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Recensions

Book Reviews

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

by Judy FUDGE and Eric TUCKER, Toronto: Oxford University Press, 2001, 398 pp., ISBN 0-19-541633-3.

When I studied Canadian collective bargaining law more than a quarter century ago, I learned how the 1944 war time 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 collec-

tive 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 University in Toronto, and they have collaborated 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 history 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 broadened, 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 industrial 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 Winnipeg in the summer of 1919; the complacent 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 local court and municipal records, complemented 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 industrial disruption.

One incident that graphically illustrates 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 employees who had abided by the law and only sought to engage in collective bargaining lost their jobs and their entire pensions 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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