

Plus ça Change? Labour-Relations Policy from Harper to Trudeau

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This article focuses upon labour-relations policy in the federal jurisdiction, under Harper, and, to a more limited extent, under Trudeau. My enquiry is guided by the following: What was Harper's approach to labour-relations; what, if anything, has Trudeau done to resist the institutionalization of Harper's approach; and, was Harper's approach, in fact, new?

The Harper Government's relationship with organized labour was inarguably contentious. Whatever one thinks of the changes the Harper Government made to labour-relations policy, these changes negated the tripartite principle which underpins our labour-relations system, by ignoring the input of important stakeholders. Moreover, these changes appeared driven by a worldview that saw no role for organized labour. Despite this, we should be cautious about thinking that Harper's approach to labour-relations was vastly out of keeping with the changes that governments of all stripes have made in this policy area over the past thirty years.

Justin Trudeau pledged to fix governmental relations with public sector unions. To that end, Trudeau has already taken steps to repeal most of Harper's labour-relations statutes. However, it does not appear that Trudeau intends to introduce anything more substantive to champion the cause of labour.

L'article traite essentiellement de la politique de relations de travail dans la compétence fédérale sous Harper et, dans une moindre mesure, sous Trudeau. L'enquête de l'auteure est dictée par les questions suivantes : Quelle était l'approche de Harper des relations professionnelles? Qu'a fait Trudeau, s'il y a lieu, pour s'opposer à l'officialisation de l'approche de Harper? L'approche de Harper était-elle en fait nouvelle?

La relation du gouvernement Harper avec le travail organisé était incontestablement querelleuse. Quoi qu'on pense des modifications apportées à la politique de relations de travail par le gouvernement Harper, ces modifications ont réduit à néant le principe tripartite qui sous-tend notre système de relations du travail, en ne pas tenant compte de la contribution d'intervenants importants. De plus, ces changements semblaient être poussés par une vision du monde qui ne voyait aucun rôle pour le travail organisé. En dépit de cela, nous devrions être prudents en considérant l'approche de Harper des relations professionnelles comme complètement incohérente avec les changements apportés dans ce domaine de politique par les gouvernements de toutes allégeances au cours des trente dernières années.

Justin Trudeau s'est engagé à régler les relations gouvernementales avec les syndicats du secteur public. À cette fin, il a déjà pris des mesures afin d'abroger la majorité des lois de Harper en matière de relations du travail. Cependant, il ne semble pas que Trudeau ait l'intention de mettre en place quelque chose de plus considérable pour se faire champion de la cause du travail.

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Introduction

The theme of this special issue of *Review of Constitutional Studies (RCS)* is the Harper legacy. A political legacy refers to a new approach or novel institutional arrangement that transforms governance in some meaningful, ongoing way. This contribution to this issue of *RCS* centres upon labour-relations policy under Harper and, to a more limited extent, under Trudeau. Three questions guide my inquiry. First, what was Harper's approach to labour-relations; second, what, if anything, has Trudeau done to resist the institutionalization of Harper's approach; and finally, was Harper's approach, in fact, new?

Labour-relations refers to the policy area that deals with the framework within which workers' associations (unions) and employers create the terms and conditions of work, via a process of collective bargaining. Underlying Canada's labour-relations system is the tripartite principle. This is the idea that labour, employers and government — as facilitator and as representative of the public interest — have an equal stake in the direction of policy in this area, and thus should be equal, consultative parties.

Labour-relations policy under Harper negated the tripartite principle by ignoring the input of labour (and often employers and disinterested experts alike). In doing so, it challenged the spirit of collective bargaining by altering the delicate balance of power between employers and labour. It was largely driven by a worldview that saw no role for organized labour at best, and at worst, viewed unions as inherently corrupt organizations. Despite this worldview, we should be cautious about thinking that Harper's approach to labour-relations was vastly out of keeping with the changes that governments of all stripes have made over the past thirty years. For his part, Trudeau has already introduced legislation to repeal most of Harper's labour-relations statutes. At this time, however, it does not appear that Trudeau intends to introduce anything more substantive to champion the cause of labour, despite his earlier rhetoric about the importance of organized labour to the creation of a stable middle class.¹

The 2015 election

Although the Conservatives lost the 2004 election, they won a minority in 2006 in the wake of the Liberal sponsorship scandal. This was followed by a second minority in 2008, and a majority government in 2011. Many believed

1 The Liberal Party of Canada. 2015. *Real Change: A New Plan for a Strong Middle Class*, 16, online, <<https://www.liberal.ca/files/2015/10/New-plan-for-a-strong-middle-class.pdf>>.

that the 21st century would belong to the Conservatives, who would replace the Liberals as Canada's "natural governing party."² The federal election of 2015, in which the Liberals went from having the fewest seats of the three major parties to winning a decisive majority, dampened that view considerably.

One of the underlying themes of the 2015 election campaign was that voters had to "take Canada back" from a prime minister who, over his tenure, had solidified his reputation for secrecy, autocracy, a disregard for scientific evidence, and hostility to the *Charter*, the judiciary, and most anyone who did not share his ideological worldview.³ Examples abound: the Conservatives' flouting the rule of law regarding cuts to refugee health care,⁴ the consistent use of omnibus bills that made Parliamentary scrutiny of proposed legislation difficult,⁵ the "tough on crime" agenda which failed, on numerous occasions, to pass constitutional muster,⁶ Harper's public contretemps with the Supreme Court's chief justice,⁷ cancellation of the long form census, — near universally condemned as the hallmark of Harper's lack of regard for scientific evidence⁸ — his labeling of those who disagreed with his policies as "radical ideologues,"⁹

2 Darrell Bricker & John Ibbitson, *The Big Shift: The Seismic Change in Canadian Politics, Business* (Toronto: HarperCollins, 2013); Mark Kennedy, "The Conservative plan to become Canada's Natural Governing Party", *National Post* (14 October 2013), online: <<http://news.nationalpost.com/news/canada/canadian-politics/the-conservative-plan-to-become-canadas-natural-governing-party>>.

3 See e.g. Steven Marche, "The Closing of the Canadian Mind", *The New York Times* (14 August 2015), online: <www.nytimes.com/2015/08/16/opinion/sunday/the-closing-of-the-canadian-mind.html?_r=1>.

4 *Canadian Doctors for Refugee Health, et al. v Attorney General of Canada and Minister of Citizenship and Immigration*, 2014 FC 651; see Jennifer Bond, "Ottawa Ignores Rule of Law in Refugee Health Cuts Case", *The Toronto Star* (11 November 2014), online: <www.thestar.com/opinion/commentary/2014/11/11/ottawa_ignores_rule_of_law_in_refugee_health_cuts_case.html>.

5 So frustrated were the Liberals with this, that they sponsored an online petition asking Canadians to help stop Harper's "abuse of power": <<http://petition.liberal.ca/harper-conservatives-omnibus-Bills/>>; see also Bill Curry, "Conservatives table wide-ranging budget bills", *The Globe and Mail* (28 March 2014), online: <www.theglobeandmail.com/news/politics/conservatives-table-wide-ranging-omnibus-budget-Bill/article17719911/>.

