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Labour Relations in an Era of Neoliberal Reform

The Campbell Years, …

Over the course of former premier Campbell•s decade in power, the working class and trade union movement were subjected to an extensive and unambiguous assault on the laws, social programs, and institutions that gave them certain rights to act collectively; some protection from conditions at work; partial compensation for work-related injuries, illness, and death; and some degree of respite from labour market vagaries (Fairey, Sandborn, and Peters). The ten-year-long attack in BC was the continuation of earlier decades of retrenchment,

material betterment (Albrecht) and highest degree of legislative protection in the history of capitalism.

As long as the effects of these circumstances and the demand for labour remained, the welfare state and legislated protection for workers continued to expand. Trade unions grew in size and number, exacted more favourable labour legislation, and increased their powers. They improved key collective rights, employment standards, industrial accident insurance schemes, and spurred the development of unemployment insurance, state pensions, and public health care. Previously treated largely as •externalitiesŽ by employers, these costs of reproduction were increasingly socialized through state redistribution of deductions from high wages and profits.

The achievements partially decommodified the existence of workers. Because labour power is bought and sold as a commodity, its price (wages and salaries), marketability, and the relative freedom of its owner are circumscribed by all the variables that impinge on its value … namely, the labour market; wage rates; employer dictates; the cost of food, shelter, and clothing; among others. All the legislative and programmatic changes won by workers increased the degree of their freedom as commodities by offsetting the effects of these variables.

This relative freedom was, however, dependent on legislation, policies, and programs that rested on a particular set of historical circumstances. Ironically, it was this freedom and the high wages in the postwar era that allowed the working class to be convinced that capitalism actually had a •human faceŽ and that workers had a place in it as a non-antagonistic •middle-class.Ž But the achievements proved self-defeating in that they, along with other factors, grew to undermine capital accumulation, the raison d•être of the system, necessitating their retrenchment (Glyn , …).

This chapter takes the position that the achievement of a high degree of relative freedom for the worker, as a commodity in the industrial countries in the postwar era, persisted beyond the conditions that made it possible and that it grew to become incompatible with the development of global capitalism. In BC•s case (notwithstanding the arguments made by Pilon [chapter , this volume]), labour laws, welfare services, and liberal democracy all had to be curtailed so that corporations could assert their freedom as global capital from national and provincial constraints. The retrenchment of labour legislation has been a central part of these cuts.

The term •labour legislationŽ is often used as a reference to a labour code that delineates union-management rights. There are, however, two other arenas of labour law that are directly related to work relations. One deals with employment standards, which regulate and define minimum health and safety conditions, hours of work, minimum wage rates, holidays, severance pay, and so on. The other regulates industrial accident insurance, which in the main provides financial reimbursement for job-related injuries, diseases, or death. There are, moreover, many other laws and programs that affect workers, such as unemployment insurance, state pensions, public health care and education, industrial training, foreign worker policies, and pay equity … but these are usually defined as part of the so-called welfare state or human rights policies rather than as labour legislation. And it should be added that many changes prejudicial to unions and workers are not legislated but are brought about by numerous small but significant decisions by the government regarding appointments, budgets, office location, and so on. In this chapter, I restrict the analysis to •labour legislationŽ referring to the labour code, employment standards, and industrial accident insurance.

The reproduction of all social formations depends on the production and distribution of goods and services. Capitalist society is no different, but central to the way it produces and allocates its resources is a conflict of interests between employers and employees. The regulation of these contradictory demands as •labour relations,Ž then, is of central importance to the system. Because these conflicts potentially threaten it and periodically have done so, they have had to be circumscribed and institutionalized through legal mechanisms to define and restrict

the limits of action of both sides. It is a far from equal compromise that casts otherwise potentially violent conflicts into a legal framework that is subject to political, judicial, police, and corporate pressures.

These laws, rights, regulations, and programs are almost always cast as matters of legislation … that is, as statutes that can be changed at will by a party in power. They are rarely defined as constitutional rights because they reflect the ongoing class struggle rather than the legal principles belonging to the dominant class and paraded as universal. If constitutionally defined, they would counter the existing, but veiled, biases in structure and principle in constitutional law … that is, they would become •fundamentalŽ rights instead of contested statutory ones that are only tolerated to the degree that they can be defended.

