LABOUR LAW: 1923-1947

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A survey of the developments in labour law in the past quarter century[1] is perforce a matter of discussing the law of strikes and picketing and, then, of tracing the substantial beginnings of labour law in Canada in the past decade. If we exclude a few prosecutions under the picketing and conspiracy sections of the Criminal Code, and another handful of civil cases for damages and injunctions based largely on those criminal provisions, there is nothing in Canadian law to mark the emergence of a distinct body of labour relations doctrine until collective bargaining procedures and legislation began to take shape in the late 1930's and early 1940's.[2]

The stimulus for these developments was the wave of organization which struck the mass production industries, spilling over from organizational drives carried on in the United States under the inspiration of section 7(a) of the National Industrial Recovery Act and of the Wagner Act.[3] The widespread unemployment and consequent distress of the early 1930's created a public opinion favourable to self-organization of employees and to collective bargaining. The advent of war in 1939 and the necessity of national direction of industry furthered industrial trade unionism, re-invigorated existing craft union organizations and gave impetus to the leadership of the national labour congresses. Pressure for collective bargaining legislation was first siphoned off through conciliation boards established under federal legislation.[4] The reports of these bi-partisan boards publicized the issues in labour relations and paved the way for acceptance by employers of legislation making negotiation with trade unions compulsory.[5]

The older law governing strikes and picketing has become more significant in the light of collective bargaining legislation

[1] The necessity of compressing this review of labour law within certain limits has prevented the treatment of some aspects of the subject and equally has militated against a more exhaustive consideration of the aspects dealt with.

[2] For a list of Canadian cases up to 1932, see Kennedy and Finkelman, The Right to Trade, Appendix, pp. 115-130.

[3] National Labor Relations Act, 1935. It has been considerably modified by the Labor Management Relations Act (Taft-Hartley Act), 1947.

[4] Industrial Disputes Investigation Act, R.S.C., 1927, c. 112, as extended by P.C. 3495 of November 7th, 1939.

[5] *E.g.*, Collective Bargaining Act, 1943 (Ont.), c. 4. It was superseded by a Federal measure, the Wartime Labour Relations Regulations, P.C. 1003, of February 17th, 1944, which is still operative although scheduled for replacement this year by a statute.

which is operative today in all the provinces through provincial enactments and throughout the Dominion by way of a federal measure.[6] It is this legislation, preceded and followed by advances in practical collective bargaining resulting in collective agreements, that has made it possible to speak of labour law rather than merely of law of strikes and of picketing. I propose in this review of the past twenty-five years to deal successively with (1) the constitutional aspects of labour legislation; (2) the criminal and civil consequences of direct labour action; (3) collective bargaining and collective agreements; (4) the administration of labour legislation; and (5) conciliation and arbitration of labour disputes.

I

Toronto Electric Commissioners v. *Snider*[7] interposed a constitutional barrier to any general federal labour measure affecting industries operating on an interprovincial basis or having an interprovincial impact. Two recent cases have, however, affirmed the exclusive legislative authority of the Dominion in labour matters relative to industries coming within classes of subjects included in federal heads of power, such as interprovincial railways, steamship and telegraph lines.[8] The Dominion has also exercised its exclusive power in relation to criminal law to cover such things as (1) picketing, dealt with in section 501 of the Criminal Code; and (2) discrimination or intimidation in employment on account of union activity, dealt with in section 502A. Otherwise, it is fairly clear that labour legislation falls within the legislative authority of the provinces, saving, however, what the Dominion may enact to implement international engagements falling squarely within section 132 of the British North America Act,[9] and saving too the acknowledged special

[6] Provincial collective bargaining legislation of a general character currently in force is as follows: Alberta Labour Act, 1947 (Alta.), c. 8; Industrial Conciliation and Arbitration Act, 1947 (B.C.), c. 44; Manitoba Wartime Labour Relations Regulations Act, 1944 (Man.), c. 48, am. 1947 (Man.), c. 65; Labour Relations Act, 1945 (N.B.), c. 41; Trade Union Act, 1947 (N.S.), c. 3; Labour Relations Board Act, 1944 (Ont.), c. 29, am. 1946 (Ont.), c. 44; Labour Relations Board Act, 1947 (Ont.), Bill 145; Trade Union Act, 1945 (P.E.I.), c. 13, am. 1946 (P.E.I.), c. 32; Labour Relations Act, 1944 (Que.), c. 30, am. 1945 (Que.), c. 44, am. 1946 (Que.), c. 37; Trade Union Act, 1944 (Sask. 2nd sess.), c. 69, am. 1946 (Sask.), c. 98, am. 1947 (Sask.), c. 102.

[7] [1925] A.C. 396.

[8] *Reference re Application of "Hours of Work Act" to C.P.R. Hotel Employees*, [1947] 2 D.L.R. 723; *C.P.R. and C.P. Express Co.* v. *A.-G. Sask.*, [1947] 4 D.L.R. 329.

[9] *A.-G. Can.* v. *A.-G. Ont.*, [1937] A.C. 326.

power of the Dominion to occupy the field of labour relations in time of war.[10]

II

The limits of protection to trade unionists against charges of criminal conspiracy remain as vague in 1947 as they were in 1923. Section 590 of the Criminal Code prohibits any prosecution for conspiracy in refusing to work with or for any employer or workman, or to do or cause any act to be done for the purpose of a trade combination unless such an act is an offence punishable by statute.[11] The words "in refusing to work with or for any employer or workman" were added after *Regina* v. *Gibson* in 1889.[12] There, a conviction for conspiracy was sustained against union bricklayers who, being employed by a private contractor in the erection of a city hall, procured the city to discharge one of its regular employees who was a non-union bricklayer. The court confined the exempting clause, "for the purpose of a trade combination", to a proximate employer-employee situation, although it is not clear that this conclusion was compelled by the definition of "trade combination" which was then, and is still, "any combination between masters or workmen or other persons for regulating or altering the relations between any persons being masters or workmen, or the conduct of any master or workman in or in respect of his business or employment, or contract of employment or service".[13] It is doubtful whether the added words, "in refusing to work with or for any employer or workman", cover the situation in *Regina* v. *Gibson*; and the narrow view taken of "trade combination" in that case remains a powerful deterrent to secondary pressure. This is indicated by *Rex* v. *Russell* in 1920 where Perdue C.J.M. stated: "But supposing there is a strike by the moulders in A's foundry and in order to assist the strike the employees of a cartage company combine in a refusal to carry goods to or from A's foundry, or the railway company's employees combine in refusing to receive or handle A's goods; neither of these combinations comes within the protection afforded by sec. 590".[14] One can perhaps distinguish these illustrations

[10] *Supra*, note 7. As to whether the Dominion power to legislate for the peace, order and good government of Canada is confined to periods of emergency only, see *A.-G. Ont.* v. *Canada Temperance Federation*, [1946] 2 D.L.R. 1.

