

## LABOUR LAW AND THE NEW INEQUALITY\*

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*The different sorts of equality are finally inseparable but up to a certain point they are sufficiently distinguishable, and one may speak of political equality, equality before the laws and economic equality. Without the last, the first and second exist only measurably, and they tend to disappear as it shrinks.*

*William Dean Howells*

## RISING ECONOMIC INEQUALITY

**W**hy is the issue of economic inequality so important? Simply put, because more unequal societies tend to produce greater levels of social dysfunction. They commonly exhibit more crime, higher levels of mental illness, more illiteracy, lower life expectancies, higher rates of incarceration, lower degrees of civic engagement, higher teenage pregnancy rates, diminished social mobility and opportunities, lower levels of interpersonal trust, lower levels of general health, and weaker social shock absorbers for the poor.<sup>1</sup> The issue is not simply one of extremes in wealth and poverty. Higher levels of economic inequality create a continuous gradient of differential social outcomes throughout the separate income layers within a society, so that not only are poor people less healthy than people with middle-level incomes, but people in the middle are less healthy than those at the top. Nor does becoming a wealthier society guarantee proportionally better social outcomes simply because of its wealth. Among western industrialized societies, social progress in improving the health of its citizens flattens out once a certain level in living standards has been obtain; after reaching that level, differences in national health outcomes among wealthy countries can be explained not by comparative per capita income or wealth levels, but by domestic levels of economic egalitarianism. In both Canada and the United States, for example, it is the most egalitarian provinces and states, rather than the richest, that are the healthiest measured by life expectancy.<sup>2</sup>

As well, there is also the issue of economic inefficiencies: widening inequalities create macro-economic impediments to growth by excluding certain groups from the benefits of an expanding economy, by diminishing the purchasing power of the middle and lower income strata that sustains economic growth, by increasing the social costs of policing low-income groups, and by having economic and social policy-making captured by wealthy groups with all of its resulting misallocations.<sup>3</sup>

Canada's recent history provides a cogent illustration of rising economic inequality. The following figure is a table displays the share of aggregate incomes going to the entire spectrum of Canadian income earners, who are divided up into five income quintiles, from top to bottom, over the years between 1951 and 2005. You will notice that, between 1951 and 1981, the bottom quintile of income earners improved their share of aggregate income marginally, the share of the middle three quintiles grew slightly (with the highest of these quintiles receiving all of the increase), and the top income quintile's share declined by 1.2 percentage points. The fruits of the post-war economic boom in Canada were distributed in a fashion that primarily benefited the upper end of the Canadian middle class, but otherwise marginally compressed the differences in income between the top and bottom quintiles. This compression stayed relatively stable through these years.

After 1981, the trend begins to reverse the compression of the initial post-war years. The share of aggregate national income for the bottom 20 percent steadily declines between 1981 and 2000, the middle three quintiles lose almost 5 percentage points of their share from 1981, and the share claimed by the top income quintile jumps more than 5 percentage points. The Organization of Economic Co-operation and Development has said that, among its nation members, Canada has had the second fastest growth in income inequality since the 1990s.<sup>4</sup>

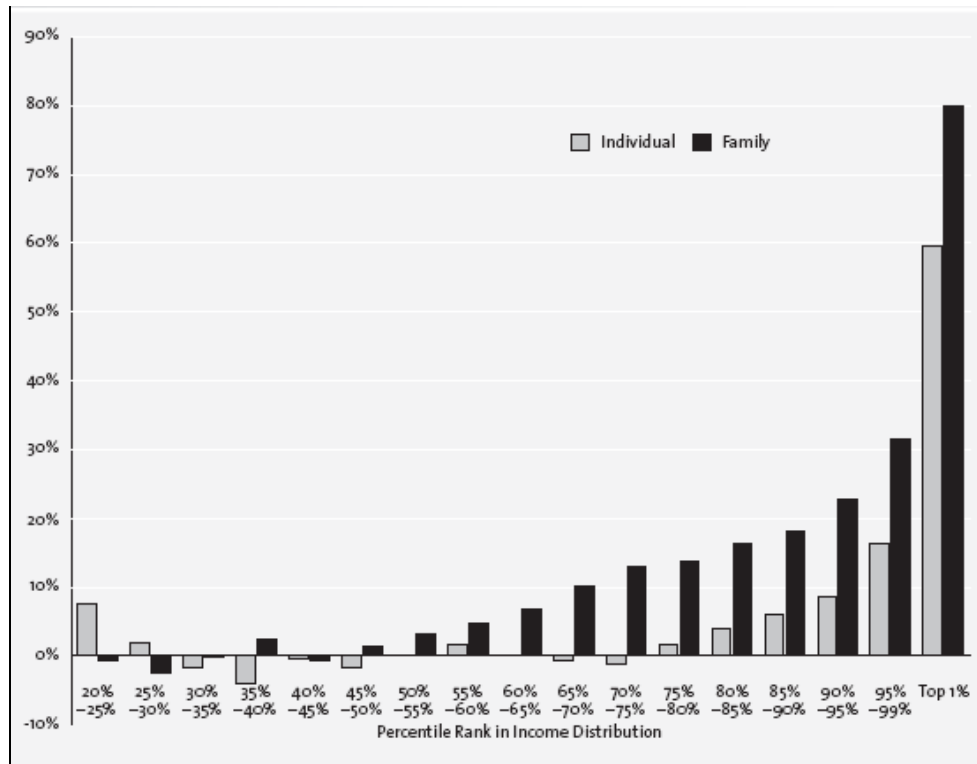
**Figure 1:**  
Share of Aggregate Incomes Received by Each  
Quintile of Families and Unattached Individuals (%)