Labour legislation is central to economic activity, regulating, in large measure, the relations between workers and employers, the role of trade unions, the terms of labour exploitation, aspects of the reproduction of the working class, and capital accumulation. Located at the centre of class relations, then, it is a body of law to which the corporate sector pays considerable attention.

It embodies two conflicting sets of demands. The employer needs to accumulate sufficient capital to reinvest and expand the business, and this process obliges the employer to minimize the costs of production, including wages. And the employee strives to exact what is at least necessary to live with dignity in a •normalŽ manner.

It follows that, if political parties represent different coalitions of class forces, a change of government can mean a shift in the balance of rights from one side to the other. This is what happened in , when the Campbell Liberals ended ten years of governments in.

The Labour Relations Code

Unions are, for the most part, the leading edge of the working class … the sector that has the organized power to assert its own demands and those of the class as a whole. The labour code has a special importance in the broad arena of labour legislation because it most directly affects the activities of the unions. It restricts their activities within certain legal limits, in particular, the right to form a union, to bargain collectively, and to strike.

Early in its mandate, the Liberals introduced Bill ( ) and Bill ! ( ), which made many changes to the Labour Relations Code. Of all the changes made, there were two that did not receive

much attention but that carried profound implications. One was the introduction of a third party, the individual employee, into the code along with unions and employers. This is the only labour code in Canada with such a provision. Section (a) of the code states that those who exercise its powers must recognize •the rights and obligations of employees, employers and trade unionsŽ … •employeesŽ are inserted as a distinct player, separate from unions. This change, promoted by the Coalition of BC Businesses (BCB) (CBCB !; CBCB "), has little to do with the rights of individual workers. The same coalition also campaigned to undermine and eliminate the rights of employees under the Employment Standards Act (SA), with WorkSafe, and later protested the rise in the minimum wage. The rights of employees in those statutes have been dramatically scaled back, and it has been made increasingly difficult to gain access to them.

The most plausible interpretation of this addition is an attempt to weaken union bargaining power by giving its members the right to disassociate from unions, much as the so-called •right-to-workŽ laws have done for decades in the United States (Fawkes). It undermines the collective force of the union by providing a formal regulatory path for individual dissent and by implying that workers on their own can negotiate as good a contract as can a union. More specifically, it can be

There is, moreover, no definition of what constitutes productivity, competition, or growth; all can be taken as code words for speed-ups, longer or flexible hours, lower wages, fewer benefits, and less job security. Management can now argue, and has argued, that certain union demands may undermine the •viabilityŽ of a business and so run counter to the principles of the code. To date, the LRB has rejected such arguments, but the principle has been established, and its application is likely a matter of time.

These additions constituted nothing less than a fundamental shift in the nature of labour relations in BC. If the main principle of the Labour Relations Code was to institutionalize collective bargaining between two purportedly equal parties, to reconcile or resolve two ostensibly equal conflicting sets of interests, it was now encumbered by a third strictly individual self-interest and framed by the general interests of one side as the overarching priority.

The Right to Organize

Perhaps the most important right won by trade unions in the nineteenth century, but not fully established until well into the twentieth century with the obligation for employers to bargain, was the right to form a trade union. In order to confront the employer, a collective force of capital, workers too had to organize as a collective force of labour. This right to organize unions was, and continues to be, resisted by employers because those workers who do unionize no longer have to face management as mere individuals with little or no power over their employment terms or conditions.

Many of the changes brought in by the BC Liberals in and were intended to circumscribe this right to organize. Section ! of the Labour Relations Code was amended to make a secret ballot mandatory for certification. In the past, depending on the party in power, the steps to certification shifted from a predominantly card-check system, allowing a union to be certified with a certain percentage of employees signed up, to a mandatory vote system, obliging a majority vote by secret ballot after a required number of cards were signed. In , the BC Liberals eliminated the single card-check certification, adding an obligatory vote in all cases. Under the code, then, at least two expressions of employee support for unionization are required … the signing of the card (minimum ! per cent) and then the vote. If the vote is less than per cent, however, a third vote is required.