[11] Section 590 reads a little awkwardly because it uses the phrase "for doing or causing" etc., which suggests an offence apart from conspiracy; the phrase "to do or cause" etc., as used in the original version, would make the meaning clearer.

[12] (1889), 16 O.R. 704.

[13] Criminal Code, s. 2(41).

[14] (1920), 33 Can. C.C. 1, at p. 10.

from the situation in *Regina* v. *Gibson*, which appears to be more nearly an instance of secondary pressure involving a connection of employment than of pure sympathy action. But there is the remark of Cameron J.A. in *Rex* v. *Russell* that "it is difficult, perhaps impossible, to imagine a set of circumstances in which sec. 590 would afford immunity".[15]

The courts have not been called on in the past quarter century to consider section 590, but it is obvious from its very terms that the common law of criminal conspiracy may still be invoked. And it is easy to put cases where it may be used, even giving the widest possible reach to the immunity afforded by section 590; for example, conspiracy to violate section 501 of the Criminal Code dealing with illegal picketing, or conspiracy to violate a provincial collective bargaining statute.

For historical reasons, the discussion of which is beyond the scope of this article, there is a criminal law of picketing in Canada covering trade union action which is perhaps not even tortious. I say "perhaps", because the exact reach of section 501 of the Criminal Code is a matter of doubt and, further, the disposition of our courts to refer to it in civil actions has confused the civil law of picketing. Section 501 originated in 1876 (Can.), c. 37, s. 1, which made it an offence "wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain", *inter alia*, to watch or beset the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place. "Watching or besetting" has been termed the legislative equivalent of picketing.[16] Until 1892, this offence was qualified by a so-called saving clause which provided as follows: "Attending at or near or approaching to such house or other place as aforesaid, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section". The clause disappeared in the criminal law codification of 1892 and was not restored until 1934.[17] While a number of criminal prosecutions for picketing came before superior courts in Canada between 1923 and 1934, there have been none reported since 1934. Picketing in the past decade has been the subject of civil actions for damages

[15] *Ibid.*, at p. 22.

[16] *Cf.* Trueman J.A. in *Allied Amusements Ltd.* v. *Reaney*, [1937] 4 D.L.R. 162, at p. 172. It should be noted that s. 501 proscribes other acts besides watching or besetting but they are irrelevant to this discussion.

[17] 1934 (Can.), c. 47, s. 12.

and injunctions, with the exception of a few prosecutions before magistrates and county court judges.[18]

It would be supererogation for me to analyse anew the judicial interpretation of section 501, since this has been done admirably by Professor Finkelman.[19] There are some points, however, which will bear repetition. The section is not in terms confined to trade union or labour action; but practically it has had no other application. The Canadian criminal cases on the section have relied heavily on the judgments in *J. Lyons & Sons* v. *Wilkins* [20] and to a lesser extent on the judgments in *Ward, Lock & Co. Ltd.* v. *Operative Printers' Assistants' Society.*[21] These were English civil cases based on the English statutory prototype of section 501; and although they are both Court of Appeal cases they are not easily reconcilable. The Canadian cases exhibit little effort to analyse the elements in picketing in relation to the proscriptions of section 501. Thus, there is no satisfactory examination of the patrolling element in relation to the carrying of placards or in relation to accosting, matters which may require a further differentiation between employees or prospective employees and patrons or members of the public generally. The civil cases on picketing have been sharper in this respect, and this may be partly attributable to the fact that they arose for decision in a period of intensified trade unionism.

In some of the criminal and civil cases on picketing the courts have either been unwilling or unable to differentiate between the "economic pressure" aspect of picketing and its "persuading" or "information" aspect, a distinction which now bulks large in American cases because of the constitutional protection of free speech.[22] Some Canadian cases purport to distinguish persuasion from the communication or obtaining of information on the picket line, holding the latter to be lawful.[23] This, of course, is unrealistic because it serves either as an artificial pretext for exonerating from liability or as a similar pretext for always finding liability. Picketers communicate information on the picket line in order to persuade and, even when they merely carry placards and do not accost passers-by, there is little doubt

[18] *Cf. Rex* v. *Carruthers* (1946), 86 Can. C.C. 247; *Rex* v. *Doherty and Stewart* (1946), 86 Can. C.C. 286.

[19] Law of Picketing in Canada (1937), 2 Univ. of Tor. L.J. 67; (1938), 2 Univ. of Tor. L.J. 344.

[20] [1896] 1 Ch. 811; [1899] 1 Ch. 255.

[21] (1906), 22 T.L.R. 327.

[22] *Cf. Carpenters & Joiners Union* v. *Ritter's Cafe* (1942), 315 U.S. 722; and see Note (1946), 59 Harv. L. Rev. 1123.

[23] *E.g., Cotter* v. *Osborne* (1906), 16 Man. R. 395; *Le Roi Mining Co. Ltd.* v. *Rossland Miners Union* (1901), 8 B.C.R. 370; *Dallas* v. *Felek*, [1934] O.W.N. 247.

that their primary concern is persuasion. To deny that persuasion can be lawful when accompanied by patrolling is to deny that picketing can be lawful in any conceivable circumstances.

