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By William Renwick Riddell*

THE economical problems of Canada are not different from those of the United States except in unimportant minutiae; and the answers attempted in the one country may not be without interest in the other.

In these papers some account will be given of the legislation in Canada in the matter of labor, strikes, and the like.[1]

The earliest legislation of the Dominion followed somewhat closely the existing legislation in England. The Imperial Parliament in 1896 passed an act[2] of which the principle as stated by its proposer was "to endeavor to establish a system of settling disputes between employers and employed, by conciliation."[3] It

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[1] There is no pretence at originality in these papers; nearly all of the materials for them will be found in an article by Mr. F. A. Acland, Deputy Minister of Labour, in 36 Canadian Law Times, 207 sqq; the Annual Reports of the Department of Labour, 1906-7, 1907-8, 1918-19; the Labour Gazette, especially for April 1916; Report on Strikes and Lockouts in Canada 1901-16, and the statutes referred to in the text. Those desiring a more detailed knowledge of the subject are invited to make use of the above official publications.

[2] (1896) 59, 60 Vict. C. 30, (Imp.) assented to August 7, 1896.

[3] The Right Honorable Charles Thomson Ritchie (afterwards Baron Ritchie of Dundee); the language was employed on Ritchie's moving the second reading of the bill, June 30, 1896. See Parl. Deb. Ho. Com. 1896, 42 Hans. 4th Series, 6th Volume p. 419. Ritchie was at the time president of the local government board; a rather inadequate account is given in vol. 3 of the Second Supplement Dict. Nat. Biog. p. 205; but a full account may be read in Hansard for 1896, 6th, 7th and 8th volumes. The debate on this bill is one of the most extended, animated and interesting in the many volumes of Hansard; but I cannot give even an outline here. The board of trade was and is a department of the government and has no analogy with the unofficial boards of trade in the cities and towns of this continent.

was recognized that there had been for some time in Oldham and elsewhere a fairly satisfactory system of dealing with disputes between employers and their workmen by boards of conciliation: the bill was not intended to interfere with that practice but rather to give the boards of conciliation an opportunity to establish themselves on a better basis by means of registration at the official board of trade. The act also provides that the board of trade might enquire into the causes and circumstances of any dispute between employers and workmen, assist in amicable settlement, at the request of the parties, appoint an arbitrator, etc.

These boards did much good: the intervention of the board of trade was sometimes very useful, but the act did not put an end to all industrial disputes.

However, the experience in England seemed to show that some such legislation was valuable; and in 1900 the existing government of Canada determined to introduce a similar bill in the Canadian Parliament. Mr. (now Sir William) Mulock, then Postmaster General in Sir Wilfred Laurier's administration, accordingly introduced a bill with the object

"by the aid of boards of conciliation to promote the settlement of trade disputes and differences that arise from time to time between employers and employed, and between different kinds of employees."

It was

"hoped that the application of this principle might prevent strikes and lockouts and that if unfortunately such extreme measures should be resorted to in the case of such disputes, the adoption of this method might bring about a more satisfactory and permanent settlement of these disputes."[4]

The act passed[5] was based on the Imperial Act of 1896; but in some respects went further. Like the Imperial Act it provided for the registration of boards of conciliation either before or after the passing of the act, a report of the proceedings of each board to the government,[6] investigation by the minister into trade disputes, etc. The Canadian act also provided for the establishment of a department of labour and the publication every month of a

[4] This language is to be found in 53 Com. Debates, Canada, (1900) p. 8399. For the debate see pp. 9368, 9392, 9396, 8418-22; 10413.

[5] (1900) 63, 64 Vict. C. 24 (Dom.).

[6] In England to the board of trade; Canada having no board of trade the reports were to be made to the minister assigned for the purpose of carrying out the provisions of the act—a "minister of labour."

Labour Gazette devoted to information concerning conditions of the labor market and kindred subjects, which was to be widely distributed.

So far as the main object of the act was concerned i.e. the establishment of boards of conciliation, the act was a dead letter; but a minister of labour was appointed and a deputy minister:[7] the Labour Gazette was duly published and much useful information obtained and published.

The deputy minister was very successful in arranging settlements between employers and employed; but in the absence of any power of compulsion, however gentle and conditional, it cannot be said that the act was wholly satisfactory. Nevertheless the Prime Minister, Sir Wilfred Laurier, was able to say with truth that "certainly Canada has escaped many such labour disputes as have endangered society in other countries."

