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Résumé de l'article

La liberté de réunion et le droit d'association sont des droits fondamentaux inscrits dans la constitution de nombreux pays et dans les déclarations, les chartes et les conventions adoptées par les organisations internationales. Parmi celles-ci, les normes de l'Organisation internationale du travail (OIT) constituent les lois intentionnellement acceptées en matière de travail et de relations professionnelles.

Les normes de l'OIT prennent la forme d'une convention ou d'une recommandation. La ratification d'une convention entraine l'influence directe des normes de l'OIT puisqu'elle requiert que les lois nationales soient conformes aux normes ratifiées. La référence aux conventions ratifiées ou non dans les conventions collectives, les plaintes formulées par les syndicats ou les associations d'employeurs aux organismes de surveillance de l'OIT en matière de non-respect de la liberté d'association de même que la référence aux normes de l'OIT par les tribunaux en vue de clarifier et de définir l'extension de la législation nationale traduisent une influence directe des conventions de l'OIT.

La convention de l'OIT relative à la liberté d'association (convention numéro 87) a influencé les lois canadiennes du travail avant et après sa ratification. Avant celle-ci, il a fallu que le gouvernement fédéral consulte les provinces de façon à ajuster les lois du travail aux dispositions de la convention. L'influence directe de la convention numéro 87 s'est poursuivie après la ratification par le processus des rapports. Les rapports effectués auprès du Comite des experts concernant l'application des conventions et des recommandations de même que les recommandations du Comite des experts demandant de modifier les lois ont façonné les relations professionnelles et la loi au Canada.

Les décisions du Comite sur la liberté d'association ont aussi influence les relations entre les employeurs et les travailleurs. Les décisions récentes du Comite sur la liberté d'association en matière de violation des droits syndicaux dans quelques provinces ont apporte un appui moral aux syndicats et gêne quelques gouvernements provinciaux comme celui de l'Ontario, mais elles n'ont eu que peu de poids auprès d'autres gouvernements provinciaux tels que la Colombie-Britannique, Terre-Neuve et l'Alberta.

Les syndicats et les gouvernements en tant qu'employeurs devraient respecter les décisions de l'OIT du fait que celles-ci portent un jugement mondial sur les problèmes de relations professionnelles au Canada. Les critiques de l'OIT devraient être bien reçues par les gouvernements non seulement parce qu'elles émanent d'un organisme international neutre, mais parce que les politiques et les recommandations favorisent l'idéologie capitaliste et qu'elles visent à améliorer les conditions de vie et de travail des travailleurs en demeurant dans les limites du système capitaliste.

Les critiques de l'OIT devraient être considérés comme une critique générale de la politique canadienne dans le domaine du travail. Étant donné que le Canada en tant qu'État fédéral doit obtenir l'assentiment de toutes les provinces avant de ratifier une convention, toutes les provinces et le gouvernement fédéral sont dans l'obligation de l'appliquer globalement. En outre, le gouvernement fédéral se doit d'aviser l'ensemble des provinces d'assurer l'application des conventions sur la liberté d'association.

The ILO Standards and Canadian Labour Legislation

Isik Urla Zeytinoglu

The author analyzes the impact of the International Labour Organization's Freedom of Association Standards on Canadian labour legislation in the last decade.

Freedom of assembly and the right to organize are the fundamental rights embodied in the constitutions of many countries and in the declarations, charters and conventions adopted by the international organizations[1].

The Canadian Charter of Rights and Freedoms, Section 1(c) and (d) guarantees the freedom of peaceful assembly and the freedom of association subject to certain limitations[2]. The fundamental freedoms in the Charter are substantially similar[3] to the United Nations Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and the Economic, Social and Cultural Rights. While the

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1 The International Labour Organization's standards, the United Nations' Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and the Economic, Social and Cultural Rights are the universal standards which cover the freedom of association. The freedom of association is also included in the regional human rights charters and conventions, such as the European Convention for the Protection of Human Rights and Freedoms, and in the two widely accepted international guidelines for the transnational corporations, the Declaration on International Investment and Multinational Enterprises of the Organization for Economic Cooperation and Development and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.