It is to be noted that Canadian courts have generally accepted the lawfulness of persuasion of non-striking employees or prospective employees in connection with liability for strikes,[24] and it is difficult to understand why persuasion becomes unlawful when it stems from strikers or union supporters of strikers engaged in patrolling in front of an employer's plant. That this is so is indicated in the interlocutory injunction proceedings of the *Lyons* case by Lindley L.J. whose opinions have been widely accepted in the Canadian cases.[25] On the other hand, Vaughan Williams L.J. indicated in the proceedings on the merits in the same case that persuasion was lawful if done through a communication.[26] Since he also sat in the *Ward, Lock* case, which differed from the *Lyons* case and is the English Court of Appeal's last pronouncement on the meaning of the English criminal picketing statute, it is surprising that the views of Lindley L.J. should have been preferred in Canada. Fletcher Moulton L.J. in the *Ward, Lock* case makes an apt criticism of Lindley L.J. in suggesting that the latter construes "compel" in the statute as if the act of compelling (or, persuading, according to Lindley L.J.) is itself wrongful.[27] This is of a piece with the notion which is dying hard (and which *Hodges* v. *Webb*[28] helped to destroy) that a threat *per se* is unlawful regardless of what is threatened.[29]

The English Royal Commission on Trade Disputes and Trade Combinations, reporting in 1906, the year the *Ward, Lock* case was decided, seems to express Lindley L.J.'s views on criminal picketing, as is indicated in the following excerpt from its report:

> It is sometimes represented that workmen are . . . punished for merely peacefully persuading . . . But that is not so. No workman has ever been punished under this Act for merely peacefully persuading. What he has been punished for is watching or besetting a house, etc., with the view of peacefully persuading — a different matter. Before he can be convicted or punished it has to be proved that he watched or beset the house; and also that he did so to compel, though compelling may, in the case supposed, mean little more than persuading persons to do what without such persuasion they might not be willing to do.[30]

[24] *Vulcan Iron Works* v. *Winnipeg Lodge No. 174* (1911), 21 Man. R. 473; *I.L.G.W.U.* v. *Rother*, [1923] 3 D.L.R. 768; *Lupovich* v. *Shane*, [1944] 3 D.L.R. 193.

[25] [1896] 1 Ch. 811, at p. 825.

[26] [1899] 1 Ch. 255, at p. 274.

[27] (1906), 22 T.L.R. 327, at p. 329.

[28] [1920] 2 Ch. 70.

[29] *Cf.* Holmes J., dissenting, in *Vegelahn* v. *Guntner* (1896), 167 Mass. 92.

[30] Cmd. 2825, p. 11.

The Royal Commission recognized the difficulty of the then existing law as follows: "What it comes to is this, that watching and besetting for the purpose of peacefully persuading is really a contradiction in terms".[31] The English Trade Disputes Act, 1906, tried to resolve the contradiction by making it lawful for a person, when acting in contemplation or furtherance of a trade dispute, to attend at or near a house or place of work merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.[32] Two things may be noted in respect of this enactment: it confines conduct to action in contemplation or furtherance of a trade dispute; and it makes no mention of persuasion of customers or of the public generally.

The Canadian criminal law of picketing is based on the English decisions interpreting the pre-1906 English law; and the ordinary stringent approach to liability that flows from Lindley L.J.'s views is buttressed by the notion of conspiracy with which all trade union cases are surrounded. The asperity of the approach is susceptible to softening at two points: (1) by expanding the immunity given by the saving clause of section 501; and (2) by interpreting the phrase "wrongfully and without lawful authority" to impose a certain burden of proof upon the Crown.

The absence of the saving clause of section 501 when *Reners* v. *The King* [33] was decided in 1926 appeared to be of some relevance in the opinion of the majority of the Supreme Court of Canada; but it is clear from the judgment of the Alberta Appellate Division when the case was before it that the saving clause would not have justified the use of persuasion on the picket line. A similar conclusion was reached by the Alberta court in its earlier decision in *Rex* v. *Blachsawl* [34] where the *Ward, Lock* case was not considered; and the dissenting opinion of Clarke J. A. in the *Reners* case was based on the view that, having regard to the *Ward, Lock* case, peaceful picketing (which, presumably, involves persuasion) was not illegal at common law, was not made illegal by the English picketing statute and hence could scarcely be wrongful under section 501 of the Criminal Code.

Even the less rigorous view of the saving clause, which would admit the use of persuasion, may be practically unimportant if we accept the suggestion, made in some cases, that picketing

[31] *Ibid.*, at p. 12.
[32] 1906 (Imp.), c. 47, s. 2(1).
[33] [1926] S.C.R. 499, affirming [1926] 2 D.L.R. 236.
[34] [1925] 4 D.L.R. 247, 44 Can. C.C. 286.

is *ipso facto* a nuisance;[35] and, *a fortiori,* the latitude for persuasion is equally meaningless if picketing is accompanied by some other nominate tort. Whatever one may think of the extension of the concept of nuisance to cover interference with business expectancies, it could be used to reconcile practically the differing views in the *Lyons* and *Ward, Lock* cases, since in the latter case the court accepted the view that a nuisance was not within the immunity of the saving clause. But it is clear from both the *Ward, Lock* case and from the judgment of the late Chief Justice Rose in *Rex* v *Baldassari* [36] that peaceful persuasion on the picket line may be carried on without any element of nuisance. A rather interesting thesis has been offered that even if the watching and besetting amounts to the civil wrong of nuisance, nevertheless the saving clause protects from criminality if the watching and besetting is only to obtain or communicate information.[37] One could, however, take a more cautious view that the saving clause does not *ipso facto* absolve from criminality but stands rather as a caution against a too easy finding of nuisance where the picketing is done merely to obtain or communicate information.

It is clear that the phrase in section 501, "wrongfully and without lawful authority", is as important to a consideration of the section as is the saving clause. And it is here that the sharpest conflict between the *Lyons* and *Ward, Lock* cases appears. The *Lyons* view, as expressed by Lindley L.J., is that "it is not necessary to shew the illegality of the overt acts complained of by other evidence than that which proves the acts themselves, if no justification or excuse for them is reasonably consistent with the facts proved".[38] What is justification or excuse? In *Rex* v. *Blachsawl,* the court refused to exonerate the accused where they acted to enforce a collective agreement for the employment of union men. In *Rex* v. *Richards and Woolridge* [39] silent picketing for one hour with a truthful placard by men who quit their employment because of a reduction in wages was visited by a conviction which was affirmed on equal division on appeal. The dissenters would have found justification in a provincial statute. The *Ward, Lock* view of "wrongfully and without lawful authority" imposes a burden on the Crown to show that the watching and besetting amounts, at least, to a tort before it can be visited with penal consequences; and this view was adopted by

[35] *E.g., J. Lyons & Sons* v. *Wilkins, supra,* note 20.
[36] [1931] O.R. 169.
[37] Finkelman, *supra,* note 19.
[38] [1899] 1 Ch. 255, at p. 267.
[39] [1934] 3 D.L.R. 332, 61 Can. C.C. 321.

the Ontario court in *Rex* v. *Baldassari* in preference to the view taken in the *Lyons* case.