The necessity for at least two demonstrations of union support in all certification drives places a much greater demand on union time and money than was previously the case. It also creates opportunities for employer intervention (MacDonald). Indeed, a review panel of union and business representatives during the NDP regime in •unanimously recommended a return to the card-check systemŽ (Dickie ,) because, they argued: •Since the introduction of secret ballot votes in ! the rate of employer unfair labour practices *f* has increased by more than percentŽ They concluded: •The simple reality is that secret ballot votes and their concomitant representational campaigns invite an unacceptable level of unlawful employer interference in the certification processŽ Another review committee on the Labour Relations Code in wrote: •Experience demonstrates that employers do seek to affect employees• right to choose. In our view, extending the certification process by introducing a mandatory *f* vote would only further invite such illegal activityŽ (cited in Dickie ,).

The evidence suggests that the mandatory vote reduces the number of successful certification applications (Dickie ,). Since the new law was promulgated, the growth rate of newly organized workers has declined significantly to the lowest rate in the last thirty years (six), even though the absolute number of organized workers has modestly continued to rise. Union density, the number of unionized workers as a percentage of all workers, however, is declining (Dickie , app. !). Its impact will be expressed as an increasingly defenceless working class.

There are other contributory factors to this decline in union density. Most are related to changes in the mode of production and the rise of the global economy, resulting in the growth of many precarious part-time jobs with low wages, which are difficult to organize. The change in the Labour Relations Code, however, is a policy-related factor … that is, a political action that privileges the interests of one party over another, or an intervention by the state intended to favour the interests of one side in an ostensibly neutral regulatory framework.

Unfair Labour Practices

Widely used to frustrate certification drives, unfair labour practices are curbed in all labour relations codes. While they circumscribe and prohibit certain actions by both sides, unions and employers, the evidence before labour relations boards points to the fact that employers are far more likely to engage in illegal labour practices than are unions.

Changes to the BC Labour Relations Code (specifically sections " and) expanded the possibilities for employers to interfere in relations between the union and its members. Employers were given in-

lowing time for management to interfere in the application. Employer objections to the application can last for weeks, or months, before they are decided upon. The representation vote after application with the signed cards, to give another example, is not usually carried out until near the end of the requisite ten-day period, again giving employers time to intervene (…).

Process and procedure in the LRB were among the first targets of the Campbell government. In , it let go a large number of Industrial Relations Officers (IROs) and •closed most of their offices throughout the provinceŽ (Dickie ,). Because the IROs play such a central part in the certification process, it is difficult to interpret these acts as anything but an attempt to slow down and frustrate the growth of unions in BC.

IROs are the first point of contact with the LRB in applying for certification: they examine the application and write the report that assesses its compliance with the code. Among other duties, they can decide •whether the union has met the required ! percent level of membership support needed to obtain a representation vote.Ž To do this, they determine how many employees comprise the bargaining unit and how many have signed union cards. Before , IROs would check both the union cards and •payroll recordsŽ in order to judge the percentage and determine the legitimacy of the representation vote. After , the size of the bargaining unit was •determined solely on the employer•s say so.Ž This ability gave the employer the freedom to make unproven claims about employee numbers, with the intent to have the certification application dismissed for not achieving the necessary ! per cent quota. As a consequence, an employer is now in a position of considerable control over a union drive and application for certification (Dickie ,).

As if to confirm the bias in practice that favours employers, IROs •now only inspect payroll records occasionally, when directed to do so by the Labour Relations Board,Ž but they •regularly inspect union membership cards, which are then inspected a second time by the vice-chair hearing the certification application.Ž Not only are the cards checked twice, the LRB •requires a union to demonstrate that an employee list provided by the employer in secret is incorrect before the Board will disclose the employee list portion of the report to the unionŽ (Dickie , n). This difference between the treatment of payroll records and membership cards is stark evidence of structural and procedural bias in the LRB.

The Right to Bargain Collectively

If the union has managed to certify a bargaining unit, the code presents more structured obstacles at the next stage: negotiating the contract. In the construction trades, sectoral bargaining made it easier for unions to establish wage rates and benefits across much of the industry, but, in , sectoral bargaining was abolished, to the sole benefit of the contractors.

Another barrier to collective bargaining is the creation of certain exemptions for employees. Optional exclusions for individuals, usually on religious grounds, to union membership and dues payments undermine union solidarity by allowing some employees in a unionized workplace to refuse to join the union or opt out of it and to direct the amount in dues and other fees to a registered charity of their choice (s.).