2 Fundamental freedoms are subject to two limitations: (a) limitations which can be justified in a free and democratic society; and (b) legislative limitation of the provincial governments through the notwithstanding clause of the Charter of Rights and Freedoms. (Part 2 of the *Constitution Act,* 1982, which is set out in Schedule B to the *Canada Act,* 1982, c. 11 (United Kingdom), Sections 1, 2 and 33 [Hereinafter cited as the Charter].

3 The similarities of the international convenants, the Universal Declaration and the Charter are discussed in various articles and books, such as: Morris MANNING, *Rights, Freedoms and the Courts: A Practical Analysis of the Constitution Act, 1982,* Toronto, Edmond-Montgomery Limited, 1983, p. 3; June M. ROSS, «Limitations on Human Rights in International Law: Their Relevance to the Canadian Charter of Rights and Freedoms», *Human Rights Quarterly,* Vol. 6, May 1984, pp. 180-223.

United Nations Declaration and Covenants set the general standards to be achieved in the human rights field, International Labour Organization's (ILO) standards serve as the internationally accepted norms on labour and industrial relations.

The ILO standards take the form of a convention or a recommendation. A recommendation serves as a guideline for the Member countries in enacting legislation. A convention, if it is ratified, creates an obligation on the Member government to enact laws and to apply the provisions of the convention in practice (ILO, 1982a). The Member governments have a further obligation to provide freedom of association to all workers whether or not they have ratified the freedom of association conventions (listed in Table 1). This is because every Member State, upon admission to the ILO, accepts to abide by the principles of the freedom of association contained in the Constitution of the ILO. This obligation allows the Committee on Freedom of Association (an ILO supervisory body) to examine the complaints on alleged violations of trade union rights (ILO, 1983, p. 8; Case No. 1055).

This paper aims to analyze the impact of the ILO's freedom of association standards on Canadian labour legislation. The following two sections present an overview of the freedom of association standards, and the influence of these standards through the ratification and supervision process. The next section analyzes the problems that came up in recent years regarding the federal and provincial governments' implementation of the principal freedom of association conventions. The last section concludes the study.

CONTENTS OF THE FREEDOM OF ASSOCIATION CONVENTIONS

The contents of the principal freedom of association conventions, namely Convention Nos 87, 98 and 151, can be analyzed under five subheadings: freedom to organize, the right to establish unions, internal union activities, external union activities and suspension and dissolution of the unions by the authorities. Convention No. 87 covers all workers with the exception of police and armed forces whose unionization and collective bargaining rights are to be determined by national laws or regulations. Convention No. 98 is on collective bargaining but it does not deal with public servants engaged in the administration of the State. Convention No. 151 protects public sector employees' unionization and collective bargaining rights.

TABLE 1

ILO Freedom of Association Standards

No. of the Standard	*Title of the Standard*	*Ratification by Canada*
Convention No. 11	Right of Association (Agriculture), 1921	Not Ratified
Convention No. 87	Freedom of Association and Protection of the Right to Organize, 1948	Ratified in 1972
Convention No. 98	Right to Organize and Collective Bargaining, 1949	Not Ratified
Convention No. 135	Workers' Representatives, 1971	Not Ratified
Recommendation No. 143	Workers' Representatives, 1971	———
Convention No. 141	Rural Workers' Organizations, 1975	Not Ratified
Recommendation No. 149	Rural Workers' Organizations, 1975	———
Convention No. 151	Labour Relations (Public Service), 1978	Not Ratified
Recommendation No. 151	Labour Relations (Public Service), 1978	———

Source: International Labour Organization, *International Labour Conventions and Recommendations, 1919-1981,* Geneva, International Labour Office, 1985.

Freedom to Organize

Convention No. 87, Article 2 recognizes the right of all workers and employers, without distinction whatsoever, to establish and join organizations of their own choosing. Convention No. 151, Article 1 guarantees the same rights to public servants with the exception of those employees whose functions are considered as policy-making or managerial or highly confidential. Convention No. 98, Article 1 and Convention No. 151, Article 4 protect the workers against anti-union discrimination in employment and against employers' interference in their right to organize (ILO, 1983, pp. 87-88).