	1951	1961	1971	1981	1991	1996	2001	2005
Bottom 20% (poorest)	4.4	4.2	3.6	4.6	4.5	4.2	4.1	4.1
Second 20%	11.2	11.9	10.6	11	10	9.6	9.7	9.6
Middle 20%	18.3	18.3	17.6	17.7	16.4	16	15.6	15.6
Fourth 20%	23.3	24.5	24.9	25.1	24.7	24.6	23.7	23.9
Top 20% (richest)	42.8	41.1	43.3	41.6	44.4	45.6	46.9	46.9

Source: L. Osberg, *A Quarter Century of Economic Inequality in Canada; 1981-2006* (Ottawa: Canadian Centre for Policy Alternatives, 2008), at p. 7.

Our next graph, Figure 2, provides a more detailed breakdown of where the income shares have been going since the early 1980s, confirming the redirection of aggregate income that we witnessed in Figure 1. The income groups are now broken down by 5 percent groupings, instead of the 20 percent groupings in the last graph. The income gains acquired by the richest quintile, which has been the biggest beneficiary of economic redistribution in the recent era, have been heavily weighted towards the very top of this quintile. While the top 20 percent on individual income earners enjoyed a 17 percent increase in real taxable income between 1982 and 2004, the top 10 percent received a 22 percent increase, the top 5 percent gathered a 31 percent increase, and the top 1 percent acquired an 80 percent increase. (Separate figures which examine the compensation of chief executive officers in Canada reinforce this observation. In 1998, Canada’s top executives earned 106 times as much as the average annual employee wage. By 2005, this ratio had grown to 240 times.)<sup>5</sup> In contrast, the bottom half of the individual income earners on the income spectrum, in terms of their share of the expanding pie, lost ground.

**Figure 2:**  
Percent Change in Real Taxable Income 1982–2004

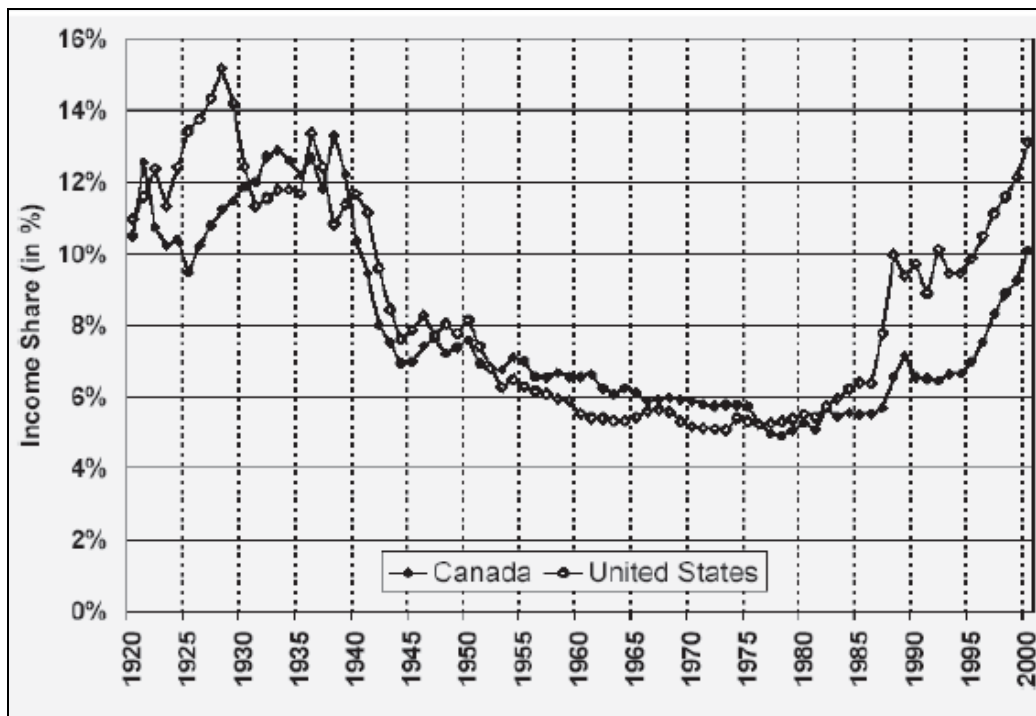


Source: L. Osberg, *A Quarter Century of Economic Inequality in Canada; 1981-2006* (Ottawa: Canadian Centre for Policy Alternatives, 2008), at p. 9.