Perhaps the most dramatic example of the violation of collective bargaining by the Campbell Liberals was the reneging on established agreements with the BC Teachers• Federation and the Hospital Employees• Union in . Not only were existing contracts broken, the very principle of collective bargaining was breached.

Bill confronted health care workers with extensive revisions to the terms of their existing agreement. The changes were so dramatic and arbitrary … including thousands of lay-offs, wage roll-backs, privatizations, contracting out, and the elimination of many services … that the government brought the province to the brink of a general strike in !. The violations of workers• rights in this bill, moreover, were appealed to the Supreme Court of Canada, where the decision in found that the government had violated the Charter rights of health care workers to bargain collectively (Camfield "; Camfield ; Isitt and Moroz).

Bill also, in , stripped the teachers• union of its right to bargain many aspects of teachers• working conditions as well as class size and composition. The BC Teachers• Federation took the government to court over this bill, and, in , the BC Supreme Court ruled that Bill was unconstitutional, infringing on the right to bargain collectively, but it gave the government a year to negotiate the ruling with the BC Teachers• Federation. In , the government returned with Bill , new legislation that pointedly used some of the same language previously ruled unconstitutional, along with further restrictions that proved to be even more severe. Among other revisions, it removed many items from possible negotiation; it prohibited strike action and replaced im-

passe resolution with a mediation process; and it laid out harsh financial penalties against individual teachers, union representatives, and the union, making strike action all but impossible.

Bill was then challenged by the union, and a second decision came from the BC Supreme Court in January !, in which the judge ruled that the government had bargained in bad faith with the union and had left much of the unconstitutional language unchanged. It ordered the government to pay * million to the union, to cover the court costs, and to uphold the earlier decision. Undeterred, the government appealed this decision, and the appeal was decided in favour of the BC Teachers• Federation in November ".

The Right to Strike

In all labour codes the right to strike is well circumscribed by qualifications, requirements, and limitations. After decades of successive legislation to restrict this right, it has been narrowed generally to situations in which negotiations for a new contract or renewal of a contract have failed. Even in these cases, labour codes have curbed this right by obliging the union to move through specified steps over periods of time before striking. Besides the legislative barriers, strikes are also a major financial burden on unions whose strike funds can be quickly diminished and on workers who rarely have the financial resources to forego their wages for any length of time. The paucity of workers• and union resources and the stringent legal regulations mean a strike is nearly always the product of an intolerable situation.

The right to strike can also be limited by the use of an essential services designation. This usually means that a strike can take place, but it is not permitted to shut down all operations or services that are struck. The designation, then, has an impact on the bargaining process given that effective collective bargaining depends on unions having the right to prevent all work in the event of an impasse. Importantly, without the right to strike or to withdraw all workers, the union contract becomes less voluntary and more coercive, framed by the threat of fines and even imprisonment. Firefighters, police, and some health care workers are the public services commonly put into this category, for reasons of public safety.

In , however, the Campbell government placed public education in the •essential serviceŽ category and gave the minister in charge discretionary power to decide which aspects of public education would

be considered essential. This was an odd change of policy given that education is not usually considered to be an essential service and that the time lost in BC to strike action in this sector has been very limited … as well, BC is the only province in Canada with such a provision in its labour code. The plausible motive for this inclusion is that it is calculated to handicap the bargaining process for the BC Teachers• Federation, a strong and militant public-sector union, allowing the provincial government more power to restrict the final offer (Camfield).

The progressive expansion of employment standards since the nineteenth century has been an attempt by the state to ameliorate working conditions and the operation of the markets. Employers are guided by few principles beyond capital accumulation, regarding workers merely as a factor in production (i.e., as a form of capital), to be exploited to the maximum degree possible. Treated in this way and without any guarantee of employment, workers are obliged as a matter of self-preservation to resist the lack of standards in employment and the absence of provisions outside of employment. Because their demands for survival impinge on corporate profits, and hence potentially threaten the system, their self-defence appears as subversive social unrest. The state is obliged to act because corporations, as mutually antagonistic competitors, usually lack the ability to act with a single voice and because their profits, in part, are mirrored in their treatment of workers.