Canadian legislation is in compliance with the freedom to organize sections of the Conventions with the exception of the recent amendments in Alberta's legislation regarding academic staff association membership. The *Colleges Amendment Act,* 1981, section 1(b) which allows college boards to designate «an academic staff member» and section 21.1(2) which states who is eligible for membership in an academic staff association, and the *Univer-*

sities Amendment Act, 1981, section 21.2(2) which defines academic staff association as a body consisting of «academic staff members» of the university, and section 17(1)(d.1) which empowers the Boards of Governors to designate academic staff members, can have a combined effect of restricting unionization rights of faculty members because it gives the employer the power to decide on the association membership. Therefore, the above mentioned sections of the *Colleges Amendment Act,* 1981 and the *Universities Amendment Act,* 1981, do not ensure full compliance with Article 2 of Convention No. 87 (Cases Nos 1234 and 1055).

The Right to Establish Unions

In line with Articles 3 and 5 of Convention No. 87 and Article 5 of Convention No. 151, the workers are free to establish or to join unions, federations or confederations without previous authorization of public authorities.

Canada's legislation is in compliance with the above mentioned sections of the Conventions Nos 87 and 151. Exclusion of several groups of professionals from coverage under collective bargaining legislation in Ontario, Alberta, Nova Scotia and Prince Edward Island, however, indirectly conflict with Convention No. 87, Article 3 and collective bargaining convention, No. 98. While legislation in Canada permits workers to form organizations of their own, establishment of unions for the purpose of collective bargaining is not allowed for some of the professionals, such as dentists, medical doctors and architects employed in a professional capacity in Ontario, Alberta, Nova Scotia and Prince Edward Island. According to the ILO Committee of Experts (an ILO supervisory body), since these employees are not specifically excluded from Convention No. 87, they should be covered by the guarantees afforded by the Convention No. 87 and should, in particular, have the right to establish and join organizations (ILO, 1983, p. 30).

Internal Union Activities

Convention No. 87, Article 3 recognizes the freedom of workers to draw up their rules and constitutions. The rules and by-laws cannot be based upon a compulsory model set by the governments. The same article provides that the unions should elect their representatives freely. Canadian federal and provincial legislation is in compliance with this section of the freedom of association conventions.

External Union Activities

External union activities include collective bargaining, the right to strike, political activities and participation of unions in tripartite bodies. Among these activities, collective bargaining and strikes are considered by the ILO as the most important in promoting and defending the workers' interests. These two activities are also the ones which cause controversy and conflict between unions and employers.

Collective bargaining is covered by Convention No. 98, Article 4 and Convention No. 151, Article 7. While Convention No. 98 provides negotiations as the only acceptable method to reach a settlement in the private sector, Convention No. 151 accepts collective bargaining or mediation and arbitration as the methods to determine the terms and conditions of employment in public sector. National legislation cannot exclude wages and conditions of work clauses from collective agreements, nor can it modify the freely negotiated agreements between the employers and the unions (ILO, 1986, p. 62).

Governments can, however, temporarily restrict wage negotiations as an exceptional measure for reasons of national economic interest. The restrictions can be imposed for a reasonable time period and it should be accompanied by adequate safeguards to protect workers' living standards (ILO, 1983, pp. 101-104).

Freedom of association conventions do not specifically mention *the right to strike.* It is recognized by the ILO supervisory bodies as one of essential means available to workers for the promotion and protection of their economic and social interest (ILO, 1983, p. 62) stemming from Convention No. 87, Article 3 which says «workers' and employers' organizations shall have the right... to organize their administration and activities and to formulate their programmes. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof» (ILO, 1982b, p. 5). Freedom of association standards permit the authorities to prohibit the strikes only in the public service or in essential services if it could cause serious hardship to the national community or if the interruption of those services would endanger life, personal safety or health of the whole or part of the population. Strikes may be temporarily restricted by law in periods of emergency as long as they are limited in time and scope (ILO, 1985, p. 77).

The external union activities section of the freedom of association conventions — specifically the sections on collective bargaining and the right to strike — have been the areas of complaints against the federal and provincial governments in the last decade. Compatibility of the Canadian legislation with these provisions are discussed in the Implementation of the ILO Standards Section.

Dissolution and Suspension of Organizations

Convention No. 87, Article 4 contains restrictions against dissolving or suspending unions and employers' associations by administrative authority. Canadian federal and provincial legislation comply with this provision.