6 *R v Summers*, 2014 SCC 26, [2014] 1 SCR 575; *R v Nur*, 2015 SCC 15, [2015] 1 SCR 773, *Canada (Attorney General) v Whaling*, 2014 SCC 20, [2014] 1 SCR 392. John Ibbitson, "In wake of Tory loss, questions remain about Harper's legacy", *The Globe and Mail* (19 October 2015), online: <www.theglobeandmail.com/news/politics/harpers-conservatives-trailing-liberals/article26879506/>. Even small 'c' conservatives like John Ibbitson, whose biography on Harper came out in 2015, opined that Conservative policies were, at times, "cruel".

7 International Commission of Jurists, "open letter to Gerald Heckman", (23 July 2014), online: <<http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/07/Canada-JudicialIndependenceAndIntegrity-CIJL-OpenLetter-2014.pdf>>.

8 John Geddes, "Why Stephen Harper thinks he's smarter than the experts", *Maclean's* (9 August 2010), online: <www.macleans.ca/news/canada/cracking-eggheads/>.

9 Pearl Eliadis, "Dismantling Democracy" in Teresa Healy & Stuart Trew, eds, *The Harper Record 2008-2015* (Ottawa: The Canadian Centre for Policy Alternatives, 2015) at 48.

all capped by having earned the rare distinction of being a Parliamentary leader found “in contempt” of his own Parliament.¹⁰

Civil society groups — notably unions, environmentalists, and other activist groups on the political left, and even disgruntled civil servants themselves¹¹ — worked together in a loose coalition under the ABC (Anything But Conservative) banner. Sophisticated online schemes were developed that encouraged strategic-voting and vote-swapping. Whatever the wisdom of such practices, they represented the organizational pinnacle of the ABC strategy. Commenting on the 2015 election, Rex Murphy wrote: “[i]t is an election about whether Harper should stay or go as prime minister. Both his style and his major policies are the very core of the race.”¹²

The Conservatives and labour-relations policy

The federal Conservatives did not campaign on a platform of making changes to labour-relations policy. Nonetheless, during the 2013 Conservative Party convention, nine motions relating to labour-relations were received from various Party chapters, and workshopped. Four of these were given priority and adopted into the agenda for general debate and voting, with the remaining five jettisoned as redundant. Voting delegates passed all four, including at least two that were more far-reaching than any presently enacted in any Canadian jurisdiction.¹³ Since only 30 proposals, in total, made it to the convention floor, that four related to labour-relations — which are now part of the party’s official policy — suggests that this was a policy area of some importance to the Conservatives.

10 House of Commons, Standing Committee on Procedure and House Affairs, *Question of Privilege Relating to the Failure of the Government to Fully Provide the Documents as Ordered by the House* (2011), online: <www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5047570&Language=&Mode=1&Parl=40&Ses=3&File=18>.

11 Kathryn May, “Harperman protest song singer could make role of impartial civil service into an election issue”, *National Post* (1 September 2015), online: <<http://news.nationalpost.com/news/canada/canadian-politics/harperman-protest-song-singer-could-make-role-of-an-impartial-civil-service-into-an-election-issue>>.

12 Rex Murphy, “This Election is about Stephen Harper — whether he should stay or go as Prime Minister”, *National Post* (15 August 2015), online: <<http://news.nationalpost.com/full-comment/rex-murphy-this-election-is-about-stephen-harper-whether-he-should-stay-or-go-as-prime-minister>>.

13 Canadian Labour Congress, Report, “2013 Conservative Party Convention — Insider’s Report”, (6 November 2013); Steven Chase, “At Tory convention, Harper establishes himself as a leader set to fight”, *The Globe and Mail*, (2 November 2013) online: <www.theglobeandmail.com/news/politics/at-tory-convention-harper-puts-future-battles-in-crosshairs/article15232705/>; Conservative Party of Canada, Policy Declaration (2014), online: <www.conservative.ca/media/documents/Policy-Declaration-Feb-2014.pdf>.

That labour-relations policy would be a focus is not, in and of itself, revelatory. Recently, political parties of different political stripes have emphasized the need to re-examine labour-relations policies. In Ontario, for example, the Liberal Government has convened the *Changing Workplaces Review*, whose mandate is to review several aspects of Ontario labour law, including the *Labour-Relations Act*. The Review's final report is not due until the end of 2016, thus it is too early to know what recommendations it will ultimately make and which, if any, the government will ultimately adopt. Yet it is notable that the review heeds the tripartite principle in its very make-up, in that it is led by two labour law professionals: one with a management-side and the other with a labour-side litigation background.¹⁴ By contrast, the Conservatives introduced, in piecemeal fashion and without concerted input, a variety of bills that undermined integral aspects of our labour-relations system.¹⁵ Instead, successive Conservative bills, including numerous pieces of back-to-work legislation, revealed a government that was contemptuous of the role of organized labour as a legitimate stakeholder (and often contemptuous of non-labour parties, as well).

Evidence of the Conservatives' lack of regard for tripartitism revealed itself early, with successive uses of back-to-work legislation to end work stoppages that otherwise conformed to the statutory framework that had been created, previously, through consultative processes with employers and labour. Within that broad framework, three "strike models" have been identified.¹⁶ These are: the "unfettered" model, in which all workers within a particular group may strike (or be locked-out) subject to a handful of procedural requirements; the "no strike" model, in which no worker among a particular group may strike or be locked-out (commonly used for those public sector workers deemed inherently essential for purposes of public health and safety); and the "controlled strike" model, in which some workers among a particular group may strike or be locked-out, while others may not, in order to provide the minimum level of services deemed essential.

14 The tripartite principle is so important to our labour-relations system that in a 2003 case, an arbitrator, chosen by then Ontario minister of labour, was removed from the role by judicial order because he did not fulfill the implicit mandate of being satisfactory to both labour and management sides. See *CUPE v Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 SCR 539.

15 Not all of the Conservatives' policies were Harper's initiatives, *per se*. At least two bills with significant implications for labour-relations policy were private members' bills. However, it is well known that any private member's bill that does not have the prime minister's *imprimatur* will not be passed into law.

16 See generally Bernard Adell, Michel Grant & Allen Ponak, *Strikes in Essential Services* (Kingston: IRC Press, Industrial Relations Centre & Queen's University, 2001).