As a way to mitigate worker unrest, the state provides a legislated base of minimum standards that is equal for all employers and employees. These are not •fundamentalŽ rights or minimums; the level and extent of the standards are all a matter of struggle that is implicit in the system and that waxes and wanes with the relative strength of the organized working class and the ability of the corporations to stand firm or to push back. The resulting standards usually take the form of regulations that stipulate the lowest possible wages, hours of work, paid holidays, severance conditions, and so on.

BC Employment Standards Act (ESA)

Although generally set as low as possible, employment standards do provide all workers with a baseline for their conditions, rights, and wages. For unionized workers, they present a starting point in negotia-

tions for improvements. Just as important, they protect non-unionized and vulnerable workers, comprising a majority of the labour force in British Columbia, from undue exploitation (Fairey ,). For corporations, these standards also have positive long-term effects in establishing a level playing field, reducing their competition for workers, and helping to maintain a healthy labour force.

But employers and employees see employment standards differently. Corporations see only their cost (in the shape of higher wages, paid holidays, infrastructure expenditures, severance costs, and the like) and the limits they place on •management rights.Ž They press for lower or fewer or no standards. Workers and unions press for higher standards as a matter of self-preservation. There are then two sets of rights at play: on the one side, the corporation and its right to hire and fire and set the conditions over the use of its private property; and on the other side, the workers and their demands for a living and a life, albeit as an embodiment of private property. As long as both sides have the power to defend their interests, there will be some compromise.

The Campbell Liberal Party revised the Employment Standards Act through three main legislative bills: Bill ! ( ), Bill ( ), and Bill " (!). They comprised a set of changes that went largely unchallenged, even though they were a significant setback, albeit with a few improvements, for workers and unions, and were enormously beneficial to management, increasing its rights and decreasing its liabilities (Fairey ,).

Probably the most significant of these changes was the exclusion of unionized workers from some terms of the ESA, whereby a collective agreement covered •any provisionŽ in the act that dealt with issues such as hours of work, statutory holidays, annual vacations, seniority, termination, layoff, and most everything to do with wages. Previously, unionized workers were covered by the ESA, which meant that its minimum standards provided the floor that collective bargaining could assume or improve. Now, however, for unions … representing about per cent of public-sector workers and per cent of private-sector workers in BC … some of these rights and standards were up for negotiation and could end up being lower than the minimum if not negotiated into the agreement.

This one change had a profound effect on union bargaining. It increased the workload for union negotiators, strained the resources of unions, and opened the possibility of losing some minimum standards as a trade-off, thereby lowering the protections for members and un-

dermining the key motives for joining a union. It also meant that the unions would have to spend their time protecting, as best they could, the minimum standards in their own collective agreements and would now have much more difficulty advancing the interests of the class as a whole by raising the floor through collective bargaining.

Furthermore, it opened the door to an expansion of possibilities for wage theft (Bobo). Because all contracts deal with matters of wages, the pertinent clauses covered in the CBA now became open to negotiation and therefore open to manipulation and misuse by employers. It also encouraged the growth of, and competition from, weak or corrupt or otherwise questionable unions (favoured by employers) that were willing to bargain away many minimum standards (Fairey ,).

Minimum Wage

The minimum wage is part of the safety net for workers, acting as a floor on wages. Its introduction has usually been a response to workers• demands to prevent the drive by employers to reduce wages to as low a level as possible. The level is always established below the value of labour power (i.e., less than what is required for workers to reproduce themselves in a normal manner) and below what are usually considered the thresholds of poverty. As a result, workers earning minimum wage must take on more hours than normal, often leading to physical and mental exhaustion. Or they have to be subsidized by the state, family, cooperative, charity, or medical system … in other words, some redistributive mechanism other than wages. From this perspective, the minimum wage provides an indirect subsidy to employers because the remaining cost to reproduce this labour power is borne in one way or another by the individual and society and not the corporation.

A low minimum wage rate also acts as a drag on the whole wage structure, adversely affecting workers but advantageous to corporations. For employers, it makes demands for increases more difficult because it induces in workers an •economicŽ discipline based on fear of unemployment and abject poverty, and it also lowers the wage bill, which, from their perspective, can never be too low. For workers, a low rate necessitates more than one job or more working hours, thus preventing a normal life. As well, it can lead to physical exhaustion and mental depression, and a declining incentive to work if there is no life beyond work and no life with work. It also appears to encourage a movement

into the informal economy, criminal activities, and a reliance on state subsidies or charities.

