LEGISLATION CONCERNING COLLECTIVE LABOUR AGREEMENTS

(PART II)

Canada

While, in Canada, collective bargaining has had a much shorter history than in Britain and has obtained a fairly strong foothold only in a few industries, such as building and printing in cities, steam and electric railway transportation, and in coal mining in Alberta and Nova Scotia, yet a considerable part of certain other industries operate under collective agreements. These include brewing, the manufacture of clothing and fur goods in Montreal and Toronto, boots and shoes in Quebec and to some extent in Ontario, and the large pulp and paper concerns in Ontario. There are, of course, collective agreements in effect here and there in various other industries.

An important difference between the law bearing on collective agreements in Britain and that in Canada follows from the restriction of the application of the entire Canadian Trade Unions Act of 1872[1] to unions registered under the Act and the fact that only some half-dozen unions in Canada are registered. Unregistered trade unions appear to fall within the scope of the common law doctrine of restraint of trade as they did in England before the Trade Union Act, 1871, when they were incapable of bringing an action for breach of contract before the courts.[2] Because of the limitation on the scope of the Canadian Act, almost the only significance attaching to the prohibition in section 4 of the direct enforcement of agreements between employers' associations and trade unions lies in the fact that it is, in substance, a declaration of the common law on this point. Moreover, although the question has not come directly before a court for decision, doubt has been cast on the constitutional validity of the Trade Unions Act by several eminent judges.[3] In each case, it was observed that the Act deals chiefly with property and civil rights and hence the subject matter is properly

[1] R.S.C. 1927, c. 202.

[2] *Chase* v. *Starr* (1923), 33 Man. R. 26, 233; [1924] S.C.R. 495; *Polakoff* v. *Winters Garment Co.* (1928), 62 O.L.R. 40. Not all trade unions were unlawful in England as being in restraint of trade but unions providing for strikes, etc., were so regarded. See TRADE UNION LAW IN CANADA, (Department of Labour, Ottawa, 1935) pp. 39-51.

[3] Duff J., Perdue C.J.M. and Trueman J., *Chase* v. *Starr;* Raney J. in *Polakoff* v. *Winters Garment Co.*, and Middleton J. in *Amalgamated Builders' Council* v. *Herman*, [1930] 2 D.L.R. 513. See TRADE UNION LAW IN CANADA, pp. 70-72.

one for the provincial legislatures.[4] Indeed, the Professional Syndicates Act passed by the Quebec Legislature in 1924 provided expressly for the registration of trade unions and conferred on them the right to hold property and to appear before the courts.[5]

Apart from the effect of recent legislation in Quebec, Ontario and Alberta, then, the nature of the collective agreement itself is of more practical importance at the present time than considerations arising out of the Trade Unions Act. Outside of Quebec, the only action by a trade union to enforce a collective agreement was brought in 1928 on behalf of the International Ladies' Garment Workers' Union against the Toronto Cloak Manufacturers' Protective Association, an incorporated society which had signed the agreement and of which the Winters Garment Company, a co-defendant, was a member.[6] The action was not instituted to enforce the clauses of the agreement determining working conditions such as hours, wages, etc., but was brought to recover damages from the employers' association and the member company for their failure to live up to the terms of the agreement providing for the arbitration of disputes arising out of the interpretation or application of the agreement. The union claimed that the Winters Garment Company had violated the agreement by requiring its employees to give security that they would accept piece-rates and by locking out certain employees while the Association, on its part, had refused to investigate the matter as required by the agreement.[7] It was not a question, then, of giving effect to a collective agreement through enforcing individual contracts of service in which were incorporated certain terms of the agreement but, chiefly, one of enforcing the provisions which the two associations, parties to the agreement, had, themselves, undertaken to observe. If we distinguish these two kinds of provisions according to the theory of collective agreements in German law, as described in the earlier part of this article, then the action of the International Ladies' Garment Workers' Union was one to enforce the "contractual" or "obligatory" clauses of the agreement, not the "normative" clauses. The distinction was of little or no significance in this case but it is essential to any adequate consideration of the

[4] That part of the present section 29 of the Trade Unions Act which frees trade unions from liability as conspiracies in restraint of trade was embodied in the Criminal Code when it was drawn up in 1892 and now stands as sec. 497.

[5] See *infra*, p.

[6] *Polakoff* v. *Winters Garment Co.* (1928), 62 O.L.R. 40.

[7] *The Labour Gazette* (1926), Vol. 26, p. 862.

nature of collective agreements and of their enforcement by courts of law.

One of the defences in the *Polakoff* case was "that the contract is itself in unreasonable restraint of trade and hence unenforceable in the courts."[8] The case turned, however, on the question of the plaintiff union's capacity to maintain an action rather than on the nature of the agreement. The Court held that

> the International Ladies' Garment Workers' Union is an illegal society incapable because of its illegality of maintaining this action, or indeed any other civil action in an Ontario court[9]

and that this illegality was due to the fact that the rules of the union and the provisions of the agreement were in restraint of trade at common law.[10] The contractual nature of the agreement was not discussed in the judgment but appears from the language used to have been accepted.

Light is shed on the legal position of collective agreements in Canada, however, by two cases which were decided by the Judicial Committee of the Privy Council.[11] Neither action was instituted to enforce a collective agreement as between employer and a trade union or to recover damages for breach of such an agreement. Both cases involved a claim by a former employee of the defendant company for reinstatement or for damages for dismissal in violation of the terms of a collective agreement between a company and the trade union of which most of the employees were members. There were, however, important differences between the two actions.

In the *Caven* case, it was "a matter of admission that the contract of service between the respondents and the appellant was regulated by this agreement."[12] The plaintiff, a member of the Order of Railway Conductors, claimed that he had been dismissed in violation of a clause of the agreement which pro-

[8] Raney J., *op. cit.* at p. 41.

[9] 62 O.L.R. at p. 58.

[10] As the rules of most trade unions were held to be in England prior to the Trade Union Act, 1871, and, but for the limited legality conferred by that Act, as they are still held to be. *Russell* v. *Amalgamated Society of Carpenters and Joiners* [1912] A.C. 421; *Braithwaite* v. *Amalgamated Society of Carpenters*, [1922] 2 A.C. 440; *Cox* v. *National Union of Foundry Workers* (1928), 44 T.L.R. 345. None of the labour cases cited in the *Polakoff* case has to do with a collective agreement but only with the character of the trade union at common law or under the Trade Union Act, 1871. See TRADE UNION LAW IN CANADA, pp. 39-52.

[11] *Caven* v. *Canadian Pacific Railway Company*, [1925] 1 D.L.R. 122; 3 D.L.R. 841, and *Young* v. *Canadian Northern Railway*, [1929] 4 D.L.R. 452; [1930] 3 D.L.R. 352; [1931] 1 D.L.R. 645. Only the final judgments in these cases are noted here.

