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# Labor Legislation in Canada

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# LABOR LEGISLATION IN CANADA:

## IMPORTATION OF LABOR

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LEGISLATION in the Dominion Parliament to protect Canadian workmen from undue competition from imported labor began in 1897.[1] The first bill for the purpose which resulted in action was introduced by a private member of the House of Commons, Mr. Cowan, who came from Windsor, Ontario, opposite Detroit. He spoke of the legislation in the United States respecting the employment of aliens there, pointed out that it had the effect of restricting Canadian laborers and artisans in obtaining employment across the lines and gave instances where it had

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[1] The question had been discussed several times in the House. Mr. Taylor, a private member, i. e. not a member of the government, being perhaps the most active proponent. His bill was introduced March 29, 1887, 44 Com. Deb. Can. p. 89, immediately after that of Mr. Cowan, do. do. do. p. 88. Other bills had been introduced previously but had failed to pass. The Reform Party under Sir Wilfred Laurier was in power at the time having succeeded at the general election of 1896 after an exclusion from power for 18 years. The government was watching its steps with great caution; it had not taken a definite stand in the matter and there was a somewhat amusing race between Mr. Cowan a reformer and supporter of the government on the one side of the House and Mr. Taylor a conservative and consequently on the opposition side of the House, for the favor of the Labor Unions and priority in their respective bills. The reformer naturally won by a nose: "Codlin is the friend, not Short." In our system of responsible government, the administration must at all times be in a position to procure a majority vote of the House of Commons on any measures. Moreover, the whole ministry must assume responsibility for every act of each minister. Accordingly a government must carefully consider every proposed measure before accepting it as a government measure. Where the government does not assume responsibility, a measure may be introduced by a "private member." If the government is neutral it takes its chances of passing, if the government actively

operated very harshly. He thought that Canadian laborers and artisans did not need and did not wish protection[2] in the open field of competition, "fair field and no favour:" but that it was a matter of national self-respect that they should be protected in the home market against the labor of a country which debarred them from competition there.[3] The bill was referred to a committee together with a bill to much the same effect introduced by Mr. Taylor.[4] The bills were consolidated in committee[5] and finally the consolidated bill became law.[6]

The act is much like the American statutes: it forbids assisting immigration of foreigners under contract to perform labor in Canada and voids every such contract: a penalty of $1,000 is

opposes, it is defeated. In the case of protection to workmen, the government was neutral.

At the date of this writing the government has not taken its stand on the question whether employees of the national railways, the Canadian National and the Grand Trunk, shall be permitted to take any active part in politics. The president of the Canadian National has put in force a regulation forbidding this; and in the election held in Northeast Toronto, November 8, 1920, Mr. Higgins the Labor candidate was obliged to give up his employment in the Canadian National Railway: he was not elected; The Honorable Senator Robertson, Minister of Labour and himself an employee of the privately owned Canadian Pacific Railway was reported a few days ago to have said that the question would receive the careful consideration of the government and a decision given. In the Winnipeg Tribune of November 10, 1920 appears the following item, indicating that the government has not decided in favor of the employees.

"The recent order of D. B. Hanna prohibiting C. N. R. employees from holding legislative offices, was carried into effect Tuesday, when A. E. Moore, M. L. A., president of the Winnipeg District Command, Great War Veterans' Association was notified that he would have to resign his seat or give up his position.

"As Mr. Moore refused to relinquish his seat, he was forced to leave the employ of the C. N. R."

(M. L. A. means Members of the Legislative Assembly.) The matter has been taken up by the trade unions; but it is still undecided.

[2] Canada was for a long time a free trade country as was to be expected from her enormous production of raw materials. In 1878, the people declared for protection for manufacturers, the "national policy." Since that time almost all classes have at some time demanded protection for themselves, which is also most natural.

[3] 44 Com. Deb. Can. pp. 625 sqq. There was some pretty good talk by Mr. Cowan. "The Canadian Laborer and the Canadian artisan . . . never asked any government to protect them by legislative enactment which declared that his neighbour from a foreign nation must renounce the flag of his country and sever the ties with the home he loved before he could secure the vantage ground in life's broad field of action that leads to final victory." Mr. Taylor spoke on the bill, said he had introduced one in 1890 of which Mr. Cowan had copied eight clauses word for word, etc., etc. He found fault with some of the provisions of Mr. Cowan's bill but generally approved.

[4] 44 Com. Deb. Can. p. 659.

[5] 45 Com. Deb. Can. pp. 3545 sqq. After an ineffectual protest by Mr. Taylor.