Although only a small percentage of the labour force actually earns the minimum wage in BC, a much larger percentage earns only marginally above the minimum. As a baseline, it makes anything above it seem positive, even though it may be below various measures of poverty or a calculated •living wageŽ (Ivanova and Klein b). From the workers• perspective, then, the higher the minimum wage, the better; from the employers• perspective, the higher the minimum, the greater the wage bill and the less the disciplinary effect on the workers.

The level of the minimum wage is more a class issue than anything else, decided by the relative strength of the two parties and the economic and political conditions of the times. The state •mediatesŽ the conflicting demands to keep the level as low as possible, to blunt any increase if it seriously threatens profitability, and to drive it lower if there is no significant resistance on the part of workers.

by the assumption of a normal work week of forty hours, a mere two-hour block, indeed any number of hours fewer than a normal full day and week, precludes an income sufficient to sustain oneself. The reality of such short work shifts negatively affects many workers in the food service, recreational, and retail industries.

The vulnerable could also •agreeŽ to give up their statutory right to higher overtime pay rates under a new •hours averaging agreementŽ that permitted no overtime pay if the hours of work did not exceed an average of forty hours per week over four weeks. This provision opened the door to abuse by employers who might regularly ask for overtime, but who might not as regularly calculate the average four forty-hour weeks. Overtime pay that was double-time, moreover, was reduced to time and a half, under certain circumstances. For many part-time workers, restrictive qualifications for statutory holidays with pay were introduced that, in effect, eliminated the extra pay. Other conditions were introduced preventing many part-timers from ever qualifying for these paid holidays.

Even the period of employers• liability for violations of wage payments was cut back from two years to six months, a reduction that greatly lessened the obligation to pay back wages and widened the door to employer meddling with unpaid wages. Corporate officers and directors were also relieved of their personal liability for wages owing in the case of bankruptcy or receivership. However difficult it was for workers to extract these owed wages before , several hundred thousands of dollars were collected, but after that date it became even more difficult. In other cases of failure to pay wages, the changes to the reduced employer obligations (Fairey ,).

Even the very process for a worker to make a complaint about violations of the ESA was radically revised. Now, the employee must fill out many pages of a •self-help kitŽ and make the initial complaint to the employer; if there is no resolution at this stage, the worker has to initiate a long process with the Employment Standards Branch (ESB), at considerable cost in time and money. And, instead of an investigation of the complaint by branch officers, there is a •mediationŽ process aimed at a •settlement agreement.Ž These new regulations have led to a dramatic reduction in complaints, rendering violations very difficult to address.

As if mocking what was left of the complaints process, the Campbell government reduced the staff at the ESB by about one-third and enforcement officers by almost one-half. Further to this it closed about

one-half of the branch offices across the province. And as though this were not enough, the random auditing of businesses as an enforcement mechanism was ended in sectors in which non-compliance was common. Even for appeals about a decision by the director of employment standards, there was now a fee to be paid, strict restrictions to the grounds for appeal, and new powers for the Employment Standards Tribunal to reject the appeal (Fairey , ; Fairey, Sandborn, and Peters , …).

Child Labour

Since the rise of industrial capitalism in the late eighteenth century, opposition to child labour has been a central issue in the demand for employment standards. Without regulation, corporations have had no hesitation to exploit labour in whatever form. Children are more vulnerable, impressionable, malleable, and easily intimidated than adults, and their employment allows for the expansion of the labour supply through the use of docile and cheap workers. Although often pushed to work by their parents or guardians in order to expand family income, they undermine the employment of adults. As employed minors, they represent an obvious violation of the principle of private property, not being fully •personsŽ under the law and therefore not responsible for their actions. They stand as clear examples of unfree labour.

In the early years of the Campbell government, Bill ! ( ) and Bill ( ) made many changes to the ESA concerning child labour. Prior to , no employer could hire a child under fifteen without obtaining a permit from the director of the ESB, who, in turn, required the consent of both a parent or guardian and school officials. The director also had the power and obligation to investigate the workplace and put restrictions on the type and hours of work.