[12] Lord Shaw, [1925] 3 D.L.R. 841 at p. 841.

vided for a certain procedure of investigation before an employee should be dismissed. The Judicial Committee held that this provision for settlement of questions of discipline and dismissal was "ancillary to, and indeed part of, the contract of service itself."[13] Accordingly, since the evidence showed that the investigation had been made as required by the agreement and just cause for dismissal found, the

> decision must be respected and honoured by both parties. It would not, in the judgment of their Lordships, have been open to the railway company to ignore it or treat it as worthless. Upon the contrary, if it had been established that just cause for dismissal did not exist then reinstatement would have resulted by contract, and this result would, if legal proceedings had ensued, have been affirmed by law. Equally, from the other point of view, when it has been affirmatively established that a just cause did exist for dismissal, then a Court of law seised of that fact must give effect to it and the defence must be sustained. The principle of law thus stated is seen to be one of equal obligation to both sides in such a dispute, binding upon both employer and employed.[14]

The judgment of the Privy Council, then, was to the effect that certain terms of the collective agreement formed part of the plaintiff employee's contract of service with the company and that there was no violation of the terms of the contract. Hence, no valid claim for damages existed. There is no suggestion in the judgment that the plaintiff was bound directly by the collective agreement as such. He was bound only by his own contract of hiring which contained certain provisions of the collective agreement.

In *Young* v. *Canadian Northern Railway*,[14A] the action was based on the plaintiff's dismissal in alleged violation of his "seniority rights" claimed under the provisions of the collective agreement between the union and the company. The plaintiff was not a member of the union but had been working in the railroad shops under union conditions. It was pointed out in the judgment :

> The outstanding question for decision is whether the railway company was contractually bound to the appellant in the terms of Wage Agreement 4, *i.e.*, whether the contract subsisting between the appellant and the railway company included provisions similar to the provisions of Wage Agreement 4. Unless that position can be established, the appellant is not in a position to sue the railway company for any alleged breach of those provisions . . . . .
>
> Their Lordships feel a doubt whether the true question has really been considered by all the learned Judges in the Courts below—*viz.*,

[13] *Ibid.*, at p. 848.
[14] *Ibid.*, at p. 850.
[14A] [1929] 4 D.L.R. 452; [1930] D.L.R. 352; [1931] 1 D.L.R. 645.

whether the appellant has established that the contract for service which existed between himself and the railway company included terms by which the railway company either bound itself to the appellant to observe the provisions of Wage Agreement 4, or bound itself to the appellant to observe provisions similar to those contained therein. . . Further, if that question be answered in the affirmative, there can be no question of the contract being unenforceable for want of mutuality or otherwise. It is simply a contract of employment which embodies special terms. . . . .

There can be no doubt upon the evidence that in fact, the provisions of Wage Agreement 4 were applied by the railway company to all its employees in its locomotive and car department. . . . .

Their Lordships, however, are unable to treat these matters as establishing contractual liability by the railway company to the appellant. The fact that the railway company applied the agreement to the appellant, is equally consistent with the view that it did so, not because it was bound contractually to apply it to him, but because as a matter of policy it deemed it expedient to apply it to all. .

But the matter does not quite rest there. When Wage Agreement 4 is examined, it does not appear to their Lordships to be a document adapted for conversion into or incorporation with a service agreement, so as to entitle master and servant to enforce *inter se* the terms thereof. It consists of some 188 "rules," which the railway companies contract with Division 4 to observe. It appears to their Lordships to be intended merely to operate as an agreement between a body of employers and a labour organization by which the employers undertake that as regards their workmen, certain rules beneficial to the workmen shall be observed. By itself it constitutes no contract between any individual employee and the company which employs him. If an employer refused to observe the rules, the effective sequel would be, not an action by any employee, not even an action by Division 4 against the employer for specific performance or damages, but the calling of a strike until the grievance was remedied.[15]

It appears, then, from the *Caven* and *Young* cases that some of the provisions of a collective agreement may form part of the contracts of employment between the employer and the individual members of the trade union. But, where there is no special legislation, a collective agreement in Canadian law is not, by itself, a contract between any individual member of the trade union and the employer making the agreement. Neither is a collective agreement regarded as a contract between the trade union and the employer since the remedy for breach is not an action by the union for performance or for damages.[16]

In 1924, the Quebec Legislature, at the request of the Confederation of Catholic Workers of Canada, passed the Pro-

[15] Lord Russell of Killowen in [1931] 1 D.L.R. 645 at pp. 648-650.

[16] For two Ontario cases to be distinguished from the *Young* case, see *Ziger* v. *Shiffer and Hillman Co.*, [1933] 2 D.L.R. 691, and *Aris* v. *Toronto, Hamilton and Buffalo Railway Co.*, [1933] 1 D.L.R. 634, referred to in TRADE UNION LAW IN CANADA, pp. 65-67.

fessional Syndicates Act[17] based on the laws of France on industrial associations and collective agreements. Where a syndicate has been formed in accordance with the Act and its rules have been approved by the Lieutenant-Governor in Council, it is constituted "a corporation enjoying civil rights." As the members of the executive committee of a professional syndicate must be British subjects, the so-called "international" unions with headquarters in the United States and only local branches in Canada appear to be outside the scope of this statute.

The Act, as amended, provides that a professional syndicate may —

> Enter into contracts or agreements wi h all other syndicates, societies, undertakings or persons respecting the attainment of their objects and particularly such as relate to the collective conditions of labour;
>
> Exercise before any court of law, all the rights of their members with respect to acts directly or indirectly prejudiciable to the collective interest of the profession which they represent . . .[18]

Further, it is stipulated —

> The collective labour agreement shall give rise to all the rights and recourses established by law for the enforcement of obligations.[19]
>
> The groups who may appear before the courts and who are parties to the collective labour agreement may exercise all rights of action arising out of such agreement in favour of each of their members, without having to establish a transfer of claim by the person interested, provided that the latter has been advised and has not declared that he was opposed thereto. The person interested may intervene at any time in the proceedings taken by the group.
>
> Whenever an action arising out of the collective labour agreement is brought by a person or by a group, the other groups with authority to appear before the courts, whose members are bound by the agreement, may intervene at any time in the proceedings taken, on the grounds of the collective interest which the result of the litigation may have for their members.[20]

An agreement, which must be in writing and a copy deposited with the Minister of Labour, binds those who sign it personally or through a representative, the members of any association which is a party or later become a party to it, unless they withdraw from membership within eight days, and finally, any persons who later join such an association.

[17] R.S.Q. 1925, c. 255; Stat. of Que., 1926, c. 62; 1929, c. 70; 1930-31, chaps. 19, 98; 1931-32, c. 87; 1934, c. 67.
[18] Sec. 6.
[19] Sec. 19.
[20] Sec. 20.

There have been few cases to enforce a collective agreement under the Professional Syndicates Act, but the courts have upheld numerous actions by individual workmen under section 14a for wages in accordance with a "fair wages" schedule contained in building contracts let by public authorities.[21] With these cases, this article is not concerned.

