THE CANADIAN INDUSTRIAL DISPUTES ACT

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The Canadian Industrial Disputes Investigation Act of 1907 was a natural development of the Canadian Conciliation Act of 1900 and of the Railway Labour Disputes Act of 1903. The former provided for the establishment of a Department of Labour and effected intervention in labour disputes through the personal efforts of the Minister of Labour himself. The next step, in 1903, was the authorization of boards of arbitration in railway labour disputes upon the request of either party. Neither side, up to this time, had given up, even for a day, the right to strike or lock-out.

On account of a serious strike in the coal mines of Lethbridge, Alta, in the winter of 1906–07, the Deputy Minister of Labour suggested a plan for the prevention of such occurrences in the future. This plan, elaborated into a bill, was presented to parliament by the then Minister of Labour, the Honourable Randolphe Lemieux, and became a law on March 22, 1907. It is often called the Lemieux Act.

This act recognizes the need of a well-established, dignified, official agency for the proper discussion of grievances and their adjustment without resort to strikes. While covering both public and private business, it draws a sharp distinction between them. It is framed to apply primarily to public utilities and mines where continuous service is of most immediate interest to the public; it reaches into private business only when both parties to a dispute consent to the acceptance of its friendly offices. Under the Lemieux Act, the government does not take the initiative in bringing about conciliation; the first suggestion for the appointment of a Board of Conciliation and Investigation (hereafter to be designated the Board) comes from one or the other interested party. The record thus far has shown that nearly all the applications for boards emanate from the employees.

Board Organization

A request from either employers or employees for the appointment of a Board, coming to the Minister of Labour with the statement that a strike or lock-out is impending, is promptly followed by the organization of such a Board under the supervision of the Department of Labour.

The side applying for the Board chooses the first representative; and if the other party does not nominate its representative within five days after due advice, the Minister of Labour appoints such representative. These two members then select a third party, usually a judge or other disinterested citizen, well-known and highly regarded by the public, and he becomes the chairman of the Board. In case the two members of the Board fail to agree upon a third, the Minister of Labour again asserts his power in the selection and appointment of the chairman. The Board thus organized at once proceeds to investigate the conditions of employment which were the cause of discontent about to break out into open strife.

Service Uninterrupted

During the time occupied by the investigations of the Board, the act provides that workingmen are not permitted to strike, nor are the employers allowed to reduce wages, increase hours or otherwise change the conditions of employment. Thus loss in wages is prevented, service continues and, what is still more important, evil passions are not aroused and accentuated as in time of strike. Investigation under conditions of employment and order is much more likely to proceed in the direction of equity and justice than if such investigation be undertaken at a time when both parties, as well as their friends and adherents, are laboring under the excitement of the abnormal conditions consequent to an open breach between employer and employed.

There are severe penalties imposed if service be interrupted during the investigation. Each workingman who strikes is liable to a fine of from $10 to $50 a day while out. The employer is liable to a fine of $100 to $1,000 a day if he disobey the law. An outsider who incites either party to break the law may be fined from $50 to $1,000 for each offense. The Board may summon witnesses, employ experts and investigate accounts. Sittings are held in public or in

private as the Board deems wise. Expenses of witnesses are paid, and each of the members of the Board receives $20 a day and expenses from the Department of Labour.

The main service of the Board is in bringing the disputing parties together and affording full opportunity to clear up misunderstandings. Explanations are mutually offered, grievances thoroughly ventilated and trade conditions discussed. There is full consideration of every vexed point. The high character of the members of the Board vouches for fair play and at the end of the investigation the published report makes a deep impression upon both sides and also upon public opinion.

Investigation—not Arbitration

There is no compulsory arbitration feature connected with the Lemieux Act. If both parties voluntarily agree to arbitration, well and good; but the act contemplates only investigation and publicity. After the report of the Board has been published, either party is entirely free to strike or lock-out; the law has been complied with when employer and employed permit the situation to remain unchanged until the end of the period of investigation. However, workingmen are quite unlikely to risk the dangers of a strike in the face of an adverse opinion of such a Board. Similarly, the employer will in almost every instance accede to the requests made by a fair tribunal. A strike or a lock-out is rarely undertaken when both parties are calm, when they have had proper opportunity to state their position and hear that of the other side. Amicable adjustment is far more likely under such circumstances; this has been the experience in Canada during the first five years of the operation of the Lemieux Act.

Five Years of the Act

From page 1056, *Labour Gazette*, issued by the Department of Labour, Canada, in May, 1912, I quote:

"During the first five years which elapsed between the enactment, in March, 1907, of the Industrial Disputes Investigation Act and the end of March, 1912, one hundred and twenty-four applications were received for the establishment of Boards of Conciliation and Investigation, as a result of which one hundred and ten Boards were established. In the fourteen remaining cases, the matters in

dispute were adjusted by mutual agreement whilst communications were passing with the department in respect of the establishment of the Board. In ninety-three out of one hundred and ten cases referred for investigation, the inquiry resulted either in a direct agreement between the parties or in such an improvement of relations as led to the settlement of the dispute. . . . There have been in all fourteen instances (out of one hundred and ten) during the five years, in which strikes have occurred after the reference of disputes under the terms of the act."