THE IMPACT OF THE FREEDOM OF ASSOCIATION STANDARDS

Freedom of association standards influence labour relations in Canada directly and indirectly. The obligation to put the ratified convention into effect results in a direct impact of Convention No. 87. The other freedom of association conventions and recommendations have an indirect impact as the internationally accepted guidelines on labour legislation.

The Influence of the Ratified Convention

Convention No. 87 influenced labour laws in Canada prior to ratification and afterwards through the supervision process. The Convention was ratified in 1972 after all the provincial legislation was brought into line with it. This process required the federal government to consult the provinces on their intention to ratify the Convention. It was ratified after all the provincial governments agreed to ratification and to bring their laws into line with the Convention (Kaplansky, 1980, pp. 81-86). Ratification of Convention No. 87 creates an obligation on Canadian federal and provincial governments not only to implement the provisions of the convention throughout the country but also to supply to the ILO periodical reports on the legal and practical implementation of the Convention in all jurisdictions (Labour Canada, 1985).

The Influence Through the Supervision Process

The influence of the ILO standards continues through supervision of the application of ratified and unratified conventions and recommendations. The ILO supervision consists of regular supervision of the Committee of Experts on the Application of Conventions and Recommendations (the Committee of Experts), and the preliminary examination of the Committee on Freedom of Association (the Committee)[4].

The Regular Compliance Procedures

The ILO requires from its members a report in every two year on basic human rights conventions in order to verify the extent of each country's application and compliance with the ratified standards (ILO, 1982c, p. 57). Examination of the reports by the Committee of Experts can result in a change in laws, as was the case in Alberta in 1984. After receiving the Committee of Experts' comments concerning the scope of essential services in the public service and the right to strike, the Government of Alberta amended the *Public Service Employee Relations Act,* 1977 to place Liquor Control Board employees under the framework of the *Labour Relations Act* which provides the right to strike (Labour Canada, 1984).

Special Procedures Concerning Freedom of Association Standards

Since freedom of association standards are considered an essential prerequisite for progress towards social justice, and since the principles of these standards are the basic human rights of workers, a special machinery was established in 1950 to deal with the complaints on these standards. Alleged infringements on trade union rights can be submitted to the ILO by the national or international organization of workers or employers or by governments, for the States that have ratified as well for the ones that have not ratified the freedom of association conventions (Pouyat, 1982). The Committee examines the complaints and reports to the ILO Governing Body its recommendations and the type of action to be taken on the case. It does not, however, have the power to decide on matters presented to it.

4 The Committee of Experts is a group of independent legal experts appointed by the Governing Body. The Committee on Freedom of Association is a tripartite body of the Governing Body which has equal numbers of representatives from the workers, employers and the governments.

Complaints by the Canadian unions and international federations against the Federal and Provincial governments were all filed with the Freedom of Association Committee.

General Influence of the Standards

The ILO standards can also influence Canadian labour relations when they are included in the collective agreements or when the courts refer to the ILO standards to clarify and determine the scope of the national legislation. For example in 1982, the Supreme Court of Ontario referred to Convention No. 87 in interpreting the freedom of association section of the Charter (Jain, 1985).

IMPLEMENTATION OF THE ILO STANDARDS

In the last decade the number of complaints submitted to the Committee on Freedom of Association on the alleged violation of trade union rights increased tremendously. The complaints on non-implementation of the freedom of association standards are being initiated by the unions from both developed and developing countries. Between 1954 and 1973, the Committee examined approximately 38 cases per year. In the following twelve years, the number of cases examined by the Committee increased to 605 cases averaging approximately to 50 cases per year. Twenty-six percent of the cases are originated from developed market economy countries, one percent of the complaints were on trade union rights in Eastern Europe and seventy-three percent were on violations of workers' rights in developing countries (ILO, 1985).

