

AN AGENDA OF LABOUR RIGHTS

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The 1948 *Universal Declaration of Human Rights* established a particularly broad definition of labour rights that remains very relevant today. In fact, many of the key objectives of current Canadian labour struggles are embodied in the *Declaration*.

In practice, the thirty years from its adoption through to the mid-1970s was a period in which the *Declaration's* objectives were realized comparatively fully in Canada. Unfortunately, the period since the mid-1970s has been one of retreat from labour rights protections as those hard-won protections have been set in a headlong confrontation with the dictates of a market liberalizing agenda.

Notwithstanding the bleak recent history of labour rights, forces that may re-establish the priority of these fundamental rights over liberalized markets can be discerned. It is also possible to pinpoint some of the issues on which progress is most likely to be made.

A brief review of the labour rights in the *Declaration* provides a useful benchmark for an assessment of the ebb and flow of labour rights over the years.

Article 23 contains the *Declaration's* most explicit focus on labour issues. It establishes that:

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

The equal pay provision in Article 23 has parallels in the more general equality provisions set out in the Preamble and Article 2. Article 2 makes it clear that all provisions of the *Declaration* apply to all people on a non-discriminatory basis.

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The *Declaration* also includes Article 24 which, in dealing with rest and leisure, affirms the right to “reasonable limitation of working hours and periodic holidays with pay.”

Finally, the *Declaration* includes a number of provisions which, though they are directed at society at large, have their greatest impact on working people. Thus, the *Declaration* includes articles dealing with: the right to social security and the realization of economic, social and cultural rights (Article 22); the right to a standard of living adequate for good health and well being (Article 25); and, the right to education (Article 26).

Ebb and Flow of Labour Rights

In Canada, as in many countries, the years following World War II were a period in which progress was made on virtually all of the many dimensions of labour rights as set out in the *Declaration*. Thus, in Canada, the rate of unemployment was kept below 7.0 per cent over the entire period from the end of World War II until 1975. Average wages and salaries grew by an average of 2.44 per cent per year over the rate of inflation from 1947 to 1956 and by 2.11 per cent and 3.06 per cent over the rate of inflation in each of the succeeding ten year periods.¹ Overall, measured poverty declined.

During the years immediately following the war, a period marked by sustained union militancy, trade union rights were formally recognized for private sector workers and trade union membership grew from roughly 700,000 in 1945 to 1.4 million in 1958. Another significant increase in union membership occurred after the mid-1960s when collective bargaining rights for public sector workers were recognized. Canadian trade union membership jumped from 1.5 million in 1965 to 2.9 million in 1975.²

Another very important area of progress was the development of Canada’s social security system. A national scheme of Unemployment Insurance was introduced during World War II. Coverage was expanded and benefits improved on a number of occasions in the post War period. The Unemployment Insurance program of 1971 provided Canadian workers with one of the strongest programs of its type in the world.³ The program also broke new ground in its provision of sickness and maternity benefits.

¹These figures are taken from the Canadian Institute of Actuaries, *Report on Canadian Economic Statistics, 1924-1996* (Ottawa: Canadian Institute of Actuaries, 1997).

²These figures are taken from M.C. Urquhart and K.A.H. Buckley, eds., *Historical Statistics of Canada*, 2nd ed. (Ottawa: Statistics Canada, 1983) and from E.B. Akyeamong, “A Statistical Portrait of the Trade Union Movement” (Winter 1997) *Perspectives on Labour and Income*.

³*Unemployment Insurance Act*, S.C. 1971, c. 48.

In 1951, Old Age Security was introduced following a constitutional amendment that allowed the federal government to create such a program.⁴ Since 1927, the federal government had cost-shared provincial programs for the elderly that were income tested. Old Age Security provided a universal flat rate benefit for all. In 1966, the earnings-related Canada and Quebec Pension Plans were introduced.⁵ These programs provided not only retirement benefits but disability and survivor benefits as well. Also in 1966, an income tested supplement to Old Age Security was introduced, for the low income elderly, through the Guaranteed Income Supplement.⁶

Family Allowances were introduced in 1945 and in 1965 and a national framework for social assistance and social services was established through the adoption of the Canada Assistance Plan.⁷ The Canada Assistance Plan provided for federal cost-sharing of provincial social assistance and social services.