Between June 2011 and June 2012, then Federal Labour Minister Lisa Raitt repeatedly demonstrated what Bernie Adell has called “a fourth model, of sorts,” that is, the “instant back-to-work” model.¹⁷ Minister Raitt sponsored — or threatened to sponsor — back-to-work bills impacting Canada Post workers, three separate bargaining units at Air Canada, and workers at CP Rail, either before or very shortly after a work stoppage had begun, despite that fact that all proposed and actual work stoppages conformed to the relevant statutes. Adell observed that in the above cases, the back-to-work legislation did not conform to the criteria identified by statute for when workers could be made to return to work, and opined that the use of back-to-work legislation in the above cases represented the “federal government’s repeated circumvention” of labour-relations law.¹⁸

Bill C-4 was another example of the Conservatives’ insular approach to labour-relations policy. It was the Conservatives’ fourth omnibus budget bill in the two years since they had secured a majority government. It made changes to over 70 laws, including the *Canada Labour Code* and the *Public Service Labour Relations Act*. Among other things, Bill C-4 authorized the government to unilaterally declare who was and was not to be considered essential on a case by case basis in the event of a labour dispute, while leaving the framework itself, un-assailed.¹⁹ Notably, the changes to essential services made by Bill C-4 have since been overtaken by the Supreme Court of Canada decision in *Saskatchewan Federation of Labour v Saskatchewan*.²⁰ There, the Court indicated that unilateral declarations of essentiality by the government and the impossibility of neutral adjudication violate section 2(d) of the *Charter of Rights and Freedoms*.

Whatever one thinks of the Conservatives’ proposals, they paid little heed to the tripartite principle. On the contrary, public sector unions complained of a “poisoned workplace” propelled by the “shroud of [secrecy]” under which the Conservatives operated. For example, the plan to alter the *Public Service Labour Relations Act* caught public service unions off-guard when it was revealed in the October 16, 2013 throne speech.²¹ The Parliamentary committee examining the proposed changes in Bill C-4 agreed that they “were not the product of a

17 Bernard Adell, “Regulating Strikes in Essential (and Other) Services after the ‘New Trilogy’” (2013) 17:2 CLEJ 413.

18 *Ibid* at 424.

19 *Public Service Labour Relations Act*, SC 2003, c 22, s 2, Division 8 ss 119-20.

20 *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4, [2015] 1 SCR 245 [*SFL v Sask*].

21 Kate Porter, “Clement defends move to limit civil servants’ right to strike”, *CBC News* (23 October 2013), online: <www.cbc.ca/news/canada/ottawa/clement-defends-move-to-limit-civil-servants-right-to-strike-1.2187767>.

consultative process” and recorded its disappointment that despite the committee’s invitation, “ministers would not appear to explain the need for the proposed changes”²²

Bill C-59 was another omnibus bill that contained changes to multiple statutes. In particular, it empowered the Treasury Board to impose terms and conditions relating to sick-leave provisions even though such terms had historically been collectively negotiated.²³ More to the point, it proved to be highly provocative to the Public Service Alliance of Canada, the federal sector’s largest public service union (henceforth PSAC). The PSAC regarded Bill-59 as the Conservative Government’s negation of both the spirit of collective bargaining and its attendant constitutional right. Speaking about the bill, PSAC President Robyn Benson said it demonstrated that “[t]he government has decided to completely throw out any pretense that they intend to respect the collective bargaining rights of [sic] its workers.”²⁴ Moreover, the Bill became the subject of a *Charter* challenge that was only suspended in view of the newly-elected Liberals’ promise to repeal it.

Aside from eschewing tripartitism, Conservative policies often did not appear to be a response to a genuine problem, thus fueling speculation that these initiatives were more ideological than practical. One such example was Bill C-525, which changed the process for union certification and decertification in the federal jurisdiction, from a card-check to a vote-based process, despite the fact that there was no general desire on the part of stakeholders (unions, employers) to do so. In particular, Elizabeth McPherson, then Chair of the Canadian Industrial Relations Board (CIRB), underscored the tripartite principle to the proper functioning of Canada’s labour-relations system. She testified before a Parliamentary committee that following the *Sims Report* in 1996, there were “numerous rounds of consultation [...] with labour and management over the amendments that would be made to the [Canada Labour] code.” She further said that “with one exception there was total consensus on all these changes” and that these changes “worked very, very well.”²⁵ The fact that the *Canada Labour Code* appeared to be working well as is prompted some

22 Senate, The Standing Committee on Social Affairs, Science and Technology, “2nd Report” (November 2013), online: <www.parl.gc.ca/Content/SEN/Committee/412/soci/rep/rep02nov13-e.htm>.

23 *Economic Action Plan 2015 Act, No 1*, SC 2015, c 36 Division 20.

24 CBC News, “Bill C-59: PSAC readies \$5M campaign against sick leave reforms”, (8 May 2015), online: <www.cbc.ca/news/politics/bill-c-59-psac-readies-5m-campaign-against-sick-leave-reforms-1.3066971>.

25 House of Commons, Standing Committee on Human Resources, Skills, Social Development and the Status of Persons with Disabilities, evidence, 41st Parl, 2nd Sess, No 12, (13 February 2014) at 915 (Elizabeth McPherson).

MPs to opine that it was not clear what problem Bill C-525 was meant to solve.²⁶

According to the Bill's sponsor, Blaine Calkins, Bill C-525 was intended to reduce union-side intimidation and coercion in the context of certification drives, in order to resolve the "mountain of complaints that end up at the labour relations board."²⁷ However, this claim was not well supported by the evidence. In the 10 years prior, the CIRB had only received 23 complaints about intimidation and coercion in the context of a certification drive. The CIRB found six to have had merit and ruled as follows: against the union twice, and against the employer four times.²⁸ The sample size here makes it impossible to draw general conclusions, but at the very least the evidence does not support the need for any change to the certification process. On the contrary, it tends to support leaving the process as is, since the evidence suggests that employer-side, rather than union-side intimidation, is the greater threat. And just as card-check processes are said to enable union-side intimidation, vote-based processes are said to enable employer-side intimidation.²⁹

The bill that perhaps most revealed the Conservatives' insularity and lack of regard for tripartism, though, was Bill C-377, which received royal assent on June 30, 2015. Bill C-377 was a private member's bill to amend the *Income Tax Act* to require labour organizations to disclose detailed information of their accounts on a publicly accessible website.³⁰ The putative reason for this was to create transparency and accountability with regard to how union dues are spent. The argument for providing this information to the public, and not solely to union members themselves, was that union dues are tax deductible, thus they are publicly funded, and thus all Canadians have a right to this information. Among myriad criticisms, it was noted that the bill did not apply to

26 See e.g. *ibid* at 10:42 (Jinny Jogindera Sims); *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 71, (8 April 2014) at 1825-35 (Judy Sgro), online: <www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6526323>.

27 *House of Commons Debates*, 41st Parl, 2nd Sess, Vol 147, No 10 (29 October 2013) at 1810 (Blaine Calkins), online: <www.parl.gc.ca/HousePublications/Publication.aspx?Pub=Hansard&Doc=10&Parl=41&Ses=2&Language=E&Mode=1#8113572> [House of Commons Debates, 29 Oct 2013].

28 House of Commons, Standing Committee on Human Resources, Skills, Social Development and the Status of Persons with Disabilities, 41st Parl, 2nd Sess, No 12 (13 February 2014) at 9:22 (Elizabeth McPherson).

