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Labour before the Law: The Regulation of Workers' Collective Action in Canada, 1900-1948

When I studied Canadian collective bargaining law more than a quarter century ago, I learned how the 1944 wartime executive order of the federal Government, known as P.C. 1003, ushered in the modern era of Canadian industrial pluralism. Upon the return of the nation to peace, it was left to the provincial legislators, who govern most private sector employment, to enact their own versions of collective bargaining statutes. However, writing broadly, there was a commonality in their approach. Employers were required to bargain with trade unions that obtained majority support in the enterprise or bargaining unit, and labour boards were established to oversee the certification of trade unions and good faith bargaining by the parties. Once collective agreements were entered into, the employer and the trade union were in most cases required to submit employee grievances over the administration and application of the collective agreement to binding arbitration, usually by a private arbitrator chosen by the parties.

With the passage of more conservative legislation in the 1990s, and with the further integration of the Canadian economy into those of the United States and Mexico through the North American Free Trade Agreement, it does appear that industrial pluralism as I once perceived it is coming to an end. In large part, it appears that the economic conditions that enabled this form of collective bargaining to flourish are no longer part of the Canadian landscape. Over the last two decades and just as is the case with similar economies like Australia, Canada has witnessed: a partial erosion of its industrial base; a workforce no longer overwhelmingly employed on a permanent basis; the outsourcing of numerous functions to subcontractors; and the whole scale disappearance of protective tariffs.

These economic and political changes have led to a contraction of pluralist industrial relations institutions and, sadly, now only one in five Canadian private sector workers is covered by a collective agreement. It is Canada’s slow abandonment of industrial pluralism which, in my view, makes this book of inestimable importance to Canadian labour law scholarship. This is because the monograph examines the manner in which the law regulated the collective action of workers before the advent of industrial pluralism, that is up to the making of P.C. 1003 in 1944. As the authors note in their concluding chapter, for many industrial relations and human resource management practitioners, all that came before the promulgation of P.C. 1003 is largely irrelevant. However, this book adduces sufficient evidence to convince me that without legislation enshrining the right of Canadian workers to engage in collective bargaining, interest arbitration or forms of independent worker representation,
the law will inevitably revert to its time
honoured traditions of protecting private
property which is, and always has been,
at the heart of our free enterprise
economy.

Professors Judy Fudge and Eric
Tucker both teach labour law at the
Osgoode Hall Law School at York Uni-
versity in Toronto, and they have col-
laborated to produce this fine and timely
book. While there is a long tradition of
labour history scholarship, law books
that chronicle modern legal history are
surprisingly rare. Yet, it is only through
an appreciation of 20th Century legal his-
tory that the utility of our current laws
can be truly evaluated and this is why
this volume is of seminal importance in
the study of Canadian labour law.

After a thoughtful introduction in
which the authors show that the concept
of “legality” always has been central to
Canada’s legal discourse on collective
employee actions, chapters 2 to 10
chronicle the role of Canadian law in
quelling employee collective action and
industrial disputation in order to protect
property, the current economic regime
and prevailing conceptions of law and
order. The book begins in 1900, which
the authors describe as a useful date
marking Canada’s second industrial
revolution when product markets broad-
ened, industrial production increased
significantly, and when Canada could no
longer be thought of as an exclusively
agricultural economy. Judy Fudge and
Eric Tucker chronologically map the
legal terrain of industrial disputation
from 1900 to 1948, covering the indus-
trial disputation that led to the enactment
by the Parliament of Canada of the 1907
Industrial Disputes Investigation Act;
the pre-World War I strikes in the coal
mines and on the railroads; the 1919
“One Big Union” general strike in Win-
nipeg in the summer of 1919; the com-
placent 1920s when little constructive
policy-making appears to have taken
place; the depression of the 1930s;
Canada’s industrial relations policy in
the Second World War; and the making
of P.C. 1003 and Canada’s transition to
a peacetime economy.

This volume does not content itself
with an examination of the passage of
amendments to Canada’s criminal code
or enactments of provincial and federal
labour laws. The strength of this work,
and this is of enormous importance, is
the manner in which the writers track the
approach of the local courts, together
with the actions of municipal, provincial
and federal politicians before, during
and after industrial disputation. The
compilation of this account is the result
of years of painstaking research of lo-
cal court and municipal records, comple-
mented by the work of scholars, much
of which is in unpublished dissertations
in university libraries. This enables this
volume to step out of a “big picture”
historical framework and to examine the
lives of working women and men who
were caught up in the legal processes,
which inexorably followed major indus-
trial disruption.

One incident that graphically illus-
trates the imbalance of Canadian law as
it then existed, was the strike of skilled
and responsible railway running trades
unions in July 1910 against the Grand
Trunk Railway. These skilled workers
abided by the conciliation and reporting
procedures required by the Industrial
Disputes Investigation Act, but once
they took the further step of engaging
in strike activity to collectively press
their demands their fates were sealed.
Although the Canadian Minister for
Labour, MacKenzie King, brokered a
settlement of the strike, C.M. Hays, the
President of the Grand Trunk Railway,
refused to abide by its terms. He would
not re-instate striking workers, despite
a report from an independent judge that
the railroad should do so. These employ-
ees who had abided by the law and only
sought to engage in collective bargain-
ing lost their jobs and their entire pen-
sions at a time when social security law
was non-existent, despite many years of
otherwise loyal service. In similar railway disputes at this time, workers with less skills and/or of foreign birth, who were even more easily replaceable, fared much worse.

It would have been useful, in my view, if the writers had more fully explained (possibly in an appendix) the operation of the relevant provisions of the Canadian Criminal Code, especially with respect to picketing and “watching and besetting.” An understanding of this volume does not require detailed legal knowledge, but a little more explanation would have made this monograph more easily comprehensible to its readers, many of whom will not possess this legal background. However, the authors note in their preface that before publication their initial manuscript was reduced, and the limitations of space may have militated against the inclusion of this type of explanatory material.

Judy Fudge and Eric Tucker dedicate this book to Harry Glasbeek, “teacher, colleague and friend extraordinaire.” As another one of Harry Glasbeek’s many students, I am delighted by this thoughtful dedication. Without this book by Judy Fudge and Eric Tucker, it would not be possible for most Canadians to learn of the role played by the law in limiting the capacity of working women and men to engage in collective bargaining through representatives of their own choosing. For those involved in the making of public policy in a post industrial-pluralist age, this book is essential reading. In my view, its analysis of recent legal history shows why a balanced labour law regime is essential in a free and democratic Canada.

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