

## The Application of the Collective Agreement Act

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[See table of contents](#)

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## THE APPLICATION OF THE COLLECTIVE AGREEMENT ACT

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*The application of the Collective Agreement Act is actually a matter of discussion. Because of the importance of this question the Industrial Relations Bulletin publishes two opinions which have been sent to it. If others wish to say what they think on this problem, the Bulletin will readily open its columns to them.*

When the Government of the Province of Quebec in 1934 passed the Collective Agreement Act it was at the joint demand of the trade unions and a large number of employers. They desired to avoid competition between employers subject to a particular collective agreement and those who could set lower prices because they were not tied down by any understanding on wages.

At the same time, the unions saw in the juridical extension of the collective agreement a means for improving somewhat the lot of workers whom circumstances prevented from being unionized, and to bestow upon all the advantages of industrial organization.

By the Collective Agreement Act, the Government then did nothing but respond to the desire of the soundest parties concerned. It executed the will of those it was charged with representing. It could not do otherwise without failing in its duty. And it cannot do otherwise without failing in its duty. And it cannot do otherwise but continue applying this law, in all its signification, as much as the unions and employers desire and in the manner which they together demand, as long as this does not go contrary to other laws in force.

There is nothing illegal, for example, in subjecting a whole industry in a determined region to identical minimum conditions of labour. It is, on the whole, the real welfare of the industry which is in mind when decreeing such a regulation.

How then imagine that the State profits from collective understandings when asked to extend them in order to introduce new clauses or limit their impact beyond all consideration of the common good ! This is to introduce the arbitrary in labour relations and to facilitate the control of industry by the State. In a word, it is attempted dictatorship, and this is intolerable.

The labour world is uneasy at the interpretation which the government of our Province can give to the Collective Agreement Act. Let the government interfere in the administration of the Parity Committees or withdraw from the jurisdiction of a decree a certain number of employers usually subject to it, or make an illogical exception in a region falling under the effects of a decree and it will cause the interested parties to lose confidence in the value and the fundamental « *raison d'être* » of the Collective Agreement Act.

It would be less annoying for the labour world to have the extension of certain collective agreements refused

them than to see these later curtailed and reduced to an instrument making for difficulties within the industry itself.

Industrial relations have been improved since the Collective Agreement Act, and thanks to it. But an arbitrary application of such a law which has so many consequences cannot but render the situation worse than it was before 1934. It is easier to deprive some-one of what he has not experienced, than to take from him the legitimate rights which he has already exercised. In the latter case greater disturbances are produced than in any other circumstances.

Our labour legislation is not yet very extensive. The workers are extremely jealous of those prerogatives which the law recognizes. They have themselves demanded this legislation in order to avoid employing the strike too often as a means of obtaining justice.

Are we once more to justify their belief in the strike as the only effective law ? Are we once more to justify their belief that they cannot count on the State to make justice respected for everyone, integrally, without distinction based on electoral motives ?

The Collective Agreement Act has a further reason for its existence ! The workers will be the first to discover more effective means of improving the working conditions of their class if this law loses its significance which, literally, is to reflect the legitimate understandings between capital and labour.

This point of view is shared at present by all independent workers' movements in the Province. And it is the natural way for the workers to see things. One could certainly add legal testimony to these arguments but the workers are first of all interested in the results of legislation. These they understand much better than legal dissertations, which, though important, add nothing to the impression which a good law applied at will can make on them.

FERNAND JOLICOEUR

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Labour legislation, through various stages of evolution, has reached with the Collective Agreement Act, its greatest degree of perfection. Employer and employee, through their professional associations, make agreements on working conditions and the State gives the force of law to the understandings reached. This is legislative regulation with a contractual base.

We immediately perceive the impetus which such a procedure can give to systematic collaboration between the two groups. The entire industrial organization of the different branches of economic activity is thus effected.

The collective agreement leads to the organization of industry. It bestows upon it a law. It makes representative organizations of employees' syndicates and employers' associations. It facilitates the creation of industrial institutions.