The civil cases on picketing which have come before the courts in Canada in the past quarter century are a veritable wonderland of confusion so far as any consistent theory of liability is concerned. Thus, liability has been based on (1) civil conspiracy to injure;[40] (2) the commission of individual acts of wrongdoing;[41] (3) placards carrying defamatory statements or statements of mere opinion rather than of fact;[42] (4) coercion, threats or intimidation;[43] (5) compulsion of patrons of the employer;[44] (6) violation of section 501 of the Criminal Code.[45] Some cases have stated that "peaceful picketing" is lawful without defining the term;[46] at least one judge has taken the view that "peaceful picketing" is a contradiction in terms.[47] For some courts patrolling is an acceptable element of picketing;[48] for others, patrolling of an organized and consistent character is unlawful as constituting intimidation or coercion.[49] No Canadian case contains any clear-cut pronouncement that persuasion of members of the public is permissible on the picket line; but there are cases which say categorically that it is not.[50] Older cases had even prohibited persuasion of workmen or prospective workmen but this attitude has now been abandoned.[51]

The Ontario and Quebec courts have in their more recent pronouncements displayed a greater tolerance of picketing than have the courts of other provinces.[52] MacKay J. in *Canada Dairies Ltd.* v. *Seggie*[53] was hardy enough to limit liability for illegal picketing to three situations, namely, (1) if it is featured by defamatory statements; (2) if it is carried on in such a manner

[40] *E.g., Kershaw Theatres Ltd.* v. *Reaney*, [1937] 4 D.L.R. 162; *Canada Dairies* v. *Seggie*, [1940] 4 D.L.R. 725.

[41] *E.g., Hurtig* v. *Reiss*, [1937] 4 D.L.R. 433; *Lupovich* v. *Shane*, [1944] 3 D.L.R. 193.

[42] *E.g., Allied Amusements Ltd.* v. *Reaney*, [1937] 4 D.L.R. 162.

[43] *E.g., Hurtig* v. *Reiss*, *supra*, note 41. *Kershaw Theatres Ltd.* v. *Reaney*, *supra*, note 40.

[44] *E.g., Hollywood Theatres* v. *Tenney*, [1940] 1 D.L.R. 452.

[45] *E.g., Schuberg* v. *Local International Alliance*, [1927] 2 D.L.R. 20; *Cotter* v. *Osborne* (1909), 18 Man. R. 371.

[46] *Bassel's Lunch Ltd.* v. *Kick*, [1936] O.R. 445, *per* Kingstone J.

[47] *Hollywood Theatres* v. *Tenney*, [1940] 1 D.L.R. 452, *per* O'Halloran J.A. at p. 459.

[48] *Canada Dairies Ltd.* v. *Seggie*, [1940] 4 D.L.R. 725.

[49] *Supra*, note 47.

[50] *Ibid.*

[51] For the older view, see *Le Roi Mining Co. Ltd.* v. *Rossland Miners Union* (1901), 8 B.C.R. 370; *Cotter* v. *Osborne* (1909), 18 Man. R. 371. For the present view, see *supra*, note 24.

[52] *Cf., Canada Dairies Ltd.* v. *Seggie*, [1940] 4 D.L.R. 725; *Lupovich* v. *Shane*, [1944] 3 D.L.R. 193.

[53] *Ibid.*

as to disclose a purpose other than peacefully obtaining or giving information; or (3) if it is part of a conspiracy to injure. That this statement is incomplete is apparent on its face. Other nominate torts besides defamation will make picketing unlawful. The exact relation of persuasion to the second stated ground of liability is uncertain. Presumably, however, this ground would cover mass picketing or any organized blocking of access to the picketed premises.[54] The issue of conspiracy to injure goes to the purpose which actuated the picketing and I shall refer to it later on in connection with strikes.

The *Seggie* case is of considerable importance for laying down the proposition that picketing is lawful in the absence of a strike. While this means that an employer-employee relationship is not a *sine qua non* of picketing, there must, of course, be a labour dispute. It may be noted, however, that in *Besler* v. *Matthews* the view was taken that no labour dispute existed between an employer and a trade union which had had no previous relationship with the employer and consequently the picketing carried on by the trade union was enjoined.[55] This attitude is equivalent to saying that picketing to compel unionization is unlawful, and this was in effect the holding in *Allied Amusements Ltd.* v. *Reaney*.[56] In *Hollywood Theatres* v. *Tenney*[57] O'Halloran J. A. took the position that no labour dispute existed for the purposes of the British Columbia Trade-unions Act where employer and trade union were at odds over the interpretation of a clause in a collective agreement to which they were parties.

The *Tenney* case is significant for the comparative analysis attempted by O'Halloran J.A. of the picketing law of England, the United States and British Columbia.[58] The severe strictures which feature the learned judge's discussion of picketing were the result of the systematic patrolling and leaflet distribution in the area of the picketed theatre, and the mass demonstration which took place in front of the theatre. These factors may well have sufficed to render the picketing unlawful but they hardly warranted the almost complete emasculation of the Trade-unions Act which was accomplished by O'Halloran J.A.'s judgment.[59] Perhaps the most interesting, even if not the most

[54] *Supra*, note 18.
[55] [1939] 1 D.L.R. 499.
[56] *Supra*, note 42.
[57] [1940] 1 D.L.R. 452.
[58] The learned judge referred to the older rather than to the more recent American cases. Contrast *Senn* v. *Tile Layers Protective Union* (1937), 301 U.S. 468.
[59] The act (R.S.B.S., 1936, c. 289) provides by s. 4 that no civil liability shall be imposed for publishing information respecting a strike or lockout,

defensible, proposition in the *Tenney* case is that picketing cannot be lawfully used to enforce a collective agreement or, more strictly, a trade union's view of the meaning of one of the terms of an existing collective agreement.[60] This view is largely predicated on O'Halloran J.A.'s conception of a collective agreement as an enforceable contract. Authority binding on Canadian courts is clearly at variance with this conception.[61]

The disposition of Canadian courts to rely on section 501 of the Criminal Code in determining civil liability for picketing is difficult to explain or justify. The *Lyons* case invoked the comparable English provision by assuming to exercise a chancery power to enjoin injury to property or trade. In Ontario, however, Middleton J.A. in *Robinson* v. *Adams* warned against the use of chancery powers to suppress crime, stating that government by injunction is abhorrent to our law.[62] It may be urged, too, on the authority of *Transport Oil Ltd.* v. *Imperial Oil Ltd.*[63] (although I personally am unable to appreciate the principle) that, having regard to the distribution of legislative power under our federal system, a civil cause of action cannot be founded on the violation of a criminal statute. It follows, moreover, from the *Ward, Lock* case that, since a violation of section 501 depends on finding independently that at least a tort has been committed, there can be no occasion for applying section 501 itself to civil liability. Further, the *Ward, Lock* case indicates that section 501 is not of that class of statute which supports a civil cause of action for breach of its obligations.