In 1957, federal legislation was passed to permit federal cost-sharing of provincial hospital insurance schemes and, in 1967, similar legislation was passed to cover insurance for physicians' services.⁸ Medicare was, by that time, fully operational.

It is also worth noting that, from the mid-1940s to the mid-1970s, government's participation in education expanded dramatically. There was, of course, a huge increase in the number of young people in the appropriate age range to be at school. However, there was also an impressive increase in the number of people who pursued education beyond the mandatory school attendance age.

The social security system that emerged in Canada in the 1950s and 1960s was modest by European standards but it included most of the key elements of a comprehensive system – albeit on a scaled down basis. Moreover, the Medicare and Unemployment Insurance components of the system compared very favourably to corresponding US arrangements.

Underlying the progress, on all of these fronts, in the protection of social and economic rights were two fundamental political conditions. First, there was a

⁴*Old Age Security Act*, S.C. 1951 (2d Sess.), c. 18.

⁵*Canada Pension Plan Act*, S.C. 1964-65, c. 51. The CPP was integrated into Old Age Security by *An Act to Amend the Old Age Security Act*, S.C. 1966, c. 65, amending R.S.C. 1952, c. 200.

⁶*An Act to Amend the Old Age Security Act*, *ibid.*, ss. 6-15.

⁷The 1945 provision for Family Allowance was made in the *Income War Tax Act*, S.C. 1945, c. 23, s. 9. The 1965 provision was made in *An Act to Amend the Income Tax Act and the Federal Provincial Fiscal Arrangements Act*, S.C. 1965, c. 18, s. 21, amending R.S.C. 1952, c. 148. The Canada Assistance Plan was implemented by the *Canada Assistance Plan Act*, S.C. 1966, c. 45.

⁸The hospital insurance cost-sharing scheme was established by the *Hospital Insurance and Diagnostic Services Act*, S.C. 1957, c. 28. Physician's service insurance was covered by the *Medical Care Act*, S.C. 1966-67, c. 64.

commitment to full employment. It has properly been noted that this commitment was less complete in Canada than it was in some other progressive countries and, indeed, than prevailing theory would have suggested was appropriate.⁹ Nonetheless, with the benefit of subsequent history as a basis for comparison, the commitment was still unmistakable. The second fundamental condition was a willingness to spend on public programs. Thus, total expenditures by all levels of government increased as a share of national income from 22 per cent in 1950 to 41 per cent in 1975.¹⁰

Progress on the many dimensions of workers' rights reversed decisively in 1975, although it took a number of years for the reversal to reach into the many facets of workers' rights that were set out in the *Declaration*.

A commitment was made, in the June 1975 budget speech, to keep the rate of growth in federal government spending down to the trend rate of growth in economic activity (GDP).¹¹ In itself, this commitment was not remarkable. However, it provided a clear signal that, henceforth, federal budgetary policy would be dominated by a concern for expenditure control rather than for the maintenance of full employment. Only three months later, the Governor of the Bank of Canada gave a speech in which he said that the Bank would no longer try to manage interest rates – to achieve full employment or any other objective.¹² Rather, the central Bank would control money supply growth and leave it to the markets to determine interest rates. Full employment ceased to be the objective of either fiscal or monetary policy. In October 1975, wage controls were introduced.¹³

In the context of the contents of the *Universal Declaration* and subsequent events, the June 1975 budget was important in other respects as well. The targets of expenditure restraint included some of the same social programs that had been built up in earlier years. The first of what has become a long procession of cuts to the 1971 Unemployment Insurance program was announced. The Finance Minister announced that the federal government would cap its contribution under the *Medical Care Act*.¹⁴ In addition, the federal government served the required five years' notice under the *Hospital Insurance and Diagnostic Services Act* that it would revise its financial

⁹R. Campbell, "The Full Employment Objective in Canada in the Post War Period" in S. Gera, ed., *Canadian Unemployment: Lessons from the 80s and Challenges for the 90s* (Ottawa: Economic Council of Canada, 1991).