In the two years, 1901 and 1902, there were (including a strike of 5,000 Canadian Pacific Railway trackmen) altogether 225 disputes involving some 40,000 employees, about three-fourths of one per cent of the population; but it must be remembered that 1900 and 1901 were times of industrial crisis and 1902 was a year of somewhat diminished industrial activity immediately preceding the era of increased employment and increased wages.[8] In 1903 was passed our first act looking to compulsion in trade disputes. This was the "Railway Labour Disputes Act"[9] which gave the minister of labour absolute power in case of a difference between railway employers and railway employees whether upon application of either party or by a municipality affected or of his own motion to establish a committee of conciliation, mediation and investigation to be composed of three persons, one appointed by the employer, one by the employed, and the third by the parties or if they did not agree, by the two so named —if any party refused to appoint the minister might do so.[10]

[7] Mr. Mulock became Minister of Labour and Mr. W. I. MacKenzie King (afterwards Minister of Labour and now leader of the Opposition) Deputy Minister.

[8] See "Report on Strikes and Lockouts in Canada, 1901-1916" published by the department of labour, Ottawa, 1918, pp. 10, 11. The language of Sir Wilfrid Laurier quoted above in found 78 Com. Deb. Can. p. 1040.

[9] (1903), 3 Edw. VII, C. 55 (Dom.).

[10] When the dispute was with the Intercolonial Railway or the Prince Edward Island Railway which were owned and operated by the government of Canada, the lieutenant-governor of Quebec, New Brunswick, Nova Scotia or Prince Edward Island was to perform the

The committee was to endeavor by conciliation and mediation to bring about an amicable settlement and if acceptable to both parties to act as a board of arbitration. If the committee failed in its efforts at conciliation and either party objected to its acting as a board of arbitration, new representatives were to be appointed in the same way as the original board, but as a board of arbitration. Upon an arbitration the board had the power of compelling the attendance and evidence of witnesses, etc., as in a court of justice: the award was filed with the minister and published by him in the Labour Gazette—but no court was to have the power to enforce or even to receive in evidence the award; the arbitration was compulsory but obedience to the award was voluntary—the whole matter being left to the good sense of the parties and the force of public opinion. Nor was there any prohibition of strikes or lockouts before, during or after the arbitration.

Only one case came up for action under this act.[11] There is no means of determining whether it had indirect influence in preventing disputes or in inducing the disputing parties to settle their disputes amicably.

The year 1903 was prominent as one of industrial unrest, not so much perhaps in the number of disputes—there were 146 as compared with 104 in 1901 and 121 in 1902—but in the number of employees involved and the heavy time loss:[12] 1904 and 1905 were years of comparative calm—99 disputes in 1904 and 89 in 1905, both together involving not appreciably more than one-half of one per cent of the total population. Official reports show that in the years 1901-1906 out of 722 disputes, 24 were settled by arbitration, 37 by conciliation, and 350 were terminated by negotiation between the parties. In 1906 out of the total number 139 or 141 (according to the dates taken) 50 terminated

function of the minister in naming a member of the board committee on default. See secs. 3, 7, of the act. Mr. Acland is in error in his article in 36 Can. L. Times at p. 211 in saying: "If . . . the establishment of a board was not requested no board could be established. . . ." the act by sec. 5 expressly provides that the minister might establish a board "of his own motion."

[11] The telegraphers of the Grand Trunk Railway threatened a strike: they asked for a minimum wage, the company refused; arbitrators were appointed who made an award and subsequently the company settled according to the terms of the award. See 78 Com. Deb. Can. pp. 1038, 1039.

[12] There were many strikes in the building trades; 3,000 were out in Toronto alone and there was a strike of 5,000 shoe workers in Quebec.

in favor of the employers and 41 in favor of the employees, 23 compromises, 5 gave the strikers partial success, some employers only yielding—15 strikes ceased without any definite result, the cause being removed or the workmen seeking other employment, and 5 were not settled by the end of the year: 55 were settled by negotiation between the parties, 27 by "strike breakers," 19 by simply resuming work, 5 by conciliation.

In 1906 the two acts above mentioned were consolidated into one without material change:[13] in this year and part of the next there were business expansion and advancing wages. The usual result followed, an increase in labor disputes, 141 in 1906 and 149 in 1907 in all involving almost one per cent of the population.

Thus far there was nothing preventing strikes or lockouts but rather a benevolent supervision by the department of labour with more or less success in preventing, alleviating or terminating labor troubles according to the acuteness or importance of the dispute and the reasonableness of the disputing parties.