After the bills were passed, children from the age of twelve could be hired, now with simply the consent of one parent or guardian. And the responsibility for assessing the conditions of employment shifted to the parent or guardian; school approval was no longer required. Moreover, a child under twelve could be hired with the permission of the director of the ESB. Any child worker could now work for up to four hours on a school day and up to twenty hours in a five-day school week. If the school week was fewer than five days, seven hours on a non-school day was allowed, up to thirty-five hours a week. These changes meant that a child in the usual five-day school week could be occupied with school

and employment for up to fifty hours: in a four-day school week, a child could be similarly occupied for over sixty hours.

It is worth pointing out that there is effectively no longer any age limit … except that to employ a child under twelve, the director of ESB must issue a permit, for which there are no criteria. In other words, the minimum age and other criteria for child labour have become merely discretionary matters for an unelected government official.

The shift in responsibility from the ESB and school officials to the parent in reality meant that there would be little or no oversight of the child•s work environment or experience because parents do not have the authority or power or ability to assess either the health and safety of a worksite or the integrity of an employer. The parental letter of permission, moreover, has to be produced by the employer only in the case of a complaint; otherwise there is no need to demonstrate that it exists.

Other than a ban on working during school hours, there are few other prohibitions on child labour. There is no prohibition on night work (and no provision for transport to or from work at night), and there are very few excluded occupations. Even previously prohibited activities have been deleted (e.g., the use of power-equipment like power hammers, forklifts, and other warehouse vehicles; work close to grills or deep-fryers; work with chemicals; or work at heights) (Luke and Moore !).

What little evidence that exists regarding the effects these changes to the ESA reveals a decidedly negative impact on school success and points to high rates of accidents due to burns, cuts, falls, and the operation of machinery. But because government statistics relating to the labour of children under fifteen are not gathered, there is little or no objective information on these effects. Undocumented, they are almost impossible to assess, making for fewer objections (Montani and Perry).

Farm Labour

Farm workers have always been among the most poorly paid, and there are many reasons for this. Generally, these workers are unskilled, and poor wages, in part, reflect this lack of human capital. They are also difficult to organize because the jobs are seasonal or temporary and the majority are migrant or immigrant workers and so are handicapped by a range of uncertainties … not to mention language and cultural barriers. Finally, they are usually subject to specific restrictive state regula-

tions because low food costs are so important to restraining wage levels in the non-farm strata of the working class.

In British Columbia, farm workers face other complicating structural factors. Much farm labour, for instance, is first sold to labour contractors, leading to a deduction of wages for their •services,Ž and presenting ambiguities about the actual employer … the farmer or the contractor? The divided jurisdictions … between the federal government•s Seasonal Agricultural Workers Program, under which many thousands of workers are hired seasonally every year, and the provincial government•s powers over employment standards, the labour code, and workers• compensation … also present workers with significant dilemmas about their status and rights.

Notwithstanding these existing disadvantages for farm workers, in the new Liberal government set about to systematically undermine their rights and wage schemes. First, it abolished the proactive enforcement program that had ended many of the deceitful practices of labour contractors and employers, and established direct relations between farm workers, agency staffers, and other players … replacing it with a system of complaint-driven compliance, opening up the possibility of the unprincipled practices of the past.

In , the Campbell government, among other things, eased employers• liability for unpaid wages and removed the requirement to keep records of wages paid to workers provided by contractors. And, in , it reduced the minimums on piece rates and overtime payments, changed the entitlements to holiday pay and vacations, and made other changes to theESA negatively affecting farm workers with respect to overtime, sick leave, maternity benefits, and pensions (Fairey et al. ; Otero and Preibisch).

Farm workers inBC comprise the lowest-paid sector of the labour force and are the least protected by legislation or unions. They are subjected to wage theft by employers and contractors, and left largely unprotected against occupational hazards, job insecurity, and overwork.

In general, changes to theESA made these standards more abstract than real. If the state does not enforce them, or monitor their application, or even issue minimal penalties, and the employer refuses to acknowledge or respect them or, worse, consciously ignores them, then they cease to be of any real value. Similarly, if workers do not know about them, or are too fearful to demand that they be respected, then, for practical purposes, they do not exist.

Workers• compensation systems are publicly administered socialized corporate insurance schemes intended, by and large, to cover employer liability for reparations to workers in the case of injury, illness, or death at their place of work. These systems were established because the growth of industrial capitalism in the nineteenth century spawned a commensurate rise in industrial accidents, taking an ever larger toll

can quickly become a financial disaster, especially when the initial days of wage loss are not compensated. The loss of income for a worker who has been injured or diseased or killed can be financially devastating in a matter of a week or two.