Regarding these fourteen cases, Hon. F. A. Acland, Deputy Minister of Labour, who has done splendid service under the past as well as under the present administration, and to whom I am indebted for much information, writes June 14, 1912: "In the majority of these cases the department received evidence showing that the inquiry had a very beneficial effect; in many instances the dispute ended on precisely the basis recommended by the Board."

Mr. Acland writes further, under same date, giving the following interesting details of the work accomplished under the Lemieux Act since April 1, 1912:

"Since the close of the financial year, there have been a number of boards established. I will briefly mention the cases:

1. "A dispute between the C. P. Railway Company and railroad freight handlers and railway clerks in the company's employ at Winnipeg. The number of employees concerned was placed at two thousand. The inquiry resulted in a unanimous report and an amicable adjustment of the dispute.

2. "A dispute between the Canadian Northern Coal and Ore Dock Company at Fort William and coal handlers numbering about two hundred. The dispute is largely a repetition of one occurring a year earlier where a satisfactory arrangement was reached by the Board. The report of the present Board has not yet been received, but there is no word of trouble.

3. "A dispute between the Ottawa Electric Railway Company and its street railway employees numbering four hundred twenty-five. The report in this case was received yesterday and was unanimous. The parties had not then formally accepted the recommendations, but the department understands that the company had accepted in advance, while the morning papers here announced that the employees last night decided to accept the finding.

4. "A dispute between the Inverness Railway and Coal Company at Inverness, N. S., about four hundred men being concerned. This Board is now in process of formation, a member having been appointed on the recommendation of each side, while the question of the chairmanship remains for a moment in abeyance.

"This, I think, completes the list of existing boards established since April 1, 1912."

Example for Our Country

Why should not our states profit by the experience of Canada? The prevention of such a large proportion as ninety-three out of one hundred ten strikes by a simple, sane, just method would mean much to us socially and economically. This is particularly true in our present troublous times, when men and women are rushing into strikes because they see no other way of rectifying their grievances. Are the officials of public utilities and mines in this country opposed to strike prevention? It cannot be. Are they not willing in time of threatened strike to have the actual working conditions of their plants brought to light by a fair investigation and then placed before the public for judgment? Every public utility or mine operator should be.

On the other hand, would our labour object to an impartial investigation of its grievances and a public statement of the same, to prevent the losses and risks of strikes? Some leaders of labour have frankly opposed legislation to this end in our states, giving two main reasons: (1) That labour is not willing to give up even for a day its fundamental right to strike. (2) That labour does not wish to give the companies time to prepare for a strike by engaging strike-breakers. On the first point, I do not understand how conservative leaders of labour can logically object to this phase of the Canadian act; for one of the aims of such men and the unions they represent is to make trade-agreements with employers; and every trade-agreement waives for a term this "fundamental" right to strike.

In connection with public service utilities where uninterrupted service is so essential for the public comfort, every man or woman seeking employment should recognize the duty assumed to serve steadily and to give ample opportunity for the investigation and rectification of any grievances that may arise. Aside from the

moral obligation of both company and men to give uninterrupted service, it should be remembered that the worst sufferers at a time of discontinuance of service in public utilities are the working people themselves. Is it not worth while under all circumstances to postpone a strike for a few weeks with the assurance, as under the Canadian act, that a fair opportunity will be given to have the objectionable conditions, which are the basis of the threatened strike, removed by peaceful means? I am assuming that the strike is a just one; if, however, a breach is threatened on account of a misunderstanding in which the labour side is wrong, how much more cause is there for delay!

Now to the second point, that of giving the companies time for preparation for the threatened strike. This argument overlooks the fact that workingmen do not, under the Canadian act, set a definite advance date for striking; they simply give notice of their intention to strike and ask for the appointment of a Board which is thereupon organized. If the company tried, as is suggested, to take advantage of the situation by collecting in advance an army of strike-breakers, the strike might easily be postponed until the company tired of supporting such an expensive body of idle men. Looking at this argument from another standpoint, public utility and mining companies are not likely to be so surprised by a strike that the modern strike-breaking agencies cannot supply men in time to meet requirements. The objections referred to are but theoretical. The hearty approval of the Lemieux Act from all sides after five years' practical operation, gives sufficient answer.

Under date March 14, 1912, Mr. J. G. O'Donoghue, B.C., LL.B., of Toronto, an attorney officially representing the unions of the Province of Ontario, writes to me confirming his previous strong endorsement of the act: "I have acted on thirty or thirty-five boards and have no reason to change my opinion." Mr. O'Donoghue has had more experience than any other man on these boards.