In 1907 a radical change was made in the policy of Canada in that respect. Sir William Mulock had ceased to be minister of labour[14] and had been succeeded by M. Rodolphe Lemieux. Mr. King continued to be deputy minister of labour; Mr. King had made a protracted and thorough investigation of the coal strike at Lethbridge and had been forcibly impressed with the necessity of protecting the public against deprivation of this foremost necessity "upon which not only a great part of the manufacturing and transportation industries but also, as recent experience has shewn, much of happiness and life itself depends" so far as that could be done "without encroaching upon the recognized rights of employers and employees." Mr. King made a report advising that in case of a dispute in respect of coal mine employers and employed all questions in dispute might be referred to a board empowered to conduct an investigation under oath with the additional feature, perhaps, that such reference should not be optional but obligatory; and pending the investigation and until the board has issued its finding the parties be

[13] Can. R. S. c. (1906) C. 96. The figures just above are taken from the Department of Labour Report for 1906-7, and from M. Lemieux's speech in the House of Commons, 78 Com. Deb. Can. p. 1167.

[14] He was in 1905 appointed Chief Justice of the exchequer of the Supreme Court of Ontario, a position he still holds with credit to himself and advantage to his country.

restrained on pain of penalty from lockout or strike."[15] Accordingly a bill was drawn up to cover not only coal mines but other "public utilities and services."

The bill was slightly modified in its passage through Parliament but ultimately was passed and was assented to March 22, 1907,[16] under the name "The Industrial Disputes Investigation Act, 1907."

This act applies to all employers[17] employing ten or more persons and

"Owning or operating any mining property, agency of transportation or communication or public service utility except as hereinafter provided, railways . . . steamships, telegraph and telephone lines, gas, electric light, water and power works."[18]

It provides by section 5 for the appointment by the minister of labour of a board of conciliation and investigation on the application of either party wherever any dispute exists between the employer and the employed and the parties are unable to agree: the disputes to be referred to this board subject to the exception that railway disputes are to be referred under the act of 1906. The board consists of three members who are appointed by the minister, one on the recommendation of each party, and the third on the recommendation of these two: the board has the power to compel the attendance of witnesses, take their evidence upon oath, etc., and has full clerical and other assistance. The first duty of the board is to endeavor to bring about a settlement of the dispute: it must to this end expeditiously and carefully enquire into the dispute and all matters affecting the merits, etc. If the parties agree, a memorandum of agreement is drawn up by the board and signed by the parties: if not, the board makes a full report to the minister in plain terms and without technicalities with its recommendations: the report (or reports if the

[15] See this Report cited by M. Lemieux on moving for leave to introduce Bill No. 36, in the House of Commons, December 17, 1906; 78 Com. Deb. Canada, p. 1036.

[16] (1907) 6, 7, Edw. VII, C. 20, (Dom.). The very instructive and interesting debate will be found, 78 Com. Deb. Can. pp. 1035, 1150, with a fairly accurate statement by Mr. (now Sir) Robert Borden of the strikes in 1901, 1902, 1903, and of the provisions of the New Zealand Act, 1378 sqq. 79 Com. Deb. Can. pp. 3001, 3091, 3278, 3802, 3843 sqq.; 80 Com. Deb. Can. pp. 3978, 4458, 4771, 4978, sqq.

[17] This is extended by the amending Act of 1920, assented to June 16 (1920) 10, 11, Geo. V. C. 29, (Dom.), to "any number of such persons . . . acting together or who in the opinion of the minister have interests in common."

[18] Sec. 2 (C).

members do not agree) the minister publishes in the Labour Gazette and gives a copy to each of the parties and to every newspaper which applies for it.

Before the report is made either party may agree in writing to abide by it, and this agreement is also sent in.

Another provision of much value is to be found in section 63—when there is a dispute arising in any industry or trade other than those included in the act and the dispute threatens to result or has resulted, in a strike or lockout[19] either party may agree in writing to allow the dispute to be referred to a board of conciliation and investigation under the act: this is transmitted by the registrar, an official at Ottawa, to the other party and if he also agree, the dispute is referred "as if the industry or trade and the parties were included within the provisions of the act." As soon as the registrar informs the parties that the minister has decided to refer the dispute "the lockout or strike in existence is forthwith to cease."

The teeth of the act lie in section 56 which provides that (with certain limited exceptions not of interest in this inquiry) "it shall be unlawful for any employer to declare or cause a lockout or for any employee to go on strike on account of any dispute prior to or during a reference of such dispute to a board of conciliation and investigation under the provisions of the act or prior to or during a reference under the provisions concerning railway disputes in the conciliation and labour act" of 1906. Any employer who violates this prohibition is liable to a fine of not less than $100 or more than $1,000 for each day or part of a day the lockout continues: an employee to a fine of not less than $10 or more than $50 for each day or part of a day: anyone inciting, encouraging or aiding an unlawful strike or lockout is liable to a fine of not less than $50 or more than $1,000. These penalties are recovered by summary proceedings before justices of the peace.