Compensation, it must be added, has never been the full amount of wages. WorkSafe does not compensate the non-wage portion of income, which can range from to per cent of wages. The loss of non-waged income and the various ceilings placed on compensation are ways of defrauding the vulnerable … the injured or diseased workers and their families … from their assumed insured income. These many forms of reduced compensation income can be interpreted as a regulated theft of wages and reduced liability for the insurers via the workers• compensation system. They translate into benefits to the employer in the form of smaller premiums and assessments as well as lower capital costs for workplace health and safety, and they translate into benefits to the WCB in the form of a larger pool of unexpended funds that are ripe for investment.

In , the changes to the WCA effectively eliminated the budget for vocational rehabilitation or retraining. The amount spent in was over * million, and it was reduced to about * . million in … a reduction of almost per cent (Guenther, Patterson, and O•Leary ,). There is a distinction between vocational rehabilitation and medical and/or physical rehabilitation. In BC, the main goal has not been vocational rehabilitation but simply to get the worker back to work, and at the earliest possible time, placing the emphasis on medical rehabilitation. These cutbacks, however, represent significant reductions in compensation benefits to injured or ill workers. It also suggests a certain analysis of the projected labour market in BC that increasingly needs part-time and relatively unskilled workers.

With WorkSafe, like most workers• compensation systems, not all workers are covered and not all conditions are accepted for compensation. In general, the processes are bureaucratic and the medical personnel are trained with a •return-to-workŽ philosophy as their priority. Since , there have been many limitations placed on the medical conditions of workers that are open to compensation. Workers suffering from permanent chronic pain and work-induced psychological conditions, for instance, have seen increased restrictions placed on the definition of their state of health.

Workers• compensation boards are often structured as independent corporations, sometimes not responsible to a government minister,

industrial nations. National governments are increasingly unable and unwilling to allow the safeguards for workers they once did in labour law and broad social reform. They increasingly disrespect the will of the citizens with arbitrary rulings and actions … here with stealth, there with undisguised zeal. Corporations commit a range of illegal acts with relative impunity, as is reported daily. And, as Summerville alludes to in chapter ! (this volume), policies of the labour parties of the past are now almost indistinguishable from those of their conservative counterparts. With the disappearance of postwar circumstances, the political leverage once commanded by the working class and trade unions has progressively dissipated.

The main arena of capital accumulation has shifted to the global level, undermining national interests and political structures, and creating a new playing field for capital and labour markets. A new mode of production has brought new occupations and demands for •flexibilityŽ and, for many strata of workers, stagnant or lower wages. The rights of workers, however, remain defined by national legal frameworks and the state-distributed social programs dependent on disappearing high wages.

For the working class inBC, as in all liberal democratic capitalist regimes, labour law and the welfare state have always been paradoxical. They appear to provide workers a legitimate role and place in the system, yet their advantages for workers have always been minimized or opposed. They allow for degrees of working-class freedom, yet the state uses them as instruments of social control and employers continuously contest their extent and even their very existence.

The conditions allowing for this paradox are in obvious decline, making workers• rights and the welfare state more difficult to defend. Workers become increasingly •unfreeŽ … that is, more subject to the discipline of the labour market, the dictates of employers, repressive laws, and state threats of fines and imprisonment. The •human faceŽ begins to appear as merely a mask. The legitimacy of liberal democracies declines when they can no longer offer the leverage, or promise the benefits, they once did to the working class, and postwar rights cannot be defended or expanded at the national level. The new economy is global and will increasingly oblige the working class to define and defend itself at that level.

Thank you to Leo McGrady for this important point.

Since , court intervention in labour issues in Canada has begun to change this situation. For a catalogue of some of these changes see McGrady and Sabet-Rasekh (").

Partial decertification refers to decertifying one or more bargaining units from a multiple location collective agreement or excluding certain employees from a bargaining unit.

! According to the International Labour Organization in : •An estimated . ! million people die each year from work-related accidents and diseases. Of these, the vast majority … an estimated . million … die from a wide range of work-related diseasesŽ Moreover, •an estimated " million people suffer from work-related diseases, and there are an estimated million fatal and non-fatal accidents per yearŽ (International Labour Organization).