Since the passing of the Act all collective regulation possesses, ipso facto, a natural force of expansion. The collective agreement is presented at one and the same time as a means of economic organization and as an instrument of social peace. It was with the aim of guaranteeing a greater effectiveness and uniformity to the efforts of private groupings that the juridical extension was advanced. It was particularly this extension which was explained in the preamble of the law which has disappeared in later editions. Here is the text of this preamble in which is expressed the intention of the legislators. «Whereas social justice prescribes the regulating of labour when the economic situation entails for the wage-earner conditions contrary to equity;

Whereas, to tolerate the forced acceptance of an insufficient remuneration is to neglect to take into account the dignity of labour and the needs of the wage-earner and his family;

Whereas, it is timely to adopt, to extend and to make obligatory the working conditions recorded in the collective agreements, as much to forestall unfair competition for the signatories as to establish just wages and satisfy equity;

Because of these reasons... »

We state then that the stabilizing and equalizing of conditions of labour are herein concerned.

Monsieur Jean-Pierre Després has expressed opinions on this subject with which we entirely agree, «The juridical extension is for the purpose of protecting employers interested in their social responsibilities. It is only just to protect them against the small minority liable to furnish unfair competition... »<sup>1</sup>

It is an excellent method of gradually leading towards syndicalism those who are not signatories. Returning to the author quoted above, we admit with him that, «The juridical extension of the collective agreement represents the most efficient formula for organizing the labour market for the advantage as much of the employer as of the trade-unions. It creates an equilibrium between these two forces, which inevitably encounter each other on the labour market, and, above all, it has the merit of being essentially democratic since it recognizes both the rights and the obligations of each ».<sup>2</sup>

(1) J.-P. DESPRÉS, *Le mouvement ouvrier canadien*, p. 159, Fides, Montreal, 1947.  
(2) *Idem*, p. 161.

No legislation could bring greater protection to wage-earners. The parity committee, provided for by this law, does not limit itself to the material interests of its members but is also occupied with the intellectual interests of the employers and employees of an industry. With the aid of the Ministry of Labour, it was the parity committees which instituted the Apprenticeship Commissions. Clause number nine of this law bears on the matter of apprenticeship and promotes it.

It was this decree which set in motion the juridical extension. This links equally and without discrimination all employers in the same territorial zone whether they direct a large or a small enterprise, and, in so doing, causes justice to prevail.

We acknowledge the right of the State to control agreements freely entered into by employers' and workers' groups. But this right must be exercised in a way to maintain for the agreements that efficacy foreseen by the contracting parties at the moment of signing. To limit, for example, the application of an agreement or a decree to a group of employers of the same business or industry in a determined region can not but diminish sensibly, if not even cancel, the effects anticipated by the signatories.

The juridical extension of a collective agreement can not but be the ideal conclusion of the judicious deliberations of the most representatives groupings concerned. But again, it is necessary that these really be their decisions in so far as they are the expression of a general accord.

A decree should unite all the employers if, in justice, they would avoid the unfair competition which would limit its application to some only of these employers. The agreements or decrees must apply uniformly to a trade, to a business and to an industry. And all those who practise the same trade, carry on the same kind of business or enterprise should be subject to the same employment regulations for their employees. To resume, the law must apply equally and in the same manner to all regardless of the number of workers in their employ.

To go against these principles would be nothing more or less than to work at cancelling the effects of an agreement or decree and to deny the reasons for which the Collective Agreement Act was enacted — reasons which are mentioned in the preamble of the said law.

In conclusion, we consider the Collective Agreement Act as the one, of all our provincial labour legislation, which most encourages the social order. And we are convinced that if it is applied without restrictions of a nature to alter its importance and efficacy, it will continue to furnish all the benefits expected of it, that is, the same ones hoped for by our legislators.

J.-E. PICARD

## DOCUMENTATION

### THE RAND FORMULA IN THE ASBESTOS DECISION (1)

#### MAJORITY REPORT

The next modification sought deals with Clause 3 of the said contract. This is the clause, which, it has been agreed, is designated as the Rand Formula. We should point out immediately that this formula is not the one suggested by Mr. Justice Rand in the Ford Motor Company

matter. It is only a part thereof, as appears from exhibit P-15.

The Company asks that this clause be struck out from the contract. The Syndicate does not suggest any modification and desires statu quo.

This clause 3 bears upon contribution to syndical funds. It binds the employer to deduct, without the con-