The act calls for observation in the following particulars: 1. Only industries which are concerned with what may fairly be called "public utilities" are compulsorily affected by the act; 2. Other industries may by consent come under it; 3. The minister of labour is authorized to act only upon request of a party—thus taking away the discretion given him by the act of 1900; 4. The

[19] Extended by act mentioned in Note 17 supra to a case where a strike or lockout "seems to the minister to be imminent."

minister may refuse to grant a board;[20] 5. Railway disputes are disposed of under the act of 1906; 6. Strikes and lockouts are forbidden until after a report of the board: but not thereafter.

Of the 151 trade disputes reported in 1907, 16 occurred in the first three months of the year before the passing of the act, and the act did not become well known until some time after it was passed. Of the remaining 135 disputes 60 were settled by negotiation, 22 by replacement of strikers, 23 by resumption of work on employers' terms, 2 by granting of employees' demands, in 3 work was resumed as employers were not involved in the dispute: in 4 strikers found employment elsewhere, there were 3 cases of arbitration and 6 of conciliation—leaving 12 unsettled (or unknown).[21] During the year there were 25 applications for boards of conciliation and investigation, but three disputes were settled before a board was constituted and one when the board was being constituted—in only one case did the board fail to prevent a strike, while there were 22 cases in mines and public utilities where a board was not called for.[22]

A full and itemized statement of strikes and lockouts in after years can be obtained from the publications of the minister of labour at Ottawa: but it would seem to be unnecessary here to do more than set out a summary and the following will probably be found sufficient:

Of cases coming within the act of 1907 whether as affecting "public utilities" and the like or by reason of request by one party and consent of the other during the period March 22, 1907, to March 31, 1919, there were 374 disputes referred under the act,

[20] This is made clear by the amending act, (1918) 8, 9, Geo. V. c. 27 (Dom.) amending s. 6 of the Act of 1907.

[21] Report of the Department of Labour for 1907-8 p. 177. Perhaps it may be of interest to set out the causes of the strikes up to this time:

Causes	1901	1902	1903	1904	1905	1906	1907	Total
For increased wages	48	54	60	36	30	55	65	348
Against reduction	10	7	7	7	8	3	3	45
For decreased hours	1	7	8	3	3	7	11	40
Increased wages and decreased hours	5	14	18	8	4	7	8	64
Against employment of certain men	13	8	13	16	9	13	20	92
Against conditions		5	5	4	8	3	5	30
Recognition union		5	5	1	4	5	3	23
Sympathetic		29	10	3	1	2	2	47
Unclassified	16	12	29	21	23	43	29	173
Totals	93	121	155	102	87	138	146	842

[22] Report of Strikes and Lockouts in Canada 1901-1916, p. 13.

of which 67 were in mines, 217 transportation and communication, 9 public utilities proper, i.e. light and power, etc., 30 in war work, and 51 which were referred under request of one party and consent of the other—in these 374 references there were 24 failures to prevent or end strikes, 11, 11, 0, 1 and 1 in the classes above named.[23]

In the last year of which full itemized particulars are available in printed form, i.e. from April 1, 1918, to March 31, 1919, the numbers referred total and in classes were 100, 3, 44, 4, 24, 25, and the failures 2, 0, 1, 0, 1, 0.[24]

In addition to the act of 1907 it must be borne in mind, the act of 1906 has been in full force. Officers of the department of labour are stationed at Vancouver, Calgary, Winnipeg, Toronto, Ottawa, and Montreal—it has been not only the duty but the pleasure of these officers to get specially in touch with all industrial disputes, and to tender their good offices to prevent and adjust strikes and lockouts. "An ounce of prevention is worth a pound of cure:" and it is quite certain that in the great majority of cases of growing dispute which came to the attention of the department, the trouble was settled without a strike. Moreover, it is officially stated that

"There is a growing tendency on the part of employers as well as workmen to invite the services of a departmental officer before a break in working relations. Experience is of the highest value in conciliation work, and many a dispute which has perplexed and baffled employers and workmen alike is solved by the appearance at an opportune moment of an officer who has frequently encountered the same or similar situations, and whom both sides (though not always without hesitation on the part of one party or the other) accept as mediator."[25]

[23] Report of Department of Labour for the fiscal year ending March 31, 1919, Ottawa, 1920, p. 75.