¹⁰Canadian Tax Foundation, *The National Finances: An Analysis of the Revenues and Expenditures of the Government of Canada 1979-1980* (Toronto: Canadian Tax Foundation, 1980).

¹¹*House of Commons Debates* (23 June 1975) at 7020-39.

¹²G. Bouey, "Remarks to the Forty-Sixth Annual meeting of the Canadian Chamber of Commerce in Saskatoon" (October 1975) *Bank of Canada Review*.

¹³*Anti-Inflation Act*, S.C. 1974-75, c. 75.

¹⁴*Medical Care Act*, R.S.C. 1970, c. M-8.

commitment in this area.¹⁵ Finally, it was a harbinger of things to come that the June 1975 budget included a personal income tax cut and made permanent certain corporate sector tax breaks that, previously, had existed only "on a temporary basis."

Certainly, the shift in direction that took place in 1975 cannot and should not be characterized as a one hundred and eighty degree turn "on a dime." Nonetheless, the shift in the basic orientations of social and economic policy was unmistakable. Unemployment began to inch upward and the movement elicited no response in terms of either monetary or fiscal policy. Control of inflation was identified, increasingly, as requiring more attention than the fight against unemployment. After several years of rising unemployment, average wages and salaries began to stagnate.

By the end of the 1970s, federal social spending commitments began to erode. Such erosion was evident in cuts to Unemployment Insurance and the introduction of the Established Programs Financing arrangements as a means of providing financial support for provincial health care and post-secondary education. Limiting spending and better targeting of resources on those "most in need" became the watchwords for federal social policy initiatives. The reduction, in 1978, of Family Allowance benefits to pay for the new refundable child tax credit can be seen as having launched the new era. The notion of social security as a right, as it is characterized in the *Declaration*, gave way to a charity-based model of social security. It is also noteworthy that the fascination with those "most in need" tends to confuse the federal role with the provincial welfare responsibility.

Despite this shift in direction of economic and social policy, with its negative impact on many labour rights, federal and provincial initiatives to address the inequality of women workers were won in the 1980s and 1990s. For example, in view of the persistence of a significant wage gap between men and women and the negligible effect of "equal value for equal work" provisions that followed on subarticle 23.2 of the *Declaration*, the women's movement and unions lobbied, with some success, for "equal pay for work of equal value" and pay equity legislation. These successes are important steps toward achievement of economic equality for women. Manitoba, Newfoundland, New Brunswick, Ontario, Prince Edward Island and Quebec all have now legislated some form of mandatory, pro-active pay equity legislation.¹⁶ Other jurisdictions, notably the federal *Human Rights Act*, provide complaints-based equal pay laws which

¹⁵*Hospital Insurance and Diagnostic Services Act*, *supra* note 8, s. 7(1).

¹⁶The provincial pay equity provisions may be found: for Manitoba, in the *Employment Standards Act*, R.S.M. 1987, c. E110, ss. 44-48; for Newfoundland, in the *Human Rights Code*, R.S.N. 1990, c. H-14, s. 11; for New Brunswick, in the *Employment Standards Act*, R.S.N.B. 1973, c. E-7.2, s. 37.1; for Ontario, in the *Employment Standards Act*, R.S.O. 1990, c. E.14, s. 32; for Prince Edward Island in the *Human Rights Act*, R.S.P.E.I. 1988, c. H-12, s. 7; and for Quebec in the *Charter of Human Rights and Freedoms*, R.S.Q. 1977, c. C-12, s. 19.

have been used by unions to advance equal pay claims for women members.¹⁷ In all jurisdictions, opposition from employers and governments has limited the gains. Equal pay and economic justice continue to be the focus for women workers' rights at the end of this decade.

What other advancements in this area might one look to? In 1984, the *Canada Labour Code* was amended to include provisions to address sexual harassment in the workplace.¹⁸ It is hoped that a current review of the Code will strengthen harassment prevention mechanisms significantly by broadening the definition to include all forms of harassment, by laying out more clearly the onus of the employer¹⁹ and by enhancing enforcement procedures. Although it is woefully inadequate compared to standards established by other northern countries, the *Canada Labour Code* also contains provisions for maternity and parental leave and for job reassignment during pregnancy.