29 See e.g. Sara Slinn, "Anti-union intimidation is real", *National Post* (7 December 2007) FP 15; Sara Slinn, "No Right (to Organize) without a Remedy: Evidence and Consequences of the Failure to Provide Compensatory Remedies for Unfair Labour Practices in British Columbia" (2008) 53:4 McGill LJ 687 [Slinn, "No Right Without Remedy"].

30 *An Act to amend the Income Tax Act (requirements for labour organizations)*, SC 2015, c 41.

businesses and professional associations, despite their also benefiting from tax exemptions.³¹

Opposition to Bill C-377 was broad-based, encompassing organizations as diverse as labour unions, law societies, provincial governments, insurance and financial associations, constitutional experts, and the former privacy commissioner. Opposition came also from within the ranks of the Conservative caucus itself. Conservative Senator Hugh Segal's speeches against a bill that he claimed revealed an "anti-labour bias running rampant,"³² led 15 other Conservative senators to refuse to pass it without amendment.

There are a number of ways of assessing policy for its quality. We can assess policy by the clarity and soundness of its purpose, by its efficacy in achieving that purpose, by its over-breadth or under-reach, by its unintended consequences, by how likely it is to offend other policy instruments, laws or the Constitution itself. On virtually every one of these measures Bill C-377 was a failure.

From the beginning its very purpose was contested. While the bill's sponsor, Russ Hiebert, argued that the Bill's aim was to increase transparency and, thus, union accountability, unions believed the Bill was "driven by an anti-union ideology"³³ whose intended effect was to "alter the balance of labour-management relations across Canada."³⁴ According to this argument, the balance between labour and management would be altered because management would now have access to information about labour organizations, but labour organizations would not have access to comparable information about management. Noting this disparity, Senator Segal sarcastically pondered whether "Coca-Cola should be forced to disclose to Pepsi its marketing plan and expenditures [...]."³⁵

31 See Doorey for a draft of the bill that includes businesses, and professional associations: David Doorey, "What Bill C-377 would look like if it actually treated unions the same as charities, businesses, and professional associations who receive tax benefits" (September 2014), *Law of Work* (blog), online: <<http://lawofwork.ca/wp-content/uploads/2014/09/Bill-C-377-Revised1.pdf>>.

32 *Debates of the Senate*, 41st Parl, 1st Sess, Vol 148, Issue 138 (14 February 2013) at 1500 (Hugh Segal), online: <www.parl.gc.ca/Content/Sen/Chamber/411/Debates/138db_2013-02-14-e.htm#40> [Senate Debates, 14 Feb 2013].

33 Canadian Teachers Federation, "Bill C-377: Overview to date on Bill C-377" (26 November 2012). To make their point crystal clear, the CFT titled their submission to the Senate Constitutional and Legal Affairs Committee, "Bill C-377: A Bill Designed to Stifle Voices of Opposition and Gut the Labour Movement." See Canadian Teachers' Federation, Brief Submitted to Senate Standing Committee on Legal and Constitutional Affairs (January 2015), online: <www.ctf-fce.ca/Research-Library/CTFSenateBriefC377.pdf>.

34 SEIU, Brief to Senate Standing Committee on Legal and Constitutional Affairs, (8 January 2015).

35 Senate Debates, 14 Feb 2013, *supra* note 32 at 1500.

Not only was the bill's putative aim brought into question, so too was the link between that aim and the means employed to achieve it. The Association of Canadian Financial Officers, for instance, claimed that the bill would fail to improve accountability.³⁶ Professor David Doorey explains why that would be, by reference to the American law upon which Bill C-377 was modeled (notably without the employer reporting requirements that the US law contains). Doorey says that the information produced by the American law is so dense and voluminous as to be almost "impenetrable to the average worker" and opines that it is mostly used by

politicians and antiunion lobbyists, who are paid by corporations to campaign against and undermine unions. And by employers, who will scour the documents looking anything [sic] that could be used to attack a union trying to organize its workers or that can help them in their collective bargaining strategies.³⁷

The bill was also problematic for its overreach. In this regard it was criticized by a series of law associations for its likelihood to require disclosure of information protected by solicitor-client privilege.³⁸ Similarly, the Investment Funds Institute of Canada and the Canada Health and Life Insurance Association raised concerns that the language of "labour trusts" contained in the Bill would trigger the Bill's onerous reporting requirements even when only one person in the entire trust fund was a union member.³⁹

But perhaps most damning of all is that the Bill ran afoul of either the spirit or the letter of other legal enactments. For instance, former federal Privacy Commissioner Jennifer Stoddart expressed concerns that the particular requirements of the Bill did not strike the right balance between transparency and the privacy of individuals.⁴⁰ And the Bill would almost certainly have faced

36 Association of Canadian Financial Officers, Brief to the Senate Standing Committee on Legal and Constitutional Affairs, "C-377: Unnecessary and Unprecedented", (20 April 2015).

37 David Doorey, "Bill C-377: The Conservatives' Private Members Bill on Union Transparency" (October 2012), *Law of Work* (blog), online: <<http://lawofwork.ca/?p=5739>>.

38 Canadian Association of Labour Lawyers, Brief to Senate Standing Committee on Legal and Constitutional Affairs (April 2015) at 3-5; Association of Justice Counsel, Brief to Standing Senate Committee on Legal and Constitutional Affairs (23 April 2015), online: <www.parl.gc.ca/content/sen/committee/412/LCJC/Briefs/20150423_C-377_brief_AssocofJusticeCounsel_e.pdf>; Federation of Law Societies of Canada, Brief (25 September 2014), online: <www.parl.gc.ca/content/sen/committee/412/LCJC/Briefs/20140925_C-377_brief_FederationofLawSocietiesofCanada_e.pdf> [Federation of Law Societies Brief].

39 The Investment Funds Institute of Canada, Brief to the Senate Standing Committee on Legal and Constitutional Affairs (19 January 2015), online: <www.parl.gc.ca/content/sen/committee/412/LCJC/Briefs/20150121_C-377_brief_IFIC_e.pdf>.

40 Office of the Privacy Commissioner of Canada, Appearance before the House of Commons Standing Committee on Finance, on Bill C-377 - An Act to Amend the Income Tax Act (requirements for

— and likely not withstood — a constitutional challenge on a division of powers basis,⁴¹ and possibly on a *Charter* basis as well.