Ten years after the enactment of the Professional Syndicates Act, the Collective Labour Agreements Extension Act was passed.[22] This statute, also, was the result of petitions to the Government by the Confederation of Catholic Workers. It is based largely on the German Order on Collective Agreements of 1918.[23] The Act, as amended in the following year, empowers the Lieutenant-Governor in Council, on the recommendation of the Minister of Labour, to extend the operation of certain terms of a collective agreement between one or more associations of employees and one or more employers or associations of employers so as to bind all employers and employees in the same trade, industry or business[24] within the district covered by the agreement. Petition for the extension of an agreement may be made to the Minister of Labour by any association of employees or employers which is party to the agreement. To safeguard the interest of non-parties, the Minister is required to give notice of the petition in the Quebec Official Gazette and for thirty days thereafter objections may be made to the extension of the agreement. If the Minister, then, is satisfied that its provisions "have acquired a preponderant significance and importance for the establishing of the conditions of labour" in the industry or business, he may recommend its extension, with any alterations he may deem expedient, to the Lieutenant-Governor in Council. An agreement which has been made binding may be amended in the same way. Account must be taken in the agreements of "the economic zones" of the province in establishing labour conditions. Nothing in the Act is to be deemed as compelling any person to become or not to become a member of any association.

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[21] In an unreported case, *L'Association des Platriers de Montreal* v. *Tessier*, the Superior Court on January 31, 1933, gave judgment for the union in an action for wages due under a collective agreement although the workers had accepted lower rates and some of them had dropped their membership in the union. For information as to cases under sec. 14a see TRADE UNION LAW IN CANADA, pp. 76-78.

[22] Stat. of Que., 1934, c. 56, amended 1935, c. 64.

[23] Bills to a similar effect have failed to pass in France. See first part of this article in (1936) 14 Can. Bar Rev., p. 102.

[24] The amendment of 1935 brings within the Act collective agreements in "business" as well as in industry or trade.

When a collective agreement is applied by order in council to all employers and employed in the industry, it governs all the individual labour contracts within its scope except those providing more favourable conditions for the worker, unless this variation from the terms of the collective agreement has been expressly prohibited by the agreement itself.

In the original Act, it was stipulated that only the wages and hours terms of the agreement might be given general application. Under the 1935 amendment, the provisions as to apprenticeship and the proportion of apprentices to qualified workmen may also be made generally binding.

The enforcement of an agreement is entrusted to a joint committee which must be set up by the parties and to which not more than two persons representing other employers and workers in the industry may be added by the Minister of Labour. The committee may check up wage-rates, working hours and apprenticeship conditions to see that they are in accordance with the agreement and it is given authority to represent the workers, without having to prove an assignment of claim, in any action arising in their favour from an agreement. By the 1935 amendment, a joint committee is constituted a corporation for the purposes of the Act. Neither the committee nor its members may be held liable for damages to an employer through a suit brought in good faith but unfounded in fact. All claims by employees, associations or joint committees are prescribed by six months.[25] A committee may, in accordance with the agreement, levy on the employers, or on both employers and employees, the amount required to meet its expenses in enforcing the agreement, provided that the rate of assessment and the estimates of receipts and expenses are approved by the Lieutenant-Governor in Council and quarterly reports made to the Department of Labour, which is to act as trustee of any balance at the expiration of an agreement.[26] The levy, however must not exceed one-half of one per cent of the workman's wages or of the employer's payroll.

[25] The president of the Confederation of Catholic Workers of Canada, writing in *La Vie Syndicale*, organ of the Catholic Unions of Montreal, September, 1935, expresses the opinion that the law is not satisfactory in so far as it places "incorporated" and unincorporated trade unions on an equal footing as regards the right to petition the Minister of Labour and to institute proceedings in the courts. The National Catholic Unions which compose the C.T.C.C. are nearly all "incorporated" under the Professional Syndicates Act, 1924.

[26] From May 18, 1935, to the end of the fiscal year on June 30, 1935, 13 joint committees availed themselves of this privilege and the rates of assessment were approved by the Lieutenant-Governor in Council (General Report of the Minister of Labour of Quebec, 1934-35). It is to be presumed that other committees have taken similar action since that date.

No provision was made for penalties in the principal Act but, under the amendment, any person who violates a wages schedule may be required to pay to the joint committee, as liquidated damages, twenty per cent of the wage claim as determined by a court. For violation of any other provision of an agreement made obligatory or for making false returns to a joint committee or its inspector or for refusing information or obstructing the latter in his duties, fines may be imposed. The Confederation of Catholic Workers has recently requested a change in the law so that fines may be imposed for the violation of the obligatory wage-rates instead of liquidated damages. Another amendment of 1935 defines an agreement that may be extended as one made, on the one side, by "one or more associations of *bona fide* employees according to the decision of the Minister of Labour." The latter stated in the Legislative Assembly that the qualifying words were added "with the purpose of preventing the organization of company unions and the recognition of Communist unions."[27]

A large number of actions by individuals have come before the Quebec Courts under the Collective Labour Agreements Extension Act. Almost all were claims for wages at the rate fixed in an agreement. In January, 1935, numerous claims were determined by a judgment of Mr. Justice Stackhouse of the Circuit Court of Montreal involving the building trades agreement. The plaintiff, a painter employed by a master painter and contractor, claimed wages at the rate fixed in the collective agreement which had been extended by order in council to apply to all employers and employees in the building industry in Montreal. Neither the plaintiff nor the defendant was a party to the agreement. Judgment was given for the plaintiff.[28]

Several actions were brought by workmen employed in the construction of buildings erected for sale by the proprietor on his own land. The defendant claimed that as he was not engaged in the building industry and was not a building contractor, he was not an employer in the same industry as the employers making the agreement and the agreement could not, therefore, be applied to him. This defence failed before two

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[27] *The Gazette*, Montreal, May 2, 1935. In the French version of the Act, the phrase runs "une ou plusieurs associations de salariés *bona fide*" which might be translated "one or more *bona fide* associations of employees." It would appear from the Minister's words that the term *bona fide* was meant to apply to the associations and not to the employees. This inference has been confirmed by the Department of Labour of Quebec.

[28] *Theberge* v. *St. Denis*, C.C.M. No. 18221, January 8, 1935.

judges of the District of Montreal.[29] In one case, the court stated :

> In our opinion, the word "industry" in these texts indicates the nature of the work, the result of the labour, it does not restrict in any way the meaning of the word "employer" and applies to all employees and employers in the building trades. It does not imply the idea of speculation. Industry is the transformation of building materials into a building by the labour of building workers.[30]

Later, an ice-dealer employing a workman to repair his ice-house was held to be bound by the agreement covering the Montreal building trades.[31]

> The work was not a simple repair undertaking. It was work required by the old age and condition of the building and entailed the reconstruction of the walls. These repairs were of a nature of *grosses reparations*.[32]

On the other hand, in October, 1935, the court dismissed an action for wages, at the rate fixed in an agreement made binding under the Act, which was instituted by a painter who was employed in the upkeep of office buildings by the defendant company whose business it is to manage such properties for the owners.[33] Mr. Justice Chase-Casgrain of the Superior Court of Montreal pointed out that the Act provided that an agreement might only be extended to bind "all the employees and employers in the same trade or industry." In his opinion, the employing company was not an employer in the same industry as the employers who were parties to the agreement. He distinguished this claim from the *Forest* cases in which the defendant was "a professional builder" erecting houses for sale.[34] He likened the case to that of a private householder :

> Although the defendant is a company, it seems to the Court that, in actual fact, its position and obligations are the same as those of a private individual, owner or tenant of a house, who employs a painter to paint the woodwork of his house in order to keep it in a desirable condition.[35]

Moreover, since the order in council extending the agreement made special stipulations regarding building contracts of less than

[29] Archambault C. J. in *Michaud* v. *Forest* (1935), Q.R. 73 S.C. 42; McDougall J. in *Bertrand* v. *Forest* (1935), Q.R. 73 S.C. 154.