Unions also have worked actively for the inclusion of sexual orientation as a forbidden ground of discrimination in human rights legislation. Such legislation is now in place in all but two provinces and one territory. Same-sex benefits for members have been won at the bargaining table and before the Courts but pension rights and legal recognition of same-sex relationships are still contested areas.

Affirmative action and employment equity measures to substantively address systemic disadvantages within the workplace have long been called for by unions and social movements. Since 1986, federal legislation which addresses these issues has been in place. Amendments made in 1996 have yet to make their impact felt.²⁰ Less success has been achieved provincially. Ontario's employment equity law was the first target of the Conservative government in its focussed assault on the so-called "quota law" and the rights of workers of colour, aboriginal workers and workers with disabilities.

Unions also built up a system of rights and standards in occupational health and safety and progress in this area, which continued after the mid-1970s, culminated, in 1981, with the ILO's generic *Convention on Occupational Safety and Health, No. 155*.²¹ However, these rights and standards have been eroded by deregulation, by the stagnation of regulatory regimes and by chronic decay in the regulatory enforcement

¹⁷*Canadian Human Rights Act*, R.S.C. 1985, c. H-6, s. 11.

¹⁸Currently s.247.1 in the *Canada Labour Code*, R.S.C. 1985 (1st Supp.), c. 9, s. 17. The sexual harassment amendments were first introduced by *An Act to Amend the Canadian Labour Code and the Financial Administration Act*, S.C. 1984, c. 39, s. 12.

¹⁹*Robichaud et al. v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84.

²⁰*Employment Equity Act*, S.C. 1995, c. 44, proclaimed in force 24 October, 1996 by SI/96-93, C. Gaz. 1996.II.3082.

²¹International Labour Organization, *Convention on Occupational Safety and Health, No. 155* (Geneva: International Labour Organization, 1981).

system. Increasingly, the international corporate agenda has been to replace systems of national regulation with "voluntary" international standards of health and safety management and auditing. These voluntary standards are not only ineffectual; in addition, they fail to address bad working conditions and fail to provide the measures necessary to improve those conditions. Procedural standards for management are being used as a substitute for enforceable regulations which, alone, can adequately ensure workers' rights and high standards of workplace health and safety. There exists a parallel process, in relation to environmental protection measures, whereby voluntary standards, often international, are being put forward as alternatives to national regulatory regimes.

In important respects, the shift in the orientation of social and economic policy of the mid-1970s remained to be completed in the 1980s and 1990s and continues to be challenged by the labour movements and other social movements. Not only was the full employment objective of macroeconomic policy abandoned, but sectoral and regional policies also came under increasing attack by governments on the grounds that the market could and would do a better job of allocating scarce resources. Moreover, markets themselves became increasingly global in nature. Thus, market liberalization became the dominant theme in structural economic policies and measures such as free trade, privatization and deregulation replaced public interventions such as regional development initiatives and the National Energy Program.

It is a matter of historical record that the era of market liberalization has been a period during which the rights and material well-being of workers have been eroded. What may have garnered less attention than it should is the ideological hostility to workers' rights that is embodied in the theoretical supports for current economic policy. Within the justifying theory, workers' rights, in the broad sense of the *Declaration*, do not show up as positive values to be achieved but, rather, as problems to be avoided. The following excerpt, which serves to illustrate the point, is taken from a memorandum to the Minister of Finance from a departmental official. The official is explaining to the Minister why the Minister's desire to see the Canadian unemployment rate reduced to US levels is unachievable:

The answer [to whether the natural unemployment rate in Canada can fall to the US level] is, likely not without further changes to the structure of Canada's markets. The much lower reliance on seasonal industries in the US, their more intensive competition in product markets, their lower rate of unionization and the reduced power of unions, their much looser market regulations, their much-less-generous and experience-rated unemployment insurance, and their less generous welfare all likely contribute to the lower US natural unemployment rate, at the expense of a more-unequal income distribution.²²

²²Memorandum to Minister of Finance from S. Clark, "The 'Natural' Rate of Unemployment and How Low Unemployment Can Go" (26 February 1997) (unpublished).