In all, the Bill was almost certainly unconstitutional, and roundly criticized by labour stakeholders, and non-partisan observers for its impact upon not only labour-relations, but upon aspects of the financial, insurance and legal industries that one can only assume were not intended. For this reason, several amendments were proposed by various parties. For instance, the Canadian Life and Health Insurance Association suggested a simple amendment that would have defined “labour trust” so as to avoid reporting requirements for trusts that were not set-up for labour associations, but to which trust a person who also happened to be a member of a labour association, might belong.⁴² The Federation of Law Societies suggested the addition of a simple clause specifying that nothing in the bill “shall require the disclosure of information protected by solicitor-client privilege.”⁴³ In June 2013, the Senate passed the Bill with amendments (introduced by Senator Segal).⁴⁴ However, the Bill was re-introduced in the Senate later that year, in the exact form and particulars that it had been previously. This time, the Senate passed it without even the amendments it had previously adopted. If the Conservatives were at all interested in rebutting the view that this Bill was purely ideological in nature, the refusal to incorporate any of the numerous amendments proposed, belied that position.

The Conservatives and anti-union rhetoric

The negation of the tripartite principle and the anti-union bias that is evident in the Conservatives’ labour-relations policies are not really surprising. In 1997, as then vice-president of the National Citizens Coalition (NCC) Harper gave a speech in Montreal to members of a US based organization called the US Council for National Policy, which many feel best captures his unadulterated political ideology. The basis of this speech was to provide these American visitors some insight into the Canadian political landscape from the perspective of a like-minded conservative. The speech opens by referring to the American conservative movement as a “light and an inspiration to people in this country

labour organizations) (7 November 2012), online: <www.priv.gc.ca/parl/2012/parl_20121107_e.asp>.

41 Bruce Ryder, Brief to the Senate Standing Committee on Legal and Constitutional Affairs, “The Constitutional Invalidity of Bill C-377” (7 June 2015).

42 Canadian Life and Health Insurance Association, Letter to the chair of the Senate Standing Committee on Legal and Constitutional Affairs (22 December 2014).

43 Federation of Law Societies Brief, *supra* note 38.

44 *Debates of the Senate*, 41st Parl, 1st Sess, Vol 149, Issue 181 (25 June 2013), online: <http://www.parl.gc.ca/Content/Sen/Chamber/411/Debates/181db_2013-06-26-e.htm?Language=E#23>.

and across the world.” Harper then situates Canada on the political stage by referring to it as a “Northern European welfare state in the worst sense of the term.” He derides the unemployed by stating that many of them “don’t feel bad about it ... as long as they’re receiving generous social assistance and unemployment insurance.” And while he doesn’t say much in this speech about organized labour (other than to identify the Canadian Labour Congress — Canada’s largest umbrella labour organization — as “explicitly radical”) he does identify the NCC as libertarian in ideology.⁴⁵

The NCC’s political leanings are relevant because libertarian theory has particular views about unions. Libertarian theory views unions as cartels, and equates their associational activity with those of companies that collude to price-fix.⁴⁶ Notably, the NCC’s webpage identifies “corrupt union bosses” as one of the important issues about which they promote awareness.⁴⁷ Importantly, libertarian theory need not incorporate the notion that union leaders themselves are or tend to be corrupt. Rather, within libertarian theory it is simply in the nature of this type of association to interfere with market efficiency. It is unsurprising, then, that libertarians do not abide the legal framework within which unions in North America operate. Libertarian theory espouses that market efficiency and individual freedom are maximized when no restraints beyond those of commercial contract law mitigate what sellers and purchasers of labour-power may individually bargain. By contrast, the legal framework that regulates the interactions of organized workers and purchasers of labour-power, known in North America as the Wagner model,⁴⁸ codifies certain labour rights, including the right to certify into legally recognized trade unions for the purpose of bargaining collectively — with the concomitant duty of the employer to so engage. Thus, the Wagner model is anathema to the libertarian mindset. No arguments about union corruption are necessary.⁴⁹ In fact, the federal task force set-up to

45 Stephen Harper, (Address delivered at a meeting of the US Council for National Policy, June 1997); The Tye, “Canada Through Stephen Harper’s Eyes” (23 March 2011), online: <<http://thetye.ca/News/2011/03/23/StephenHarpersEyes>>.

The conservative movement in the US, despite its Christian underpinnings, is highly influenced by libertarian economic thinking and well-funded by libertarian adherents. See e.g. Jane Mayer, “Covert Operations: The billionaire brothers who are waging a war against Obama”, *The New Yorker* (30 August 2010), online: <www.newyorker.com/magazine/2010/08/30/covert-operations>.

46 See generally Richard Posner, *The Economic Analysis of Law*, 7th ed (New York: Aspen Publishers, 2007).

47 National Citizens Coalition, “About Us”, online: <<https://nationalcitizens.ca/index.php/about-us>>.

48 Named after the senator who proposed the Act which created the framework, commonly known as the *Wagner Act* or, more formally, *The National Labor Relations Act*, 29 USC § 151-169 (49 Stat 449).

49 This is not to say that no union corruption exists (see generally the Charbonneau Report (2015) at <www.ceic.gouv.qc.ca/fileadmin/Fichiers_client/fichiers/Rapport_final/Rapport_final_CEIC_Integral_c.pdf>). It is to say, however, that there is nothing particular about unions that makes them

review the *Canada Labour Code* in 1996 culminating in the *Sims Report*,⁵⁰ concluded that “Canadian trade unions exhibit a high level of internal democracy and genuinely represent the interests and wishes of their membership.”⁵¹

Notwithstanding, altering the Wagner model has been an ongoing project for conservative lawmakers in the US, (and increasingly so for those in Canada)⁵² almost since the *Wagner Act* was passed.⁵³ Recently, noted political scientist Theda Skocpol has researched the rise of extreme right-wing politics in the US and notes the centrality of anti-union legislation to the agenda.⁵⁴ However, ideology is just one motivating factor and it is likely informed in complex ways by political factors. Charles Smith, for example, calls unions the “best financed social movement on the centre left” and notes that it has always been a “thorn in the side of Conservative [sic] parties” that “unions funnel some of that money into the political movement.”⁵⁵ Nathalie Des Rosiers concurs, explaining that opposition to unions is best understood as a means to silence their long-standing advocacy of “economic welfare as a matter of right, and not only as a political choice [...]”⁵⁶

If one were to take Harper and the Conservatives at their word, however, nothing could be further from the truth. The rhetoric of “union bosses” was regularly invoked in order to argue for piecemeal dismantling of the basic legal framework in which unions operate. “Union bosses” implies, as it is meant to do, that union leadership is dishonest and unethical, and uninterested in the workers it represents. For instance, during debate on Bill C-525, the bill’s sponsor explained that the NDP would not support the bill because they were “in

or their leadership more prone to corruption in the general case, and that evidence of corruption is the exception not the rule.

50 Commission of Inquiry to Review Part I of the Canada Labour Code, *Seeking a Balance* (Ottawa: Minister of Public Works and Government Services Canada, 1995).

51 *Ibid*, as quoted in Michael Lynk, “Union Democracy and the Law in Canada” (2002) 1 *Just Labour* 16 at 16.

52 Canadian Foundation for Labour Rights “Restrictive Labour Laws in Canada” (2016), online: <<http://labourrights.ca/issues/restrictive-labour-laws-canada>> [CFLR, “Restrictive Labour Laws”].