The following graph, Figure 3, provides us with an even clearer demonstration of the re-direction of the recent benefits of our economic growth. This is an historical graph which illustrates the progression of a specific income group between 1920 and 2000 in both Canada and the United States. This graph shows the share of annual income going to the top ½ of 1 percent on income earners in both countries. Economists choose this particular group because its fortunes are illustrative of the pushes and pulls of economic inequality in the broader society. The historical fortunes of this top income-earning stratum, both upwards and downwards, are remarkably similar in both countries.

Figure 3 documents that, at the end of the Gilded Age just before 1940, the share of national income going to the top 0.5 percent stood at around 13 percent in both countries, before declining precipitously. The post-war Great Compression that followed lasted until the mid-1980s, with the share of income going to these groups falling to 5 percent. After the mid-1980s, it began to steadily move up again, the United States more dramatically than Canada. By 2000, the share captured by the richest 0.5 percent in Canada had reached 10 percent, while in the U.S., their share had climbed back to 13 percent.

**Figure 3:**  
The Top 0.5% Income Share in Canada and the United States 1920-2000



Source: L. Osberg, *A Quarter Century of Economic Inequality in Canada, 1981-2006* (Ottawa: Canadian Centre for Policy Alternatives, 2008), at p. 26.

Figure 4 is from a 2006 Statistics Canada study, and focuses on wealth inequality, rather than income inequality. This table tells a similar story to the income inequality trends: over the past quarter century, the levels of wealth inequality in Canada have widened. Figure 5 divides the population into groupings of 10, by income, from bottom to top. Between 1984 and 2005, the share of wealth owned by the bottom nine groupings all fell. The only group whose share rose was the highest grouping.

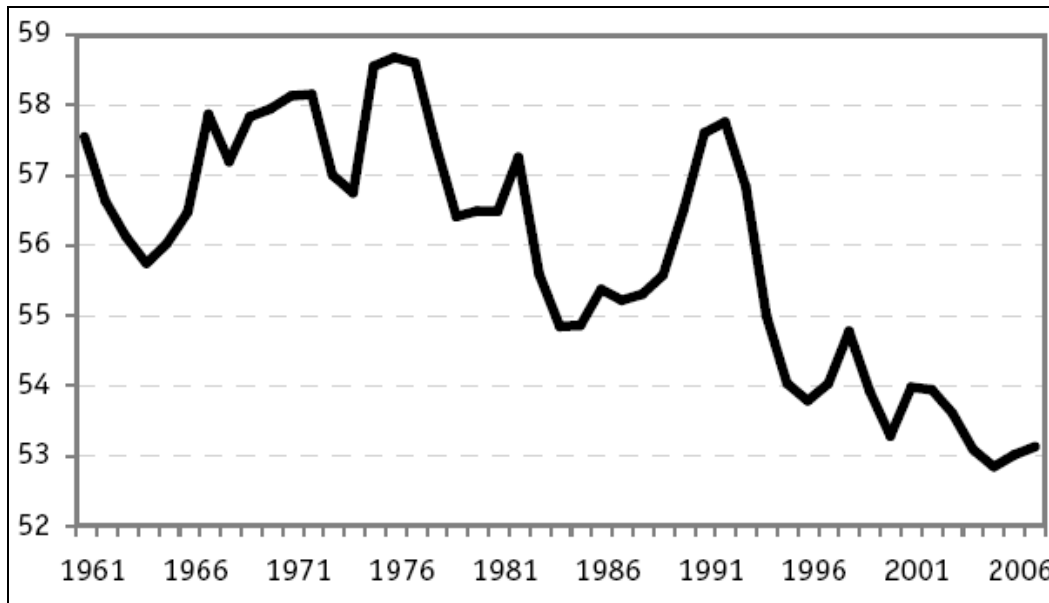
**Figure 4:**  
Share of Total Wealth

	Share		
	1984	1999	2005
<b>All families</b>			%
Bottom 10%	-.05	-.06	-.06
Second	0.1	0.0	0.0
Third	0.5	0.4	0.2
Fourth	1.7	1.3	1.1
Fifth	3.5	2.8	2.5
Sixth	5.6	4.7	4.4
Seventh	8.2	7.4	6.9
Eighth	11.5	11.0	10.5
Ninth	17.5	17.4	16.8
Top 10%	51.8	55.7	58.2

Source: R. Morissette & X. Zhang, "Revisiting Wealth Inequality" (2006), 7:12 *Perspectives on Labour and Income* (Statistics Canada).

There is one last part of the statistical portrait that I wish to draw before leaving this theme. This has to do with the declining share of the Gross Domestic Product (GDP) that has been captured by Canadian wage earners since 1961. As Figure 5 shows, labour held almost 57 percent of the GDP in 1961. This rose to a peak of 59 percent in 1976, fluctuated between 57 percent to 54 percent in the 1980s and 1990s, before bottoming out at 53 percent in 2005, its lowest mark in a half century. This occurred in the midst of a growing Canadian economy with rising labour productivity. This is the sort of economic climate that orthodox economic theory would have average wages rising in real dollars to capture a greater share of the GDP. And, as labour's share has been declining, a recent study for the Institute for Competitiveness and Prosperity in Ontario has noted that corporate profits as a share of GDP are currently at a historical high.<sup>6</sup>

**Figure 5:**  
Labour's Share, Canada, Total Compensation as a Share of GDP, 1961-2007  
(current dollars, per cent)



Source: A. Sharpe, J-F. Arsenault & P. Harrison, "Why Have Real Wages Lagged behind Labour Productivity Growth in Canada?" (2008), 17 *International Productivity Monitor* 16, at p. 19.