The matter has become even more confusing by reason of Trueman J.A.'s statement in the *Allied Amusements* case that section 501, as far as it goes, merely expresses the common law, the full statement of which is in section 2 of the English Trade Disputes Act, 1906.[64] The learned judge cannot be referring merely to the criminal side of picketing because the words "it shall be lawful" in section 2 of the Trade Disputes Act cover civil

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or for warning workmen or other persons against seeking, or urging workmen or other persons not to seek, employment, or not to patronize the employer. O'Halloran J.A. decided that the term "other persons" must be confined to persons who are proximately and substantially concerned as parties to a labour dispute.

[60] For a contrary view see 4 Restatement of Torts (1939), s. 789, Comment a.

[61] *Cf.*, *Young* v. *Canadian Northern Ry. Co.*, [1931] A.C. 83.

[62] (1924), 56 O.L.R. 217.

[63] [1935] O.R. 215. For effective criticism, see (1935), 13 Can. Bar. Rev. 517; (1941), 19 Can. Bar Rev. 51.

[64] [1937] 4 D.L.R. 162. The learned judge is almost alone in recognizing the anomaly of applying section 501 to civil liability: *ibid.*, at p. 168. See also Martin J.A. dissenting, in the *Schuberg* case, *supra*, note 45, at p. 28.

actions as well.[65] It is, however, a rare judicial treat to find a Canadian court taking its lead as to common law from an English statute. One can perhaps conclude that the constant resort in civil picketing cases to section 501 is related to a habit of adherence to English authorities and to a reluctance to exonerate from tort liability for activities which may be criminal.

There remains for consideration civil liability for strikes, actual or threatened, which on the criminal side are covered by the common law and statute law of criminal conspiracy dealt with earlier. Canadian case law in this connection has proceeded on the basis of the tort of conspiracy to injure, both in the case of a strike or threat thereof arising out of a direct union-employer dispute about terms of employment or arising out of a dispute concerning the employment or non-employment of certain workmen.[66] In this, our courts have merely reflected the English cases, such as *Quinn* v. *Leathem*.[67] But the English line of decision respecting interferences with economic relations has segregated interference with contract relations ("inducing breach of contract") as a type of case in which conspiracy or combination is not a necessary element of liability, although it is invariably present in labour disputes. The segregation has important consequences because there has been no disposition to find justification where a breach of contract has been induced.[68] *Hay* v. *Local Union No. 25*,[69] an Ontario decision, appears to belie this statement, but there the court relied on the conspiracy to injure cases rather than on the inducing breach of contract doctrine of *South Wales Miners' Federation* v. *Glamorgan Coal Co. Ltd.*[70] In *Klein* v. *Jenoves* [71] the Ontario courts returned to the true faith.

It is hardly a matter of surprise that with so nebulous a concept of liability as conspiracy to injure the courts should grasp at such supporting straws as "coercion", "intimidation" and "threats".[72] While just cause or excuse would admittedly exonerate from liability, the courts could easily disarm any defence by finding that there was no proper occasion for trade union interference or that the kind or degree of interference exceeded justifiable bounds. This approach meant that the legality of any interference or threatened interference might vary directly

[65] *Cf.*, *Vacher* v. *London Society of Compositors*, [1913] A.C. 107.
[66] *E.g.*, *Cotter* v. *Osborne* (1909), 18 Man. R. 471; *Graham* v. *Knott* (1908), 14 B.C.R. 97; *Johnston* v. *Mackey*, [1937] 1 D.L.R. 443.
[67] [1901] A.C 495.
[68] See Note (1940), 18 Can. Bar Rev. 393.
[69] (1929), 63 O.L.R. 418.
[70] [1905] A.C. 239.
[71] [1932] O.R. 504.
[72] *Supra*, note 66.

with the effectiveness of trade union action. If liability depended largely on finding whether the trade union purpose was to injure (assuming no other nominate torts), then clearly it was a foregone conclusion, unless the courts were prepared to admit an exculpatory principle of competition on the level of trade union-employer conflict as they had long admitted on the level of trade conflict among employers.[73] The admission of such a principle finally came in *Crofter Hand Woven Harris Tweed Co.* v. *Veitch*,[74] which quickly made its influence felt in Canada, as indicated by the judgment of the Alberta Appellate Division in *Corbett* v. *Canadian National Printing Trades Union*.[75] It makes such earlier Canadian cases as *Johnston* v. *Mackey*[76] completely absurd.

To some extent the *Crofter* case, which was a decision on the common law and not dependent on section 1 of the English Trade Disputes Act, 1906,[77] has rendered superfluous such statutory relief against liability for conspiracy to injure as is contained in section 3 of the Ontario Rights of Labour Act.[78] This provision offers protection only if combined action is taken "in contemplation or furtherance of a trade dispute", a term not defined but capable of being confined to a proximate employer-employee situation. Were it so confined, we would have the anomaly of the common law, as exemplified in the *Crofter* case, offering greater protection than a statute dealing with the same matter.[79]

The *Crofter* case, in appreciating the mixture of purposes which inhere in trade union direct action and in showing a readiness to accept a trade union's assertion of what its main interests require in the way of action, indicates a detachment and a self-restraint that is as revealing in terms of current social principles as was *Quinn* v. *Leathem* in its setting forty years earlier. Canadian law has for long recognized that the purpose or object of a strike governs liability for its consequences.[80] Under the *Crofter* case, the judicial task in conspiracy to injure is to ascertain

[73] *E.g.*, *Mogul Steamship Co.* v. *McGregor, Gow & Co.*, [1892] A.C. 25.

[74] [1942] 1 All E.R. 142.

[75] [1943] 4 D.L.R. 441. This was an action against a union to enjoin it from procuring the discharge of certain workmen.

[76] *Ibid.*, note 66.

[77] 1906 (Imp.), c. 47; s. 1 in effect abolishes liability for conspiracy as such, if the act done in pursuance thereof was in contemplation or furtherance of a trade dispute.

[78] 1944 (Ont.), c. 54. It is similar to s. 1 of the English Act, *supra*. See also, Trade Union Act, 1944 (Sask. 2nd sess.), c. 69, s. 20.