[30] Archambault C. J. in *Michaud* v. *Forest*, *supra*, at p. 47 (translated).

[31] *Lalumière* v. *Dupuis* (1935), Q.R. 73 S.C. 339.

[32] Mackinnon J. at p. 841. Art. 469 of the Civil Code defines "greater repairs" as "those of the main walls and vaults, the restoration of beams and the entire roofs and also the entire reparation of dams, propwalls and fences." Art. 468 stipulates that the owner and not the tenant shall be responsible for "greater repairs." For all others, the tenant is liable.

[33] *Hodgkin* v. *Coristine Realties, Ltd.* (1935), Q.R. 73 S.C. 491.

[34] At p. 497 (translated).

[35] At p. 495.

$5,000 and concerning those signed before the date of the order, he was of the opinion that the collective agreement applied only to building contracts and not to a contract for the upkeep of a property. He considered that the Act was intended to provide for reasonable rates of wages to be paid by employers in industry who were employing in their establishments, for the purposes of their business, persons working at certain trades but that it was not meant to fix wages which private persons were to pay who were not employing persons for the purposes of their business. To interpret the law as applying to a contract for the upkeep of a private house would result in depriving men temporarily unemployed of a chance of work. In *Lalumière* v. *Dupuis*, it was observed that the work deemed to be covered by the agreement under the Act was reconstruction, at least in part, of a building and not small repairs.

The 1935 amendments to the Act, which were assented to on May 18, before the judgment in the *Hodgkin* case, included a provision concerning the building industry under which no agreement made obligatory may apply to building in connection with the agricultural industry and workmen permanently employed in the maintenance of religious and charitable institutions or of immoveables utilized in whole or in part as manufacturing establishments may be paid a lower hourly wage than that fixed in the agreement, but the agreement must stipulate the rate to be paid under the circumstances. After this amendment, the Montreal building trades agreement was revised to specify the wage-rates to be paid to maintenance men employed throughout the year in institutions, office buildings, apartment houses, etc. General application was given to the new clauses by an order in council of August 12.[36] It appears, then, that the provincial authorities and the Confederation of Catholic Workers, which sponsored the amendments, were of the opinion that a contract for employment as a building worker, such as that with a company engaged in the management of buildings, was governed by the collective agreement for the building industry. The judgment has accordingly been appealed.

In September, in *Sekel* v. *Kelly*,[37] the plaintiff's claim for wages at the rate fixed in the Montreal building trades agreement was allowed, the Court holding that the construction of an underground conduit for electric wires on which he was employed was covered by the agreement. In another case, the joint

[36] O.C. 2225, Quebec Official Gazette, August 17, 1935.
[37] (1935), Q.R. 73 S.C. 396.

committee established to enforce the agreement in the shoe industry was successful in an application to have certain workers paid according to the hourly rate fixed in the agreement for that industry, although they had made their contracts on a piece-work basis. Mr. Justice Boyer in the Bankruptcy Division of the Superior Court of Montreal pointed out that the law provides that —

> a worker, whatever agreement he himself may make, is entitled to claim the difference between what is paid him and the minimum wage fixed under the authority of the law. . . . . The fact that the workers are on piece-work does not prevent the application of the law seeing it is based on the number of working hours and requires the employer to keep a true record of the hours and that otherwise the law would be ineffectual.[38]

Several prosecutions under the amended Act have been successful. Most of these have been for obstructing the members of the joint committees or their inspectors in their duties of inspecting employers' records as to wages and hours. One complaint was dismissed on the ground that it had been sworn out by an inspector and not by a member of the joint committee as the court deemed necessary.[39]

At the annual meeting of the Confederation of Catholic Workers in September last, several proposals to amend the Collective Labour Agreements Extension Act were approved. One resolution advocated legislation to provide for compulsory arbitration on the application of "an incorporated trade union" when employers and workers cannot come to an agreement.[40] Another motion urged the establishment of a Labour Court in the Province of Quebec.[41] The plea for provision for compulsory arbitration either through an amendment to the Act on collective agreements or to the Quebec Trade Disputes Act[42] is put forward on the ground that in some industries a few influential employers are able to prevent the conclusion of a collective agreement although practically all the workers and the other employers are in favour of it. Such a condition is said to exist in the printing trades in Montreal and among the asbestos and textile workers.[43]

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[38] Translated from text of judgment published in *La Vie Syndicale*, January, 1936, p. 11.

[39] *The Star*, Montreal, December 10, 1935.

[40] As reported by Alfred Charpentier, president, C.T.C.C., in *La Vie Syndicale*, October, 1935, p. 3. On incorporation of trade unions under the Professional Syndicates Act, see p. 225, and footnote on p. 226.

[41] *The Labour Gazette*, 1935, Vol. 35, p. 909.

[42] R.S.Q. 1925, c. 97.

[43] *La Vie Syndicale*, November, 1935, p. 3.

In connection with the recommendation that a Labour Court should be set up in Quebec, a brief digression on special courts with jurisdiction in certain labour cases may be of interest. Such courts have been set up in several European countries and in Australia and New Zealand[44] but there is a sharp distinction between the character of the courts in different countries. In Australasia and in Denmark,[45] these courts are courts of arbitration designed to aid in maintaining industrial peace. They have to do, primarily, with disputes as to working conditions between employers and trade unions when the parties fail to reach an agreement and not with the legal rights of the parties except as these are defined for the purpose of conciliation and arbitration. Penalties for non-observance of awards of the arbitration courts or of collective agreements are imposed by the ordinary courts in most cases. In Norway,[46] Sweden[47] and Germany,[48] the Labour Courts have jurisdiction only in "collective disputes" about the legal rights of the parties to a collective agreement. In other words, they decide questions as to validity, interpretation or maintenance of an agreement. Disputes about "interests" or the conditions of work to be laid down, are settled by the parties themselves in concluding a new agreement or through the official conciliation machinery. Actions by individuals are decided by the ordinary courts. In Germany, however, before the National Socialist revolution, the Labour Courts had also jurisdiction over disputes between employers and individual workmen.

In all countries with special Labour Courts, it is provided either that one or more members of the court shall be appointed on the nomination of the employers and an equal number on the nomination of the trade unions, as in Germany and the Scandinavian countries, or, where the court consists of only one judge as in some cases in Australia and in New Zealand, that the judge may refer any matter to a local industrial board or may be assisted by two assessors representing employers and trade unions. Independent members of the courts are required

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[44] I.L.O. Conciliation and Arbitration in Industrial Disputes, 1933. Chapters on Australia and New Zealand.