Between 1980 and 2005, labour productivity (the increase in value produced by a unit of labour) rose 37 percent, while the growth in real average wage levels through this time period was virtually flat. In 2005 constant dollars, the average annual salary of a full-time year-round Canadian employee was \$41,348 in 1980, and it had risen by only \$53 in 2005 to \$41,403. Had medium wages of this worker increased at the same rate as labour productivity (37 percent), she or he would have been earning \$56,800 in 2005.<sup>7</sup> As our various charts have suggested, whether wages and income rise with productivity is not a natural consequence of a free market economy, but rather quite strongly tied to the relative bargaining strength of employees.

#### DECLINING UNIONIZATION LEVELS

In its most recent report on the global workplace, the International Labour Organization postulated that a hydraulic relationship exists between unionization and inequality. Countries that have higher unionization rates tend to have lower economic inequality patterns. And as unionization rates decline, inequality levels tend to climb. The International Labour Organization stated that recent economic trends show:

[...] a clear negative correlation between unionization and inequality: the countries in which income inequality is on average lower in the period 1989-2005 tend to be those in which a greater proportion of workers are affiliated to trade unions.<sup>8</sup>

It is not simply that trade unions raise wages and benefits for their members over the prevailing labour market rates, although they do perform this task. Rather, the prevailing social science literature tells us that unions have at least four significant effects on the labour market and the broader economy that contribute to more egalitarian social outcomes. One does not have to be a cheerleader for unions to acknowledge the institutional role they have historically played in democratizing the economy and stimulating the spread of social wealth and rising productivity through the middle and lower income strata.

First, beyond improving the economic return to their own members, unions raise the wages and benefits of non-unionized workers in related industries, in part because non-unionized employers seek to dampen the appeal of unionization.<sup>9</sup> The best example of this can be seen in the Canadian auto and auto-parts industries, where the non-unionized Japanese car manufacturers in Ontario pay salary rates to their employees that closely parallel those paid to the unionized North American auto companies located in Ontario, precisely to maintain their non-unionized status. Second, unions tend to raise the wages for their lower paid members and compress the overall wages scales within a unionized workplace, so that the lowest paid workers rise in relative terms and the wage differentials diminish.<sup>10</sup> This not only erodes low income levels in the unionized labour force – in 2002, a third of Canadian non-union workers were defined as low paid, but only eight per cent of unionized workers were so classified – but it also works to improve the economic well-being of historically disadvantaged groups such as women and visible minorities, who are disproportionately found at the lower end of the Canadian labour market.<sup>11</sup>

A third significant contribution of unions towards greater economic egalitarianism has been to dampen the differential levels between executive pay and the wage rates in the mainstream labour force. A 2007 study has concluded that unionized firms generally pay lower levels of total CEO compensation than non-unionized firms, with an increasing impact upon the very highest executive levels.<sup>12</sup> And fourth, unions in a dense-enough clustering within a society increase the influence of other social forces – such as non-governmental organizations, liberal religious institutions, academics, policy forums and critical journalism – in favour of more egalitarian economic policies of redistribution. The recent ILO study that I quoted above has found that unionization levels are closely linked with broader virtuous social circles:

The countries where union density rates are higher are also the ones in which union benefits are more generous, the taxation system is more progressive, collective bargaining more centralized and labour law is closer to international norms and better implemented.<sup>13</sup>

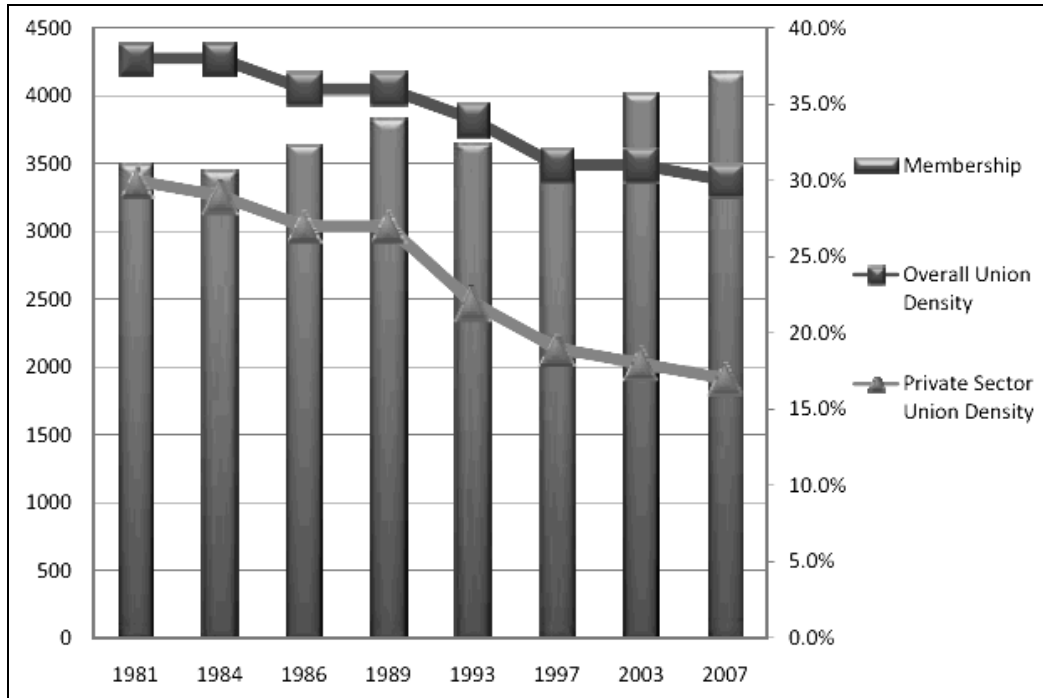
Thus, unions perform at the macro-social level what they also do at the workplace and sectoral level: compress overall wages and benefits, lift up the bottom, spread out the middle and dampen down the top.<sup>14</sup> In a recent study, the World Bank has said that this has been accomplished without impairing national economic performance or social prosperity.<sup>15</sup>