The increase in complaints can be attributed to many factors, the major one being the deterioration in the countries' economic performance in the last decade. Governments tend to increase their restrictions on organized labour and collective bargaining in times of economic difficulties (Zeytinoglu, 1985). Since the economic recession of 1973, a growing number of developed countries as well as developing countries started to implement policies to combat inflation, control wage increases and decrease the unemployment rate (Pankert, 1983; ILO, 1984). Although developing countries refer to these policies as economic development programs, and developed countries refer to them as stabilization measures or compensation restraint policies, the governments' policies in developed and develop-

ing countries are similar in their means and ends. They all aim to resolve economic problems by using restrictive monetary and fiscal policies and controlling collective bargaining activity[5].

Complaints Initiated Against Federal and Provincial Governments

Since 1975, Canada's labour policy has been frequently examined by the Committee on Freedom of Association. In the last decade, twenty-one complaints were initiated by the Canadian unions against the federal and provincial governments (ILO, 1975-1985).

If we compare the Canadian governments' and other developed market economy countries' compliance with the freedom of association standards, Canadian governments take a special place in terms of the increase in the number and percentage of complaints. As shown in Table 2, while the number of complaints against Canadian Federal and Provincial governments took only two percent of the total complaints initiated against the governments of developed countries between 1954-1973, the percentage of complaints increased to 12 percent in the 1974-1985 period. In comparison to Canada, the number of complaints as well as the percentage of complaints decreased in France, the Federal Republic of Germany, Italy, United Kingdom and the United States during the same time period. While the change in the number of complaints in each country can be influenced by various other factors, such as legislation, the «real» power of the unions, or the differences in income policies introduced by the government, the data reveals that Canada is among the few industrialized market economy countries which do not fully comply with the internationally accepted norms on freedom of association.

5 This paper does not discuss the Federal and Provincial governments' reasons in implementing policies to restrict freedom of association. For a discussion of this topic see, Frank REID, «Wage-and-Price Controls in Canada», in John Anderson and Morley Gunderson, eds., *Unio-Management Relations in Canada,* Toronto, Addison-Wesley, 1982, pp. 482-502; Alton W.J. CRAIG, *The System of Industrial Relations in Canada,* 2nd ed., Scarborough, Ont., Prentice-Hall Canada, 1986, pp. 24-25; and W.D. WOOD and Paradeep KUMAR, (eds.), *The Current Industrial Relations Scene in Canada,* Kingston, Queens University, Industrial Relations Centre, 1983, pp. 221-223, 301-304. For the summary of the measures in other countries see, ILO, *Collective Bargaining: A Response to the Recession in Industrialized Market Economy Countries,* Geneva, ILO, 1984; Isik U. ZEYTINOGLU, «The Impact of the International Labour Regulation on Labour Legislation in Developing Countries: The Case of International Labour Organization's Conventions and Recommendations», Ph.D. thesis, University of Pennsylvania, 1985; and Isik U. ZEYTINOGLU, «The Trade-Off Between Economic and Social Development: Industrial Relations in Turkey Between 1978-1985», *Proceedings of the 7th World Congress of the International Industrial Relations Association,* Hamburg, September 1-4, 1986, Vol. V, pp. 131-150.

TABLE 2

Complaints of Violations of Trade Union Rights Filed With the ILO Against the Governments of Developed Countries (1954 - 1985)

Countries	*1954 - 1973*		*1974 - 1985*	
	N°	*%*	*N°*	*%*
Canada	4	2	19	12
France	31	13	5	3
Germany, F.R.	4	2	1	1
Italy	5	2	2	1
Japan	8	3	15	10
United Kingdom	55	23	11	7
U.S.A.	16	6	6	4
Other Countries*	117	49	98	62
Total	240	100	157	100
Average/Year	13	—	13	—

*Most of the complaints in this group were initiated against the governments of Turkey, Greece, Spain and Portugal.

Source: International Labour Organization, *Freedom of Association, Digest of the Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO,* 3rd ed., Geneva, 1985.

An Overview of the Complaints

The complaints between 1975-1985 against the Federal and Provincial governments show some similarities. With the exception of four cases on union recognition and certification, back-to-work legislation and union trusteeship (Cases Nos 818, 841, 931 and 964), all of the complaints raised by labour unions were either related to or were the results of government stabilization programs. The unions' complaints about these programs can be summarized as the denial of freedom of association to certain employees, restrictions on collective bargaining, and prohibition of the right to strike. (Table 3 summarizes the complaints initiated against Canadian Federal and Provincial governments since 1975 and a list of these cases is available from the author upon request.)