The Hon. W. L. Mackenzie King, C.M.G., Ph.D., the father of the act, who may well feel proud of his successful labours in saving for his country not only money but men by this movement for strike prevention, writes to me under date February 15, 1912, as follows: "My faith in the Canadian act has been increased, first, as a result of its workings, which have more than kept up to the average of

previous years; and secondly, because of the outspoken defense of the act by labour men. In our last election, an effort was made by some to belittle its effects, but the labour men came to its defense, in particular leaders of the Grand Trunk Railway strike."

In applying the principle of the Canadian act in our states, which I trust will soon be done, we might be able to improve details. For example, the Board may be increased from three to six members, for the following reasons: When a single individual represents a side, the pressure upon him to "stand up" for his folks, right or wrong, is tremendous. He is fearful of the charge that he has "gone back" on his side. He is more apt to be under suspicion of "selling out." His responsibility is unnecessarily great. Had each party, namely, the employers, the employees and the public, two representatives, these would strengthen and reinforce each other and divide the burdens. Again, the presence of a single judge, a "third man," gives the proceeding the appearance of an arbitration. With but three men on a board, as in Canada, all depends in the end upon a single man's judgment or viewpoint. In the amendment which I propose, that is to have a board of six, the judgment is more apt to be fearless and independent and the decisions will have a stronger moral influence upon both sides and upon the community. Other amendments of a technical character may be necessary to adapt the Canadian act to the provisions of our federal and state constitutions; but the principle of the act should soon be applied to satisfy our crying need of strike prevention. Although boards have but rarely been invoked by private business corporations or associations in Canada, it may be possible to so shape the law as to make it more attractive to private business in our states.

Industrial "Fire" Department

In view of the normal risk of fires and also the added danger of those of incendiary origin, every city, town and hamlet has for its protection, an organized fire department. A new development, called forth by growing appreciation of the need of conservation of our resources, is the fire-prevention bureau. In contrast to this activity, we are very backward in the industrial world in preparations for protection against the labour conflagrations which threaten our prosperity. In spite of the frequent occurrence of incendiary industrial fires in addition to those arising out of the conflicts of

normal human passions, we have hardly any industrial fire-prevention bureau, or even industrial fire department. Under our "Erdman" act (a crude forerunner of the Canadian act), Judge Knapp and Commissioner Neill have become federal industrial fire chiefs with practically no firemen at their command—two men for our whole country! Less than half our states have conciliation boards and even these are not at all equipped to meet the dangers that menace us.

Recommendation

One of our most serious problems grows out of the fact that the cost of living is increasing beyond the earning power of the masses. Manifestations of discontent are breaking out everywhere. Strikes are threatening right and left, while we remain almost entirely unprepared. There should be competent, disinterested men and women of standing in every community willing to devote their lives to the study of this serious human problem. To these experts employers and employees would turn with confidence to obtain a peaceful adjustment of differences, if such a simple mechanism as the Canadian act were operative in our states. Workingmen frequently strike because they know of no better way to attempt to secure justice. Let us provide such a better way!

Particularly in the case of employees in public utilities should the opportunity to obtain just conditions without resort to strikes be clearly established. All that both sides in any controversy should and usually do desire, is fair play; a device like the Lemieux Act assures this. In no strike does our public receive sufficient impartial testimony upon which to base judgment as to the rights of the controversy. At least, in cases where public utilities are affected the people are certainly entitled to full, unprejudiced information; the Lemieux Act provides for this.

It might be well, in view of the successful operations of our federal Erdman act in interstate railway industrial disputes, to apply a similar expedient to state public service utilities. This could readily be accomplished by delegating to the state public service commissioners the same powers now given, under the Erdman act, to the interstate commerce and federal labour commissioners. It would be a great step forward in the cause of strike prevention. But it has become evident that the Erdman act might

safely be broadened in its scope and strengthened in its powers to still further increase its usefulness. Conceding this, there is but a single step from a broadened Erdman act to the Canadian Industrial Disputes act. Why not make that step?

I earnestly call for action on the suggestion of President Taft, who says: "The magnitude and complexity of modern industrial disputes have put upon some of our statutes and our present mechanism for adjusting such differences, a strain they were never intended to bear and for which they are unsuited. What is urgently needed to-day is a re-examination of our laws bearing upon the relation of employer and employee and a careful and discriminating scrutiny of the various plans which are being tried by some of our states and in other countries."

The strike and the lock-out are crude, barbaric and wasteful; they prove nothing of value and settle nothing permanently; they show only which side is the stronger or has the greater power of resistance, not which side is right. After the conflict, angry passions rankle in the breasts of the defeated; the fire is but temporarily smothered. On the other hand, the settlement of differences in the enlightened manner proposed, impartial investigation and publicity through a fair tribunal, brings out the facts and establishes justice. This is the only true and final settlement of any difference between men.

May industrial peace with justice be thus brought about in a manner befitting our twentieth century civilization!