[45] Act respecting Permanent Arbitration Court. Bulletin of the International Labour Office, Basle, 1910, vol. V, p. 395.

[46] I.L.O. Legis. Series, 1927—Nor. 1-A. The Norwegian Court was first established in 1915.

[47] Legis. Series, 1928—Swe. 3.

[48] Legis. Series, 1926—Ger. 8. The Labour Courts Act set up a system of district and state Labour Courts with a federal Labour Court of Appeal. Collective disputes were formally withdrawn from the Labour Courts on May 1, 1934, as they had been in practice in 1933.

to have the same qualifications as judges of the Supreme Court but in Denmark, the Permanent Arbitration court is a bipartite body. In France, there are no special courts for dealing with collective disputes on labour matters but disputes arising out of individual labour contracts may be settled in the local Probiviral Courts. These are made up of equal numbers of employers and employed and are instruments of conciliation in the first instance but if conciliation fails, they fall back on judicial procedure. If a dispute involves more than 1,000 francs, an appeal may be made to an ordinary court.[49]

In South Africa, the Commission on Industrial Legislation points out in its report in 1935 that in each of the large centres the Department of Justice has arranged for the same magistrate and public prosecutor to deal with all cases under the industrial code. The report continues :

> We strongly recommend that the present arrangements under which cases under industrial legislation are assigned to special magistrates and prosecutors should not only be continued but also extended. . . . We also recommend that trained public prosecutors should be sent to handle industrial cases at centres where the persons usually entrusted with prosecuting are not sufficiently conversant with the industrial laws.[50]

To return to the operation of the Collective Labour Agreements Extension Act of Quebec. The Confederation of Catholic Workers, which has been active in promoting the formation of unions and the conclusion of agreements, reported in September, 1935, that between November, 1933, and November, 1934, the membership of the affiliated unions had increased from 26,000 to 30,000 and during the next ten months it had risen to 38,000. Thirty-four local unions had been formed during the past twelve months.[51] About sixty collective agreements were given general application by order in council between April 20, 1934, when the Act went into effect, and March 1, 1936. Of these, some fifty, covering approximately 135,000 workers, were in effect at the end of 1935. The classes of workers affected included those employed in construction in about ten different areas, barbers and hairdressers in eleven districts, bakers and bread distributors in six areas, longshoremen for inland and ocean vessels at Montreal, fur and millinery workers in Montreal, printers in Quebec City and in Chicoutimi and persons employed in ornamental iron and bronze workshops in Quebec and Montreal. In

[49] I.L.O. International Survey of Legal Decisions on Labour Law, 1933. p. xx.

[50] P. 139.

[51] *La Vie Syndicale*, October, 1935, p. 5.

addition, legal effect has been given throughout the province to the agreements covering granite and stone cutting and the manufacture of boots and shoes, women's cloaks and suits, men's clothing and furniture and gloves. Lower rates of wages and, in some cases, longer hours are permitted in the smaller towns than in the larger centres. It has been estimated by the Quebec Department of Labour that these agreements have effected an average annual increase of $60 for the workers concerned.[52] Most of the agreements are stipulated to remain in force for one year or for the season and to be renewed automatically unless one of the contracting parties gives notice of an intention to modify or revoke an agreement. Many of these have been amended in one or more respects. All the agreements lacking the automatic renewal clause have been renewed except three, those relating to longshoremen employed in Montreal in connection with sea-going vessels, to electricians in Three Rivers and to fur workers in Montreal.

All the agreements legalized appear to have been made by trade unions on the workers' side, except those relating to granite and stone cutting. In these two cases, the agreements were concluded by a number of employers and a committee of employees. Most of the unions which are parties to agreements are National Catholic Unions but the agreements in men's clothing, cloaks and suits, millinery, fur sewing and in building in Montreal and printing in Quebec were entered into by so-called international unions, that is, unions having headquarters in the United States and usually affiliated with the Trades and Labour Congress of Canada.[53] Both an international and a national Catholic Union were signatories to the agreement of the building trades in Montreal, the barbers' agreement in Ste. Hyacinthe and the printers' agreement in Quebec City.

In the agreements covering the manufacture of men's and boys' clothing in all parts of the province and of millinery in the Montreal district which were approved by order in council on July 24, 1935, there is a clause prohibiting "any strike or lockout having for its object a change of the conditions of the present order in council." The trade unions which are party to these agreements are international unions. In both industries, a strike has taken place since the extension of the agreement but in neither case was the stoppage for the purpose of effecting

[52] Letter from Secretary, Department of Labour of Quebec, February 21, 1936.

[53] Data regarding the agreements have been taken from the text of the agreements as published in the Quebec Official Gazette.

a change in the agreement. In the millinery industry, a strike was called against one manufacturer who had violated a clause of the collective agreement providing for a closed union shop, a question unaffected by the legalization of the sections of the agreement relating to wages, hours and apprentices. In men's clothing, the strike was virtually one to enforce the obligatory terms of the agreement. Employees in several contractors' shops ceased work with the goodwill of the contractors with the object of compelling the manufacturers to allow the contractors a sufficient price to enable them to pay the wage-rates fixed in the agreement.[54]

The Collective Labour Agreements Extension Act stipulates–

> The Lieutenant-Governor in Council may refuse to apply the provisions of this Act to any industry liable, in his opinion, to suffer, through their enforcement, serious injury from the competition of foreign countries or of other provinces.

In the matter of interprovincial competition, the representatives of the joint committees appointed to enforce the agreements in Quebec have declared themselves opposed to separate provincial agreements in competitive industries.[55] A possible solution of the problem of such competition in labour conditions is indicated by the action of employers and trade unions in the millinery and women's clothing industries after the enactment of the Industrial Standards Act in Ontario.[56] This statute also provides that the wages and hours terms of an agreement may, on certain conditions, be made binding on the whole industry within the district specified. The millinery workers' international union negotiated agreements with the millinery manufacturers' association of Montreal and with manufacturers in Ontario at the same time. Both agreements provided for a 40-hour week and a five-day week with provision for limited overtime in rush seasons. Weekly wages fixed in the Montreal agreement were one dollar less for six classes of workers than in the Ontario

[54] In the case of the Amalgamated Clothing Workers of America, the clause is an amendment to the original agreement. The United Hatters, Cap and Milinery Workers' International Union had its first agreement approved on this date. It is a frequent practice to insert in collective agreements a provision that grievances or differences between the parties shall be referred to a joint conciliation or arbitration committee before a strike or lockout is called but a stoppage is not prohibited if the procedure has been followed without success. Clauses in collective agreements forbidding or postponing strikes or lockouts have, of course, no legal effect if the agreement is only morally binding. There has been no determination of the legal nature of a stoppage of work directed against the wages or hours terms of an agreement made binding in law.

[55] *La Vie Syndicale*, September, 1935, p. 12.