TABLE 3

Complaints Initiated Against Canadian Provincial and Federal Governments (1975 - 1985)

Topic of Complaint	Against the Government of (No. of the Case)	Decision of the ILO Committee on Freedom of Association.
Denial of the right to organize	A(1055); F(1147); A(1234); NF(1260)	NC — Conv. No. 87, Art. 2 (in three cases); C — Conv. No. 87, Art. 2.
Stabilization Measures		
Restrictions on wages (Short term)	F(1147); Q(1171); BC(1173)	C — Conv. No. 98, Art.4; C — Conv. No. 151 (in two cases), No. decision on BC(1173).
Restrictions on collective bargaining	BC(886); A(1055); O(1071); O(1172); BC(1235); A(1247) BC(1329); NS(1070)	C — Conv. No. 98, Art. 2 (in two cases); NC of No. 98 & 151 (in six cases).
Interruption of negotiated agreements	O(1172); BC(1173)	NC — Conv. No. 98 & 151 (in both cases).
Interference with the arbitrators' decisions	BC(1173); BC(1329); BC(1350); A(1247)	NC — Conv. No. 151 & Conv. No. 98, Art. 4 (in all cases).
Prohibition of Strikes		
Temporary	Q(845); F(1147)	D; NC — Conv. No. 87, Art. 3.
Permanent or prolonged	NS(1070); O(1071); BC(1173) A(1247); NF(1260); A(893)	NC — Conv. No. 87, Art. 3 (in all cases).
According to the profession:		
Hospital workers	NF(1260)	C — Conv. No. 87, Art. 3
Teachers, university faculty	Q(1171), BC(1173), BC(1350)	NC — Conv. No. 87, Art. 3 (in all cases).
Public sector (Non-Essential employee	F(1147), O(1172), NF(1260)	NC — Conv. No. 87, Art. 3 (in all cases).
Essential employee	Q(1171)	C — Conv. No. 87, Art. 3.
Back to work legislation	F(931)	D, insufficient information.
Certification and decertification	O(841); NS(964)	C — Conv. No. 87, Art. 2 (in all cases).
Amendments to the Construction Industry Legislation	Q(818)	NC — Conv. No. 87, Art. 2

Coded Information: *Provinces:*
A: Alberta
BC: British Columbia
F: Federal
NF: Newfoundland
NS: Nova Scotia
O: Ontario
Q: Québec

Decisions of the Committee:
NC: Does not comply with the principles of the named Convention
C: Complies with the principles of the named Convention
D: Case is Dismissed
Conv: Convention

Source: International Labour Organization, *Official Bulletin, Reports of the Committee on Freedom of Association,* Vols. LVIII-LXVIII, Series B, Nos 1-3, Geneva, 1975-1985; International Labour Organization, *Two Hundred and Forty-First Report of the Committee on Freedom of Association,* Geneva, 6B 231/10/13, 231st Session, 11-15 November 1985; International Labour Organization, *Two Hundred and Forty-Third Report of the Committee on Freedom of Association,* Geneva, 6B 232/6/11, 232nd Session, 3-7 March 1986.

In examining the complaints on stabilization programs, the Committee's decisions differed depending on the type of restraint measure taken by the governments. After examining the *Federal Public Service Compensation Act* which brought wage guidelines of 6 and 5 percent for two years in 1982-1983, and Québec's Provincial Act No. 70 which restricted wage negotiations for a definite time period, the Committee repeating its previous decisions on other cases (ILO, 1985, p. 117), decided that the governments' wage restraint policies were not in contravention of the freedom of association conventions because they were limited to only wage restrictions and/or initiated under exceptional conditions for a limited period (Cases Nos 1147 and 1171). Referring to the federal compensation restraint case, the ILO Committee concluded that restrictions on the right to collective bargaining might be acceptable on condition that they are of an exceptional nature and only to the extent that they are necessary without exceeding a reasonable period, and that they are accompanied by adequate safeguards to protect workers' living standards (Case No. 1147).