All of these features were certainly true during the halcyon days of the Great Compression. They remain true today, but in a distinctly more diminished fashion. In recent years, the unionization levels throughout most of the advanced industrialized world have been steadily eroding. In many of these countries, unions reached their apex in terms of density in the 1970's and 1980's and have been sliding down since. In Canada, declining unionization rates have been cited as a significant contributing factor to falling average wages and shrinking pension benefit coverage among workers,<sup>16</sup> which in turn contribute to widening inequality.

Figure 6 illustrates that the unionization rate in Canada has been falling steadily since the mid-1980s, just as the economic inequality levels in the country were beginning to rise. What the prior table on comparative union density rates did not tell us about Canada is that union membership (as a percentage of the total workforce) rose from 32 per cent in 1970 to as high as 38 per cent by 1981, before its steady decline to the 2007 figure of 29 per cent. Private sector unionization in Canada has diminished even farther, sliding from 29 per cent in 1981 to 17 percent today. If it had not been for the high and fairly stable unionization levels in the public sector - approximately 71 percent of public workers are union members - the decline would have been much greater. Both the 29 percent overall unionization rate and the 17 percent rate in the private sector are the lowest figures since the 1950's.<sup>17</sup> Keep in mind that this decline has occurred even as Canadian unions were significantly increasing the number of new members in their ranks: between 1997 and 2007, union membership grew by almost 19 percent in absolute numbers, but with total employment rising by almost 25 per cent, the density of unions slumped.<sup>18</sup>



**Figure 6:**  
Trends in Union Membership and Density



Source: P. Kumar, "Whither Unionism: Current State and Future Prospects of Union Renewal in Canada" (Kingston, Ont.: Industrial Relations Centre, 2008, Discussion Paper # 2008-04)

Another way to illustrate the relationship between declining unionization rates and rising economic inequality in Canada is to compare these rates at the provincial level. This is a helpful measurement, as provinces have sufficient governmental jurisdiction within Confederation over social and, to a lesser degree, economic policy-making to be able to contribute, positively or negatively, to their economic inequality levels. Using 1998 statistics (the most recent useful comparative figures available), Figure 7 lists the 10 provinces with their unionization levels on the left-hand column and their inequality ratios (based on their after-tax income upper and lower quintile ratios) on the right, with their respective rankings in brackets.

Figure 7 tells us that, as a distinct trend, the provinces with the highest unionization rates have also been the most egalitarian as measured by their inequality levels. With the Canadian after-tax inequality ratio average set at 5.40, the five provinces with the highest unionization levels (Newfoundland, Quebec, Manitoba, British Columbia and Saskatchewan) were all below the national inequality ratio, while three of the provinces with the lowest unionization rates (Alberta, Ontario and Nova Scotia) are at or above the national ratio for

inequality. (Prince Edward Island and New Brunswick, the smallest and third smallest provinces by population, are statistical outliers.)

**Figure 7:**  
Comparative Provincial Unionization Levels and After-Tax Inequality Ratios

Province	Unionization Rate, and Rank - 1998	After Tax Inequality Ratio of Highest and Lowest Quintiles, and Rank - 1998
Newfoundland	39.7% (1)	4.90 (4)
Prince Edward Island	26.3% (9)	4.20 (1)
Nova Scotia	28.9% (6)	5.40 (8)
New Brunswick	26.6% (8)	4.90 (4)
Quebec	35.7% (2)	4.90 (4)
Ontario	28.0% (7)	5.50 (9)
Manitoba	34.9% (3)	4.70 (3)
Saskatchewan	33.6% (5)	4.60 (2)
Alberta	23.0% (10)	6.10 (10)
British Columbia	34.8% (4)	5.10 (7)
<b>National Average</b>	<b>30.7%</b>	<b>5.40</b>

Sources: R. Morissette, G. Schellenberg & A. Johnson, "Diverging Trends in Unionization" (2005) 6:4 *Perspective on Labour and Income* (Statistics Canada) 5, Table 3, at p. 8; and D. Sanga, "Income Inequality within Provinces" (Winter 2000), 12:4 *Perspectives on Labour and Income* (Statistics Canada) 33, at p. 35.