Clearly, the material well-being and rights of workers have come into a headlong conflict with the currently dominant view of how the economy must be managed. The future of labour rights probably will depend on the relative strength of that view in the future.

Some Current Issues and Contradictions

The period since the mid-1970s has seen dramatic changes that bear on the prospects for a fuller realization of workers' rights, on how those rights might be secured and on the focal point of conflict over rights. Among the most noteworthy changes in this respect are:

- a substantial increase in the portion of the labour force and the membership of the trade union movement who are women, people of colour, people with disabilities, aboriginal peoples and gay men and lesbians;
- a more distant relationship between the labour movement, on the one hand, and government and business, on the other;
- increased global dialogue and political action among trade unions and popular organizations; and
- changes in the way that work is organized including: growing inequality of hours worked; increasing part time work and overtime; intensification of work; more homework and less secure employment relationships.

These developments tend to be related to each other. They also reflect a lengthy period in which business has dominated public policy and economic agendas, both nationally and internationally. These developments also point to the prospects for change. They need not be belaboured but do deserve some elaboration.

The *Universal Declaration* was drafted at a point in time not only when labour issues had a substantive legitimacy but when there was active interest in formalizing dialogue on labour issues through consultative institutions. In Canada and other English-speaking countries, this process never went as far as it did in other industrialized countries. Nonetheless, institutions like the Economic Council of Canada and the C.D. Howe Institute did formalize dialogue on economic and employment issues. In addition, informal contacts between the leaders of the labour movement and business and political leaders were frequent.

Both the formal and informal discussions of economic and labour market issues tended to evaporate after the mid-1970s. Introduction of the wage control program, in October 1975, was the proximate cause of the labour members leaving the Economic Council. However, the continued drift of economic policy, supported by business

advocacy, in directions that ignored unemployment and labour rights, meant that there was a growing gulf between labour and the business and government establishments. That gulf was reflected, in part, by a growing fundamental criticism of government policies on the part of labour. In addition, the manner in which labour articulated its demands for the labour rights set out in the *Declaration* changed.

Increasingly, direct dialogue with government and business elites has given way to efforts to mobilize the trade union membership and to work with non-labour organizations, especially those representative of equality-seeking groups. Highlights of this reoriented approach include the massive demonstrations on Parliament Hill against high interest rates (1981) and for jobs (1993), the women's march against poverty (organized, in 1996, by the Canadian Labour Congress and the National Action Committee on the Status of Women) and the several recent Alternative Federal Budgets.²³

There has been an important change, as well, in the venue of labour rights discussions: from dialogues between labour leaders, on the one hand, and business and government, elites, on the other, to the streets. This change in venue has drawn energy from the changes in the internal composition of the labour movement referred to above. It has also gained energy from the new alliances with non-labour groups that have emerged in recent years. Not surprisingly, the labour rights agenda has also been influenced, in substantive ways, by changes in labour's method of advancing this agenda.

In its most general form, the substantive reorientation has involved a growing but as yet unsatisfied need to recognize the key elements of diversity among workers. Thus, issues like employment and pay equity have gained importance among the labour rights articulated by the labour movement and its allies. In addition, issues which traditionally have been dealt with in a "generic worker" fashion, such as rates of unemployment and pay are dealt with increasingly in terms of their specific implications for particular groups of workers.

The combination of market liberalization and substantial slack in the labour market has contributed heavily to changes in the way that work is organized. Large workplaces have intensified work processes, increased use of both part time work and overtime, instituted layoffs and downsizing, and introduced new organizational structures that emphasize either or both of "employee involvement" and "pay for performance" payment arrangements. At the same time, the workers' environment includes increasing amounts of temporary and contract work, self-employment and work in small firms and establishments. As a generalization, the emerging forms of work tend to be

²³Canadian Centre for Policy Alternatives and Choices: A Coalition for Social Justice, *Alternative Federal Budget Papers 1997* (Ottawa: Canadian Centre for Policy Alternatives, 1997) and *Alternative Federal Budget Papers 1998* (Ottawa: Canadian Centre for Policy Alternatives, 1998).

non-unionized and the members of equality-seeking groups are over-represented among the job holders.