[6] (1897) 60, 61 Vict., c. 11 (Dom.).

imposed on every person natural or artificial assisting or encouraging such immigration: the master of a ship who so offends is liable to a fine of $500 and imprisonment for six months. The attorney general of Canada may deport within one year anyone so immigrating and at the expense of the owner of the importing vessel: and no proceedings were to be taken under the act without the consent of the attorney general. The act was in its terms a retaliatory act. It provided by Sec. 9 that it "should apply only to such foreign countries as have enacted and retained in force or shall enact and retain in force laws or ordinances applying to Canada of a character similar to this act." After a slight amendment in 1898, relating only to evidence of foreign law,[7] this act remained in force until 1901. When the department of labour was created in 1900,[8] it became a very important part of its duty to gather information and inform the attorney general's department of violations of the act. A resident officer was appointed with that special duty.

There were many prosecutions under this act but it was found cumbrous in its actual working. The department of the attorney general was in Ottawa and complaints were made that there were delays and obstacles in the way of speedy and effectual prosecution. Moreover, the courts were conservative in imposing the very severe penalty of $1000 and cases arose where a much smaller penalty might well be sufficient punishment. The most serious defect, however, arose from the fact that the act was frankly retaliatory on the United States as it was to apply only to aliens or foreigners, citizens of countries having similar legislation. Accordingly where proceedings were taken in respect to workmen from the United States, all that had to be proved for a successful defence was that the workmen were not citizens of the United States.

These defects induced the government to promote legislation. It had now become the settled policy of the government. Accordingly, March 7, 1901, the Prime Minister Sir Wilfred Laurier introduced a bill to amend the act correcting these defects.[9] This bill was much discussed in labor circles and contained a clause inserted at the suggestion of the labor organizations forbidding promise of employment to foreigners by advertisement and the like. The bill was passed in due course and became law May 22,

[7] (1898) 61 Vict. c. 2 (Dom.)
[8] Under the Conciliation Act, 1900, 63, 64 Vict. c. 24 (Dom.)
[9] 54 Com. Deb. Can. (1901) p. 1066.

1901.[10] The law thus declared has been consolidated in the Revised Statutes of Canada, 1906, as chapter 97. The penalty for assisting alien labor to enter Canada under contract is not less than $50 or more than $1000; this may be sued for as a debt by any person on the written consent of the judge of the court in which the action is to be brought. Or on the consent of the attorney general of the province, the penalty may be imposed on a prosecution and summary conviction under the criminal law and the minister of finance may allow up to 50 per cent of the amount recovered to the original informer. As in the earlier act contracts are declared void which have as their object the violation of the act. The master of a vessel knowingly bringing in alien labor under contract is liable to a fine of not more than $500 for each person and also to imprisonment for not more than six months. If an immigrant comes to Canada in violation of the act, he may within the year be deported to the country whence he came at the expense of the owner of the vessel or if from "an adjoining country"[11] at the expense of the person or company that brought him or lured him to Canada. It is considered a violation of the act for anyone to assist or encourage immigration from any other country by advertisement, etc., of promise of employment and the like. The whole act is still restricted in its application to countries having similar legislation.

The first case reported under this act was in British Columbia: W. L. MacDonald of the miners' union at Rossland, British Columbia, laid an information against Albert Geiser for bringing from the United States two miners, Stevenson and Andrew, under contract to work in the Le Roi mine: Geiser was convicted and fined $500 in one case and $50 in the other. Failing on technical grounds to have an appeal considered,[12] he paid the fines and $275 was awarded to MacDonald. It is not proposed to detail the cases decided under the act. It will be sufficient to note a few with the points decided.

In 1902, the carpet weavers' union laid an information against the secretary-treasurer of the Toronto Carpet Company. He had engaged in Lowell, Massachusetts, for his factory in Toronto, a French Canadian who asked that his brother should also be engaged. The answer was "He will have a show." They came

[10] As (1901) 1 Edw. VII, c. 13.

[11] A gentle way of saying "the United States."