## STAGNATING LABOUR LAWS

Legislatively, the past 25 years in Canada has been a period of labour law retrenchment. Since the mid-1980s, the provincial legislatures have enacted, more commonly than not, statutory provisions on union certification and the protection of collective bargaining that have made union organizing and negotiating more difficult.<sup>19</sup> Chief among these amendments have been the change in six jurisdictions, including three of the four largest provinces by population, from a card-count certification process to a mandatory election process when determining whether a union has the majority support of the employees in a workplace for representational purposes. Much less frequently over this time period have been the occasions when labour laws have been amended to protect or enhance the organizing capabilities of unions. And even when many of these enhancements occurred – British Columbia in 1992, Ontario in 1993 and Saskatchewan in 1994 – they were rolled back by subsequent governments.<sup>20</sup> It may well be that some of the initial labour law reforms that

strengthened unions were poorly thought out, or packaged in such a way as to unwittingly invite a fierce counter-reaction.<sup>21</sup> But with greater certainty, it can also be said that the conservative political trend which has been antithetical to unions at both the provincial and federal levels in Canada has shaped the recent legislature climate towards industrial relations. Whatever the preferred explanation, the unmistakable trend in recent years has been towards the statutory diminishment of the vitality of our labour laws.

This should concern us all. Labour and employment rights and the laws that buttress them are not the accumulation of privileges by a vigorous lobby of special interests, but the expression of core constitutional and human rights that benefit, directly and indirectly, the majority of citizens living in a modern democratic society. At the international level, the three foundational documents of the International Bill of Rights – the Universal Declaration of Human Rights,<sup>22</sup> the International Covenant of Economic, Social and Cultural Rights,<sup>23</sup> and the International Covenant of Civil and Political Rights<sup>24</sup> – all promote the right of employees to a collective voice at work as a fundamental human rights guarantee. At the national level, the Canadian Parliament has stated that collective bargaining is a positive social good which ensures that the benefits of economic growth are fairly distributed to all.<sup>25</sup> And constitutionally, the Supreme Court of Canada has recognized the importance of collective bargaining by sheltering it within our *Charter of Rights and Freedoms*.<sup>26</sup>

In this last part of the Lecture, I want to focus on one area of concern, respecting union certification, which I think is illustrative of the worrisome legislative trends in Canada in recent times respecting our labour laws. Because of our limited time, other patterns that could also have been usefully explored are not, such as the regular reliance by Parliament and the provincial legislatures on back-to-work legislation to end lawful strikes,<sup>27</sup> or the dogged refusal by some Canadian governments to extend collective bargaining to specific occupational groups, such as police officers working for the Royal Canadian Mounted Police<sup>28</sup> or Ontario agricultural workers.<sup>29</sup>

Prior to 1984, the federal jurisdiction and nine of the ten provinces utilized the card-check system in their labour legislation.<sup>30</sup> Since 1984, five provinces have set aside the card-check system and turned to the mandatory secret ballot process: British Columbia (which adopted the mandatory certification election process in 1984; reverted to the card-check process in 1992, and returned to mandatory elections in 2002); Alberta (1988); Newfoundland (1994); Ontario (1995); and Saskatchewan (2008).<sup>31</sup> In each case, the legislative changes were driven not by any evidence-based studies which found that the card-check system was functionally deficient in measuring majority employee support, nor by a rational selection from among different rights-enhancing industrial relations models. Rather, the most likely explanation is that these changes were the ideological preference of provincial governments led by parties

with an antipathy towards collective workplace rights and other equalizing institutions. The unspoken expectation of these governments was that a mandatory election process for union certification would result in lowered unionization rates. And these expectations have been borne out. In 2004, the five provinces that required mandatory certification elections at that time had a combined unionization rate of 30.5 percent, which was almost 14 percent lower than the 34.7 percent average unionization rate for the five provinces that did employ the card-check process.<sup>32</sup>

The steadily shifting political preference by conservative provincial governments for the mandatory election process has prompted a number of Canadian industrial relations academics to investigate the impact of these changes on unionization levels. The two most common provincial laboratories for these social scientists have been Ontario and British Columbia. In recent times, both provinces have experienced political pendulum swings, with liberal or social democratic governments maintaining or enacting the card-check method, and conservative governments legislating mandatory certification elections. The advantage of these pendulum swings is that they have given social scientists a relatively rich amount of certification data to quantify and compare the contributions of both methods to relative unionization levels in the specific time periods.

Ontario has been frequently studied on this issue. The province's labour legislation had a card-check system since the late 1940s, through Progressive Conservative (1947-85), Liberal (1985-90) and New Democratic Party (1990-1995) governments. Significant labour law reforms were enacted by the NDP in 1993 which maintained the card-check approach, but enhanced other aspects of the certification process. The election of the Progressive Conservative government in 1995 saw major changes to the Ontario *Labour Relations Act*, including the introduction of mandatory certification elections for the first time in Ontario. The Liberal government that came to office in 2003 has maintained the mandatory election system, with the exception that the card-count process was restored for the construction industry.

