Act (§ 85) and the Nova Scotia Trade Union Act (§ 40) fines are increased to $1000 per day for individuals and $10,000 per day for corporations and trade unions for infringements of the acts.

[46] ALTA. REV. STAT. c. 196, § 105 (1970); Industrial Relations Act, N.B. Stat. 1971 c. 9, § 115; Labour Act, P.E.I. Stat. 1971 c. 35, § 42.

Section 183 of Bill C-253 prohibits picketing other than when associated with a lawful strike and elsewhere than "at the place of business or operation of the employer of the employees." [47] The Alberta Labour Act [48] follows the British Columbia Trade-unions Act, 1959, [49] outlawing certain types of conduct on the picket line.

Other amendments may be found such as those enabling the minister to set up industrial inquiry commissions in Ontario, [50] providing more detailed provisions for taking strike votes in Alberta, [51] in New Brunswick [52] and Prince Edward Island [53] and, in Ontario, making arbitration compulsory for damages caused by unlawful strikes where there is no collective agreement. [54]

V. Conclusion

It is obvious that considerable efforts are being made to find solutions to the many problems in the sphere of labour-management relations. It is just as manifest that no panacea is yet with us. Although there has been much legislative activity, there have been few changes of major consequence since the publication of the two Royal Commission reports. The defining of public interest disputes seems as elusive as ever. The innovations in the legislation pertaining to the construction industry would not appear to be enough to bring tranquillity into this troubled industry. There are few innovative features in the other amendments reviewed and they are likely to have only a minimal palliative effect.

What are the reasons for the present industrial unrest? Work stoppages and estimated time loss of workdays are among the highest in Canadian history. In part, no doubt, this unrest is due to lack of job satisfaction, lack of satisfaction with union leadership, lack of job security. But these factors alone are not adequate to explain the unrest. Whatever the true reason, the workers want a greater share of the proceeds of industry into which they put their efforts. Why, they argue, should the profits go back into the industry for expansionary purposes; why should the profits go to paying high-salaried executives; why should the profits go to paying high interest rates of the short and long-term lenders? They want their "fair share." Few will, at least overtly, argue with this proposition, but what is a "fair share," how is it to be determined and who shall determine it? These are burning questions and until generally accepted answers to them are found, in my opinion, industrial unrest will continue.

Within a state there are many and varied groups advocating their own interests. Each has its goals and its methods of attaining them. But in any

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[47] *See also* Industrial Relations Act, N.B. Stat. 1971 c. 9, § 105.

[48] Alta. Rev. Stat. c. 196, § 100 (1970).

[49] B.C. Rev. Stat. c. 384, § 3 (1960).

[50] An Act to amend The Labour Relations Act, Ont. Stat. 1970 c. 85, § 9 adding new § 31(*a*).

[51] Alta. Rev. Stat. c. 196, § 98 (1970).

[52] N.B. Stat. 1971 c. 9, §§ 94-96.

[53] P.E.I. Stat. 1971 c. 35, § 39.

[54] Ont. Rev. Stat. c. 232, § 84 (1970).

advanced social organization some body must be the supreme arbiter to decide which and how far these conflicting goals (and methods) are to be accepted in the light of the public interest. This supreme body is the government of a state and, after making its decisions, the government will support certain groups and their goals by enacting favourable laws, granting immunities from taxation, paying subventions and by other ways. However, if the groups are found, in whole or in part, not to operate in the public interest, the government will impose certain sanctions which will make the goals (and methods) of the offending groups intolerable or impossible.

The corporation has been generally considered to be acting in the public interest. The advantages of concentrations of economic wealth in the corporation have been recognized for well over 200 years. By application of the concept of limited liability, many parties are able to pool their resources and partake in a combined enterprise that is beyond the means and inclination of an individual. If the venture is a success, not only will the participants realize a return on their investment but new economic activities will be created. These activities create jobs, jobs create wealth, and wealth is material well-being. However, economic activities are being controlled in the light of the public interest. Pure capitalism is no more and in its stead today is a modified form of free enterprise. Concepts of private property, contract, profits, competition and other components of the system are being rearranged in an attempt to effect a more equitable distribution of wealth.

The assertion of self-interest by pressure groups in our society is expected, accepted and necessary. Each group endeavours to bring about the desires of its supporters and decry or ignore the conflicting interests of other groups. However, they must persuade the arbiter of the rectitude of their cause, illustrating in some way that the self-interest is the public interest.

It is apparent that the self-interest of the corporation is to bring the greatest monetary return, that is, to show the greatest profit possible. If not, it is argued, there will be no expansion, lenders will lose confidence, technological changes will be postponed or even abandoned and, consequently, economic advantages for the benefit of all will be inhibited. Further, customers demand the best product for the cheapest price. This requires research for better products and for more efficient methods of production. Profit, therefore, determines growth and prosperity and this self-interest is in the public interest.

But what is public interest? What, if any, are the responsibilities of the corporation to the community? How far should efficient production take precedence over, for example, job security of the employees? How far should the corporation participate in social enterprises, philanthropic endeavours, educational programs? How far should the corporation be expected to have regard for the safety of the community, the cleanliness of the environment or the general welfare of the state?

The self-interest of the trade union is perhaps more readily apparent. Trade unions, briefly, exist for the purpose of attaining a "fair share" of the rewards of industry for the workers they represent. Their demands are limit-

less because "fair share" has not been defined. A short time ago they were the "have-nots"; the corporations were the "haves." However, today, they wield a social and economic power second only to the state itself. The monetary and financial structure of the state may be affected by their demands; they have an effective control in many key industries; they can weaken or strengthen the economic position in the state and its international trading position.

Can the self-interest of the corporation or of the trade union be controlled by the protagonists themselves? It is unlikely. The employer's concept of profit and the union's basic purpose are so fundamentally at odds that it will take more than effort and patience. It will mean a change in philosophy and purpose. Also it is evident that the employer's bargaining power is eroding, and more and more the employers are finding it difficult to withstand the demands of labour. This is due to hesitant legislation, increased union membership, general acceptability of trade unions and the organizing of employees in small critical areas such as in the security and educational fields. Each group is clamouring for more and more, each group supports the other, and each group is becoming surer and surer of attaining its demands.

The result is inevitable. The economic pie is only so big. There is only so much to be distributed. Some agency must regulate its distribution. But how and by whom? There are questions with which we should be concerning ourselves. Shall prices and wages be frozen? If so, at what figures and at what time? Shall price and wage controls be imposed? Is compulsory arbitration the answer? Shall Canadians consider mammoth conferences where the economic pie is sliced more or less arbitrarily?

Law in a democratic state is founded on consensus, that is, the agreement of all or a greater part to support and abide by the law. Before an acceptable solution to the present state of labour-management relations will unfold, we need more information and general involvement. We must found a proper climate of consultation and cooperation among affected government departments, agencies, universities, private enterprises and other organizations. We must expand conciliation and mediation services, train more conciliators and arbitrators, give more attention to their remedial suggestions and do more research in the area of comparative pay classifications. We must encourage the centralization process and give more consideration to compulsion of collective bargaining on a larger scale. The solution probably rests, in the final analysis, on the education of Canadians; on their ability to discern the true causes of the unrest, to become aware of the impact of poor labour-management relations and to make a collective value judgment on the remedy. It would seem fair to conclude at this time that a "fair share" will only be ascertained when the minimum needs of all workers are satisfied and standards of economic return for work done and methods of attaining these standards are generally accepted.