[12] See Rex v. Geiser, (1901) 5 Can. Cr. Ca. 154; (1903) 7 Can. Cr. Ca., 172; 4 Labour Gazette, (August 1903) p. 143.

and went to work. As to the first man, he was a British subject, never denaturalized, and there was, therefore, no offence. As to the brother, it was held that an express contract was not necessary, and a fine of $50 and costs was imposed.[13]

In 1904, an information was laid against a tailor in Dundas for importing two workmen from New York. His defence was that he did not make a direct engagement but only assured them of work in his factory: that defence was unsuccessful.[14]

A defence that a strike had left him shorthanded, that he could not get corkcutters in Canada and did not know the law did not save Edward Freyseng of Toronto.[15]

A man in Philadelphia saw an advertisement which caused him to write for work to a wallpaper company in Toronto: the president answered that he could not engage him in the United States but could if he came to Toronto. On being requested to pay railway fare, the president refused as that would be a violation of the act, but sent a ticket from the Canadian border to Toronto. Fine $50 and costs of which the informer got $25.[16] But while the courts have been astute to prevent colorable evasion of the act, its provisions have not been extended beyond their fair meaning. The usual manufacturer's advertisement of "mechanics wanted" was held to be simply an invitation to apply for employment, not a promise of employment:[17] and the consent of the judge to bring an action must specify the offence charged and not simply the alleged offender.[18]

Very important investigations have been made by commissioners appointed for the purpose into the employment of aliens

[13] Rex v. Hayes, 3 Labour Gazette (September 1902) p. 188, 23 C. L. T. 88.

[14] Rex v. Amberg, 5 Ont. L. R. 198, 20 W. R. 123, 6 Can. Cr. Cas. 357. 5 Labour Gazette (September 1904) p. 303.

[15] Rex v. Freyseng, 4 Labour Gazette (May 1904) p. 1129.

[16] Rex v. Menzie, 6 Labour Gazette (March 1906) p. 1059: 6 Labour Gazette (November 1906) p. 580.

[17] Rex v. Vancouver Engineering Works, 5 Labour Gazette (July, 1904) pp. 112, 113: S. C. 8 Can. Cr. Ca. 66. See the sound and commonsense remarks of Mr. Justice Duff.

[18] Rex v. Breckenridge, 6 Labour Gazette (1905) pp. 228, 469, 597; S. C. 10 Can. Cr. Ca. 180, 10 Ont. L. R. 459. This was decided at Toronto by a divisional court composed of Sir William Meredith (then C. J. Common Pleas now C. J. Ontario), Anglin J. (now Justice of the Supreme Court of Canada) and Clute J., the judgment of the court being delivered by the chief justice who points out that were it otherwise "the protection which the written consent was intended to give would be wholly illusory and it would be possible to prosecute for an offence entirely different from that brought to the notice of the judge and to which the consent . . . was intended to apply." 10 Ont. L. R. at pp. 461, 462.

upon railways. In the case of the Grand Trunk Railway in 1904, the Commissioner, Judge Winchester of Toronto, reported twenty-four engineers, etc., improperly employed by the company: fifteen left the employment at once and some of the others were deported at the instance of the attorney general. The investigation into the Père Marquette Railway had a curious result: the Commissioner, Judge Winchester, confirmed the conclusions of a labor man who had investigated the facts on the instructions of Sir William Mulock, Minister of Labour. At the request of Sir William, the attorney general of Canada issued warrants for the deportation of the aliens named: some left voluntarily but James R. Gilhula, chief train dispatcher and Everett E. Cain, trainmaster at St. Thomas, Ontario, resisted. They obtained a writ of habeas corpus upon the return of which, Mr. Justice Anglin ordered their discharge. The learned judge proceeded upon the ground that there was no means whereby the American employees could be "returned to the United States" without "an assumption of extra-territorial jurisdiction" which Canada admittedly does not possess.[19] This meant a very serious impairment of the act; the attorney general of Canada informed the House of Commons that the government did not agree in Mr. Justice Anglin's law and that an appeal would be taken to the Judicial Committee of the Privy Council, the final tribunal for Canadian cases.

Accordingly the solicitor general of Canada[20] appeared before the Judicial Committee and obtained leave to appeal.

The Judicial Committee reversed the judgment appealed from and thus finally and conclusively declared that the act was intra vires the Dominion, i. e., "constitutional" in the American sense of the word.[21]

It may be confidently said that this act is in universal favor among workmen and that only very occasionally does it work real hardship upon the employers.

Imperial legislation was passed in 1906 at the instance of Canada making it an offence punishable with fine and imprison-

[19] See the report In re Gilhula, (1905) 10 Ont. L. R. 469.

[20] The Honorable Rudolphe Lemieux, afterwards, upon Sir William Mulock becoming Chief Justice of the Exchequer Division, Minister of Labour and Postmaster General in succession.

[21] I happened to be in the Judicial Committee, Downing Street, Westminster, waiting for my case to be called and heard the argument July 6 1906. The case is reported, [1906] A. C., 542.

ment for anyone by false representation to induce any person to emigrate or engage a steerage passage in any ship.[22]

Another protection for certain workmen has been on the statute book since 1896,[23] the "Wages Liability Act." This provides that the minister may pay to workmen of any contractor with the government or any subcontractor, their wages out of money coming to the contractor: and provides means for the payment of such wages.