There have been four leading academic investigations into the comparative impact of the two different certification-determination methods in Ontario's recent history. Each of them has found that the card-check process measurably enhanced the certification success and activity rates of unions, while the mandatory elections provisions stunted union representation efforts.

Felice Martinello, in research published in 2000, concluded that the combined effect of the NDP government in the early 1990s and its labour law reforms resulted in a significant increase in union certification activity and success rates, while the subsequent PC government and its labour legislation resulted in a marked decrease in certification activity and success rates.<sup>33</sup> Two years later, Susan Johnson's investigation focused expressly on the change from

card-check to mandatory elections. Similar to Martinello, she found that the post-1995 legislative switch to elections had a substantial downward impact on union certification success rates. Johnson also extended her analysis to a cross-country review, and concluded that mandatory vote provisions among the various provinces reduced the union certification success rates by nine percent.<sup>34</sup> Sara Slinn in 2004 found that the introduction of mandatory certification votes in 1995 had “a highly significant negative impact” upon the probability of certification success for unions in Ontario, amounting to a 21 percent lower likelihood of certification under the mandatory vote procedure.<sup>35</sup> And Timothy Bartkiw’s 2008 published research supported these earlier findings, leading him to conclude that “labour laws continue to matter *despite* shifts in economic internationalization and industrial structure.”<sup>36</sup>

Similar results have been found in the British Columbia context. Chris Riddell has shown that from the late 1970s up until 1984, the union certification success rate under the card-check process was in the high 80 percent and low 90 percent range. Mandatory certification elections were introduced in 1984, and the success rate tumbled to the 70 percent range until 1993, when the card-check process was re-introduced through labour legislation reforms under a new provincial government. The certification success rate returned to the 90 percent level almost immediately and remained there until 2002, when another government re-introduced the mandatory election procedure and the rates fell back to the 70 percent level.<sup>37</sup> Professor Riddell also found that employer tactics to suppress union certification efforts have been twice as effective under mandatory election laws as under the card-check process, suggesting that certification elections create an environment more conducive to anti-union tactics.<sup>38</sup>

These findings are both worrisome and reassuring. On the one hand, they should trouble us, because the recent legislative trends to blunt the effectiveness of labour law demonstrates that Canada’s decades-old international human rights commitments to protect and enhance the collective voice of employees in the workplace have not yet become broadly accepted among our political classes. But, on the other hand, these findings provide an odd reassurance. If labour laws do play a prominent role in increasing or decreasing the levels of unionization within a province or a country, then we retain the capability as political actors to respond meaningfully to the economic forces in front of us. We are not just the objects of invisible hands, but also the subjects of our own destiny.

## NOTES

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\* This is a much shortened excerpt from the Ivan Cleveland Rand Memorial Lecture that I gave at the Faculty of Law, University of New Brunswick on 5 February 2009. The full Lecture is available through a free download at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1411700](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1411700). The full Lecture has also been published at: (2009), 59 *University of New Brunswick Law Journal* 14-41.