[56] Stat. of Ontario, 1935, c. 28.

agreement, with the same rate for the one remaining category. The Ontario agreement was made obligatory on the millinery industry throughout the province but it was stipulated in the order in council that the provisions as to hours should not become effective until similar provisions were put in force in the Montreal district. The Montreal agreement was gazetted a few days later.[57] Similarly, the agreement of the International Ladies' Garment Workers' Union covering the making of women's cloaks and suits was made binding on all employers and employed in this industry in Ontario and Quebec. In this case, the same minimum wage-rates and maximum hours of labour were established in both provinces.

The Industrial Standards Act of Ontario differs in several important respects from the Quebec law on collective agreements but the underlying principle is similar — the application of a common rule as to wages and hours of labour to each of the various classes of labour in an industry, if agreement is reached by a sufficient proportion of the employers and workpeople concerned. In Ontario, however, the Act expressly authorizes the Minister of Labour to promote the conclusion of collective agreements by calling conferences of the employers and employees for the purpose of negotiating agreements if representatives of either group request him to do so. In Quebec, the Minister of Labour acts only after an agreement has been reached and petition for its extension has been submitted to him. Again, under the Quebec law, notice of the petition with a copy of the agreement and the names of the employers and trade unions signatory to it are published in the Quebec Official Gazette and a period of thirty days allowed for any persons to lodge objections to the extension of the agreement. In Ontario, there is no explicit provision made for public notice of the proposal to legalize an agreement or of its terms and signatories or for the hearing of arguments against it. Sections 9 and 10 of the Act read :

> If, in the opinion of the Minister a schedule of wages and of hours of labour for any industry is agreed upon in writing by a proper and sufficient representation of employees and of employers, he may approve thereof, and upon his recommendation, the Lieutenant- Governor in Council may declare such schedule shall be binding upon every employee and employer in such industry in such zone or zones to which such schedule applies.

[57] The millinery agreement in Quebec was signed by hat manufacturers and was extended to apply only to "the industrial manufacture of hats," that is, to places where hats are made and not to millinery shops where hats may be trimmed or altered after being sold to the public. (Information furnished by Department of Labour of Quebec, February 27, 1936).

> No such schedule shall become effective until ten days after publication of the order in council in the Ontario Gazette.

A curious anomaly in the Ontario Act is the definition of the term "association of employees" which does not occur elsewhere in the statute and which was evidently overlooked in the revision of the Bill :

> An "association of employees" shall mean a group organized for the purpose of advancing their economic conditions and which is free from undue influence, domination, restraint or interference by employers or associations of employers.

This definition appears to have been drafted with a view to ensuring the independence of an association of workers in making an agreement but, unlike the Quebec Act, neither the Ontario statute nor the schedules make any reference to associations or to trade unions. Section 8 stipulates that "parties to every agreement" shall assist in maintaining the standards established. Presumably, the parties are those who sign the agreement either personally or through an agent. If trade unions as such are not parties to the agreements, although in the case of certain agreements, the union representatives were virtually the negotiators on behalf of the workpeople, this fact sharply distinguishes the Ontario statute from the law in Quebec and in other countries where legislation renders the terms of an agreement, arrived at as a result of collective bargaining between one or more employers or associations of employers and one or more trade unions, enforceable as between the parties or as common rules in the industry.

The effectiveness of collective bargaining, however, whether agreements are legally or morally binding, is dependent to a large extent on the degree of organization among employers and employed and, more particularly, on the strength of the trade unions. Where there are no unions, or where the unions are weak and cover only a small part of the industry in any locality, whatever collective agreements are concluded are likely to have a relatively slight influence in stabilizing labour conditions on a satisfactory level. Such has proved to be the case in many industries during the past few years. In some respects, the operation of the Industrial Standards Act of Ontario seems to resemble that of the Trade Boards Act[58] of the United Kingdom which was designed to provide machinery for fixing minimum wages in trades in which employers and employed were unorganized and in which wages were unduly low. The statute,

[58] 9 Edw. VII, c. 22; 8 and 9 Geo. V, c. 32.

enacted in 1909, may be applied by the Minister of Labour to any trade

> if he is of opinion that no adequate machinery exists for the effective regulation of wages throughout the trade, and that, accordingly, having regard to the rates of wages prevailing in the trade, or any part of the trade, it is expedient that the principal Act should apply to that trade.
>
> If at any time the Minister is of opinion that the conditions of employment in any trade to which the principal Act applies have been so altered as to render the application of the principal Act to the trade unnecessary, he may make a special order withdrawing that trade from the operation of the principal Act.[59]

Minimum rates of wages are fixed in each trade by a trade board, made up of equal numbers of employers and employed with one or more members nominated by the Minister of Labour. The rates agreed upon must be confirmed by the Minister of Labour who may send them back for reconsideration. In this connection, interest attaches to the arguments advanced by officers of the Confederation of Catholic Workers in favour of a minimum wage law applicable to any industry in which it is impossible to take advantage of the Collective Labour Agreements Extension Act owing to the lack of organization among the workers and in which wages are very low. The matter appears to be still under consideration and the Confederation has not yet submitted to the Quebec Government its proposal for a minimum wage law to supplement the Collective Agreements Act.[60]

For the purpose of carrying out the Industrial Standards Act of Ontario and the schedules of wages and hours, the Lieutenant-Governor in Council is empowered to appoint one or more "Industrial Standards Officers" with full powers of investigation. One such appointment has been made from the ranks of trade union officials. At the conferences of employers and workers held for the purpose of reaching an agreement, this officer presides as chairman and gives general assistance to the members. The Ontario law does not require a joint committee to be set up to enforce an agreement as the Quebec Act requires, but it provides that, for the purpose of hearing complaints and assisting generally in the application of a schedule, a board of not more than five members may be established by the employers and employed in any zone or group of zones to which a schedule of wages and hours applies. In practice, it appears that a board

[59] 8 and 9 Geo. V, c. 32, sec. 1 (2) and (3).
[60] *La Vie Syndicale*, January and February, 1936.

is usually appointed when the agreement is made. In several schedules it is stipulated that the joint board shall define the various classes of workers. In the building trades, the boards are empowered to fix the wage-rate to be paid to aged and handicapped workers and to establish rates for work contracted for and accepted before the schedule went into effect, if due notice of such work is given to the board. To the provincial Minimum Wage Board, which was appointed to administer the statute providing for minimum wages for female workers, is given the task of enforcing the Industrial Standards Act and the schedules of wages and hours made obligatory under it. For this purpose, the Board is given authority to demand information, inspect records, etc. Penalties may be imposed on an employer who pays lower wages than are prescribed by the schedule or who "requires or permits any employee to work a greater number of days in each week than is prescribed in any schedule." An employee who accepts lower wages or works longer hours is also liable to a penalty. Wages found to be unpaid are to be paid to the Minimum Wage Board on behalf of the Provincial Treasurer or of the employee in the discretion of the magistrate. In default of payment they may be recovered by distress at the instance of the Minimum Wage Board.