Providing legal protections to the workers in the new forms of work arrangements is a critically important challenge that is recognized and supported by a large part of the population. Indeed, in an era when the advance of labour rights has not been an issue that has attracted broad based support, protection for non-standard workers is something of an exception. New forms of work arrangements have also provoked unions to rethink their approaches to organizing and the way in which they provide support to union locals.

Much of the change that is taking place in the economy at large and within individual workplaces can be understood as part of the process of globalization. Globalization, in the context of national and international deregulation, is both a “real world” economic phenomenon and an ideological force which, typically, is employed to rationalize the natural order of the market. In both the “real world” economic and ideological spheres, globalization has tended to undermine the living standards and rights of workers. On the other hand, it has also begun to produce its opposite number in the form of increasingly globalized popular opposition to the free reign of market forces.

Aided by the Internet, trade unions, women’s, environmental and other popular groups at the national level are becoming more thoroughly involved in networks with their counterparts in other countries. While, in the case of trade unions, formal networks have existed for many years, the international networks are viewed as gaining in relevance to the work of national organizations. Moreover, international trade unions are working more frequently with non-labour organizations on activities, such as the Asia-Pacific Economic Cooperation popular summits, which are designed to focus attention on labour rights, in the broad *Universal Declaration* sense of the term, and environmental issues in the APEC area.

An Agenda of Labour Rights

In Canada, as in many countries, labour rights have been under assault in recent years as the theory and practice of market liberalization has undermined living standards and turned the virtue of labour rights into the supposed vice of market rigidity. In Canada, this trend has been underway for some period of time. Despite strong efforts to resist the trend, it has not yet been reversed. It is clear, too, that both national and international efforts are now required to reverse the liberalizing trends.

It is a reasonable conjecture that if broadly based progress on the labour rights set out in the *Universal Declaration* is to be made, two basic conditions must be satisfied. First, substantively, a broadly based support for full employment and social security must be rebuilt. The abandonment of full employment and the fatalistic acceptance of

that abandonment have undermined conditions in the labour market and put unnecessary strains on social programs for the non-elderly. Exercises like the Alternative Federal Budget are important in bringing together a range of groups around these issues. Second, organizationally, coordination of efforts across a range of groups and organizations is necessary both nationally and internationally. Given their constituency, organizational form and resources, trade unions will be pivotal to these efforts but are unlikely to succeed on their own in building the required support to substitute labour rights for market liberalization as the key to future prosperity.

Even without having totally reversed the liberalizing trend, there will be – and should be – battles over specific labour rights issues in the period ahead. Some of these issues have sufficient resonance with wide parts of the population that they may succeed as minor rallying themes within an environment that, overall, is hostile.

As was noted above, the situation of precarious workers has attracted a great deal of interest in the recent past and labour will fight for the extension of further legal protections to people in these work situations. Specific focus will be brought to bear on concerns such as guarantees of access to non-wage benefits for part-time workers and application of labour standards and collective bargaining law to homeworkers and self-employed workers who are dependent contractors.

In addition, struggles around equality issues will continue. Campaigns for pay and employment equity will continue. So, too, will the struggle for workplace social benefits for same-sex spouses.

Internationally, solidarity work in support of labour rights will continue. Efforts will continue to be made to insert social and environmental clauses in trade and investment agreements. Greater efforts than have been made in the past will be required to perform policy advocacy in support of the broad range of labour rights established in the *Declaration*. Moreover, work on social clauses will have to be expanded substantively to focus attention on the need for international economic agreements that speak to the rights of workers in a truly comprehensive way.

Notwithstanding the battering that they have taken in recent years, the labour rights set out in the *Universal Declaration* still serve as a good conceptual guide to labour rights fifty years later. Moreover, despite their reversal of fortunes in practice, the forces that will correct the current state of affairs remain discernible as do the key issues on which wider events will turn.