A still more important provision is not statutory but is based upon a unanimous resolution of the House of Commons in March, 1900. This resolution was introduced by Sir William Mulock, Minister of Labour, and is to some extent based upon the resolution of the Imperial House of Commons against "sweating," February 13, 1891, which had been found by a select committee of that House in 1897 to be working well. After an animated debate the resolution was unanimously adopted.[24] This in substance provides for the inclusion in every government contract of conditions insuring the workmen fair wages, and this includes not only contracts with the government but also every contract for works assisted by the grant of Dominion funds. Every railroad and some other projects have been assisted by a grant from the Dominion: the wide reacting effect of this provision will accordingly be manifest.[25] The minister of labour appointed fair wage officers whose duty it was to see to it that the proper clauses were inserted in contracts entered into by the different departments of the government: the rates of wages are based upon the rates prevailing in the vicinity: if there is no such prevailing rate, the officer determines the rate on consideration of all the circumstances, the cost of living, etc., etc., in the various localities. Labor men have been selected for that position, and there has been little friction and no serious trouble over the wages.[26] There are at present five officers

[22] (1906) 6 Edw. VII, C. 48, S. 24. (Imp.) See as to this whole matter Report of Department of Labour for 1906-07, pp. 98-105.

[23] (1896) 59 Vict., c. 5 (Dom.) now R. S. C. (1906) c. 98.

[24] 51 Com. Deb. Can. (1900) pp. 2464, sqq. The text of the Resolution is given on p. 2464.

[25] Some if not all of the provinces insist upon a similar clause in their contracts and in all contracts for enterprises with provincial subsidy.

[26] I find that in the seven years from the beginning of the system down to the Report of 1906-07 there were 935 schedules of fair rates prepared by the Fair Wage officers, extending into every province of the Dominion, 147 and 150 being the numbers in the last two years. See Report of Department of Labour for 1906-7, p. 82. In the next year there were 222, 96

engaged in fair wages and conciliation matters.[27] In some instances, the department has had to extend its investigations to procure information; and it is always ready to make investigations and to furnish the fullest particulars to those interested who make application.[28]

The part played by the provinces in labor legislation is important if not quite so striking as that of the Dominion. Taking this province, Ontario, as an example (and the other provinces are not very different), workmen are given a lien on a structure upon which they are working and the land improved by the building priority to judgments, executions, assignments, etc., and a simple process is provided for the recovery of wages.[29] Woodmen in the new districts have a lien on the time cut;[30] wages are a preferred claim in insolvency, on sales under execution, etc.[31] Wages of miners must be paid fortnightly,[32] all wages are exempt from seizure up to $25.00.[33] Ontario has a statutory provision similar to that of the Dominion for the payment of the wages of workmen on contracts with the province or with provincial aid or subsidy.[34] The same act makes every company with an Ontario charter liable for wages on any work done for the company either directly under the company or through the intervention of a contractor or sub-contractor.[35]

Councils of conciliation and of arbitration are also provided for settling industrial disputes on much the same lines as in the Dominion legislation.[36]

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for the department of public works, 93 railways and canals, 23 marine and fisheries, and 11 militia and defence. Report for 1907-8 p. 136. (On this page will be found the Mulock Resolution of 1900).

[27] See Report of Department of Labour for 1918-19, p. 33 for particulars.

[28] In the Report for 1907-8, p. 127 is given a list of persons for whom investigations were made and to whom information was supplied including Mr. Gompers, Professor Batten of Washington and Lee University, the captain of a high school debating team of Brooklyn, and gentlemen in England, Australia and all parts of Canada. I gratefully recognize the courtesy and consideration of the department of labour to myself on several occasions when I asked for information.

[29] R. S. O. (1914) C. 140.

[30] R. S. O. (1914) C. 141.

[31] R. S. O. (1914) C. 143.

[32] (1916) 6 Geo. V. C. 12, S. 4. (Ont.)

[33] R. S. O. (1914) C. 143, S. 7 (1). By the act R. S. O. (1914) C. 63, S. 66 a minor can sue for wages up to $100 notwithstanding his minority.

[34] (1910) 10 Edw. VII, C. 71 (Ont.) now R. S. O. (1914) C. 142.

[35] R. S. O. (1914) C. 142, S. 7.