[24] Ibid. p. 74.

[25] Ibid. p. 8. The language quoted is that of Mr. Acland, Deputy Minister of Labour, in his report to Hon. Senator Robertson, Minister of Labour, (himself a labor man and in a sense representing labor in the Dominion Cabinet). I do not here more than mention the Order-in-Council, P. C. 1743, which set out explicitly the conditions which in the view of the government should obtain in Canada during the war; it amongst other things established a board of appeal to which appeals could be carried from boards of conciliation, the board of appeal being composed of two representatives of labor nominated by the executive council of the trades and labour congress of Canada, two representatives of the employers nominated by the executive of the Canadian manufacturers' association and a chairman selected by these four or if they could not agree by the minister of labour. This came to an end on peace—for Canada unlike the United States is now at peace.

It would be ungenerous not to say a good word of the splendid disposition shown by employer and workman during the recent war. Canada was at war in August, 1914, and for some years while the United States was still unengaged, was suffering fearful losses. In 1911 the loss of time by strikes was over two million working days—in 1912, about one million, and in 1913, a million and a quarter, but in 1914 less than half a million with a total number of strikes 44, the smallest number in the experience of the department since its organization in 1901. In 1915 there were 43 strikes with a time loss of 106,149 days, one-twentieth of the loss in 1911: in 1916 the loss was slightly increased, 43 strikes causing a loss of about 200,000 days: 1917 was not quite so satisfactory. In this year labor shortage first became felt and there was a growing demand on the munition factories: shipbuilding became active, and the miners in the west were restive. But with all this the strikes totalling 148 brought about a loss of only 1,134,790 days, less than half the loss of 1911, a year of similar unrest. In 1918 there were more strikes, but these were of short duration, 196 strikes producing a loss of 763,341 days—41 of the strikes lasted three days or less, and in many other cases work was resumed within a week or ten days.[26]

In Canada we are not embarrassed by troublesome "constitutional limitations." Our Parliament within the ambit of its prescribed objects has plenary power to act as it will.

The Conciliation Act of 1906, section 30, provides that:

"No court . . . shall have . . . any power . . . to recognize or to receive in evidence any report of any board of arbitration or of any committee of conciliation or any testimony or proceedings before such board or committee . . . for any purpose whatever except in case of prosecution for perjury;"

and all such boards may allow or decline to allow professional counsel or solicitors to appear although the parties may appear in person or by agent.[27] The boards may in their discretion conduct their proceedings in public or in private, Sec. 33.

Under the act of 1907, the board sits in public unless it decides to sit in private:[28] it may permit or refuse counsel or solicitors, Sec. 41, and its proceedings have the same immunity from court interference as in the act of 1906.

[26] See the very lucid and interesting report mentioned in note 25 supra.

[27] Sec. 29.

[28] Sec. 45.

Consequently there is little in the way of judicial proceedings in connection with these acts.

There have been a very few proceedings against workmen for striking before a board has been asked for.[29] These were generally due to ignorance of the law, and in at least one case to my personal knowledge the workmen on finding that they were acting illegally called off the strike only to renew it when the award of the board was not satisfactory to them.[30]

In *Rex v. McGuire,* one James McGuire[31] was convicted by the police magistrate of Cobalt of "having unlawfully incited the employees of the Nipissing Mining Company to strike," and adjudged to pay a fine of $500 and in default of payment to be imprisoned for six months. A motion was made to the supreme court to quash the conviction on several grounds, the chief one being that neither party had made an application for a board. The divisional court[32] held that the prohibition by the act of strike or lockout "prior to and during a reference" applied not only to cases in which either party had applied for a board but to all cases: and consequently a strike is illegal before as well as after such application.

The legislation to ensure workmen fair wages and decent surroundings and to secure them against undue competition from labor imported under a contract, and also the effect of Canadian legislation upon that of other countries will be the subject of another paper.

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[29] Published in the Labour Gazette.

[30] The strike in the Springhill coal mines, Nova Scotia, which resulted so disastrously to both owners (credo experto) and the workmen.

[31] (1908) 16 O. L. R. 522, 11 O. W. R. 384.

[32] Composed of Sir William Mulock, C. J. Ex., Magee and Clute, J. J.; the judgment is illuminating and will repay careful perusal. The prosecution was under sec. 60 of the act: "Any person who incites, encourages or aids in any manner any employee to declare or continue a lockout or any employee to go or continue on strike contrary to the provisions of this act, shall be guilty of an offence and liable to a fine of not less than $50 nor more than $1,000."

The term of imprisonment was reduced to three months by the Divisional Court.