[79] In the *Crofter* case, there was a dispute between millworkers and their employers, and the former invoked the assistance of dockers, who were members of the same union, to effectuate an embargo on shipments to and from the employers.

[80] *Cf.*, *Jose* v. *Metallic Roofing Co. of Can. Ltd.*, [1908] A.C. 514.

the predominant purpose. The approach of that case to this problem suggests that the range of objects for which trade unions may justifiably direct or threaten the withholding of labour is bounded only by the relationship of such objects to employment and the conditions thereof in the industry involved.

III

Collective bargaining legislation imposing a legal duty to negotiate for a collective agreement is the existing substitute for strikes for union recognition. Effectuation of this policy, however, has necessitated legal guarantees of association in trade unions or employees' associations free from domination or interference by employers and free from actual or threatened discrimination on their part against their employees because of membership or activity in trade unions or employees' associations. This has worked a revolution in employer-employee relations because, by law, unionization is now a foreseeable concomitant of a business.

The unfair practices prohibited to employers are, by and large, the same in all Canadian collective bargaining legislation.[81] A number of unfair practices are also prohibited to employees and trade unions; for example, carrying on union activity on an employer's premises during working hours without his consent; using coercion or intimidation in soliciting membership; engaging in a "slow-down" or other activity designed to limit production. Enforcement procedure in respect of all unfair practices follows the same general pattern. The administrative agency under the particular statute has no affirmative powers but its consent must be obtained to prosecute alleged violators in a magistrate's court. In Saskatchewan there is a deviation from the general pattern, and there the labour relations board has positive powers, *e.g.*, to reinstate employees whose discharge is the result of an unfair labour practice, or to disestablish an employer-dominated organization.[82] The Board under the Quebec Labour Relations

[81] It is unnecessary, for the purposes of this article, to detail the provisions in the various acts which were referred to in note 6, *supra*. Substantially the same legislation is in force for the Dominion, Ontario, Manitoba and New Brunswick, and with certain differences, in Nova Scotia. There are no very marked differences in the Quebec legislation. The Saskatchewan legislation differs principally in the wider powers conferred on the labour relations board and in its elaboration of unfair practices. Alberta and British Columbia have similar legislation, distinguished by elaborate conciliation machinery and by provisions preventing a trade union from committing employees to a strike without their consent. The Prince Edward Island legislation is largely of a declaratory type.

The following discussion is based principally on the Wartime Labour Relations Regulations, P.C. 1003, effective for the Dominion, Ontario and Manitoba and substantially copied in New Brunswick and Nova Scotia.

[82] 1944 (Sask. 2nd sess.), c. 69, s. 5. In a judgment handed down on

Act also has an affirmative power to disestablish an employer-dominated employees' association.[83] In the other Canadian jurisdictions the administrative agencies exercise an indirect affirmative power in this connection, since they can refuse to entertain a certification application from such an association or to put it on a ballot. Similarly, they can certify a *bona fide* trade union or employees' association in a plant where a collective agreement subsists between an employer and a dominated association because such a collective agreement is without effect.

There have been relatively few prosecutions for unfair practices. The administrative agency, on an application for leave to prosecute, exercises a power which can be used to resolve differences. Secondly, trade unions are currently concerned more with establishing their collective bargaining position than with isolated unfair practices. Thirdly, the provision for conciliation after abortive collective bargaining prevents hasty strike action and thus avoids questions of unfair practices, which would more easily arise in connection with re-employment of strikers at the conclusion of or during a strike called immediately on the rupture of negotiations.

Inter-union strife will often lead to a charge of an unfair labour practice, as where an employer discharges a member of a union competing with the existing collective bargaining agency in the plant. Where, as permitted by some legislation, there is a union shop or closed shop provision in a collective agreement and the discharge is in pursuance of the requirements of the agreement the employer is protected. Even here, however, there may be some doubt whether the employer should be obligated to make the discharge after the collective agreement has been in force ten months and before it has been renewed, either automatically or specifically at the expiration of its term of a year. Generally, collective bargaining legislation in Canada allows a competing union to challenge the existing collective bargaining agency during a two months' period following the expiration of ten months' duration of a collective agreement. During this period, freedom to associate in any trade union might be deemed an interest paramount to the requirement by a collective agreement of membership in a particular trade union. The employees' privilege to change their bargaining agency is a

December 15th, 1947, in the case of *John East Iron Works Ltd.* v. *Local 3493, United Steel Workers of America*, as yet unreported, the Saskatchewan Court of Appeal held that it was a violation of s. 96 of the B.N.A. Act to give a provincial board power to direct reinstatement or to award back pay. *O tempora, o mores!*

[83] 1944 (Que.), c. 30, s. 50.

fundamental of collective bargaining. Where the employer is not compelled by a collective agreement, discharge of a member of a competing union is probably dangerous. The problem has recently arisen under section 502A of the Criminal Code, which makes it an offence, *inter alia*, to discharge a person for the sole reason that he is a member of a trade union. In *Canadair Ltd.* v. *The King*,[84] the majority of the Quebec Court of King's Bench, Appeal Side, quashed the conviction of a corporate employer which had discharged employees who were members of a union competing with the established collective bargaining agency, the ground of discharge being that they impeded production because of their friction with the established union. The decision is a doubtful one because the fact governing discharge seemed to be membership in a rival union rather than insubordination in employment. Section 502A was enacted at a time when employees needed some security in self-organization and it has probably outlived its usefulness now that provincial and federal collective bargaining legislation exists which covers the same ground and, in addition, provides administrative machinery for establishing collective bargaining rights.