Permanent or prolonged compensation restraint programs, or restricting negotiations on all aspects of collective agreements or interruption of already negotiated agreements by the governments are generally considered by the Committee not in conformity with the principles derived from Convention Nos 98 and 151. However, in Cases Nos 886 and 1055 initiated against the Governments of British Columbia and Alberta, respectively, the Committee did not find any contradiction with the Conventions and legislation. In Committee's opinion, amendments to the *Universities Act,* 1977 in British Columbia and the *Colleges Amendment Act,* 1981 in Alberta did not restrict the faculty's collective bargaining rights and therefore this aspect of the case did not call for further examination.

In various other complaints regarding collective bargaining (Cases Nos 1070, 1247, 1071) the Committee expressed concern over the laws enacted by the governments of Nova Scotia, Alberta and Ontario which restricted the scope of matters that may be negotiated or referred to arbitration, and modified the freely negotiated collective agreements. The Committee requested the governments to consider the possibility of amending the provisions in question. Lastly, in the two complaints initiated against the government of British Columbia (Cases Nos 1235 and 1329), the Committee decided that the legislative loophole resulting in the possibility of including benefits in the collective agreements lower than the employment standards (Case No. 1235), and establishing permanent or prolonged compensation stabilization programs by the government (Case No. 1329), were contrary to the principles of Article 3 of Convention No. 87, Article 4 of Convention No. 98 and Article 7 of Convention No. 151.

Restrictions on the arbitrators' independent decision-making power by requiring the arbitrators to consider the government's fiscal policies as a factor in their decisions were incorporated in the legislative amendments in Alberta and British Columbia (Cases Nos 1173, 1329, 1350, 1247). After examining these cases, the ILO Committee found these policies an infringement of the principles of collective bargaining. Furthermore, in British Columbia's case (No. 1329), the Committee, repeating its previous decision in Case No. 1173, concluded that the requirement of prior approval of collective agreements by the Government-appointed Commissioner before they come into force was not in conformity with the standards.

The denial of the right to organize by the teachers or designation of certain employees as essential workers by the employer as in the labour laws of Newfoundland and Alberta were considered by the Committee as in contravention of Convention No. 87, Article 3 (Cases Nos 1055, 1234, 1260).

According to the Committee, the right to strike can be restricted as a temporary measure (Cases Nos 845 and 1147) or can be prohibited if the employees work in essential services (Cases Nos 1171 and 1260) where a strike activity may endanger the health and safety of the public (ILO, 1985, p. 78). In its decisions on Canadian jurisdictions, the Committee found that the labour laws of Newfoundland, British Columbia, Ontario, Québec and Nova Scotia do not comply with Convention No. 87 because of restricting the teachers, university faculty and public sector workers' right to strike (Cases Nos 1260, 1173, 1172, 1171 and 1070). In these cases the Committee repeated its decision in Case No. 893 on the prohibition of strikes in public service in Alberta, and concluded that

«... while recognizing the freedom of association does not necessarily imply the right to strike in the case of all public officials, whenever that right is denied adequate guarantees to safeguard fully the interest of all workers thus deprived of an essential means of defending their occupational interests must be provided. These guarantees include speedy and impartial conciliation and arbitration procedures in which the parties can take part at every stage and in which the awards are binding in all cases on both parties. These awards, once they are made, should be fully and promptly implemented... In this connection, the Committee on Freedom of Association recalls that the right to strike could be restricted in the strict sense of the term, i.e., services whose interruption would endanger the existence or well-being of the whole or part of the population. The ban on strike activity for employees of the Art Gallery, Boxing Authority and Communications and Information Centre appears to the Committee to go far beyond this criterion.» (Case No. 1070).

CONCLUDING COMMENTS

The ILO freedom of association standards influence labour-management relations and legislation in Canada directly and indirectly. Other than a general influence as the internationally accepted norms on labour relations, reporting on ratified and unratified conventions, and recommendations of the Committee on Freedom of Association (the Committee) and the Committee of Experts, influences labour legislation in Canada.

In the last decade, the Committee examined various complaints on alleged violations of trade union rights. Although conclusions of the Committee varied depending on the specific aspects of each case, majority of the conclusions pointed out to the inconsistencies between legislation and the ILO principles of freedom of association.

The decisions of the Committee, however, had a mixed impact on governments. While the government of Ontario promised to initiate programs to eliminate the negative effects of wage restraint legislation criticized by the ILO (Case No. 1172), the recommendations of the Committee were disregarded by the governments of British Columbia, Newfoundland and Alberta.