53 Douglas E Ray, Calvin William Sharpe and Robert N Strassfeld, *Understanding Labor Law*. 3rd ed (LexisNexis, 2011) 352.

54 Theda Skocpol, “Who Owns the GOP?”, *Dissent* (3 February 2016), online: <www.dissentmagazine.org/online_articles/jane-mayer-dark-money-review-koch-brothers-gop>.

55 Teuila Fuatai, “Canadian unions celebrate defeat of C-377, international attacks against unions intensify”, *Rabble* (13 January 2016), online: <<http://rabble.ca/news/2016/01/canadian-unions-celebrate-defeat-c-377-international-attacks-against-unions-intensify>>.

56 Nathalie Des Rosiers, “Unions and Democratic Governance” in Matthew Behrens, ed, *Unions Matter: Advancing Democracy, Economic Equality, and Social Justice* (Toronto: Between the Lines, 2014) 93 at 100.

the pockets of the big union bosses who want to maintain their stranglehold on workers and muzzle their democratic voice.”⁵⁷

The rhetoric of “union bosses” places the focus upon the actions of individuals in a way that could attract the support of those who would otherwise want a legal framework for organized labour such as the Wagner model. This is why Russ Hiebert, the sponsor of Bill C-377, noted (however disingenuously) that support for the bill was high even among union members.⁵⁸ By contrast, it would be much more difficult to justify anti-union legislation by reference to the libertarian ideology that animates it (much less to a desire to silence political opposition) since by default the regulatory scheme in libertarian philosophy is simply the thrust and parry of market forces, of which many people are highly dubious.

In the end, the phrase “union bosses” elides an important distinction between, on the one hand, corrupt union leaders, and on the other hand, the mere fact of union organization in our labour-relations system. This is obvious when we examine the sort of things that are taken for examples of union corruption. For instance, in its brief to the Senate Banking and Trade Commerce Committee, REAL Women, a conservative interest group, derided the fact that unions have funded causes such as “abortion, feminism, homosexuality, as well as the Palestinians in the current Israeli-Palestinian conflict [...]”.⁵⁹ The corruption implied by the term “union bosses” refers to the (putative) fact that members neither know about nor desire these expenditures and object (or would do so) to the use of their dues to support such causes.

The implication of corruption, however, misunderstands that our *labour-relations* system maps the basic principles of our *political* system.⁶⁰ Whatever one thinks of the use of union dues to fund controversial political and social justice campaigns, there is nothing inherently corrupt or illegitimate in it. Representational democracy is majoritarian (in that there will usually be a minority that has not gotten what it wants) and non-direct (meaning that some

57 House of Commons Debates, 29 Oct 2013, *supra* note 27.

58 *House of Commons Debates*, 41st Parl, 1st Sess, Vol 146, No 95 (13 March 2012) at 1825 (Russ Hiebert), online: <www.parl.gc.ca/HousePublications/Publication.aspx?Pub=Hansard&Doc=95&Parl=41&Ses=1&Language=E&Mode=1>. Importantly, the polling was flawed, see generally Andrew Stevens & Sean Tucker, “Working in the Shadows for Transparency: Russ Hiebert, LabourWatch, Nanos Research, and the Making of Bill C-377” (Spring 2015) 75 *Labour/le Travail* 133.

59 REAL Women of Canada, Brief presented to the Senate Banking Trade and Commerce Committee, “Brief on Bill C-377” (May 2013) at 1.

60 Brian Langille & Josh Mandryk, “Majority, Exclusivity and the ‘Right to Work’: The Legal Incoherence of Ontario Bill 64” (2013) 17:2 *CLEJ* 475.

decisions are allocated to others to make, within a more general framework). The fact that union members often do not know about the allocation of their dues or that individual members do not always support how they are used is, in and of itself, non-revelatory. The analogy of our political system is helpful. The vast majority of Canadians do not know what bill is being debated in Parliament on any given day, or how much of our taxes will be required to fund the initiative should it pass. Nor do we all agree upon political outcomes.⁶¹ The charge of corruption or the suggestion of illegitimacy do not follow from the recitation of these facts.

The labour movement has, historically, championed social justice causes.⁶² This is so because concerns about the allocation of social resources and opportunities, which impel social justice advocacy and activism, are often viewed as inseparable from concerns about terms and conditions at work more narrowly construed. Unfairly, then, unions face a Catch-22: when they concern themselves narrowly with the workplace terms and conditions of their individual membership, they are accused of being a privileged elite whose privilege should be removed by dismantling the legal framework that supports it.⁶³ By contrast, when they embed themselves more broadly within various social movements, they are accused of ignoring the needs and interests of their membership, and thus the legal framework that supports them should be dismantled.

To conclude this section, labour-relations policy under Harper revealed a piecemeal and insular approach to a particularly controversial policy area, whose framework has been crafted over many decades. From a constitutional perspective, *Charter* challenges to Bills C-4 and C-59 had already been filed with the Ontario Superior Court when the Liberals came to power in 2015. Bill C-377 would surely have followed suit. From a policy perspective, many of these bills revealed either a failure to understand, or a willingness to repudiate, the broader principles that animate our particular labour-relations system.

61 Some may object to the fact that union dues can be compelled, and virtually all supporters of Bill C-377 on record, do. The issue of compulsory dues is, of course, a different matter, and one that is very well addressed in *ibid*. Either way, it is beside the point here, as Bill C-377 does not address the fact of compulsory dues.

62 This is not to imply that unions have always done so unproblematically. As with virtually all organizations, there have been historical issues with the inclusion of blacks, women, the LGBT community etc...This, however, is to say nothing more than that unions, being made-up of people, will reflect those people's general attitudes. Notwithstanding, in very many ways and for many reasons, unions have been champions of progressive causes beyond those that are explicitly class-based.

63 See e.g. LibertyPen, "Milton Friedman - The Real World Effects of Unions" (14 March 2014), online: <www.youtube.com/watch?v=xzYgiOC9cj4>.

The Liberals and a new agenda for labour-relations in Canada?

Given the focus of the 2015 election, it is no surprise that Trudeau's election night speech sought to reassure the world that "Canada was back."⁶⁴ However, a year into the Liberals' mandate, making comparisons between them and the Conservatives appears to be a journalistic pastime.⁶⁵ For some, there is considerable distance between Liberal rhetoric and Liberal action. Given the tenor of the entire election campaign, the Liberals are more than usually vulnerable to accusations of "plus ça change . . ." It is not obvious, however, that this is a reasonable assessment of the Liberals' actions to date. Rather, thus far the Liberals have committed to undo much of what was done by Harper's Conservatives in the area of labour-relations.

First, Prime Minister Trudeau has made good on an election campaign promise by introducing legislation to repeal Bills C-377 and C-525,⁶⁶ saying that doing so was necessary to restore a "fair and balanced approach to organized labour."⁶⁷ That Bill was passed by the House of Commons on October 19, 2016, and was before the Senate as of this writing.