These rights, under Canadian legislation, flow from the certification of a trade union, or the certification of bargaining representatives, as representing the majority of the employees in a defined bargaining unit. Certification may be consequent upon evidence of majority supplied by a vote directed by the administrative agency under the particular legislation, or may follow from evidence deemed sufficient without a vote. The certification results in the imposition of a duty upon both the certified union or representatives and the employer to bargain in good faith for the conclusion of a collective agreement. The legislation is not clear as to what happens if the parties take no steps towards negotiation. Can they thus prevent a competing agency from entering the picture? Where a board has power to rescind or vary any order, as is the case under the Saskatchewan Trade Union Act, the problem is susceptible of solution on that basis. Where no such specific power is given, a board may have to decide, on the application of a competing agency, whether the certified representatives have abandoned or in effect renounced their certificate or have ceased to exist or act as employees' representatives. A similar problem arises where the certified group and the employer have abortive negotiations, go through

[84] (1947), 47 Lab. Gaz. 1340. In *Society Brand Clothes Ltd.* v. *The King*, [1943] 1 D.L.R. 111, it was held that "sole reason" in s. 502A means the principal or dominant reason, rather than the exclusive reason.

the required conciliation proceedings and still fail to reach an agreement. Can a competing agency then come in?[85] The problem is related to loss of majority position by the certified group and it is relevant in this connection whether the loss of majority position follows or precedes a refusal by an employer to bargain. Clearly, if a collective agreement has been properly made, a loss of majority falling short of extinction of the bargaining agency does not affect the validity of the agreement. If there is no agreement or it has been properly terminated, there would seem to be no objection to the attempt of another agency to establish its majority position; and where a board has power to rescind or vary its orders, an employer who has bargained in good faith may be justified in seeking to be relieved of a duty to continue to bargain after the certified agency has lost its majority where no unfair practice has produced this result.[86]

Some of the collective bargaining legislation prohibits strikes prior to certification and until a conciliation procedure has been exhausted.[87] It is not clear whether this prohibition is confined to strikes for union recognition or extends to strikes for any object. Conceivably, an unorganized group of employees may decide to strike for higher wages. Must they first organize themselves and take certification proceedings? Is the policy of this collective bargaining legislation not merely to facilitate union organization but to compel it? Other collective bargaining legislation, such as the Alberta Labour Act[88] and the British Columbia Industrial Conciliation and Arbitration Act,[89] avoids the problem by requiring resort to a specified conciliation procedure before a strike can take place.

Brief mention may be made of collective agreements. While they enjoy no common law recognition,[90] they have been given force under existing collective bargaining legislation through provision for punishment of a violation by criminal prosecution.[91]

[85] *Cf.*, *Sitka Spruce Lumber Workers' Union* v. *International Woodworkers of America* (1946), 1 D.L.S. 7–603 (De Boo Labour Service).

[86] *Cf.*, Trade Union Act, 1947 (N.S.), c. 3, s. 11. See also Industrial Conciliation and Arbitration Act, 1947 (B.C.), c. 44, s. 58(2).

[87] This is so under the Wartime Labour Relations Regulations, P.C. 1003, s. 21.

[88] 1947 (Alta.), c. 8, s. 81(5). This, however, is only in the case of a "dispute", which is defined by s. 57(1)(e) to mean, *inter alia*, a dispute or difference between an employer and a majority of his employees or a majority of a unit or classification of his employees.

[89] 1947 (B.C), c. 44, s. 30. "Dispute" is defined in s 2(1) to mean *inter alia* a dispute or difference between an employer and one or more of his employees.

[90] *Cf.*, *Young* v. *Canadian Northern Ry. Co.*, [1931] A.C. 83.

[91] See Thompson, Collective Labour Agreements (1946), 24 Can. Bar Rev. 167.

IV

It has been characteristic of trade union and collective bargaining legislation in Canada for administration to be confided either to the executive head of the government's labour department or to a bi-partisan board equally representative of employer and organized employee interests and presided over by an independent lawyer chairman. The experiment of the Ontario Collective Bargaining Act, 1943, in confiding administration to the Supreme Court was short-lived owing to supersession of the act in 1944 by the federal Wartime Labour Relations Regulations.[92] The Dominion established a bi-partisan board to administer the Regulations and Ontario also set up a bi-partisan board in connection with provincial administration of the Regulations. Both of these boards, which are not full-time agencies, have continued to function in their respective spheres and they typify current administration of collective bargaining legislation in Canada.

My own view is that bi-partisan boards are not suitable agencies for administering labour law which, more than anything else today, requires trained full-time adjudicators who as public appointees are capable of framing decisions based on some consistent pattern of labour law development. The part-time bi-partisan board is by reason of its composition a compromissory tribunal, short on long-term policy, long on expediency, and ultimately dependent for its success on the skilful manoeuvering of its chairman. It is a cogent argument, of course, that bi-partisanship is a prerequisite to the minimum of confidence that employers and trade unions alike must have in the tribunal. The argument is one, however, of short-term validity because, if labour relations are to be governed by legal principle, both employers and trade unions must be prepared to yield to the impartial adjudication of a public full-time board.

The administration of collective bargaining legislation by boards raises the perennial problem of judicial review with all its esoteric learning on the difference between excess of jurisdiction and a "wrong" decision on matters within a board's jurisdiction, questions of jurisdictional fact and questions of law conditioning a board's jurisdiction. The few cases that we have had of judicial review of administrative decisions under collective bargaining legislation have revealed a severe judicial attitude tending to limit administrative labour adjudication by substantive and procedural conceptions of the common law.

[92] For a review of the experience under the Ontario Collective Bargaining Act, see (1943), 21 Can. Bar Rev. 684.

In *Re Lunenberg Sea Products Ltd., Re Zwicker*,[93] the Nova Scotia Supreme Court, in certiorari proceedings challenging the jurisdiction of a board administering the Wartime Labour Relations Regulations, decided that members of a fishing crew working on a "joint adventure" basis were not employees for the purposes of the Regulations. The judgment of the court exhibits a dreary conceptualism the persistence in which is the more remarkable when one considers that the Regulations expressly stipulate that the board shall decide whether a person is an employee if such a question arises under them. The court's answer to this was that the question arose not under the Regulations but in certiorari proceedings.[94] This is so unreal that it carries its own refutation. As I have said elsewhere, clearly if the court can instruct the board on who is an employee, it should equally feel able to say what is an appropriate bargaining unit and what constitutes bargaining in good faith. Why have a board?

Similar criticism may be made of the judgment of Bigelow J. in *Re Speers and Saskatchewan Labour Relations Board*,[95] where a board decision was invalidated for bias because the board sent its executive officer to verify the union membership of a group of employees. A trade union had sought collective bargaining rights on behalf of the employees and supported its application by evidence that a majority were members of the union. The employer countered by evidence of a secret poll of the employees which he took and which showed that the union did not enjoy majority support. The board could have made an unchallengeable order on the conflicting evidence without a check by its executive officer. The court's judgment, hence, appears to penalize the board for an over-careful discharge of duty. This was not a case where the board was receiving additional evidence from one of two interested and adverse parties but a case where it used its powers of independent investigation. If there was any "bias" (a term hardly meaningful here) it was a bias operating equally against both parties. Moreover, since the board allowed its executive officer to be cross-examined on the report of his investigation, there could be no objection that it was proceeding on material which the adverse parties had no chance to controvert.