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1. R. Wilkinson & K. Pickett, *The Spirit Level* (London: Penguin, 2009).
  2. R. Wilkinson, *The Impact of Inequality* (New York: The New Press, 2005), at chap. 4.
  3. *World of Work 2008 – Income Inequalities in the Age of Financial Globalization* (Geneva: ILO, 2008); and *World Development Report 2006 – Equity and Development* (Oxford: Oxford University Press, 2006).
  4. *Growing Unequal? Income Distribution and Poverty in OECD Countries* (Paris: OECD, 2008).
  5. A. Yalnizyan, *The Rich and the Rest of Us: The Growing Face of Canada’s Growing Gap* (Ottawa: Canadian Centre for Policy Alternatives, 2007), at p. 28.
  6. Institute for Competitiveness and Prosperity, *Prosperity, Inequality and Poverty* (Toronto: ICP, 2007, Working Paper No. 10), at p. 25.
  7. A. Sharpe, J-F. Arsenault & P. Harrison, “Why Have Real Wages Lagged behind Labour Productivity Growth in Canada?” (2008), 17 *International Productivity Monitor* 16.
  8. *World of Work 2008*, *supra*, note 3, at p. 83.
  9. A. Jackson, *Work and Labour in Canada* (Toronto: Canadian Scholars’ Press Inc., 2005), at Chap. 8.
  10. D. Card, T. Lemieux and W.C. Riddell, “Unionization and Wage Inequality: A Comparative Study of the U.S., the U.K. and Canada” (2004), 25 *Journal of Labor Research* 519.
  11. Jackson, *supra*, note 10.
  12. R. Gomez & K. Tzioumis, “What do Unions do to CEO Compensation?” (2007), Centre for Economic Performance Discussion Paper no. 720.
  13. *World of Work 2008*, *supra*, note 3, at p. 86.
  14. For recent economic evidence of this thesis, see the essays in J. Bennett & B Kaufman (eds), *What do Unions do? A Twenty Year Perspective* (New Brunswick, NJ: Transaction Publishers, 2007).
  15. A 2003 study conducted by the World Bank has found no persuasive evidence that union density impairs the economic or employment performance of Western countries. See T. Aidt and Z. Tzannatos, *Unions and Collective Bargaining; Economic Effects in a Global Environment* (Washington: The World Bank, 2003).
  16. R. Morissette, G. Schellenberg & A. Johnson, “Diverging Trends in Unionization” (2005) 6:4 *Perspective on Labour and Income* (Statistics Canada) 5, at p. 8.
  17. For recent reports that document the historical and current Canadian unionization rate, see: P. Kumar, “Whither Unionism: Current State and Future Prospects of Union Renewal in Canada” (Kingston, Ont.: Industrial Relations Centre, 2008, Discussion Paper # 2008-04); and “Unionization” (2008), 9:8 *Perspectives on Labour and Income* (Statistics Canada) 17.
  18. Kumar, *ibid*, at p. 5.
  19. I emphasize the provincial legislatures because approximately 89 percent of the Canadian labour force is under the labour law jurisdiction of the provinces. The last major reforms to the *Canada Labour Code*, in 1998, modestly enhanced the organizing capacity of unions in the federally-regulated workplace.
  20. There has been statutory reform of labour laws that remains in place today – the federal level in 1998, in Manitoba earlier this decade, in Ontario in 2005 – but it would be a fair comment to say that these changes have been modest and incremental.
  21. See: K. Burkett, “The Politicalization of the Ontario Labour Relations Framework in the 1990s” (1998), 5 *Canadian Labour and Employment Law Journal* 168; and J. McCormack, “Comment on the Politicalization of the Ontario Labour Relations Framework in the 1990s” (1999), 6 *Canadian Labour and Employment Law Journal* 343.
  22. Article 23(4): “Everyone has the right to form and to join trade unions for the protection of his interests.”
  23. Article 8(1)(a): “The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests.”
  24. Article 22(1): “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”
  25. *Canada Labour Code*, R.S. 1985, c.L-2, Preamble: “Whereas the Parliament of Canada desires to continue and extend its support to labour and management in the co-operative efforts to develop good relations and constructive collective bargaining practices, and deems the development of good

- 
- industrial relations to be in the best interests of Canada in ensuring a just share of the fruits of progress to all”
26. *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*, [2007] 2 S.C.R. 391, at para. 86: “Recognizing that workers have the right to bargain collectively as part of their freedom to associate reaffirms the values of dignity, personal autonomy, equality and democracy that are inherent in the *Charter*.”
  27. See generally D. Fudge, *Collective Bargaining in Canada: Human Right of Canadian Illusion* (2<sup>nd</sup> ed.) (Black Point, N.S.: Fernwood Publishing, 2006); and L. Panitch and D. Swartz, *From Consent to Coercion* (3<sup>rd</sup> ed.) (Aurora, Ont.: Garamond Press, 2003).
  28. See *Delisle v. Canada (Deputy Attorney General)*, [1999] 2 S.C.R. 989, where the Supreme Court of Canada upheld the constitutionality of federal legislation that excluded RCMP officers, who belong to the largest police force in the country, from a statutory collective bargaining regime. But see *Mounted Police Association of Ontario v. Canada (Attorney-General)* (Ont. S.C., 6 April 2009).
  29. See the litigation surrounding *Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016 and *Fraser v. Ontario (Attorney-General)*, 2008 ONCA 760 (CanLII) (Leave to appeal to the Supreme Court of Canada granted, 2 April 2009).
  30. Nova Scotia was the only jurisdiction up until that point to require a certification election for every bargaining unit certification application.
  31. Manitoba enacted the mandatory election process in 1997, but reverted to the card-check system in 2000.
  32. R. Morissette, G. Schellenberg & A. Johnson, “Diverging Trends in Unionization” (2005) 6:4 *Perspective on Labour and Income* (Statistics Canada) 5, Table 3, at p. 8.
  33. F. Martinello, “Mr. Harris, Mr. Rae and Union Activity in Ontario” (2000), 26 *Canadian Public Policy* 17.
  34. S. Johnson, “Card Check or Mandatory Vote? How the Type of Union Recognition Procedure Affects Certification Success” (2002), 112 *The Economic Journal* 344.
  35. S. Slinn, “An Empirical Analysis of the Effects of the Change from Card-Check to Mandatory Vote Certification” (2004), 11 *Canadian Labour and Employment Law Journal* 259, at p. 299.
  36. T. Bartkiw, “Manufacturing Descent? Labour Law and Union Organizing in the Province of Ontario” (2008), 39:1 *Canadian Public Policy* 111, at p. 120.
  37. C. Riddell, “Using Social Science Research Methods to Evaluate the Efficacy of Union Certification Procedures” (2005), 12 *Canadian Labour and Employment Law Journal* 313. Also see C. Riddell “Union Certification Success Under Voting Versus Card-Check Procedures: Evidence from British Columbia, 1978-1998” (2004) 57 *Industrial and Labor Relations Review* 493; and C. Riddell “Union Suppression and Certification Success” (2001) 34 *Canadian Journal of Economics* 396.
  38. Riddell, “Using Social Science Evidence...”, *ibid*.