Second, the head of the Treasury Board, Scott Brison, committed to the non-operationalization of those portions of Bill C-59 that removed sick leave provisions from collective bargaining and instead imposed a plan via legislative fiat. Brison deemed this necessary in order to "support the Government's commitment to bargain in good faith with Canada's federal public sector unions."⁶⁸ Although Trudeau made no secret of his desire to repair what he

64 Jim Bronskill, "'We're Back,' Justin Trudeau says in message to Canada's allies abroad", *The National Post* (20 October 2015), online: <<http://news.nationalpost.com/news/canada/canadian-politics/were-back-justin-trudeau-says-in-message-to-canadas-allies-abroad>>.

65 See e.g. Steven Chase, "Ottawa going ahead with Saudi arms deal despite condemning executions", *The Globe and Mail* (4 January 2016), online: <www.theglobeandmail.com/news/politics/ottawa-going-ahead-with-saudi-arms-deal-despite-condemning-executions/article28013908/>; Tonda MacCharles, "No vacancies for media at Liberals' cabinet retreat" *The Toronto Star* (14 January 2016), online: <www.thestar.com/news/canada/2016/01/14/no-vacancies-for-media-at-liberals-cabinet-retreat.html>.

66 Bill C-4, *An Act to amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act, the Public Service Labour Relations Act and the Income Tax Act*, 42nd Parl, 1st Sess (Committee reported without amendment on 12 May 2016).

67 Office of the Prime Minister, "Minister of Employment, Workforce Development and Labour Mandate Letter" (2015), online: <<http://pm.gc.ca/eng/minister-employment-workforce-development-and-labour-mandate-letter>>.

68 Professional Institute of the Public Service of Canada, "First Signs of Improved Labour Relations" (22 January 2016), online: <www.pipsc.ca/portal/page/portal/website/issues/legal/challenges/constitution/01222016> [PIPSC].

saw as the fractured relationship between the government and the civil service, the Liberals have been accused by the PSAC of acting like Conservatives in the present round of bargaining, notably by presenting a sick-leave plan virtually identical to that favoured by the Conservatives.⁶⁹ The Canadian Association of Financial Officers, another public sector union that was in negotiations with the federal Liberals as of this writing, initially appeared more amenable to the Liberals' approach than had the PSAC.⁷⁰ But as negotiations with both unions drag on,⁷¹ general disenchantment with the Liberals' bargaining stance is evident.⁷² Notably, unlike the Conservatives, the Liberals do not intend to impose their preferences via legislation, but to leave it to the thrust and parry of the collective bargaining process. In many ways, this is no less (and perhaps no more) than they had promised to do. It is presently unclear whether doubling-down on procedural guarantees will be sufficient to win the goodwill and trust of federal public sector unions.

Third, Bill C-4 made significant and myriad changes to the process for bargaining and arbitration. Initially, the Liberals resisted pleas to repeal, outright, those aspects of the bill relating to labour-relations, instead promising to "engage in consultations with public sector partners" about them.⁷³ However, a more recent promise to repeal Division 17 of Bill C-4 is not only consistent with the Supreme Court of Canada's ruling in *SFL*⁷⁴ (and coming on the eve of a scheduled court date, it had the effect of averting a judicial challenge), it also has the effect of reversing most of the changes to labour-relations policy made by the Bill.

As it stands, then, the Liberals have so far either introduced — or promised to introduce — legislation that would repeal Bills C-525 and 377 in their entirety, and most of those aspects of omnibus Bills C-59 and C-4 that public sectors unions found troubling. The Liberals have stated that doing so was necessary to restore fairness and balance to our labour-relations system. There seems to be little doubt that in the area of labour-relations, most of Harper's core

69 Kathryn May, "PS Bargaining with Liberal Government off to a Bumpy Start", *Ottawa Citizen* (5 February 2016), online: <<http://ottawacitizen.com/news/politics/ps-bargaining-proposal>>.

70 Association of Canadian Financial Officers, "Details on proposed short-term disability plan (2 June, 2016)." Accessed June 6, 2016. <<http://www.acfo-acaf.com/2016/06/02/details-on-proposed-short-term-disability-plan/>>.

71 Both unions have been without a contract for over two years.

72 Association of Canadian Financial Officers, "Collective Bargaining, Next Dates Set," (20, Oct. 2016)." Accessed Oct. 23, 2016. <<http://www.acfo-acaf.com/2016/10/20/collective-bargaining-next-dates-set-2/>>.

73 PIPSC, *supra* note 69.

74 *SFL v Sask*, *supra* note 21.

policy changes will not survive, nor will the Liberals adopt the Conservatives' anti-union rhetoric.

Gift horses or trojan horses?

Arguably, Trudeau is still settling in, and how he walks the line of “bringing balance to organized labour” remains to be seen. Trudeau’s intention appears to be to restore the status quo: respecting the tripartite principle and paying appropriate heed to stakeholders’ input. However, the status quo itself has been in flux for some time. The Canadian Foundation for Labour Rights identifies 218 restrictive labour laws that have been passed by both levels of government, and by all political parties, since 1982. Thirty-three of these were at the federal level, and approximately one third of these were passed with a Liberal majority.⁷⁵ And as Panitch and Swartz elaborate, the use of back-to-work legislation and other legislative means to “discipline” labour predates Harper.⁷⁶ My point in saying so is that while Trudeau appears to have largely rejected Harper’s policies in the area of labour-relations, it would be naïve to see in Harper’s approach a complete break from that of preceding governments, whether federal or provincial, and whether Conservative or not. While few parties have gone as far as proposing or adopting into their formal policy agenda items as far-reaching as did the Conservatives under Harper,⁷⁷ narrowing the scope of labour rights has been a common project across party lines for more than three decades.

In many respects, Trudeau benefits by simply not being Harper. For instance, after the federal election, noting that Canadians had voted for “change,” PSAC President Robyn Benson blogged that there was “nowhere else to go but up.”⁷⁸ According to political scientist Nelson Wiseman, most of what the Liberals did in their first six months was to repeal Conservative policies.⁷⁹ Beyond that, however, the Liberals’ approach to labour-relations policy has been tepid.

75 CFLR, “Restrictive Labour Laws”, *supra* note 53.

76 See generally Leo Panitch & Donald Swartz, *From Consent to Coercion: The Assault on Trade Union Freedoms*, 3rd ed (Aurora, Ont: Garamond Press, 2003).

77 For example, the Federal Conservatives adopted a formal stance against the Rand Formula and against union majoritarianism. As far as I know, only the Ontario Conservatives have so far taken a similar stand.

78 Robyn Benson, “Climate Change is a Union Issue” (26 November 2016), *Headwinds* (blog), online: <www.aec-cea.ca/>.

79 Monique Muise, “Has Justin Trudeau kept his promises six months after election day?”, *Global News* (19 April 2016), online: <www.globalnews.ca/news/2647778/has-justin-trudeau-kept-his-promises-six-months-after-election-day/>.