[93] [1947] 3 D.L.R. 195. Some of the collective bargaining legislation contains a privative section purporting to protect administrative orders from being questioned by the prerogative writs. The courts have said that such a provision is no protection where the order is made without jurisdiction; see *Bruton* v. *Regina City Policemen's Association*, [1945] 3 D.L.R. 437.

[94] For a recent English view contrary to that of the Nova Scotia court, see *Rex* v. *Ludlow, ex. p. Barnsley Corp.*, [1947] 1 All E.R. 880.

[95] [1947] 2 D.L.R. 835, affirmed on appeal.

In any event, the investigation was of a corroborative character and one can only express astonishment that the Saskatchewan Court of Appeal, in affirming Bigelow J., did so on the ground that the board had improperly surrendered to its executive officer the finding of the decisive fact in the proceeding, *viz.*, whether the applicant trade union represented a majority of the employees affected by its application. The court's attitude in the case points to the possibility of attacks on such procedures of the Ontario Labour Relations Board as the refusal to disclose the evidence on which it certifies without a vote.

A related problem of judicial review is raised by the judgment of Anderson J. in *Dominion Fire Brick & Clay Products* v. *Saskatchewan Labour Relations Board*,[96] where he held that a company which manufactured fire brick and clay products, holding for that purpose leases of Crown land from which it obtained clay for its manufactures, was "engaged in mining operations". It was hence beyond the grasp of the Saskatchewan Trade Union Act by its express terms, although presumably within the federal Wartime Labour Relations Regulations which covered, *inter alia*, works or undertakings engaged in mining operations. Whether one agrees or disagrees with the interpretation of "mining operations", the court here had a function which no other agency could perform with any finality, *viz.*, to determine as between a provincial board and a federal board which was to take jurisdiction over labour relations in a particular industry which was clearly subject to the powers of one of the boards. Clearly, then, the problem here differed from that in the *Lunenberg* case or that in the *Speers* case.

V

Collective bargaining legislation in Canada has reinforced duties of collective bargaining by a requirement of conciliation in connection with the negotiation or renegotiation of collective agreements and by a requirement of arbitration in connection with disputes concerning the interpretation or violation of collective agreements.

The *ad hoc* conciliation board served a useful purpose in the early war years in articulating collective bargaining problems and exposing the differences of the parties to public scrutiny. Inevitably, stereotyped patterns made their appearance as a multiplicity of boards faced the same recurring problems. In the last few

[96] [1946] 4 D.L.R. 130; appeal quashed on other grounds, [1946] 4 D.L.R. 575; appeal to Supreme Court of Canada allowed, [1947] 3 D.L.R. 1.

years there has been a noticeable tendency to discount the position of the employer's nominee and the trade union's nominee on a conciliation board, and for the respective nominees to engage in "jockeying" in attempting to agree on a chairman, who is government-appointed if they fail to agree. Chairmen of conciliation boards, engaged in thankless work of surpassing importance, have come to be "typed" by employers and trade unions respectively, so that agreement or disagreement on a chairman by nominees to a board of conciliation has come to depend on the issue in dispute and on the chairman's known attitude to the issue. Since a board has only a power to recommend terms of settlement, its desire to reach an acceptable compromise often varies with the parties' intransigence on a particular issue.

Conciliation proceedings are a necessary preliminary to a lawful strike; and recent legislation in some provinces has additionally provided for a majority vote of all employees affected by a dispute as a condition of the calling of a strike by their collective bargaining agency.[97] The exact relation between the duty to bargain in good faith and conciliation proceedings is in doubt. A labour relations board will be loath to make a finding of failure to bargain in good faith when conciliation proceedings stand behind abortive direct negotiations between employer and trade union. There is, under existing legislation, clearly no obligation on the parties to accept the recommendations of a conciliation board and it is eminently desirable that the parties to collective bargaining should not have an agreement foisted upon them without their consent.[98] But it is sound policy to require them to negotiate on the basis of the recommendations and to make a failure so to do a breach of legal duty to bargain in good faith. The time-consuming character of conciliation proceedings is a problem that deserves attention, but it defies any solution through a fixed formula since so much depends on the issues that confront boards of conciliation.

The statutory requirement of an arbitration procedure for final settlement of disputes concerning interpretation or violation of collective agreements introduces legalism into their administration. This requirement involves not only compulsory resort to arbitration but compulsory acceptance of arbitration awards; and having regard especially to the non-enforceability of collective

[97] Alberta Labour Act, 1947 (Alta.), c. 8, s. 81(4); Industrial Conciliation and Arbitration Act, 1947 (B.C.), c. 44, s. 31A.

[98] Some of the newer legislation provides for a vote of the employees for acceptance or rejection of a conciliation board's report; see Alberta Labour Act, s. 80(7).

agreements in the courts, it is a desirable development. It is not too clear whether the statutory requirement covers disputes concerning the application of a collective agreement but, practically, this would seem to be included in the terms "interpretation or violation", although it depends too on the extent to which management is given a free hand or unlimited discretion under a particular collective agreement. The usual arbitration procedure, being the final step in grievance adjustment, provides for the nomination by each of the parties of one or more members of the arbitration board and for the selection of a chairman by the parties jointly, or by a government agency or officer in the event of their disagreement. Generally, the boards are *ad hoc*, which militates against consistent interpretation of a particular collective agreement. Hence, encouragement ought to be given to the appointment of permanent arbitrators or, at least, to the establishment of a small trained panel from which arbitrators could be selected for any cases that arise.

* * *

It is worth noting, in concluding this survey, that labour law is a newcomer to Canadian law school curricula and that Canadian writing on the subject consists of a few articles and an assortment of case notes.[99] Little of the writing can be characterized as an attempt to explore underlying conceptions or to articulate any fundamental approach, but the best of it necessarily makes that attempt.[100] A hopeful sign of the awakening of the legal profession to the importance of labour law is the establishment by the Canadian Bar Association of a committee on the subject. The achievements of the committee will grow as more lawyers acquire an understanding of labour law problems. Only the law schools can give this understanding to the profession as a whole.

[99] See the list of writings included under the title "Labour" in the Index to the Canadian Bar Review, volumes 1–22 (1923–1944). Kennedy and Finkelman, The Right to Trade (1933), is a monograph on the tort problems arising out of interference with economic relations.

[100] *E.g.*, Finkelman, *op. cit.*, *supra*, note 19.