Several prosecutions for violation of the terms of the schedules have resulted in convictions. Appeals from the conviction of four millinery firms in Toronto were successful, however, while, in another case, an appeal by the Department of Labour from the dismissal of a charge against a painter was not allowed. In these cases, the question turned on whether the Act permitted work on Saturday to be prohibited in an agreement. On appeal, it was held by Judge Honeywell that the Act only prohibits an employer permitting his employees "to work a greater number of days in each week than is prescribed by any schedule" and that the painters' and millinery schedules in so far as they attempt to prevent work on a particular day of the week, go further than the Act authorizes and are, therefore, unenforceable.[61]

Up to the end of February, thirty-five schedules of wages and hours were approved by the Lieutenant-Governor in Council and applied to all employers and employed in the industries concerned within the districts affected by the agreements. Thirty schedules relate to construction in nine zones, one to bakers and their deliverymen in the counties of Waterloo, Wellington,

[61] Information on these cases was obtained from the Solicitor of the Department of Labour of Ontario.

Perth and Huron, one to the furniture industry in all parts of the province but the City of Toronto, and the others to brewing, millinery and the women's cloak and suit industry throughout the province. In addition, two other agreements have been arrived at and are likely to be approved by order in council shortly. One of these affects some 3,500 workers in the logging industry about Port Arthur and Fort William. It is estimated by the Ontario Department of Labour that approximately 60,000 workpeople are covered by the agreements made under the Act and that there has been an increase in the amount of the payrolls in the various industries ranging from five to twenty-five per cent with an even greater increase in some individual workplaces. The general effect as regards wages has been a grading up of the wage-level in the establishments paying the lowest rates.

Before the enactment of the Industrial Standards Act, labour conditions in the building trades in Ontario cities were regulated by collective agreement but many of these lapsed or became inoperative under depressed business conditions, There had been agreements covering millinery manufacturing and the making of women's cloaks and suits in Toronto for some years but in both these cases, only some of the larger establishments were affected. In recent years, there had been a few collective labour agreements governing several furniture factories in the City of Stratford, while in Toronto there were agreements for a few plants producing upholstered furniture. In all except the furniture industry, the unions making the agreements before the Industrial Standards Act was passed were international unions. In furniture, the agreements were negotiated by committees of the employees many of whom were members of the Furniture Workers' Industrial Union affiliated with the Workers' Unity League.

Organized labour in Ontario is divided into three rival camps, the "international unions," most of which are affiliated with the Trades and Labour Congress, the "national unions" adhering to the All-Canadian Congress of Labour and the unions affiliated with the Workers' Unity League. The international trade unions are the oldest unions and have members employed in Ontario in railroad work, the building and metal trades, in printing and in clothing, electrical supplies, boots and shoes, brewing and other industries. In general, their membership is made up of skilled and semi-skilled men, although some unions include women and unskilled workers. The nucleus of the All-Canadian Congress of Labour was formed in 1902 when the

Trades and Labour Congress of Canada voted to exclude from its membership all international unions not affiliated with the American Federation of Labour and any national unions in crafts where internationals existed. A minority group of the Knights of Labour and some Canadian unions thereupon formed the National Trades and Labour Congress, later called the Canadian Federation of Labour. This body, after some ups and downs, joined with other Canadian unions in 1927 to form the All-Canadian Congress of Labour. In the main, the trade unions affiliated with the latter body comprise the same sort of membership as the international unions. The All-Canadian Congress, however, has declared itself in favour of industrial unionism, or the organization of labour according to industry, and not only according to craft or trade.[62] On the other hand, labour organizations in Ontario affiliated with the Workers' Unity League, which was established in 1930, are made up largely of workers employed in mining, lumbering and in the needle trades, in factories producing furniture, boots and shoes, automobile parts and textiles and in bake-shops and restaurants. These industries include a large number of unskilled workers and machine operators.

Neither the Trades and Labour Congress nor the All-Canadian Congress has publicly declared itself in favour of the Industrial Standards Act of Ontario or of the Collective Labour Agreements Extension Act of Quebec. Resolutions submitted to the Trades and Labour Congress at its annual convention in September, 1935, by the Toronto District Labour Council recommended that the Congress should press for the amendment of the Ontario Act, (1) to *require* the Minister of Labour to call a conference when requested to do so by either employers or employed in any industry, (2) to provide for remunerating and paying the expenses of the members of joint boards appointed to assist in administering the schedules and (3) to authorize its enforcement by joint boards and inspectors instead of by the provincial Minimum Wage Board. These recommendations were voted down by the Congress on the recommendation of its committee on resolutions. The main ground of the committee's opposition was stated by the chairman :

> The Act in question had only been in operation a short time. Therefore, the committee felt it inadvisable to seek amendments until the machinery provided had opportunity to function.

During the discussion, the first motion was opposed by some delegates because of "the danger of inserting provisions which

[62] *The Labour Gazette*, 1928, Vol. 28, p. 1348.

might react to the detriment of international unions" through the action of "dual unions."[63] The Congress re-affirmed the policy "respecting industrial control and minimum wages" adopted at the 1934 convention. Among the principles approved were the following:

> 3. There must be uniformity throughout the Dominion to prevent inter-provincial competition and evasion of the standards set by the removal of industries from one province to another. This can most effectively be achieved by amendments to the British North America Act, giving to the Federal Government full power to enforce such regulations. Failing this, our provincial executives should endeavor to have their respective governments mutually agree on uniform standards and methods of enforcement, whether federal or provincial.
>
> 5. It is our studied opinion that any such laws must provide for co-operation with *bona fide* trade unions as it is only by full recognition of union agreements being accepted as the schedules to be enforced that the breaking down of established conditions can be avoided. Any legislation which ignores this fundamental principle of collective agreements should be vigorously opposed as should also schedules fixed, arbitrarily, by legislative bodies without consultation and agreement with the trade union organizations of the classes of workers covered by the same.
>
> 7. The right to organize in unions, free from any control whatsoever by employers or their agents, should be clearly stated in the legislation.
>
> 8. Any provisions for the incorporation of trade unions should be strongly opposed, as they successfully were in the Juridical Extension of Agreements Act, in the province of Quebec, and previous to that, in the federal legislation giving trade unions the right to protect union labels by process of law.
>
> 9. Trade unions only should be given the right to represent wage-earners' interests in the negotiation of collective agreements and on any joint bodies created for the purpose of framing, administering or enforcing industrial control legislation, as individuals are unable to carry out such functions.[64]

After the decision of Judge Honeywell holding invalid, under the Industrial Standards Act, the clauses in certain schedules forbidding work on Saturday, the Ontario executive committee of the Trades and Labour Congress urged the Ontario Government to amend the Act to permit such conditions affecting hours of labour to be made binding.[65]

It is difficult to estimate correctly the attitude of the general body of employers to the Industrial Standards Act and the Collective Labour Agreements Extension Act. In two recent

[63] Report of the Proceedings of Trades and Labour Congress of Canada, 1935, pp. 162-164.
[64] *Ibid.*, pp. 165-166.
[65] *Canadian Congress Journal*, January, 1936, p. 17.

articles in a trade journal, officers of the Montreal Builders' Exchange and the Toronto Building and Construction Association respectively, representing practically all the large contracting firms in these cities, express definite approval of the principles of this legislation.[66] Other firms engaged in speculative house-building in Toronto have been reported as opposed to the Ontario statute. A large part of building operations in Canadian cities has been carried on for many years under collective agreements and the big construction companies are accustomed to collective bargaining.