In the spring, the Liberals introduced Bill C-7. This bill proposes a statutory scheme for bargaining within the RCMP, in response to a 2015 Supreme Court ruling.⁸⁰ So far, the bill has received considerable criticism from various police associations, mainly for how restricted it is. In particular, critics note that the bill excludes from collective bargaining any terms relating to the following: law enforcement techniques, transfers and appointments, appraisals, probation, discharge and demotion, conduct, basic requirements for carrying out duties, as well as uniform and dress.⁸¹ In its landmark 2007 decision known as *Health Services*, the Supreme Court determined that, while freedom of association did not include the right to collectively bargain about every workplace issue, it did include the right to bargain over “fundamental” workplace issues.⁸² Clearly, many of the excluded items constitute fundamental workplace issues. Therefore, the Bill has raised concerns that, unamended, it is too meager to withstand *Charter* scrutiny. Amendments to remove the exclusions, however, have been adopted in the Senate. The amended bill has been sent back to the House of Commons for consideration.⁸³ What the House will do with the amended Bill remains to be seen, but in any event, the Bill as passed by the Liberal majority could hardly be described as robust.

The Liberals also rejected an ‘anti-scab’ bill without even the benefit of committee hearings. Bill C-234 was a NDP private member’s bill introduced in early 2016. The Bill introduced an amendment to the *Canada Labour Code* to prevent the use of replacement workers, commonly known as ‘scabs’, during a strike or lockout. Only BC and Québec have comparable legislation. That the Bill was defeated is not really surprising, but it is interesting to hear why Liberals claimed not to support it. Speaking on behalf of the Minister of

80 *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1, [2015] 1 SCR 3.

81 Bill C-7, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures*, 1st Sess, 42nd Parl (2016), cl 238.19 (c) (i)-(viii) (as passed by the House of Commons on 30 May 2016). See e.g. Mounted Police Professional Association of Canada, “Brief presented to the Standing Committee on Public Safety and National Security” (14 April 2016), online: <www.parl.gc.ca/Content/HOC/Committee/421/SECU/Brief/BR8172615/br-external/MPPAC2016-04-e.pdf>; Mounted Police Members’ Legal Fund, “Brief presented to the Standing Committee on Public Safety and National Security” (14 April 2016), online: <www.parl.gc.ca/Content/HOC/Committee/421/SECU/Brief/BR8226355/br-external/MountedPoliceMembersLegalFund-e.pdf>; National Police Federation, “Brief presented to the Standing Committee on Public Safety and National Security” (17 April 2016), online: <www.parl.gc.ca/Content/HOC/Committee/421/SECU/Brief/BR8226374/br-external/NPF-FPNclauses-e.pdf>.

82 *Health Services and Support - Facilities Subsector Bargaining Assn v British Columbia* 2007 SCC 27 at para 19, [2007] 2 SCR 391.

83 *Debates of the Senate*, 42nd Parl, 1st Sess, Vol 150, Issue 54 (21 June 2016) at 1450, online: <www.parl.gc.ca/Content/Sen/Chamber/421/Debates/054db_2016-06-21-e.htm#34>.

Employment, Parliamentary Secretary Roger Cuzner adduced the very tripartite principle and necessity for broad consultation whose lack had been one of the reasons for labour's criticism of Conservative bills, particularly Bills C-525 and C-377. In other words, procedurally, the Liberals could not now support a private member's bill that made changes to the *Canada Labour Code*, without broader, tripartite consultation. In response, the NDP said that it would embrace broad consultations about the *Canada Labour Code*. So far, however, the Liberals have not indicated an intention to undertake the kind of in-depth and broad review of labour-relations policy that occurred with the *Sims Report* (and the all-but-ignored *Arthurs Report* in 2006)⁸⁴ and that is now happening, for example, in Ontario.

More to the point, it is not clear that the Liberals supported Bill C-234 in principle. Cuzner argued that the present provision, which allows employers to use replacement workers subject to certain conditions, was recommended in 1999 by the task force convened after the *Sims Report*, because it strikes the appropriate balance between the "competing views of unions and employers."⁸⁵ By contrast, Karine Trudel, Bill C-234's sponsor, argues that the capacity to hire replacement workers acts as a disincentive for employers to negotiate with unions, and that employers now appear much more willing to lockout their employees than they were previously.⁸⁶ This willingness is largely determined by the availability of other workers. Therefore, the rise of precarious forms of work in recent years challenges us to examine whether or not present policies are still equal to the task of achieving the appropriate balance between employers and labour. Given that, it might have proven fruitful to have the bill considered by committee where recent evidence about the state of labour-relations could have been brought to bear. Perhaps most disappointing of all, then, was that only a handful of Liberal MPs was willing to allow that. As such, it was defeated, arguably before it received a fair hearing.

84 The *Arthurs Report* was commissioned by the Federal Liberal Government, in 2004, and tasked with reviewing the *Canada Labour Code*. It was released in 2006 and all but ignored by the ruling Conservatives.

85 *House of Commons Debates*, 42nd Parl, 1st Sess, Vol 148, Issue 37 (12 April 2016) at 1805 (Roger Cuzner), online: <www.parl.gc.ca/HousePublications/Publication.aspx?Pub=Hansard&Doc=37&Parl=42&Ses=1&Language=E&Mode=1#8854196>.

86 *House of Commons Debates*, 42nd Parl, 1st Sess, Vol 148, Issue 37 (12 April 2016) at 1750 (Karine Trudel), online: <www.parl.gc.ca/HousePublications/Publication.aspx?Pub=Hansard&Doc=37&Parl=42&Ses=1&Language=E&Mode=1#8854196>.

Conclusion

Trudeau appears sincere in his desire to re-engage the tripartite principle and to take labour seriously as a legitimate stakeholder. However, if he wants to restore balance to labour-relations in the federal jurisdiction as he claims, he might need to do more than undo Conservative, anti-union bills. In the new industrial reality, where income inequality, precarious employment and the social and economic havoc that they wreak, is well documented,⁸⁷ measures that were seen to strike the appropriate balance between the interests of labour and employers even 15 years ago, may, upon re-examination, no longer appear to do so. By Trudeau's own admission, organized labour has a role to play in reducing income inequality and crafting decent work.⁸⁸ At this time, however, it is not clear that the Liberals intend to do any more to strengthen labour's hand, than to repeal the overtly hostile bills passed by a Conservative majority.

87 See, for example, Poverty and Employment Precarity in Southern Ontario Research Group. 2013. *It's more than Poverty*; Lewchuk, Wayne, Marlea Clarke and Alice de Wolff. 2011. *Working without Commitments: Precarious Employment and Health*, (Montreal: McGill Queen's University Press Law Commission of Ontario. 2012). *Vulnerable Workers and Precarious Work: Interim Report*. Law Commission of Ontario. Online: <<http://www.lco-cdo.org/en/vulnerable-workers-interim-report>>.

88 The Liberal Party of Canada, *supra* note, 1.