[36] R. S. O. (1914) C. 145. This machinery is very little used. One statute of Nova Scotia should be mentioned: by the act of (1890) 53 Vict., C. 7 (N.S.) providing for arbitrations in coal miners' disputes, the masters

A very important part of the Ontario legislation concerning labor is workmen's compensations for injuries suffered in the course of their employment. Legislation on this subject began in England by the "Employers' Liability Act, 1880."[37] As is well known the most significant of the changes effected by this statute was the practical abolition of the rule in *Priestley v. Fowler*,[38] and it certainly was a great boon to the workmen.

Ontario's first statute on the subject was in 1886, "The Workmen's Compensation for Injuries Act."[39] This was substantially the same as the English act and with various amendments remained law until 1914 and except as affected by the legislation of 1914, still is law. The act of 1914 does not take away the rights given by existing legislation and if the case is not covered by the act of 1914, the injured workman may still proceed against the employer as formerly. Most cases, however, are covered by the recent statute, and if the case be so covered, he must proceed under the statute and not under the former legislation.[40]

The new act provides for the appointment by the lieutenant-governor in council[41] of a commission of three members, the chairman and two others, "The workmen's compensation board." They pass upon claims for compensation for injury or death in the course of a workman's employment. The board sits at Toronto and is kept somewhat busy at all times. The province con-

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are forbidden to reduce wages or declare a lockout if an arbitration is asked for and by C. 8, workmen are forbidden to strike. These acts were amended by (1901) 1 Edw. VII cc. 29 and 20, (N.S.) after having been R. S. N. S. (1900) C. 21.

[37] In Hansard Debates in the House of Commons for 1800 will be found a report of a debate of the most interesting character and most ably conducted by nearly every speaker. The act is (1880) 43, 44 Vict., C. 42. (Imp.)

[38] Priestley v. Fowler, (1837) 3 M. & W. 1.

[39] (1886) 49 Vict. c. 28 (Ont.) In our constitution, the province has jurisdiction over "civil rights." The act became R. S. O. (1887) c. 141: it was amended in 1889 by 53 Vict., c. 23 (Ont.): was taken forward as R. S. O. (1897) c. 160 and R. S. O. (1914) c. 146. The act of 1914 is 4 Geo. V, c. 25 (Ont.)

[40] See, e. g., Murphy v. Toronto, (1918) 41 Ont. L. R. 156; S. C. in appeal (1918) 43 Ont. L. R. 29, 45 D. L. R. 228. Hutton v. Toronto R. Co., (1919) 45 Ont. L. R. 550, 49 D. L. R. 216, 16 O. W. N. 236.

[41] Our camouflage for "the members of the government." The lieutenant governor has nothing to do with the appointments. We call him governor on the lucus a non lucendo principle because he does not govern. We have responsible government, i. e., the ministry is responsible for every act not to the governor but to the representatives of the people in the legislative assembly and whenever they cannot command a majority there they must get out and give place to others who can.

tributes for administration not more than $100,000 a year: and an accident fund is formed from subscriptions from certain specified industries as fixed by the board. Assessments are made annually by the board for the fund.

The act was very carefully drawn after the most extensive and minute inquiry. It operates successfully and to the satisfaction of all concerned.[42]

It is not thought necessary to discuss the provincial legislation for the protection of workmen from undue danger and the like. It is much the same as in all advanced communities.[43]

The Canadian Dominion legislation of 1907 has been followed in other Dominions. The Transvaal, South Africa, in 1919, Queensland, Australia, in 1912, New Zealand in 1913.[44]

In conclusion it may be said that at every step, representative labor men as well as employers have been freely and openly consulted in reference to every piece of legislation; workmen have been kept posted by the Labour Gazette of the working of the acts and all suggestions from any source receive careful consideration. The inner history of the legislation original and amendatory would make interesting reading, but that is another story.

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[42] The investigation was made by Sir William Meredith, Chief Justice of Ontario, who when in the legislative assembly had much to do with the passing of the original act. The bill drawn by him became law and has been a model for legislation elsewhere.

[43] Children are protected by the Mining Act R. S. O. (1914) c. 32 as amended in 1916, 1918, and 1919: the Apprentices and Masters Act, R. S. O. (1914), c. 147: the Factory Act, R. S. O. (1914) c. 229 as amended in 1918 and 1919: the Children's Protection Act R. S. O. (1914) c. 231 as amended in 1919: the School Attendance Act of 1919, 9 Geo. V, c. 77 (Ont.) etc.

Women are protected by the Mining Act, the Factory Act, etc., while there are many statutory provisions looking to the health and safety of all workmen.

[44] See the article by the Deputy Minister of Labour, Mr. F. A. Acland referred to in note 1 of the former paper.