In the manufacturing industries, this is not the case and the Canadian Manufacturers' Association has declared its opposition to collective bargaining between employers and trade unions, although some of its members enter into collective agreements with trade unions. The industrial relations committee of the Association reported on its action regarding the Industrial Standards Act as follows :

> With regard to the Ontario Industrial Standards Act which is modelled on the Quebec Collective Agreements Extension Act, it was held by your Committee to be objectionable on the ground that it would inevitably constitute an invitation to trades unions to proceed to unionize all industrial workers. Your Committee considers that the Association should still adhere to its traditional policy of insisting that wages, hours and conditions of employment generally should be agreed upon between employers and their own employees; and it was primarily because this new collective bargaining legislation appears definitely to deny that principle that your Committee considered that it should be vigorously opposed. The Bill passed the Ontario Legislature in spite of the representations made.[67]

In February, 1935, the Quebec Division of the Association presented a memorandum to the provincial Government from which the following is extracted :

> At the last session of Parliament, an Act respecting the Extension of Collective Labour Agreements was passed, after several amendments in the original text of the Bill. The Act, by its very nature, does not in our opinion admit of any great degree of variation by amendment without the danger arising of its developing from a reasonably helpful statute to one fraught with grave danger to the industrial life of the Province . . . . . we would urge that the Government be persuaded to allow the Act to remain in its present form without change for some time to come, until it is thoroughly tried and tested. Continued development of Governmental interference in private industry, as

[66] Paterson, *Codes and their Effect on the Construction Industry*, and Perkins, *Have Codes Raised Costs?* The Construction Trade Review and Forecast, 1935-36, Supplement to the Daily Commercial News and Building Record, Toronto, January 14, 1936.

[67] *Industrial Canada*, July, 1935, p. 73.

observed earlier in this presentation, if not deplorable, is highly undesirable and disturbing. . . . .

While it appears that this Act provides an effective method by which the Government is able to eliminate the unfair treatment of labour, and to that extent is beneficial, we believe it is highly unnecessary, unwise and inadvisable for the Labour Department of the Government to continue its expressed intention of putting every worker in the Province under some collective labour agreement. Such a policy could only mean that the ultimate goal of the Department of Labour is to force every worker to belong to a labour organization, and industry in the Province would become a closed shop. We submit that such a policy is unjust to the employer who deals fairly with his employees, and its continuance can only result in very strong opposition by industry, and much labour unrest throughout the Province.

Employers are co-operating with the Department at the present time in making the act an effective instrument in removing certain existing abuses in certain phases of our industrial fabric, but further widening of the application of the Act, we do not believe to be justified at this time.[68]

In May, 1935, the Quebec Division received a report from its executive committee on the recent amendments to the Quebec Act :

The original Act, passed a year ago, has been applied undoubtedly with considerable benefit in some industries, notably the boot and shoe industry where much unfair competition was eradicated. The law has also been of help in the building industry but there are a great many industries that will never need—and probably the employers will never accept—the collective labour agreement. Twenty-six agreements have so far been made, some of which have been reasonably effective and others exist to a large extent on paper only.

Since the law became effective, the one great difficulty which industry in general experienced was with respect to "maintenance" men, these being claimed by the building trades as coming under their agreement. In the amendments to the Act this year, "maintenance" men in churches, chapels, charitable institutions and orphanages were exempted, when permanently employed. Following a conference with the Minister of Labour, it was agreed that in addition there should be exempted "maintenance" men in "buildings," the major portions of which are used as manufacturing establishments. . . . .

Amendments have been made to the Act permitting the joint committees to make a levy upon the employers and employees in order to secure funds to police their agreements. It is the opinion of those in close touch with the operation of the law that, as soon as arbitrary assessments are enforced, many of the committees under agreements which do not fully represent a "preponderance" in the industry involved, will encounter difficulties which will tend to destroy any effectiveness which the law may hitherto have had.

Other provisions of the amending Bill have reference to penalties. These seem to be reasonable in their application.[69]

[68] *Ibid.*, March, 1935, p. 49.
[69] *Ibid.*, June, 1935, p. 48.

In November, 1935, the industrial relations committee reported in part as follows :

> As regards the lessons to be drawn from the experience, to date, under this legislation, it is significant that in both Quebec and Ontario, the industry which has been most active in availing itself of the new legislation has been the building industry, where wages are well known to be anything but low, and what the codes have done is simply to maintain at their old level or even raise still higher wages which, as has been said, were already inclined to be high in relation to wages in general. This is interesting, in view of the fact that the sponsors of the legislation in Ontario, at least, declared that the chief and indeed the sole object was to put a stop to the payment of unduly low wages, and prevent the consequent "degradation of the workers." In other words, an Act which was advocated as a purely anti-sweatshop measure is being used for an entirely different purpose. Further, so far as the building industry is concerned, the additional labour cost, consequent upon the enforcing of the codes, estimated (in Toronto for example) at upwards of 15 per cent or 16 per cent, is clearly having the effect of retarding recovery in the building industry, in which even prior to the codes, costs and prices were already out of line with costs and prices in other fields, particularly in agriculture.
>
> Another claim made by the sponsors of this legislation was that the shortening of hours would result in an increase in employment. So far from there being any evidence that this result has followed, everything goes to show that, so far as the building industry is concerned, the increased cost has, as pointed out above, actually caused a reduction of employment.[70]

In Alberta, the Legislature passed an Industrial Standards Act[71] similar to that in Ontario, except that there were added to the Alberta Bill during its passage certain sections providing for standard specifications for commodities for industrial use or sale in the province. Only one schedule of wages and hours has been made legally binding under the Act in Alberta. Persons employed in the domestic plumbing and heating industry in the City of Edmonton are governed by this schedule. The trade union in which the plumbers are organized has had agreements with the employers for some fifteen years. No other proceedings appear to have been taken under the Alberta statute which is administered by the provincial Bureau of Labour. Neither the Ontario nor the Alberta Act applies to the mining industry.

The statutes concerning collective agreements have aroused considerable interest not only among employers and trade unions but among the general public. In Quebec, the way had been prepared to some extent, partly by the enactment ten years earlier of the Professional Syndicates Act patterned on the laws

[70] *Ibid.*, December, 1935, p. 33.
[71] Stat. of Alberta, 1935, c. 47.

of France giving contractual force to collective agreements and partly through the work of the officers of the National Catholic Unions in studying the legislation of other countries before making their petition for an enactment to the Government and in informing their members as to the principles involved and the objects to be attained.[72] In Ontario, where English law prevailed and collective agreements had no legal force, the Industrial Standards Act was passed at a time when the public was demanding that some remedial action be taken with regard to the very low wages revealed in some industries. There were differences of opinion, however, as to the measures that should be taken. In an attempt to reconcile conflicting ideas, the Act was given some of the features of a minimum wage law, while at the same time it enables collective agreements between employers and trade unions to be made binding on the industries concerned.

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[72] See *La Vie Syndicale*, Vol. XIII, 1933.