The ILO Committee's conclusions, however, should be acceptable to the governments not only because they are coming from a neutral international body, but also because they reiterate the freedom of association principles protected in Canada's Constitution.

By ratifying Convention No. 87, federal and provincial governments accepted the obligation to give full effect to the Convention. Furthermore, since Convention Nos 98 and 151 are considered as the basic human rights stemming from the Constitution of the ILO which the Canadian government accepted prior to its membership, the Freedom of Association Committee can examine the complaints and recommend the Canadian federal and provincial governments to take measures to repeal the legislation in question even if the governments' have not ratified the conventions. While the Committee's decisions cannot be compared to a court order, the ILO Committee's reports are a moral persuasion to improve and promote human rights.

In order to fully apply the internationally accepted standards on freedom of association, the Federal and Provincial governments have to be informed of the contents of the freedom of association standards and their obligations under the ILO Constitution. The federal government is responsible to inform the provinces to initiate full observance of the standards, but all jurisdictions are responsible for continuing compliance.

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Les normes de l'OIT et la législation canadienne du travail

La liberté de réunion et le droit d'association sont des droits fondamentaux inscrits dans la constitution de nombreux pays et dans les déclarations, les chartes et les conventions adoptées par les organisations internationales. Parmi celles-ci, les normes de l'Organisation internationale du travail (OIT) constituent les lois internationnellement acceptées en matière de travail et de relations professionnelles.

Les normes de l'OIT prennent la forme d'une convention ou d'une recommandation. La ratification d'une convention entraîne l'influence directe des normes de l'OIT puisqu'elle requiert que les lois nationales soient conformes aux normes ratifiées. La référence aux conventions ratifiées ou non dans les conventions collectives, les plaintes formulées par les syndicats ou les associations d'employeurs aux organismes de surveillance de l'OIT en matière de non-respect de la liberté d'association de même que la référence aux normes de l'OIT par les tribunaux en vue de clarifier et de définir l'extension de la législation nationale traduisent une influence directe des conventions de l'OIT.

La convention de l'OIT relative à la liberté d'association (convention numéro 87) a influencé les lois canadiennes du travail avant et après sa ratification. Avant celle-ci, il a fallu que le gouvernement fédéral consulte les provinces de façon à ajuster les lois du travail aux dispositions de la convention. L'influence directe de la convention numéro 87 s'est poursuivie après la ratification par le processus des rapports. Les rapports effectués auprès du Comité des experts concernant l'application des conventions et des recommandations de même que les recommandations du Comité des experts demandant de modifier les lois ont façonné les relations professionnelles et la loi au Canada.

Les décisions du Comité sur la liberté d'association ont aussi influencé les relations entre les employeurs et les travailleurs. Les décisions récentes du Comité sur la liberté d'association en matière de violation des droits syndicaux dans quelques provinces ont apporté un appui moral aux syndicats et gêné quelques gouvernements provinciaux comme celui de l'Ontario, mais elles n'ont eu que peu de poids auprès d'autres gouvernements provinciaux tels que la Colombie-britannique, Terre-Neuve et l'Alberta.

Les syndicats et les gouvernements en tant qu'employeurs devraient respecter les décisions de l'OIT du fait que celles-ci portent un jugement mondial sur les problèmes de relations professionnelles au Canada. Les critiques de l'OIT devraient être bien reçues par les gouvernements non seulement parce qu'elles émanent d'un organisme international neutre, mais parce que les politiques et les recommandations favorisent l'idéologie capitaliste et qu'elles visent à améliorer les conditions de vie et de travail des travailleurs en demeurant dans les limites du système capitaliste.

Les critiques de l'OIT devraient être considérées comme une critique générale de la politique canadienne dans le domaine du travail. Étant donné que le Canada en tant qu'État fédéral doit obtenir l'assentiment de toutes les provinces avant de ratifier une convention, toutes les provinces et le gouvernement fédéral sont dans l'obligation de l'appliquer globalement. En outre, le gouvernement fédéral se doit d'aviser l'ensemble des provinces d'assurer l'application des conventions sur la liberté d'association.